

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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PUBLIC HEARING

+ + + + +

TUESDAY

MAY 17, 2005

+ + + + +

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

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

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

ZONING COMMISSION MEMBERS PRESENT:

CAROL MITTEN	Chairperson
ANTHONY HOOD	Commissioner

COMMISSION STAFF PRESENT:

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

This transcript constitutes the minutes from the hearing held on May 17, 2005.

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OTHER AGENCY STAFF PRESENT:

JOHN MOORE	Office of Planning
STEPHEN MORDFIN	Office of Planning
KAREN THOMAS	Office of Planning

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

LORI MONROE, ESQ.

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P R O C E E D I N G S

Time: 9:40 a.m.

CHAIRPERSON GRIFFIS: Good morning, ladies and gentlemen. Let me call to order the 17th of May 2005 Board of Zoning Adjustment of the District of Columbia's morning public hearing.

My name is Geoff Griffis, Chairperson. Joining me today is the Vice-Chair, Ms. Miller, and Mr. Etherly. Representing the National Capital Planning Commission is Mr. Mann, and representing the Zoning Commission is Ms. Mitten with us this morning.

Copies of today's hearing agenda are available for you. They are located on the wall where you entered into the hearing room. You can pick it up and see what we will accomplish this morning, where you on the chronology.

There are several very important things that I am going to go through in our opening remarks. First of all, everyone should be aware that all proceedings before the Board of Zoning Adjustment are recorded. They are recorded in two fashions, the most important of which is the court reporter, sitting on the floor to my right, who is creating the official transcript.

Attendant to that, we ask that people fill

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1 out two witness cards prior to coming forward to speak
2 to the Board. Witness cards are available at the
3 table close to the entrance of the hearing room and
4 also the table in front where you will provide
5 testimony. Those two cards go to the recorder prior
6 to coming forward to speak.

7 We are also being broadcast live on the
8 Office of Zoning's website. So attendant to that
9 also, we would ask that people, of course, speak into
10 the microphone, and the microphone should be on, and
11 you should refrain from making any noises or
12 disruptive actions in the hearing room so that we
13 don't interrupt the testimony that is before us and
14 any sort of transmission out of the hearing room.

15 I will give technical direction, if need
16 be, in terms of use of the microphones and such.
17 However, we would ask that, when speaking to the Board
18 first, you state your name and address for the record.
19 You just need to do this once, and then we can proceed
20 with hearing your testimony.

21 The order of procedure for special
22 exceptions and variances is: First, we hear from the
23 applicant and their case presentation. Second, we
24 will hear any government reports attendant to the
25 application, reports from the Office of Planning or

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1 Department of Transportation and such.

2 Third, we will hear from the Advisory
3 Neighborhood Commission, the ANC. Fourth would be
4 parties or persons in support of the application.
5 Fifth would be persons and/or parties in opposition to
6 an application. Sixth, finally, we return to the
7 applicant for any closing remarks or summations or
8 rebuttal witnesses, if they have any.

9 Cross-examination of witnesses is
10 permitted by all parties in a case. The applicant, of
11 course, is a party. The ANC is automatically a party
12 in the case, and then the Board will establish, if
13 required, additional parties in a case. Those folks
14 would be able to cross-examine witnesses. I will go
15 into more specificity of that, if need be, as it
16 arises in specific cases.

17 The record will be closed at the
18 conclusion of each hearing on a case except for any
19 material that the Board specifically requests, and we
20 will be very specific as to what is to be submitted
21 into the record and when it is to be submitted into
22 the Office of Zoning.

23 After that material is received, it should
24 be, of course, understood that no other information
25 would be accepted into the record. The record would

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1 be finally closed.

2 The Sunshine Act requires that this Board,
3 as I said, conduct all its hearings in the open and
4 before the public. This Board does enter into
5 executive session, both during or after hearings on a
6 case, and that is for purposes of reviewing records
7 and/or deliberating on cases. This is in accordance
8 with our rules, regulations and procedures. It is
9 also in accordance with the Sunshine Act.

10 The decision of this Board in contested
11 cases, and all cases before us are contested, must be
12 based exclusively on the record that is created before
13 us today. Therefore, we ask that people present no
14 engage Board members in private conversations today so
15 that we do not give the appearance of receiving
16 information outside of the record.

17 The Board will now -- Actually, let me say
18 a very good morning to Ms. Bailey with the Office of
19 Zoning on my very far right, Mr. Moy closer to me on
20 my right with the Office of Zoning, and also the
21 Office of Attorney General, Ms. Monroe representing
22 today.

23 Let me ask that all those individuals who
24 are wishing or thinking of testifying today if you
25 would please stand and give your attention to Ms.

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1 Bailey. She is going to swear you in.

2 MS. BAILEY: Please raise your right hand.

3 (Witnesses sworn.)

4 CHAIRPERSON GRIFFIS: Thank you all very
5 much.

6 At this time, the Board will consider any
7 preliminary matters. Preliminary matters are those
8 which relate to whether a case will or should be heard
9 today. Requests for postponements, withdrawals or
10 whether proper and adequate notice has been provided
11 are elements of preliminary matters.

12 If you have a preliminary matter or you
13 believe that there is a case on the Board's agenda
14 this morning that should not proceed, I would ask
15 that you come forward and have a seat at the table in
16 front of us.

17 Again, let me say a very good morning to
18 Ms. Bailey and ask if you have any preliminary matters
19 for the Board's attention at this time.

20 ZONING SPECIALIST BAILEY: Mr. Chairman
21 and to members of the Board and to everyone, good
22 morning.

23 Staff does not have any preliminary
24 matters, Mr. Chairman.

25 CHAIRPERSON GRIFFIS: Oh, excellent. Not

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1 seeing any indication of having a preliminary matter
2 from those present, let's call the first case of the
3 morning.

4 ZONING SPECIALIST BAILEY: Application
5 Number 17318 of Ronald and Katherine Stewart, pursuant
6 to 11 DCMR 3103.2 for a variance from the lot
7 occupancy requirements under Section 403, the side
8 yard requirements under Section 405, the court
9 requirements under Section 406, and the nonconforming
10 structure provisions under Subsection 2001.3, to allow
11 additions to a single family dwelling in the R-1-B
12 District of premises 3130 Worthington Street, N.W.,
13 Square 2349, Lot 815.

14 Mr. Chairman, my understanding is that it
15 was advertised as I read it. However, there may be a
16 correction needed for this application.

17 CHAIRPERSON GRIFFIS: Excellent. Thank
18 you. Good morning.

19 MR. GELL: Good morning. Good morning,
20 Mr. Chairman. My name is Stephen Gell. I am a zoning
21 attorney, and I am representing Katherine and Ronald
22 Stewart, who live at 3130 Worthington Street, N.W.

23 First, let me thank you for accommodating
24 our time constraints. Appreciate it.

25 This was advertised as a variance.

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1 Actually, our application does request a special
2 exception. We do think that it comes within 223.1,
3 special exception, in three areas. One is for lot
4 occupancy. It is 42-something percent; whereas, we
5 are permitted 40 percent.

6 One of the side yards is okay at 5 feet,
7 which is permitted in that District for that age
8 house. The other is 3 feet, and for that we would
9 need a special exception, in addition to which the two
10 additions do create courts.

11 There was some discussion between Mr.
12 Mordfin and myself over how many courts we are talking
13 about. I said I thought there were four. There are
14 indeed four indentations. His feeling was that two of
15 those could be accommodated by the provisions
16 regarding court niches and the fact that one of them
17 is a bay window.

18 We tried to get some confirmation of that
19 from Mr. Bello. We weren't able to do it by the time
20 of the hearing. So we would still keep the request at
21 four courts, just in case the Zoning Administrator has
22 a different view when we go down to get our permits.

23 I am going to stop at this point and ask
24 Ms. Stewart if she would make a statement. With me
25 also is Mr. Phil Eagleburger, the architect. I am not

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1 going to ask that he be regarded as an expert witness.
2 He, obviously, is AIA, and he does have all those
3 qualifications, but I don't think it is necessary to
4 take the time to do that in this case.

5 CHAIRPERSON GRIFFIS: Okay, and just for
6 clarification, Mr. Gell, you did state the fact that
7 the lot occupancy falls within that of the constraints
8 to allow this to come forward under Section 223. Is
9 the lot occupancy 47.5 percent?

10 MR. GELL: I remember it at 42, but I will
11 check. You are absolutely right. It is 47.5 percent.

12 CHAIRPERSON GRIFFIS: Okay, and you are
13 indicating, of course, with the courts, whether they
14 be court niches or courts, there is a total of four.
15 Those would also come under Section 223, special
16 exception. Is that correct?

17 MR. GELL: I believe they do.

18 CHAIRPERSON GRIFFIS: Indeed. And the
19 side yard also has been also covered under 223, as you
20 have indicated. Very well. Let's move ahead.

21 MR. GELL: Thank you.

22 MS. STEWART: Good morning. My name is
23 Katherine Stewart. With me is my husband, Ronald
24 Stewart. We are seeking a special exception so that
25 we can add small additions to our home at 3130

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1 Worthington Street.

2 In order to build the additions, we need
3 to exceed lot occupancy and reduce the side yard and
4 court dimensions beyond what would be permitted as a
5 matter of right.

6 We have lived in the house since 1983. My
7 husband is a retired Foreign Service Officer who works
8 as a consultant for the Department of State. I work
9 at the Institute for International Economics as
10 Executive Assistant to the Director.

11 Our house looks like a decent size house
12 from the outside, but inside it is chopped up. The
13 kitchen is very small and old. The bedrooms are also
14 very small. In this house, we have raised our two
15 children and have been joined by my mother who comes
16 and stays with us for extended periods of time.

17 As a result of the small size of the
18 rooms, our lifestyle has been extremely circumscribed.
19 Our children, when they were young, could never bring
20 their friends over and entertain them in a normal
21 fashion, because we simply did not have sufficient
22 room inside or out. We could never entertain more
23 than six people for dinner or a few more for
24 cocktail receptions because our public areas were
25 inadequate.

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1 Our children have temporarily left the
2 nest, but neither is married, and both intend to
3 continue their educational pursuits at schools in the
4 Washington area. So we have to prepare for the
5 contingency of having to welcome them back to the nest
6 in their adult capacity.

7 Our house, therefore, is badly in need of
8 renovation. We plan to put a small one-story addition
9 on the west and a two-story addition on the east.
10 However, the lot is an odd shape. It is a perfect
11 triangle and on a hill and, therefore, difficult to
12 work with.

13 In today's housing market, one need only
14 check the prices to understand that moving is not an
15 option except for the wealthy. Therefore, we must
16 face the prospect of either modestly expanding our
17 present quarters in order to make the house livable or
18 being forced to make the best of a difficult
19 situation.

20 We don't think our addition will have any
21 negative impact on the neighbors in terms of light,
22 air or privacy. The design of the additions will fit
23 nicely with the character, pattern, and scale of the
24 houses nearby, and our neighbors apparently agree. In
25 fact, all of our immediate neighbors and several

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1 others have signed our petition.

2 Our architect, Phil Eagleburger, is here
3 to answer any questions you may have about the design.
4 Thank you very much.

5 CHAIRPERSON GRIFFIS: Excellent. Thank
6 you very much. We appreciate a little bit of
7 background. Of course, we won't be judging whether
8 there is exceptional need or requirements for the
9 interior space, but rather exactly what you ended
10 with, and that is whether it will tend to impair the
11 light, air or privacy and use of the adjacent
12 neighbors.

13 You have indicated also the petition that
14 was sent in that the Board has looked at. Of course,
15 that says to us not that the majority vote goes to
16 approve this, but rather that no evidence has arisen
17 of having any sort of detrimental impact or no
18 concerns have arisen. So people have looked at this,
19 and with their notion I think the Board now obviously
20 is looking at it with our own.

21 Let's move ahead then. What else, Mr.
22 Gell?

23 MR. GELL: Unless the Board has some
24 questions of the architect, we can rest at that point.

25 CHAIRPERSON GRIFFIS: Excellent. One

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1 quick question. Of course, the character is an issue
2 in 223, and we have dictatorial design jurisdiction
3 here. So we can do anything we want, just to scare
4 you a little bit while I ask this question.

5 Materials: You have indicated some of the
6 materials, lap siding. Can you just speak briefly on
7 how it is matching the existing, what the materials
8 for the addition are going to be?

9 MR. EAGLEBURGER: Thank you. My name is
10 Phil Eagleburger. I am the architect, Treacy &
11 Eagleburger Architects.

12 The materials are basically drawing from
13 the existing. The existing house is a masonry house.
14 The larger of the three additions, which is the
15 breakfast room here, will be substantially masonry
16 with wood flanking pieces -- a wood bay popping out
17 from the masonry portion. So it is intended to look
18 perhaps like it was always there, but it is still
19 smaller and diminutive relative to the existing house.

20 The rear -- This is a little powder room
21 addition in the rear corner. That is also masonry.
22 Then the bay at the west end is wood construction
23 attached to the masonry wall.

24 There is a total of about -- I think it is
25 117 square feet of total coverage which we are adding

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1 to this already about 700 square foot existing
2 coverage. It gives you an idea of the scale of this
3 house.

4 CHAIRPERSON GRIFFIS: Good. Anything
5 else? Any other questions from the Board? Very well.
6 Not noting any other questions, why don't we move on
7 then to the Office of Planning. Indeed, we believe
8 that we do need to waive in the OP report. Is there
9 any objection to waiving and accepting it into the
10 record as Exhibit No. 27?

11 VICE-CHAIRPERSON MILLER: No objection.

12 CHAIRPERSON GRIFFIS: Not hearing any
13 objection, let's move ahead. A very good morning,
14 sir.

15 MR. MORDFIN: Good morning, Chairman and
16 members of the Board. Stephen Mordfin with the Office
17 of Planning.

18 The applicant is proposing three building
19 additions, to include a bay window on the west side of
20 a dwelling, a one-story powder room addition on the
21 west side of the dwelling, and a two-story building
22 addition with a two-story bay on the east side of the
23 dwelling.

24 As a result, the applicant requires relief
25 to increase the lot occupancy to 47.5 percent, reduce

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1 the east side yard to three feet, and permit two open
2 courts, one 5.4 feet in width and the other 3.1 feet
3 in width.

4 The subject application is in conformance
5 with the provisions of Section 223 in that the
6 building additions are to a one-family dwelling in a
7 residence district. Light and air will not be unduly
8 affected, because the building additions will not
9 result in side yards of a lesser width than currently
10 exist.

11 Privacy and use and enjoyment of
12 neighboring properties will not be unduly compromised,
13 because the building additions on the west side of the
14 dwelling face a driveway on the adjacent property, and
15 not a yard, and the building addition on the west side
16 will conform to the 5 foot side yard required prior to
17 1958.

18 The addition will not visually intrude
19 upon the character, scale and pattern of houses, as
20 the building additions are designed to complement the
21 existing structure and are in scale with the
22 surrounding dwellings.

23 The applicant submitted drawings in
24 support of the application. The proposed FAR is 47.5
25 percent, less than the maximum 50 percent permitted,

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1 and the subject application will not introduce or
2 expand a nonconforming use.

3 Therefore, the Office of Planning
4 recommends approval of the subject application.

5 CHAIRPERSON GRIFFIS: Excellent. Thank
6 you very much. An excellent report. Mr. Gell, do you
7 have any cross-examination of the Office of Planning?

8 MR. GELL: No, I don't.

9 CHAIRPERSON GRIFFIS: Excellent. Any
10 questions from the Board? Very well.

11 Let's move ahead then. I don't have any
12 other government reports attendant to this
13 application. We do have -- moving on to exhibits, I
14 have a letter from the ANC. Is ANC-3G represented
15 today? The ANC is not represented today. We take
16 that into the records unless there's any comments that
17 Board members have regarding it? There was a
18 regularly scheduled meeting on the 11th of April, and
19 the vote was 7 to zero, with a quorum present.

20 Mr. Gell, is there anything else we need
21 to be aware of in that report?

22 MR. GELL: No. It was favorable. We are
23 happy with it.

24 CHAIRPERSON GRIFFIS: Indeed. In that
25 case, at this time let's take anybody else here

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1 present for Application 17318 to provide testimony,
2 persons to provide testimony either in support of the
3 application or in opposition to the application. Not
4 seeing any indication of persons present to provide
5 additional testimony, Mr. Gell, let's turn it over to
6 you for any closing remarks you might have.

7 MR. GELL: I will leave it at that. I
8 think we have made the case for a special exception.
9 I want to thank the Office of Planning for the work
10 that they did. It was very, very helpful, and thank
11 you for your time.

12 CHAIRPERSON GRIFFIS: Good. Thank you.
13 Board members, I think this is prepared to go forward.
14 The record is full on this, and I would move approval
15 of Application 17318 of the Stewart addition, which
16 would come under 223, Special Exception for lot
17 occupancy, the side yards, and also the courts, as
18 indicated in the application. That would be all four,
19 and I would ask for a second.

20 COMMISSIONER MITTEN: Second.

21 CHAIRPERSON GRIFFIS: Thank you, Ms.
22 Mitten. Clearly, 223 is part of the regulations. It
23 is set up exactly for this. We don't go into, of
24 course, the requirements or the demand for why you
25 need space, but rather the regulations accommodate

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1 those nonconforming structures in existence that may
2 need to be adapted.

3 Of course, our provisions for approval is
4 to make sure that it doesn't unduly impair the light
5 and air of adjacent neighbors or their privacy, their
6 use or in some be detrimental to the larger -- let's
7 say, the larger community and surroundings. Clearly,
8 there has been no evidence in this that is persuasive
9 or no evidence, actually, brought forward that it
10 would. In fact, the opposite.

11 The materiality of this, I think, is very
12 in keeping with the character and also that which is
13 in the record that we can indicate of the surrounding
14 area. The light and air and the use and privacy has
15 not been impacted whatsoever.

16 I will open it up for any other
17 deliberation on the motion. Not noting any other
18 comments from Board members, we have a motion before
19 us. It has been seconded. I would ask for all those
20 in favor, signify by saying Aye. Opposed? Very
21 well, why don't we record the vote?

22 ZONING SPECIALIST BAILEY: Mr. Chairman,
23 the vote is recorded as 5-0-0 to approve the
24 application under Section 223 of the Zoning
25 regulations. Mr. Griffis made the motion. Ms. Mitten

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1 seconded. Mr. Mann, Mr. Etherly and Ms. Miller are in
2 agreement. Are we doing a summary order, Mr. Chairman?

3 CHAIRPERSON GRIFFIS: I don't see any
4 reason, unless there is any objection by the Board
5 members, that we waive our rules and regulations and
6 issue a summary order on this.

7 ZONING SPECIALIST BAILEY: Thank you, sir.

8 CHAIRPERSON GRIFFIS: Excellent. Thank
9 you. Mr. Gell, thank you very much. Appreciate you
10 all being here, and an excellent application.

11 MR. GELL: Thank you all.

12 CHAIRPERSON GRIFFIS: Enjoy. Let's move
13 ahead then and call the next case.

14 ZONING SPECIALIST BAILEY: Application
15 Number 17321 of Darcy E. Flynn pursuant to 11 DCMR
16 3103.2 for variances from the lot area and lot width
17 requirements under Section 401, a variance from the
18 lot occupancy requirements under Section 403, a
19 variance from the rear yard requirements under Section
20 404, a variance from the side yard requirements under
21 Section 405, and a variance from the off-street
22 parking requirements under Subsection 2102.1, to allow
23 the construction of a new single-family detached
24 dwelling in the R02 District at premises 1000 block of
25 Taussig Place, N.E., Square 3890, Lot 117.

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1 CHAIRPERSON GRIFFIS: Please. Good
2 morning. I am going to have you just touch the button
3 on the base there, and you can just state your name
4 and address for the record.

5 MR. FLYNN: Good morning. My name is
6 Darcy Flynn. My address is 1247 Kerney Street, N.E.,
7 Washington, D.C. 20017.

8 CHAIRPERSON GRIFFIS: Excellent.

9 MR. ABBOTT: My name is Jacob Abbott,
10 address 3126 10th N.E., Washington, D.C. 20017.

11 CHAIRPERSON GRIFFIS: Okay, we will turn
12 it over to you.

13 MR. FLYNN: Okay. Thank you very much for
14 this opportunity. I'll just summarize what I am
15 hoping to do. I bought a vacant lot from a neighbor,
16 Miss Brown, and I also want to mention that I -- I
17 don't know the process very well, and I apologize.

18 CHAIRPERSON GRIFFIS: That's fine. We'll
19 walk you through.

20 MR. FLYNN: I was supposed to turn these
21 in a week ago, I think, and I have, I think, about 14
22 neighbors who --

23 CHAIRPERSON GRIFFIS: They have just been
24 handed to us. So they are now in the record. They
25 will get an exhibit number. Ms. Bailey will put that

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1 on later.

2 MR. FLYNN: One of those neighbors is the
3 person I bought this lot from back in January. So as
4 I understand it, we have a letter from the city saying
5 that we can build a house, because there is a garage
6 on the lot, and so we are working with a homebuilder
7 who said, well, if we can make it one foot wider, that
8 would be nice.

9 So we are asking, I think, for three
10 different variances: Can we make the house 24 feet
11 wide instead of the 23 that is allowed, and can we
12 make the house -- can we build a back deck, basically,
13 and make it longer than otherwise allowed under the
14 setback requirements; and can we in that process have
15 the parking on the street instead of a parking pad in
16 the back.

17 I want to let you know that we discovered
18 this morning -- I think we made an error in the
19 summary, and I apologize for that. But on the front
20 page, assuming, as we are, that the rear deck counts
21 in the setback requirement, the setback we are
22 actually asking for is 12.5 instead of 18.5, because
23 the deck is 6 feet.

24 CHAIRPERSON GRIFFIS: To the rear yard?

25 MR. FLYNN: The rear yard. Then the side

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1 yard setback is -- We've called it 5.25, because what
2 you will see is it is actually 7.5 on either side, but
3 we are also asking for this 4 foot stoop on the side.
4 So that's why we called it 5.25. It's just for that
5 little 8 by 4 stoop. Otherwise, it is really a one-
6 foot setback that we are asking for.

7 I have approached the neighbors to my
8 right and introduced myself and told them, if there is
9 anything about it that is particularly objectionable,
10 by all means, you know, if I can do anything to
11 accommodate people to make it more palatable or
12 acceptable -- you know, I live in the neighborhood.
13 I fully understand some people just oppose building
14 altogether. Other people, maybe they don't like
15 something about it that we can address. So I just
16 want you and all the neighbors to know. I have given
17 them all my phone number and everything. If there is
18 something particularly you want done, by all means, we
19 are open. We are not wed to this idea.

20 CHAIRPERSON GRIFFIS: Well, that's
21 interesting. But this is the idea we have, and this
22 is the application that you put in. It is a good
23 place to start in terms of getting the correct
24 calculations, and I note on your site plan that it
25 does indicate 12.5 feet for the rear yard.

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1 You have indicated on the side yard where
2 you have a stoop, that is a four-foot stoop, and it is
3 a 7.5 foot side yard. That would make the side yard
4 decrease to three and a half.

5 MR. FLYNN: Yes.

6 CHAIRPERSON GRIFFIS: Okay. So that, I
7 think, is showing. That is an understanding.

8 Okay. So you are here, obviously, for a
9 variance from the parking requirements, also that of
10 the side yard, the rear yard, and the lot occupancy.

11 Why don't we turn it over to you just to
12 reiterate what you have put into the application or
13 continue on that burden of proof for the variance
14 case. Of course, that goes to how is this property
15 unique, and what are the -- out of those uniquenesses,
16 what are the practical difficulties that have arisen
17 in terms of compliance with the regulations?

18 MR. FLYNN: Sure. Thanks. As I
19 understand it, prior to the zoning regulations that
20 came into effect in the Fifties, this is a lot that
21 could have been built upon, and then when the zoning
22 laws came into effect, it made it so that it is not
23 4,000 square feet. It is only 2200. It has 39 foot
24 of road frontage rather than the required 40. So it
25 is short by one foot, and so it is unique in that

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1 sense.

2 Absent a -- If it weren't for the garage,
3 then absent the variance, we wouldn't be able to build
4 at all. But it does have the garage, and so that may
5 take away some of its uniqueness, but also the block
6 itself is actually zoned R-2, and I believe, if I
7 counted them up correctly, there are 16 houses on the
8 block. Three of them are detached frame houses like
9 the one we want to buy. So this would be the fourth
10 one. The rest of them are all semi-detached brick
11 homes.

12 CHAIRPERSON GRIFFIS: Okay. But you seem
13 to be talking about the uniqueness. Obviously, this
14 was a lot that was created prior to the zoning
15 regulations.

16 MR. FLYNN: Yes.

17 CHAIRPERSON GRIFFIS: So in the adoption
18 in the 1950s of the zoning regs, it became
19 nonconforming. So you have a small lot.

20 MR. FLYNN: Yes.

21 CHAIRPERSON GRIFFIS: So the size is one
22 of the uniquenesses. So how does the size impact your
23 practical difficulty of meeting the regulations?

24 MR. FLYNN: Right. The size is -- The
25 regulations require 4,000 square feet. The size of

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1 this lot is only 2200. So without some sort of help--

2 CHAIRPERSON GRIFFIS: Right. We got that.

3 MR. ABBOTT: Essentially, it would be a
4 very small house, if we had to conform to the zoning
5 regulations. So we don't want a tiny little box house
6 on the land. So that is why -- You know, it's shallow
7 and narrow. So we want a variance so that it is going
8 to look like a house that's on the block.

9 CHAIRPERSON GRIFFIS: Oh, I see. With the
10 diminished size of your lot occupancy, which is a
11 percentage of the size, is disproportionate. You,
12 obviously, are moving above that 40 percent required,
13 because the lot is so small, and then you want to make
14 a house that is nice enough or usable or whatever your
15 words will be.

16 MR. FLYNN: Precisely. But, you know, I
17 also want to reiterate that I don't think we are
18 asking for a whole lot of a variance. Again, I think
19 it is just the foot, and then as far as length, I
20 think we could practically build this house all but
21 one-foot narrower without the variance. So, yes, we
22 need the relief in order to put a house on this tiny
23 lot, but I don't want it to sound like it is going to
24 dwarf the lot. It would be no bigger, for instance,
25 than the neighbor's house.

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1 CHAIRPERSON GRIFFIS: The understanding is
2 that it is not out of scale.

3 MR. FLYNN: It is not out of scale, right.
4 Right.

5 CHAIRPERSON GRIFFIS: Well, I think we are
6 aware of that. Okay. You keep saying this one foot.
7 Where is the one foot that you would change to make it
8 conforming?

9 MR. FLYNN: I believe, because it is --

10 MR. ABBOTT: Well, just on the side.

11 MR. FLYNN: -- 39 feet wide, if we use 8
12 foot setbacks, we would be allowed to go 23 feet width
13 on the house. Again, I am excluding that stoop. So
14 if it weren't for the stoop, then we would be looking
15 at one foot of a variance from the width. Now,
16 obviously, the stoop is additional that we are looking
17 for, but most of the house is going to be 7.5 feet,
18 which is just a half a foot on either side less than
19 the required 8 feet.

20 COMMISSIONER MITTEN: Can I ask a question
21 on that point, Mr. Chairman?

22 CHAIRPERSON GRIFFIS: Yes, please.

23 COMMISSIONER MITTEN: Can you tell us what
24 is the -- You have suggested that you are only one
25 foot narrower than would be otherwise required, and

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1 yet the side yard variance that you are asking for is
2 four feet. Is that right? Yet you are asking for a
3 four-foot. So what is the -- How does a one-foot
4 narrower lot compel you -- How does it create an
5 exceptional practical difficulty that you need a four-
6 foot side yard variance?

7 MR. FLYNN: It is really just for the
8 stoop. We weren't sure -- We are actually not sure if
9 we put this in here properly. You know, the stoop is
10 unique, because it is not on both sides of the house.
11 So we just kind of divided it by 2 and asked for the
12 setback there.

13 COMMISSIONER MITTEN: Maybe you are not
14 getting my point. Maybe you need to say why do you
15 need the stoop?

16 MR. ABBOTT: I mean, this is -- I mean, it
17 would be for the side entrance. So it is going off
18 your kitchen. So instead of bringing the trash like
19 through your living room, just an easy access off the
20 side yard to put your trash and what-not, so you are
21 not having to drag --

22 COMMISSIONER MITTEN; Is there some reason
23 why there can't be a front door and a back door? Why
24 does there have to be a side door, just for instance?

25 MR. ABBOTT: I mean, there is still a

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1 front and a side, but like a lot of houses in the
2 neighborhood -- I mean, a lot of houses will have kind
3 of a side entrance off the kitchen to -- Does that
4 make sense?

5 COMMISSIONER MITTEN: The requirement is
6 you have this unique circumstance, and it creates a --
7 Complying with the strict requirement of the zoning
8 ordinance creates an exceptional practical difficulty
9 for you. Is this merely a convenience or is there
10 some really compelling reason why you have to have
11 this side door? That's the logic of this exercise.

12 MR. FLYNN: Okay. I guess I didn't fully
13 understand that and, to be honest, thinking off the
14 top of my head, other than the fact that this is what
15 the builder suggested, and we really like the design
16 and think it would just add to the value and
17 attractiveness of the house, and we have a picture of
18 it, and we think it looks a lot better with a stoop
19 than without it -- you know, and we don't think that
20 the three-foot for just 8 little feet in the middle of
21 the house is going to be that big of a detraction for
22 anybody. We think it adds value and doesn't take away
23 a whole lot. Beyond that, I can't say it's compelling
24 because we have a handicapped person that can only
25 come out the side or, you know, anything like that.

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1 CHAIRPERSON GRIFFIS: We are not looking
2 at that level of compelling, but this has stairs
3 entering into the first floor, doesn't it? I mean,
4 this is one of your entrances to the residence?

5 MR. FLYNN: Yes.

6 VICE-CHAIRPERSON MILLER: I just want to
7 jump in here for a second, because --

8 CHAIRPERSON GRIFFIS: Well, let me follow
9 up on that, because in 2503.4 of our regulations,
10 structures in required open spaces, stairs leading to
11 the ground floor from a door located on the story in
12 which the principal entrance to the building is
13 located may occupy any yard required under the
14 provisions of this title. The stairs shall include
15 any railing required in the provisions of the D.C.
16 Building Code.

17 I don't think that side -- the stoop, as
18 you call it, actually goes toward lot occupancy.

19 MR. FLYNN: We were conservative, and
20 assumed that it was. Same with the front and rear
21 porch. So if that is the case, obviously, that's
22 wonderful.

23 CHAIRPERSON GRIFFIS: Unless others see it
24 different.

25 COMMISSIONER MITTEN: I think it is that

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1 it doesn't go to the side yard, if you are quoting
2 from Chapter 25.

3 CHAIRPERSON GRIFFIS: I'm sorry. It is
4 allowed projection in the open space to the yard.

5 COMMISSIONER MITTEN: Right. Okay. So
6 that's out. So we don't need the side yard.

7 CHAIRPERSON GRIFFIS: Right, right.

8 COMMISSIONER MITTEN: And then it is not
9 included in the lot occupancy calculation, though. It
10 has not been. I'm sorry. I interrupted you, and I
11 think you were walking through it. But since you were
12 on that one-foot thing --

13 MR. FLYNN: Yes. If we ignore the stoop,
14 then as I understand it, we could build a 23-foot wide
15 house, because the lot is 39. You take away the 16 --
16 right? -- eight on each side, and that leaves 23 feet.
17 So we are asking for one foot, one-half foot on each
18 side to make it a foot wider, 24 feet wide.

19 COMMISSIONER MITTEN: And now tell us
20 about why it is more desirable to have a 24 foot wide
21 house than a 23 foot wide house, and not just that
22 it's better.

23 MR. FLYNN: No, no. Well, the extra foot
24 just makes it easier -- makes it better for the
25 bedroom configuration and the hallways. What we want

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1 is a three-bedroom, two and a half bath, and it is
2 just -- you know, you get the extra space.

3 CHAIRPERSON GRIFFIS: I'm sorry, Ms.
4 Mitten. I think it is a good exploration, but I think
5 we may not be clear enough. I don't think we are
6 asking the applicant to come down and justify 24 as
7 opposed to 22 or 23. For that matter, how could you
8 answer the question, why isn't this 16 feet wide. I
9 mean, my townhouse is 16 feet. Why can't you be 16
10 feet? Do you know what I mean? I'm not sure. How
11 are they to answer it when we have the plans and the
12 decision has been made to make it 24? Does that make
13 sense?

14 COMMISSIONER MITTEN: Well, as I
15 understand the test for a variance, there is the
16 unique condition, and as we are focused on this
17 particular point, the uniqueness is that the lot is
18 somewhat more narrow than typical, and then we have to
19 understand how that gives rise to an exceptional
20 practical difficulty.

21 Without knowing what a 23-foot-wide house
22 is like, because that is what you could build as a
23 matter of right, relative to a 24, how can the Board
24 explore the practical difficulty?

25 VICE-CHAIRPERSON MILLER: I would like to

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1 jump in here also, because practical difficulty is
2 kind of a difficult concept. I just wanted to read
3 some guidance from a Court of Appeals decision which
4 we look to with our regulations. This is the Gilmartin
5 case.

6 The Court says here that: In order to
7 prove that an applicant suffers from practical
8 difficulties, two elements must be proven. One, the
9 applicant must demonstrate that (1) compliance with
10 the area restriction would be unnecessarily
11 burdensome. I think that is probably where you need
12 to focus. Is this unnecessarily burdensome to you,
13 and explain how it is. Not impossible, but how does
14 it create a burden that is really not necessary?

15 Then the second aspect, the Court says, is
16 that the practical difficulties are unique to the
17 particular property.

18 Now you have already somewhat addressed
19 the uniqueness of this property anyway, but I just
20 wanted to give that to you. Maybe you can focus on
21 that, if you got that.

22 MR. FLYNN: One thing for us is we are
23 working with a builder, and sort of deferring to his
24 expertise, and this is a model that he has that's 24
25 feet wide. I think, in order to make it 23 feet wide,

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1 he would have to customize and tailor and add to the
2 costs and do that sort of thing in order to convert
3 this from what it already is.

4 I don't know that he has a 23-foot-wide
5 house. Maybe another one does, but we like this
6 builder and we like this product. So I think he would
7 have to somehow -- I suspect we would incur additional
8 costs to somehow shave the foot off of this thing on
9 the side.

10 I don't know if this goes so much to the
11 burden, but again the neighboring yards have smaller
12 setbacks. So, certainly, in that sense I guess would
13 it be a burden that we aren't allowed what others
14 have? I don't know if that is arguing it from a
15 different way. But I think it would add to our costs
16 and make it a more difficult house to build.

17 I apologize for not having a fuller
18 response.

19 CHAIRPERSON GRIFFIS: That's okay.
20 Follow-up?

21 COMMISSIONER MITTEN: Can you just explain
22 -- I'm not that well versed in building houses.
23 You're saying that you have this builder, and he's got
24 these -- He just has like these certain models, and
25 you sort of pick size and whatever, and it's sort of

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1 like pre-packaged, to some extent?

2 MR. FLYNN: Sure. These are high quality
3 modular -- not modular, but they are partially done in
4 the factory, and then they come out and set them up a
5 the property, which save costs. But I think they are
6 the previous version of those cheesy modular homes
7 which have really made a lot of strides, and really
8 are attractive, and there are a lot of them in our
9 neighborhood.

10 So, yes, the product is built in the
11 factory at 24 feet wide, and I don't know that he has
12 a 23 foot wide home.

13 COMMISSIONER MITTEN: I see. Okay. Thank
14 you.

15 CHAIRPERSON GRIFFIS: Following up on that
16 then, couldn't you somewhat glean -- You're not a
17 builder or a designer or an engineer, I take it. But
18 could you glean on the fact that, if a model has been
19 created and it is pre-engineered which is quality
20 control in the factor, and it comes out to the site
21 and it is all put together, that there is industry
22 reasoning for not doing 23 feet but 24 feet?

23 MR. FLYNN: I wish I had made that point
24 myself. Right. Absolutely. I'm not an engineer or
25 any of that, and so I'm --

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1 CHAIRPERSON GRIFFIS: Could it conceivably
2 be based on, for instance, the roof pitches that would
3 accommodate for the engineering of the truss, the
4 window spacing? You have the front -- As I looked at
5 this, you've got a front door. You've got a small
6 vision window and then a double-hung window. If you
7 lost 12 inches, would that impact the fenestration on
8 that or at the rear?

9 You have on the side elevation three
10 fenestrations on the first level and a chimney. The
11 chimney is part of this product. Is that correct?

12 MR. FLYNN: Yes, sir.

13 CHAIRPERSON GRIFFIS: A fireplace? It
14 seems like it would impact that elevation and how you
15 would actually accommodate, actually, light and air
16 into the property.

17 MR. FLYNN: I would assume so, and that
18 is, I think, the point I tried to make earlier,
19 unartfully. Taking the foot away, I'm sure, one way
20 or another, impacts what the builder needs to do. I'm
21 sure it doesn't reduce costs.

22 CHAIRPERSON GRIFFIS: I see. Okay.

23 MR. FLYNN: Or the attractiveness.

24 CHAIRPERSON GRIFFIS: Very well. Where
25 are we then? Additional questions?

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1 VICE-CHAIRPERSON MILLER: Mr. Chairman, I
2 have an additional question as to where we are. Are
3 all the variances still being requested or some not
4 necessary because of our interpretation of how the
5 stoop might affect variances?

6 CHAIRPERSON GRIFFIS: I think one of the
7 side yards is not required. I think, as I looked at
8 this, the lot occupancy, the stoop was not calculated
9 into the current lot occupancy. Is that correct?

10 MR. FLYNN: Correct.

11 MR. ABBOTT; So it would just be a half-
12 foot.

13 CHAIRPERSON GRIFFIS: And I think that it
14 does calculate into the lot occupancy. If I go to
15 building area, it is actually taken away from being
16 calculated within building area. Of course, building
17 area would go to calculating the lot occupancy
18 percentage.

19 MR. ABBOTT: I think, for the side, if you
20 did the 7.5, it would still be a half-foot on each
21 side. Right?

22 MR. FLYNN: Right. I think we would still
23 be asking for a half a foot on each side instead of
24 the 5.25 feet.

25 CHAIRPERSON GRIFFIS: What else?

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1 MR. FLYNN: The minimum required is 8, and
2 we are asking for 7.5 on each side.

3 CHAIRPERSON GRIFFIS: Okay.

4 VICE-CHAIRPERSON MILLER: Okay. I think
5 you have addressed the practical difficulty with
6 respect to the side yard and the lot occupancy, I
7 think. But what about the rear yard variance?

8 MR. FLYNN: The threshold question is that
9 we weren't sure, but we went conservative and assumed
10 that the front and rear porch had to be, in effect,
11 counted when considering the setback requirement. If
12 that is not the case, then again, just as with the
13 stoop, that would actually dramatically reduce the
14 variance we are asking for. But the burden we have
15 here is that the lot is only 57 feet wide, and so
16 while that is plenty of room for the width that we
17 want -- the length of 28 feet, we really would like to
18 have a front porch and a rear porch, and without some
19 relief we are going to have to --

20 I think I calculated it. If we can't get
21 some relief, what we are going to settle for is no
22 rear deck and a 4.5 foot wide front porch. So I think
23 that would be unattractive and, I think, just way too
24 narrow, and it might force us to not even have a front
25 porch.

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1 So that is the burden there, is that the
2 lot itself is simply -- It's only 57 feet wide --
3 deep, excuse me. And we want to be able to have a
4 small front porch and rear deck.

5 VICE-CHAIRPERSON MILLER: Can I push you
6 just a little further.

7 MR. FLYNN: Sure, sure.

8 VICE-CHAIRPERSON MILLER: Can you
9 articulate why it would be unnecessarily burdensome
10 for you not to have a front and rear porch?

11 MR. FLYNN: I'm too self-deprecating to do
12 this kind of stuff. Go ahead.

13 MR. ABBOTT: You know, I've just been
14 helping him with the project, but I think we also
15 compared it to the house that's essentially next to
16 it, and we wanted to create a house that looks like
17 the other houses in the neighborhood.

18 In general, I think anybody likes the
19 house likes to have a front porch. So it is not -- I
20 mean, you can live in a 8 x 8 box and it would be
21 fine, but I think it is more of a -- You want to
22 create a house that looks similar to the ones in the
23 neighborhood and would like to have a front porch.

24 MR. FLYNN: Thanks. The three frame
25 houses have porches. So I know one concern people

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1 have talked about is conformity, and would it be
2 burdensome for someone to not have a front porch to
3 sit on? I guess you could make that argument, but
4 also I think it would be a burden on the neighborhood
5 not to have it, because the three frame houses there
6 have lovely covered front porches, including, like
7 Jake said, the one right next-door, Ms. Stewart-
8 Brown's house who we bought the lot from.

9 So but I really do -- Yes, I think it is
10 burdensome for someone to desire to have a front porch
11 and see that their neighbors have one and not be able
12 to have one to sit on and enjoy.

13 COMMISSIONER MITTEN: Could I just follow
14 up on that. Setting aside the front porch, tell us
15 about why it is unnecessarily burdensome, if you were
16 not to have a rear porch, because it is the -- It's
17 the two porches in combination with the footprint of
18 the house that puts you over on lot occupancy. So how
19 it is that conforming with the lot occupancy
20 requirement is unnecessarily burdensome?

21 MR. FLYNN: I guess the same argument. In
22 our -- We have talked with all the -- Well, the
23 neighbors who support us have said there is absolutely
24 no problem parking on the street. There's plenty of
25 room, and so given that, we think that the full use

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1 and enjoyment of this yard would be a back deck. We
2 have back decks. We just think it adds a lot of value
3 and enjoyment to the home, and to have to do without
4 one, I think, certainly takes away from the use and
5 enjoyment of the home for parties or whatever.

6 So given that there is plenty of parking
7 on the street, we think that we would much rather see
8 a nice inviting deck in the back than a parking pad.

9 COMMISSIONER MITTEN: Okay, thanks.

10 CHAIRPERSON GRIFFIS: I think that's a
11 good point. It is one or the other, and the rear
12 porch, of course, being covered is now going toward
13 lot occupancy. It's one of the questions, and it is
14 also impeding on the rear yard, which impedes on the
15 available 9 x 19 space available for a car.

16 MR. ABBOTT: So if it is not covered, it
17 doesn't -- So if we just change it to a uncovered back
18 porch, that would change it?

19 CHAIRPERSON GRIFFIS: That's my
20 understanding of the regulations.

21 MR. FLYNN; And I know earlier -- I know
22 this is what we have come in with, and this is what we
23 have to decide. But I don't know your processes but,
24 obviously, you know, we are here in the spirit of
25 compromise, if that's what it takes to make it happen.

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1 If we have to do a partial porch and have a parking
2 pad, you know -- I'll be perfectly honest. In the
3 end, we are not sure we wouldn't prefer to have a
4 parking pad here, because certainly more vandalism
5 occurs to cars on the street, but we would like to
6 have the ability not to have to do it, if we want to
7 have the porch there. But we certainly are willing to
8 compromise to make it work to everyone's satisfaction.

9 CHAIRPERSON GRIFFIS: But even still, you
10 wouldn't be able to comply, I don't think -- or I
11 guess you would park it sideways, the 9 x 19 dimension
12 in the rear yard. Where do you put it?

13 Anyway, let's do this. Anything else you
14 want to state at this point?

15 MR. FLYNN: No, thank you.

16 CHAIRPERSON GRIFFIS: Okay. What we are
17 going to do is we will run through all the government
18 reports and Office of Planning reports. Then we will
19 go through persons here to provide testimony,
20 everything else that we have in. Then we will turn it
21 back over to you for a last discussion. Let's do that
22 then. The Office of Planning, a very good morning.

23 MR. MOORE: Good morning, Mr. Chair and
24 members of the Board. I am John Moore of the Office
25 of Planning.

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1 As the OP report indicates, we support the
2 project, but we have some heartache in terms of doing
3 so. I interviewed the lady who sold this lot, who
4 lived next door, and I didn't quite understand how,
5 first of all, the city could plat a lot that was
6 substandard or how one could even be sold, because
7 this was a recent transaction, I believe.

8 If you look at the photographs in the OP
9 report -- I forgot what page it's on -- you could see
10 the width and depth of the yard on each side, which is
11 very large. I thought that, if there is going to be
12 a sales transaction, a part of that yard could have
13 been sold to this owner and, therefore, a house that
14 was more comparable to that lot could have been built
15 on it.

16 Given that that wasn't the case, this
17 applicant had handicaps built in from Square One,
18 given the lot's width and depth. It's pretty much
19 impractical to build a standard size house on that
20 lot.

21 Without going into great detail, hearing
22 the Board's discussion this morning, we are going to
23 still stand on the record and support this
24 application.

25 CHAIRPERSON GRIFFIS: Excellent. Thank

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1 you very much. Questions from the Board? Does the
2 applicant have any cross-examination of the Office of
3 Planning? Do you have any questions of them?

4 MR. FLYNN: No. Thank you.

5 CHAIRPERSON GRIFFIS: You have their
6 report. Is that correct? Do you have their memo?
7 Have you read their report to us?

8 MR. FLYNN: I don't know. I have not, no.

9 CHAIRPERSON GRIFFIS: Okay. Let's make
10 sure we get you a copy.

11 MR. FLYNN: Thank you.

12 CHAIRPERSON GRIFFIS: It's an excellent
13 report. Ms. Miller, did you have a question of Office
14 of Planning?

15 VICE-CHAIRPERSON MILLER: I just am
16 wondering. Is it your opinion that -- We were
17 exploring this practical difficulty test, and that it
18 is unnecessarily burdensome for the applicant to
19 comply with each of the variances?

20 MR. MOORE: Some, I thought, were -- could
21 have been compromised. Example, the two porches
22 that's been discussed, and I think there is a stoop on
23 the side. Given that you are operating with a lot
24 that is less than standard, I thought that the
25 applicant could have chosen not to put anymore

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1 embellishments on the property than necessary. I can
2 see a porch, but not one in front and the back, given
3 the depth of the lot.

4 I personally would have eliminated the
5 side stoop to try and close to conformance with
6 respect to the side yards, but then that's the
7 applicant's decision to make.

8 VICE-CHAIRPERSON MILLER: And do those two
9 pieces have an adverse impact on the neighbors or the
10 community?

11 MR. MOORE: No.

12 VICE-CHAIRPERSON MILLER: Thank you.

13 MR. MOORE: I did talk to the neighbors on
14 both sides.

15 BOARD MEMBER MANN: What were your
16 observations about parking in the neighborhood?

17 MR. MOORE: There's adequate parking.
18 When I went there, it was around 10:00 o'clock in the
19 morning, which is after rush hour. So in the evening
20 when I went home, I drove back through. There had to
21 be 25 or 30 spaces on the entire block in the morning,
22 and by the time I got there in the afternoon there was
23 still about 15 spaces left.

24 One other constraint: The discussion the
25 Board has had so far regarding parking in the rear of

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1 the building. That is less than the standard size
2 alley. So the turn rate in and out of that space
3 would be difficult. As you can see, there is an old
4 garage, I believe, on the property -- one of the
5 photographs right there. Getting in at that garage
6 would have been sort of difficult unless it's a very
7 small car. You would have to pass the garage and sort
8 of back in there, because the alley width isn't that
9 great.

10 BOARD MEMBER MANN: Thank you.

11 VICE-CHAIRPERSON MILLER: I just have one
12 other question. Do the other houses in the
13 neighborhood have back porches like the one that he is
14 requesting here?

15 MR. MOORE: I think I counted four,
16 including the one on the east side with screened
17 enclosure on the rear. That lot, though, as I
18 mentioned, is a lot larger -- The enclosure sort of
19 went to the west as opposed to the south toward the
20 rear alley. I didn't see one on the house on the
21 immediate west, but then they have the odd space, and
22 they can look at photographs.

23 There is a very large porch on the side,
24 on the east side of the house on the west side of this
25 one.

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1 VICE-CHAIRPERSON MILLER: Thank you.

2 CHAIRPERSON GRIFFIS: Good. Anything
3 else? Thank you very much. Then let's move ahead.
4 I don't have any other government reports attendant to
5 the application. We do not have anything from ANC-5A.
6 Is there a representative from ANC-5A here? Not
7 noting any, let us move ahead then.

8 At this time, let's go to persons here
9 present to provide testimony.

10 BOARD MEMBER MANN: Mr. Chairman, could I
11 ask a question first?

12 CHAIRPERSON GRIFFIS: Of course.

13 BOARD MEMBER MANN: I note in the OP
14 report that it says, as of April 25, the application
15 had not been presented to the ANC-5A. What is the
16 current status of that?

17 CHAIRPERSON GRIFFIS: Did you present this
18 to the ANC?

19 MR. FLYNN: No. My understanding was that
20 a notice was being sent, and if there was going to be
21 a hearing or a neighborhood meeting, we would go.

22 CHAIRPERSON GRIFFIS: Oh, I see. Okay.
23 So you were waiting for them to contact you.

24 MR. FLYNN: Or not -- Yes, either to
25 contact us or to schedule a neighborhood meeting, if

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1 they wanted to do that, to vote on it.

2 CHAIRPERSON GRIFFIS: Okay. Good enough.
3 Very well. Why don't we open the table and have you
4 folks just sit for a second, and let's go ahead to
5 persons to provide testimony today. Very good, a full
6 panel.

7 So I am going to ask you to, of course,
8 state your name and address for the record. You are
9 provided three minutes to give testimony and, if you
10 wouldn't mind, after your name and address just
11 indicate whether you are opposed or in support of the
12 application.

13 MS. BLOUNT: My name is Rosalind Blount.
14 I live at 1019 Taussig Place, N.E. I am on the west
15 side of the property that we are discussing today, and
16 I oppose.

17 CHAIRPERSON GRIFFIS: Okay.

18 MR. LEWIS: My name is Warren Lewis. I
19 live at 1610 Juniper Street, N.W., Washington, D.C.
20 I am a relative of Valerie Douglas and Rosalind
21 Blount, and I, too, oppose.

22 MS. DOUGLAS: I am Valerie Douglas. I
23 live at 1020 Taussig Place, N.E., Washington, D.C.,
24 and I am opposing also.

25 MR. ABREU: The reason my relatives -- My

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1 name is Roy Abreu. I live at 2202 Linden Lane in
2 Silver Spring, Maryland. Rosalind is my niece by
3 marriage, and Valerie is my sister-in-law by marriage.
4 Warren is my son by marriage.

5 The reason they have been so brief is that
6 it has been left to me to do a more complete
7 presentation. So I hope you will allow me the time to
8 complete this.

9 Speaking with my remarks, I divide it into
10 roughly four sections. The first section has to do
11 with the serious omission. The second has to do with
12 some computational errors that have been made that the
13 applicant has already referred to. The third has to
14 do with the section on the variance which I would like
15 to discuss, and I have a final conclusion.

16 Now in terms of the omission, as was
17 pointed out earlier, as of April 25 the ANC was not
18 notified, and the ANC does not know about this case.
19 Until as recently as yesterday when we spoke to the
20 ANC Commissioner for the first time, she told us that
21 she had not received any notification of this and was
22 going to follow up. I am not sure what the follow-up
23 implies. This is a Ms. Lewis.

24 Now the problem I have with this is that,
25 first of all, the Planning Board had indicated that as

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1 of the 25th of April the applicant had not notified
2 the ANC. Beyond that, what --

3 CHAIRPERSON GRIFFIS: Let's take that up
4 right away. Exhibit Number 17 in the record -- In
5 terms of notification, the ANC was notified. Mr.
6 Bauer was sent a letter from this Board indicating the
7 application, the relief sought, and the hearing date
8 scheduled, Tuesday, May 17, 2005.

9 Now I've just been handed a letter from
10 the ANC which indicates that -- I'm reading: "We were
11 informed this morning that a hearing is scheduled for
12 Tuesday, May 17, 2005, regarding the above-mentioned.
13 5A Commission is not aware of the proposed
14 construction. Your favorable consideration of the
15 request will be greatly appreciated."

16 I don't see how our regulations were not
17 in requirements, unless Board members see otherwise.

18 MR. ABREU: Mr. Chairman, that letter is
19 obviously a result of our conversation yesterday with
20 the ANC. So there has been no time to prepare, and I
21 think it is important to recognize that the applicant
22 has very actively been canvassing the neighborhood and
23 asking people to sign a petition. In fact, he has
24 knocked on doors multiple times.

25 I think this is a big omission, because in

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1 a community such as this where people don't have the
2 resources to hire their own representation, the ANC
3 becomes the vehicle by which their rights are
4 basically protected. I think it is very important for
5 the ANC to be notified and there be some sort of
6 continuance on this.

7 CHAIRPERSON GRIFFIS: Okay. Let me be
8 clear again then. Our regulations state -- and I
9 think this Board clearly believes in giving great
10 weight for the ANC is very important, and one of the
11 pieces of which is a consideration.

12 There are several notifications that go
13 out. As I have indicated, the ANC was notified. They
14 were aware by our regulations that this was happening.

15 Secondly, the property is always posted,
16 big placards. The mail orders are sent out to those
17 property owners within a certain radius, and you've
18 just indicted yourself that the applicant was
19 canvassing the neighborhood. All those are very
20 important aspects of letting people know what's
21 happening.

22 Now that all culminates in today. This is
23 the public hearing. This is where things are decided.
24 This is the forum of which all those issues should
25 come forward. So we could get quickly into the

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1 substance of that.

2 Let me also dispel -- I don't think anyone
3 needs -- I think we are very patient with everybody in
4 instructing. No one should feel like they need
5 representation to come in to present their view.

6 MR. ABREU: Thank you, Mr. Chairman. I
7 will go to my next point, which is a question about
8 the computational and numerical errors that have been
9 made in the application.

10 The applicant has referred to some of them
11 in terms of the self-certification form that was
12 filled out. The lot occupancy, which is stated as
13 being 960 square feet, excludes the stoop that has
14 been spoken of.

15 The stoop is not a fragile structure at
16 the edge of the house. It is based on a concrete
17 footing, if you look at the diagrams, and it is
18 designed to enter the main portion of the house. It
19 is not a special structure to provide access to the
20 basement. I am not sure how this wouldn't count, both
21 with respect to lot size coverage as well as with
22 respect to setback.

23 Now in terms of coverage, if you include
24 the stoop, it rises from 960 to 992 square feet, which
25 is a variance of 44.24 percent where the lot size

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1 coverage is only allowed to be 40 percent.

2 The second point is the rear yard, and
3 that has been sufficiently clarified. On the drawings
4 it says 18.5 feet, but in fact it is only 12.5 feet.

5 The third calculation issue has to do with
6 the side yard variance where an average has been taken
7 rather than the variance on the west side of the
8 property which abuts Rosalind's property where it
9 reduces to only 3.5 feet.

10 Now I just want to reflect on something
11 the applicant says. The applicant knowingly has
12 bought a substandard lot. The seller has additional
13 property adjoining this lot which is available to
14 build on.

15 So I would have thought it would be
16 reasonable for them to be sold a parcel that could
17 accommodate a decent house. Now what's happened is
18 the substandard lot has been purchased, and then the
19 builder, assuming that a variance is going to be
20 granted, has come up with a house that he likes.

21 I mean, if I were in a situation where I
22 had to accommodate something, I would see what could
23 be accommodated and create the least amount of
24 variances requirements, you know, not put the cart
25 before the horse.

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1 Now if you look at the variance guidance,
2 there are several points to be made. First of all,
3 the variance guidance in the text refers to
4 narrowness, shallowness, and shape of the lot. It
5 says nothing about size.

6 The next point refers to topographical
7 issues, conditions, site issues. Again, specifically
8 omitted is the question of size.

9 Finally, the text specifically says that
10 relief can be granted, provided that --

11 CHAIRPERSON GRIFFIS: You are making the
12 point that size wouldn't be an acknowledgeable factor
13 of uniqueness in this variance?

14 MR. ABREU: Only to the extent that it is
15 not specifically mentioned.

16 CHAIRPERSON GRIFFIS: But is the
17 regulation specifying and limiting those elements that
18 are unique or is qualifying those aspects that might
19 be unique to give a context?

20 MR. ABREU: I think, by implication, when
21 it is specific about certain issues like shallowness,
22 narrowness, the writers of the code could have easily
23 said "and size." They have not said that. So one has
24 to -- I'm not suggesting that a marginal variation in
25 size is not something to consider, but when the size

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1 is 57 percent of what is required by regulation, that
2 is a really serious matter.

3 This final point in the code is very
4 important, because it says that relief can be granted
5 provided that it will not impair the intent, purpose
6 of integrity of the zoning regulations.

7 I certainly think that a lot size that
8 small -- otherwise, one has to ask the question: At
9 what point does the lot become so small that one would
10 deny the variance?

11 Finally, let me say again in conclusion
12 that what the applicant is asking you to do is not
13 make adjustments to the code. He is asking that the
14 code be simply ignored, and the citizens whose rights
15 are protected by the code are also basically given
16 short shrift.

17 I can understand if someone had a property
18 and it had been inherited and it had come to them from
19 way back, that one might be more considerate to that
20 applicant. But this is someone who with open eyes has
21 bought a property within the last few months and then
22 decided in advance that they can ask for a variance,
23 and it is going to fly.

24 I don't think it is appropriate. I don't
25 think it is at all appropriate to grant something

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1 without imposing a requirement minimally that people
2 go back and look to see -- I have to tell you, I built
3 a house with my wife within the last four years. I am
4 very familiar with all sorts of construction issues
5 and how you go about designing a house.

6 I built it from the ground up. Don't tell
7 me that there aren't houses that can be built which
8 are 16 or 20 or 22 feet wide and 28 feet deep. There
9 are all sorts of houses left and right.

10 I will tell you that the neighborhood
11 doesn't have front and back yards that are being
12 suggested. There are some houses that do and some
13 houses that don't. We don't have to grant a variance
14 because someone wants it. I want plenty of things.
15 So what? Thank you. Thank you for listening.

16 CHAIRPERSON GRIFFIS: Indeed. Questions?

17 VICE-CHAIRPERSON MILLER: Are you opposed
18 to building a house there in general or are you
19 opposed to certain aspects that this applicant would
20 like to have in the house?

21 MR. ABREU: I think at the outset my
22 feeling is that the writers of this code did it for a
23 reason. I don't think they envisioned -- I'm actually
24 with Mr. Moore here, who says it's difficult to
25 imagine how a lot that size could have been platted in

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1 the first place and recorded. It's so tiny.

2 CHAIRPERSON GRIFFIS: And that seems to be
3 your issue. You know, we don't have any jurisdiction
4 on changing that. We are not here for the lot size,
5 as it was subdivided. We are now here as a given.
6 The fact is that this is a diminished sized lot.

7 MR. ABREU: Okay. And with that in mind,
8 what I would say is, first of all, I don't know what
9 the contractual arrangement is between this buyer and
10 the seller, whether if a house cannot be built, the
11 buyer can opt out of the arrangement. I don't know
12 what those issues are.

13 If that is possible, I think that's what
14 should be done in the first place. In the second
15 place, I think the code should be followed, and these
16 variances should not be granted. Finally --

17 CHAIRPERSON GRIFFIS: So you don't think
18 there is any possibility of granting variances on that
19 argument?

20 MR. ABREU: I think that with a lot this
21 size, I would be very reluctant to enter into that
22 area, to create precedents where houses can be built
23 on lots of this size. But having said that, if your
24 feeling is that it is in the public interest to allow
25 a house to be built, I would argue that it should

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1 conform in every other respect.

2 Where it is possible, it must conform. I
3 don't think it is appropriate to say, well, I like
4 this stuff, so let me do it.

5 CHAIRPERSON GRIFFIS: Right. I hope you
6 don't think that the Board is looking at this and
7 saying, well, we like this, let's grant it.

8 MR. ABREU: No, I'm not.

9 CHAIRPERSON GRIFFIS: There is a very
10 strict test that we are putting the applicant through
11 on every application. Each stands on its own and
12 doesn't set a precedent.

13 I don't think you are alone in the
14 argument that you are making today, although I think
15 it needs a little bit of -- Well, certainly, we have
16 heard before, and perhaps by people that sit on this
17 Board, the argument that you are making.

18 By the mere fact of asking for a variance,
19 you are going against the regulations, and you should
20 be denied. It means the fact that you have to always
21 comply. There is no relief. I don't agree with that,
22 and I think that we have set up the availability of
23 granting relief, and that is based on the unique
24 factors of it.

25 The fact that the specific issue here,

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1 that this was subdivided somehow, how it was
2 subdivided, I think all of us share your concern of
3 how that was actually done. But our difficulty is, in
4 terms of what we are set forth to do and our
5 jurisdiction -- that's a given. That is what before
6 us. Unless I can be moved to say, you know, let's
7 throw this out because we don't know how it was done,
8 I'm not sure we can do anything about it, but hear the
9 variance test that's before us.

10 MR. ABREU: I appreciate what you are
11 saying, Mr. Chairman, and don't get me wrong on this.
12 But I would say one has to ask oneself under what
13 conditions would a variance not be granted on the
14 basis of lot size? Are there any limits?

15 CHAIRPERSON GRIFFIS: There are tons of
16 limits. Come sit and hear a lot of our cases, and you
17 will see which ones are denied and not denied. It's
18 such an open assertion to say, and I don't think it is
19 very substantive or productive to assert that before
20 the Board, as if we have no tests and, in fact, are
21 having really no process here, but the mere fact of a
22 request is availing us to grant it, and I disagree
23 with that.

24 When you built your house, did your
25 neighbors design it? Did the committees go through

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1 and tell you what they liked and didn't like? Did
2 they pick 16 feet to 20 feet or 30 feet? I don't want
3 it answered, actually, but put it in perspective when
4 we look at this. There is a certain amount of --

5 MR. ABREU: Yes, but let me say, Mr.
6 Chairman, I had to abide by every rule, every single
7 rule.

8 CHAIRPERSON GRIFFIS: And that's what you
9 are asking this applicant to do, and I understand
10 that.

11 MR. ABREU: No. I mean, I could do it,
12 because it fit the lot size permitted and, if there
13 was a margin or issue and I had to apply for a
14 variance, I would have. But I'm talking about
15 something -- I mean, for me, it's fairly clear when
16 something is an extreme case and when something, you
17 know, is so small that it can be accommodated. I
18 mean, but here what I see is not individual variances
19 that are at issue, but the composite of the whole
20 where you are asking for a variance on every single
21 dimension. I mean, that creates an issue for me.

22 CHAIRPERSON GRIFFIS: Okay, and I
23 appreciate that position. Factually, they are not
24 asking for every area variance of which they are
25 conformed. I mean, they are not asking for a height

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1 variance, for instance.

2 MR. ABREU: No, they are not. I should
3 have said --

4 CHAIRPERSON GRIFFIS: But I understand
5 your point. Okay. Questions?

6 VICE-CHAIRPERSON MILLER: One of the tests
7 that we consider is adverse impact to this community,
8 and I believe that you said you are from Silver
9 Spring, but you are talking on behalf of your
10 relatives.

11 MR. ABREU: Yes.

12 VICE-CHAIRPERSON MILLER: Can you or they
13 just explain if there is some adverse impact to them
14 and that's why you are here?

15 MS. DOUGLAS: I want to talk. This is my
16 brother-in-law, and we asked him to talk for us.

17 Okay. I -- Which I stated, my name is
18 Valerie Douglas. I live at 1020 Taussig Place. I own
19 -- Me and my husband, we own two houses on Taussig
20 Place, N.E. I have lived in the District of Columbia
21 for over 40 years. I have lived on Taussig Place for
22 over 15 years. I am almost 60. I work at the
23 Department of Commerce, supervisor.

24 Today I need your help in resolving this
25 matter. I don't know the laws. I am not familiar

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1 with the zoning laws. I have done a little research
2 over the computer or whatever I could gather up,
3 asking my brother-in-law. But you know the laws, the
4 rules, the regulations, and that the District has set
5 in place for property matters to protect the citizens.

6 My husband and I helped our daughter
7 purchase a house across the street at 1019 Taussig
8 Place which is next to this lot where this house is
9 going to be built. We have had people -- three
10 different people -- Two different people knocked on
11 our door three times with some variance papers or
12 forms for us to sign. Of course, we didn't sign it.

13 We knew that we were coming here to the
14 hearing today, but I know that maybe they did have to
15 go through the neighborhood and talk to the neighbors
16 and talk to us about this, but they don't have to
17 constantly keep coming back once you are told that,
18 you know, we are not going to sign anything. We
19 already know -- You know, we would really be here
20 today. We know what's going to happen. This house is
21 going to be built.

22 This house is right outside my door at
23 1019, the house I own at 1019 Taussig Place. It is
24 very small. It's below the standards. This lot is
25 below the standards to even build a house. I can

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1 glance out and see the entire lot. It's the size of
2 a back yard.

3 Now what bothers me the most -- I might
4 not be saying this the right way. This is what really
5 bothers me. On the house on the east side, she has a
6 house. She has a front porch. She has a large yard,
7 an extra lot. She sold this lot next to my house at
8 1019. If they build a house -- I don't care what size
9 you build, 12 feet, six feet or 16, 20 -- it is going
10 to be right up on my fence.

11 The side of this house, if anyone should
12 build, will be right on my fence. This is devaluing
13 -- I am losing -- If I sell this house at 1019 which
14 my daughter lives at, I'm losing value, because
15 whoever -- the real estate company or whoever gave --
16 zoning, planning people gave them permission to sell
17 this lot.

18 It's very, very small. You can go look at
19 it. This has a shed. A car can't fit in that shed.
20 It's not a garage. It's a shed. You can't even put
21 a car in it, because I had -- My relative came and cut
22 the grass for us, because we are old. My husband
23 doesn't cut the grass anymore. And he offered to
24 clean out the shed. She had some tools and stuff in
25 it. A small car wouldn't even fit in it.

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1 That shed is still there. Before this
2 house was even -- this lot was even put up for sale,
3 she came outside like a year ago, and she took down a
4 fence. The people who owned the house on the other
5 side of this lot that was sold -- and she left this
6 open space. Long Fence came and put a wooden fence
7 around her property, left this open space. All summer
8 it was weeds. She never cleaned it up. It was just
9 an eyesore to the whole neighborhood.

10 So my daughter and I, we had Long Fence
11 come and -- First we had a surveyor come, which was
12 very costly, almost \$2,000 to survey our property,
13 because I wanted to know where my dividing line was
14 before we put our fence up.

15 We had Long Fence come. That was another
16 costly thing for me to put this fence up. Now they
17 are getting ready to build a house on this little,
18 small lot right next to me. It's not bothering the
19 person that sold the property, because she has a yard.
20 She has another lot, and then she has this.

21 This house is pushed up over on me, on my
22 side. And I really think -- I don't know. I don't
23 know the law. I don't know, but I think this is
24 wrong. I know it's wrong.

25 Why didn't she just give them -- She could

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1 have sold them a little bit more land or sold them the
2 other lot. They could have built a mansion.

3 BOARD MEMBER ETHERLY: Ms. Douglas, could
4 I ask you a quick question? I'm just trying to orient
5 myself with respect to where your property is located.

6 You won't be able to see this, but we have
7 an Exhibit Number 6 which has pictures of the
8 neighborhood, and I just want to get a sense. Is your
9 property --

10 MS. DOUGLAS: I'm on the west side.

11 BOARD MEMBER ETHERLY: Is the property
12 that you are referencing the one with the white
13 fencing around it?

14 MS. DOUGLAS: Yes. That's my home.

15 BOARD MEMBER ETHERLY: Okay. And then the
16 property that belongs to the person who sold the lot
17 is the property that is bounded by that brown fence?

18 MS. DOUGLAS: Right. Right.

19 BOARD MEMBER ETHERLY: Okay, thank you.
20 I apologize for the interruption.

21 MS. DOUGLAS: Now I don't -- My daughter
22 -- We bought this house for my daughter and my
23 grandson. She lives there. She maintains this house.
24 I live across the street in the blue house at 1020, me
25 and my husband. But after our kids graduated from

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1 college and everything, we got -- I have two children.
2 We helped each one of them get homes. One has a house
3 in North Carolina, and my daughter -- she's like the
4 baby -- she wanted to stay near me. So this house
5 came up for sale, and we bought it for her.

6 Now today I am sitting here trying to
7 explain a situation. I really don't know the law, but
8 I know it's wrong. This shouldn't be happening. She
9 had all this land, and she had this -- Just give them
10 a little bit more land, and let them build what they
11 want.

12 CHAIRPERSON GRIFFIS: Understood.

13 MS. DOUGLAS: Why should we be
14 inconvenienced and have this over here on us?

15 CHAIRPERSON GRIFFIS: Talk to me a little
16 bit more about the inconvenience you keep saying and
17 the close proximity of the side yard. What is the
18 impact?

19 MS. DOUGLAS: Because, okay, see, you're
20 supposed to have -- I read something. By the law you
21 are supposed to have 8 feet.

22 CHAIRPERSON GRIFFIS: Right. I know the
23 regulations, believe me.

24 MS. DOUGLAS: Okay.

25 CHAIRPERSON GRIFFIS: Tell me your

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1 impression of what that is going to be. What is the
2 negative impact?

3 MS. DOUGLAS: It's going to be like three
4 and a half --

5 CHAIRPERSON GRIFFIS: I understand the
6 dimensions. So what?

7 MS. DOUGLAS: Right up on my fence.

8 CHAIRPERSON GRIFFIS: Okay. And why is
9 that a problem?

10 MS. DOUGLAS: Because I shouldn't be
11 inconvenienced. I mean, I probably, if I sell my
12 house, I will lose value when I sell my house, because
13 this house I'm talking about is 1019.

14 CHAIRPERSON GRIFFIS: Okay. So you have
15 value.

16 MS. DOUGLAS: It's a detached house. It
17 could be a fire hazard, as far as I know, because it's
18 right -- When I bought this detached house, I had no
19 idea that that land would be sold and a house put
20 right up next to me. I mean, she could -- She could
21 have helped the people by just giving a little bit
22 more land. Give it to them, sell it to them,
23 whatever. Do you understand?

24 CHAIRPERSON GRIFFIS: Understood.
25 Absolutely. No, I absolutely understand.

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1 MR. ABREU: Let me say that a specific
2 issue is there is a sun deck on that side of the
3 property right next to the fence. So that is
4 immediately going to be affected. There are going to
5 be issues of light. There are going to be issues of
6 privacy, you know, if you build a house right next to
7 it. So those are the essential points.

8 MS. BLOUNT: Well, my view was from the
9 east side there's going to be 7.5 feet from her lot,
10 because there was three lots. She owned all three
11 lots, and then she sold one of them. She took the
12 fence down. She put the shed on there, because she
13 had this big yard. So she put the shed closest away
14 from the house. So that's how the shed got there.
15 But with my side, by being on the west side, it will
16 only be 3.5 away from me, but leave her 7.5.

17 I thought that was a little unfair that
18 she sold it. She should have the -- leave me the 7.5,
19 if it had to go that way.

20 CHAIRPERSON GRIFFIS: I see. Okay.

21 BOARD MEMBER ETHERLY: Is it your sense
22 based on your familiarity with the surrounding
23 community that -- would that spacing in some way be
24 somewhat different from the spacing of other
25 properties in the community or, in particular, on that

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1 particular street?

2 MS. BLOUNT: The ones that's -- They are
3 smaller. The homes are smaller. They are semi-
4 detached. I don't have a front yard or back yard.
5 None of us have -- like I don't have a front porch.
6 I have like a couple of -- enough where two people can
7 stand, but it's not a porch where you can sit and put
8 a chair there. I have a side porch. The ones with
9 side porches -- we have some space. Some of the areas
10 are a little smaller than others. I have a picture of
11 the actual house where the house that faces the east
12 is just a one-level house and a basement. So it's not
13 that high. They have a front porch. So due to the
14 different -- the different houses in the neighborhood
15 -- The one that they want to build, they had huge
16 yards around them.

17 So the scenery is going to look terrible,
18 you know, with this normal house on this little, teeny
19 land. It will look kind of funny.

20 BOARD MEMBER ETHERLY: Okay. And as was
21 indicated by your mother, there is an addition on the
22 side of your property which is a sun porch. Correct?

23 MS. BLOUNT: I have a -- yeah, a sun
24 porch. Right.

25 BOARD MEMBER ETHERLY: Okay. Then in

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1 terms of other -- the other windows on that side of
2 your property, there appears one more window kind of
3 behind that porch, and then you have two upstairs
4 windows.

5 MS. BLOUNT: Right.

6 BOARD MEMBER ETHERLY: What are those?
7 Are those bedroom windows?

8 MS. BLOUNT: The bedrooms.

9 BOARD MEMBER ETHERLY: Okay, thank you.
10 Thank you, Mr. Chair.

11 CHAIRPERSON GRIFFIS: Very well. Anything
12 else? Did you want to say anything? Okay, that's
13 fine. Good. Any other questions from the Board?
14 Clarifications? Let's go to the applicant then. Do
15 you have any cross-examination? Do you have any
16 questions of the witnesses that you just heard?

17 Let me ask you one thing. I heard over
18 and over the applicant kind of saying they went, they
19 talked to people. They were trying to -- They were
20 amenable to changing this. Did anyone take the
21 opportunity in all this concern to actually talk over
22 some of the issues in placement?

23 MS. BLOUNT: Neither one of them two, but
24 another gentleman knocked on my door last week, and he
25 gave me a picture of the type of house they would like

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1 to build, and he told me what website to go on. He
2 handed me this, and to sign a variancy, what website
3 to go on to actually see the floorplan.

4 So then I said, well, okay, are you going
5 to be my neighbor, it's nice to meet you. And he was
6 like, no, Darcy Flynn owns it, and he just bought it,
7 but he just doesn't plan to reside there. So I said,
8 oh, well, you are going to build a house and sell it
9 to someone else? He was like, yes, but if I had any
10 questions to call Darcy Flynn. So I was like -- so if
11 this is going to be a house that's going to be sold
12 but not to the value of my house might be worth, that
13 will bring down the property value of my home.

14 CHAIRPERSON GRIFFIS: Will it?

15 MS. BLOUNT: Because --

16 CHAIRPERSON GRIFFIS: How do you know
17 that?

18 MS. BLOUNT: They said that, whenever
19 there are detached houses and whatever the recent sold
20 house -- The recent sold houses, they will pull up
21 each house that was sold, and that's the prices, the
22 asking value of each home in the neighborhood.

23 CHAIRPERSON GRIFFIS: Who is saying that?

24 MS. BLOUNT: That's what I talked to
25 different real estate people.

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1 CHAIRPERSON GRIFFIS: So you're saying
2 that this one with new construction, based on what it
3 sells for, would actually reduce the value of your
4 house?

5 MS. BLOUNT: Right. That's what I was
6 told. I'm not sure. I don't know the rules and
7 regulations.

8 CHAIRPERSON GRIFFIS: Okay. The bottom
9 line, you didn't think you had the opportunity to talk
10 over your issues with them?

11 MS. BLOUNT: Right. He never -- I saw him
12 yesterday in the street, but I didn't know exactly who
13 he was. I didn't go up to him.

14 CHAIRPERSON GRIFFIS: It was just
15 interesting whether there was an opportunity or not.
16 Okay. Ms. Miller, other questions?

17 MS. DOUGLAS: I have one thing to say.
18 Can I say something?

19 CHAIRPERSON GRIFFIS: Sure.

20 VICE-CHAIRPERSON MILLER: I'll wait.

21 MS. DOUGLAS: When they knocked on my
22 door, they knocked on the door --

23 CHAIRPERSON GRIFFIS: Okay. I'm not
24 really -- I have no jurisdiction or ability to change
25 what has happened. So in terms of the semantics, who

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1 knocked and they ring the doorbell or were they
2 dressed poorly -- I'm not saying you are saying any of
3 this, but these are a lot of things that I have heard
4 before, and they are aggressive.

5 I want to know actually the facts of was
6 there a possibility -- Were you able to say, please,
7 why don't you move this house 10 feet away from my
8 property line, and they said, you know, this is why we
9 can't. That's all. If that didn't happen, I think we
10 can move on. I mean, I fully understand your issues,
11 and I understand the application at this point.

12 MR. ABREU: That did not happen.

13 CHAIRPERSON GRIFFIS: Okay, good. Ms.
14 Miller.

15 VICE-CHAIRPERSON MILLER: As a follow-up
16 to that question, when you were saying but why can't
17 you have the greater side yard on your side instead of
18 on the other side, I'm not sure whether I am
19 understanding whether that is an issue anymore,
20 whether that goes to the stoop or not. Is the stoop
21 planning to be on your side?

22 MS. BLOUNT: Yes.

23 VICE-CHAIRPERSON MILLER: Okay. Would you
24 not object if the stoop were on the other side?

25 MS. BLOUNT: It's still going to be like

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1 -- I have a six-year-old son. So let's say he's out
2 playing or something, and the ball just -- You know,
3 by being so close, a ball hits the window. I'm liable
4 for everything, because there's not enough --

5 VICE-CHAIRPERSON MILLER: My understanding
6 from what I was hearing today is that it would be 7.5
7 feet instead of 8 feet.

8 CHAIRPERSON GRIFFIS: Six-inch difference.

9 MS. BLOUNT: Not according to what we
10 picked out yesterday.

11 VICE-CHAIRPERSON MILLER: Okay. My
12 question: Is the stoop an issue for you or not
13 really?

14 MS. BLOUNT: Well, then it's also like the
15 value of the fence. You know, if they are using that
16 door, would my property be damaged in any kind of way.
17 Not saying they are unruly neighbors. I don't know.
18 But since -- You know, that is a possibility. Would
19 I be faced with spending extra money on that?

20 CHAIRPERSON GRIFFIS: Isn't that the
21 reality of any house anywhere anytime? I mean, you
22 have a neighbor on the other side, don't you?

23 MS. BLOUNT: Well, we have enough space in
24 between us, like she doesn't have a door that comes
25 out to my side. I don't have a door for her side.

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1 Our porches don't have steps. They come off right at
2 the entrance to the yard. So we have no choice but to
3 come out the front or the back. We don't have side
4 entrances.

5 CHAIRPERSON GRIFFIS: Okay.

6 MR. ABREU: But we do accept that half a
7 foot is a modest variance and, if the stoop could be
8 moved and you are going to approve the house in the
9 end, that would clearly be the preference.

10 VICE-CHAIRPERSON MILLER: And why is that?
11 What is it about the stoop that would --

12 MR. ABREU: If you look at the pictures,
13 the stoop is a substantial structure, and really
14 causes the whole property to be effectively within
15 three and a half feet, not seven and a half feet or
16 eight feet, as required by the code.

17 So I mean, one thinks about it, for any of
18 us who are sitting here, if that was the option that
19 was presented, what would be our choice?

20 MR. LEWIS: Excuse me, Ms. Miller. Three
21 and a half feet, if we can visualize, is literally
22 almost the size of this table. Three and a half feet
23 from the stoop to the fence. So what I mentioned, if
24 we could -- If you do decide to approve this, then Ms.
25 Douglas and Ms. Blount would like the design to go the

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1 opposite side, the east side, understanding, though,
2 that might change their plans, because as Mr. Flynn
3 had mentioned earlier, the stoop was coming from the
4 kitchen or something. So I don't know if a stoop is
5 now coming into a living room or whatever, but I just
6 want to make that point. Three and a half feet is
7 very close.

8 CHAIRPERSON GRIFFIS: It would clearly
9 change the entire design. They would have to like put
10 the plans on the copier upside down and then go there,
11 in reverse.

12 MR. ABREU: Which is not that difficult to
13 do.

14 CHAIRPERSON GRIFFIS: No, I don't think
15 it's that difficult. But I think Ms. Miller is really
16 exploring, in all directness, what the impact of that
17 is. I think it's understood at this point to that
18 level. Is that correct? Excellent. Okay, any other
19 questions? Any other questions from the Board? Very
20 well. Thank you all very much. We absolutely
21 appreciate you taking the time to be here.

22 We are going to, lastly, go to the
23 applicant for any closing remarks. Then we will see
24 how we proceed today.

25 MR. ABREU: Thank you very much for

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1 listening to us.

2

3 CHAIRPERSON GRIFFIS: Indeed. Do we have
4 all the persons that wanted to provide testimony?
5 We've got everybody. Okay, good. Thank you, all of
6 you.

7 MR. FLYNN: Thank you. I just want to
8 respond to a few of the concerns that I heard. As far
9 as the adverse impact, I'm only aware of -- I just
10 want to assure the neighbors that the purpose of the
11 second visit wasn't to try to change their mind but to
12 actually let them know that I am all ears to any --
13 and that's what I told the gentleman who didn't speak.
14 If there is anything you want me to hear, here is my
15 number, please let me know.

16 I predict that, perhaps with the exception
17 of the nice brick house next door, all these other
18 houses are semi-detached. Yes, they are brick.
19 That's nice, but they are semi-detached, and the other
20 frame houses are -- I predict this will be probably
21 the most valuable house on the block other than
22 perhaps the brick house next door.

23 I am troubled by the concern that this is
24 going to be an ugly house. I'm just glad that the 14
25 neighbors who supported it saw the picture and said

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1 it's lovely, it's beautiful, and they think it will
2 fit in wonderfully.

3 I'm not sure if I am going to live in this
4 house. My plan is to live in it, and when my
5 housemate, Tom, went and solicited these several a
6 week or so ago for us, he mistakenly did --

7 CHAIRPERSON GRIFFIS: I don't think that
8 should have any bearing on this application.

9 MR. FLYNN: Okay. But I assured all the
10 neighbors that I don't want them to support it under
11 the misconception that I am living there. Assume I am
12 going to sell it, and they supported it nonetheless.

13 I think my understanding -- I could
14 double-check, but my understanding is moving a stoop
15 to the other side would be a huge problem for the
16 builder, but you know, this is one of those situations
17 where, given the contention, if it's doable, I'll do
18 it; because if I can make the neighbors happy by
19 moving the stoop, that kind of thing I am more than
20 happy to do. But if it is going to add exorbitant
21 amounts of costs, I really apologize.

22 It's kind of like trying to save a maple
23 tree. One neighbor is mad, because we might have to
24 cut down a maple tree. I don't like cutting down
25 trees either, but I try to balance capitalism with,

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1 you know, being a good neighbor. And if we can move
2 the stoop, we will, but I don't think we should have
3 to incur tons of costs to reconfigure the whole house
4 to have to do it.

5 I think that's it.

6 CHAIRPERSON GRIFFIS: Okay. Good.
7 Follow-up questions? We will make note, of course,
8 you did submit in today the -- you just indicated 14,
9 but I haven't counted them all up, but it is --

10 MR. FLYNN: I did want to say one other
11 thing. I can't say for sure about the house next to
12 me, the nice brick house, but most of the other houses
13 do not comply with these strict standards. They would
14 not be able to build those houses there today.

15 My understanding is these zoning laws make
16 perfect sense and, if you have uniformity in a
17 neighborhood, all the houses already conform, then
18 obviously you are not going to grant this variance if
19 all these houses are conforming with the codes. But
20 as I understand it, the code specifically -- We are
21 anticipating these situations where otherwise
22 buildable lots became unbuildable.

23 So most of the houses in this block don't
24 conform. They don't have 20-foot back yards. So I
25 don't think we are asking for anything that isn't

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1 already existing on most of these houses.

2 CHAIRPERSON GRIFFIS: Okay, good point.

3 VICE-CHAIRPERSON MILLER: I do have one
4 final one. Am I correct that you did not discuss your
5 plans with these particular neighbors who have come
6 forward today?

7 MR. FLYNN: Yes, I did not. I tried. I
8 did not.

9 VICE-CHAIRPERSON MILLER: You tried? But
10 you are willing to revise your plans and talk to the
11 neighbors to see if you can come up with something
12 that is more acceptable to them. Is that correct?

13 MR. FLYNN: Revise my plans?

14 VICE-CHAIRPERSON MILLER: I thought you
15 said that you would consider putting the stoop on the
16 other side, if it was --

17 MR. FLYNN: You know, here's what I'd
18 prefer. I would prefer not having to commit to doing
19 that. I'd prefer to get the approval for what we are
20 trying to do. If I talk to the builder and he says it
21 costs nothing to move it to the other side, I'm going
22 to tell him to do it. If he tells me it costs
23 \$50,000, I'm going to tell him forget it.

24 So I prefer to do it like this. I have no
25 idea if he can do it with the stoop on the other side.

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1 VICE-CHAIRPERSON MILLER: Thank you.

2 MR. FLYNN: And just by clarification, I
3 tried to speak with the gentleman yesterday, and based
4 on his response and knowing that his daughter already
5 opposed, I did not knock on her door. I saw that as
6 futile.

7 CHAIRPERSON GRIFFIS: Okay. Good enough.
8 Board members, we've got an awful lot of information
9 before us. Let me hear comments on whether we are
10 ripe to proceed today or is there additional
11 information that you would like to ask the applicant,
12 and set this for decision? Mr. Etherly?

13 BOARD MEMBER ETHERLY: Thank you very
14 much, Mr. Chair. It would be my inclination at
15 minimum to set this for decision. There are two
16 points of concern.

17 I tend to agree with, I believe, the
18 direction in which the questions of my colleague, Ms.
19 Mitten, were heading with respect to the issue of
20 exceptional practical difficulty or exceptional and
21 hardship. I think that is a challenge here, and there
22 might have to be more information that's useful. But
23 let me put that aside.

24 I think there is perhaps a valid question
25 with respect to the ANC. I appreciated the discussion

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1 of the Chairman as related to our records indicating
2 that, at minimum, the notice had been sent out. It is
3 perhaps not always the case that, when we send notice
4 out, it gets to the appropriate ANC. That could be
5 for a variety of reasons, which complicate the ability
6 of the ANC to take the notice in, in a satisfactory
7 way.

8 Here, I think we do have an instance where
9 the ANC did take what I felt was an appropriate step
10 of trying to alert the Board to the fact, albeit
11 rather lately, but nevertheless alerting the Board to
12 the fact that they had not received notice, for
13 whatever reason. I think that that would be an
14 appropriate ground for, once again at minimum, holding
15 this off for decision making.

16 I would not necessarily say we hold it off
17 to ensure that the ANC-5A meets, not knowing what
18 their schedule looks like. I wouldn't say let's hold
19 this off for two months, and give them an opportunity
20 to meet. Understanding where we are in terms of the
21 month of May, our decision meeting for the next month
22 comes up relatively quickly.

23 All that to say, Mr. Chair, at minimum I
24 would suggest holding off on decision today and
25 setting this for decision. That would be my

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1 inclination.

2 CHAIRPERSON GRIFFIS: Ms. Miller?

3 VICE-CHAIRPERSON MILLER: Mr. Chairman, I
4 would agree with Mr. Etherly. I think there are good
5 reasons to put this off, maybe even until the June
6 decision making meeting.

7 There seem to be -- At least in my mind,
8 there is a question of what numbers we are even
9 dealing with. There seem to be changes in
10 quantifications with respect to how that stoop is
11 calculated. So I think, for one reason, we need to
12 get accurate numbers in.

13 I think also, with respect to what Mr.
14 Etherly and Ms. Mitten said, with respect to the
15 practical difficulty question I think that the
16 applicant should better address with respect to each
17 variance that it is seeking why it would be unduly
18 burdensome to comply with the restriction that is
19 imposed in the regulation.

20 I think that would provide a good
21 opportunity for the applicant to go and talk with the
22 neighbors to see whether the design can be changed to
23 have less -- well, to be more acceptable to the
24 neighbors and what the costs might be. He doesn't
25 know that at this point.

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1 Also, it would be useful to him to go back
2 to the builder to find out if it is unduly burdensome
3 to make certain changes. He wasn't able to really
4 address that today, and this would give the ANC the
5 opportunity to weigh in.

6 Even though I think that, certainly, under
7 our regulations they were provided sufficient notice,
8 it is a good idea to hear from them when we can, and
9 we are not delaying the schedule for them, but
10 delaying our decision would allow them this
11 opportunity. I think that would be valuable.

12 CHAIRPERSON GRIFFIS: Good. Thank you.
13 I agree with you in terms of the variances and
14 addressing them for each of the elements that we have
15 talked about. That was, of course, the parking, the
16 rear yard and the stoop and how that's calculated, and
17 getting that in, I think, and keeping the record open
18 for that.

19 I think we ought to be very clear that it
20 is making that variance test that is of utmost and
21 critical importance here, not to make sure that
22 everyone agrees and this comes in with no controversy.
23 We are not adverse to hearing applications that are
24 opposed, but we need to get to the fact of the matter
25 of how it makes the test or doesn't.

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1 So I think the direction that we should
2 out is, absolutely, you should now -- you have heard
3 some substantive issues by the neighbors. Could those
4 be accommodated that would reduce the variances that
5 are actually required, and then deal with it in that
6 sense, or maybe it isn't. Maybe it is too burdensome,
7 but I don't want to set off on something that actually
8 could never be reconciled. But I think that makes
9 some sense.

10 I think we would look for a decision in
11 the June meeting which, of course, is the first
12 Tuesday in June. I would look for the calculations of
13 all of the computations of the lot occupancy and also
14 the side yard dimensions.

15 It may also be explored, I think, moving
16 it to make one side yard compliant, which doesn't seem
17 to be that burdensome as in terms of making two not.
18 Why not make one. But that needs to be weighed on
19 what that actually does and what that setting about
20 the property is. Again, the rear yard and how it is
21 calculated, and with that back porch, whether covered
22 or uncovered; and there it is. And then the parking.

23 You indicated yourself that you may want
24 to provide parking. Perhaps that should be explored,
25 how it would be done and how it would be secured for

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1 the utilization of that property.

2 MR. FLYNN; Okay.

3 CHAIRPERSON GRIFFIS: Let me open it up to
4 others then. What else do we have?

5 COMMISSIONER MILLER: I would just like to
6 share, if we are sending the applicant back, that
7 based on what is in the record so far, I don't think
8 that the variance test for each of the variances has
9 been met. I want you to know that that's what this
10 Board member thinks in deciding how you proceed.

11 A lot of what we heard about practical
12 difficulty has been created by your choice of using a
13 modular type product, and that is self-imposed. So I
14 think you need to be real clear that a self-imposed
15 hardship is not one that qualifies to meet the
16 variance test.

17 So when you are addressing these issues,
18 it has to be why a house could not be designed to meet
19 the lot occupancy requirements, for instance, and the
20 rear yard and so on, not how this particular product
21 could be adapted.

22 CHAIRPERSON GRIFFIS: Let's explore that
23 a little bit, because I don't want to send the wrong
24 message, because it is not my understanding that
25 practical hardship or self-created hardship goes to

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1 this at all, but rather it goes to a use variance.

2 I am not sure where the threshold would
3 stop.

4 COMMISSIONER MILLER: Well, the issue is
5 that the unusual condition gives rise to the
6 exceptional practical difficulty. In this case, some
7 of what we heard -- not all, but some -- is that Mr.
8 Flynn's choice of housing type is what is giving rise
9 to the practical difficulty. And that was my basic --

10 CHAIRPERSON GRIFFIS: That you want to
11 have a front door could rise to a practical
12 difficulty. I'm not sure. How would we ever stop?
13 Where is our judgment that it is self-imposed or not,
14 and where is it that precludes it from looking at, for
15 area variances, a decision that is made as creating
16 part of -- as creating the element of practical
17 difficulty? That's my confusion.

18 COMMISSIONER MITTEN; Because that doesn't
19 arise from the unique condition of the property. That
20 arises from outside the property. So the thread is
21 missing.

22 CHAIRPERSON GRIFFIS: But in this case, I
23 think we then need to deny this outright, because
24 based on the fact that they have a minimum lot
25 dimension, they are choosing -- and it is a self-

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1 imposed difficulty -- to build a house on a
2 substandard dimensioned lot.

3 By the same argument, and which we should
4 be able to rest on the same argument all the way to
5 every application -- by the same argument, we would
6 have to say, no, you can't choose to build a house on
7 this site, because you don't have to. Why should you
8 have to build a house? It's your decision.
9 Therefore, it is a self-created difficulty.

10 COMMISSIONER MITTEN: I think you are
11 taking it to an extreme that is --

12 CHAIRPERSON GRIFFIS: But we have to take
13 it to extreme, because every case will be seen before
14 us. This is what we will hear all the time then.

15 VICE-CHAIRPERSON MILLER: Could I jump in
16 here, because I think the problem is that Ms. Mitten
17 may be using these buzz words that are bothering us,
18 and I understand exactly where you are going.

19 It is not that it is a self-imposed
20 hardship to build a house on this property. She is
21 saying they are choosing a modular, and maybe they
22 don't have to choose a modular.

23 I think that that goes back to the
24 Gilmartin whereas it says come back and tell us why it
25 is unduly burdensome to use a different -- to build it

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1 differently other than modular.

2 COMMISSIONER MITTEN: That is what I am
3 saying. What you have rendered in terms of what I've
4 said is correct. It's not that they have chosen to
5 build a house. It's that they have chosen to
6 constrain themselves by selecting a modular product
7 that is not flexible.

8 VICE-CHAIRPERSON MILLER: Right. So he
9 could come back and say, well, if he didn't choose
10 that modular, it would cost a million dollars more,
11 and that's why he has to use the modular, or
12 something. You want to know why -- We want to know
13 why it is unduly burdensome to do it another way. Why
14 do you have to do it that way? There may be a very
15 good reason, and we don't have it in the record. Is
16 that right? Okay.

17 COMMISSIONER MITTEN: That's right. But
18 I just want to make it clear that, you know, just
19 saying, well, the model only comes in 24 feet, it
20 doesn't come in 23 feet -- that's not going to get it.
21 You know, that's not what we will meet the test.

22 CHAIRPERSON GRIFFIS: Good.

23 MR. FLYNN: Can I just ask, on the ANC:
24 Being a former ANC, I'm all for community input and
25 weighing in. At the same time, if your letter was

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1 sent to the ANC and, despite our posting, are you
2 saying that you are still going to let them weigh in
3 and have a hearing and -- we have to go through that
4 hoop now, even though they just got your letter and
5 didn't do it?

6 CHAIRPERSON GRIFFIS: That's not my
7 understanding.

8 MR. FLYNN: Can you just verify whether or
9 not they received your notice?

10 CHAIRPERSON GRIFFIS: I did. It's in the
11 record. We sent it. That's what is required.

12 MR. FLYNN: They claim they didn't get it,
13 and there seems to be some issue of whether they
14 actually got it.

15 VICE-CHAIRPERSON MILLER: I was suggesting
16 that -- and I think Mr. Etherly was also -- just that
17 the record be left open if they want to submit
18 something, and it is up to you and the ANC whether
19 they have hearings, don't have hearings, whether you
20 have any communication with them whatsoever. That's
21 really not our issue. We are just leaving the record
22 open if they want to submit something.

23 BOARD MEMBER ETHERLY: I would agree
24 entirely, Mr. Chair. I think there has definitely
25 been somewhat of a spirit of trying to encourage

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1 dialogue and cooperation and communication around the
2 subject property. To the extent there is additional
3 time between now and our June decision meeting, if the
4 ANC can pull its act together and have some discussion
5 or get some communication to us, great. But I would
6 definitely not -- It would not be my posture to hold
7 off in any way.

8 MR. FLYNN: All I would ask on that
9 comment is, again from my experience as an ANC, the
10 vote is the handful of people that show up; and it is
11 whoever is better at drumming up people to support
12 their position. You know, I hope it doesn't trump the
13 14 people who already said it looks great, and signed
14 in support who can't go to the meeting.

15 CHAIRPERSON GRIFFIS: I think this Board,
16 in all its applications, will look at all the
17 information that's accumulated in the record, and go
18 to the fact base of how does it meet the test or not.

19 Ms. Mitten was definitely -- All of us
20 have said, and given you direct direction to
21 reemphasize your case and how you meet the test.
22 That's what this all comes down to. Okay.

23 Anything else then? Very well. Ms.
24 Bailey, would you mind going over the schedule?

25 ZONING SPECIALIST BAILEY: Sure, Mr.

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1 Chairman. I spoke with someone in the ANC office
2 yesterday, and I do -- I believe their next meeting is
3 May 25. So with that said, is it possible for the
4 applicant to submit something to the Board and to the
5 ANC by May 23, and then -- Mr. Chairman, are you
6 leaving the record open a response from the ANC?

7 CHAIRPERSON GRIFFIS: Yes.

8 ZONING SPECIALIST BAILEY: Yes,
9 absolutely. I should know that. So, sir, is it
10 possible for you to have something by May 23rd?

11 MR. FLYNN: Sure. What is it that you
12 need?

13 ZONING SPECIALIST BAILEY: The things that
14 the Board just spoke about.

15 MR. FLYNN: Oh, sure.

16 ZONING SPECIALIST BAILEY: Okay. And, Mr.
17 Chairman, the ANC, therefore, will be meeting on the
18 25th of May, and June 3 would be a response from the
19 ANC.

20 CHAIRPERSON GRIFFIS: And what is the date
21 of our meeting?

22 ZONING SPECIALIST BAILEY: June 7th.

23 CHAIRPERSON GRIFFIS: The seventh of June?

24 ZONING SPECIALIST BAILEY: Yes, sir. Mr.
25 Chairman, were you leaving the record open for Ms.

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1 Valerie Douglas to file something as well, or the
2 person who spoke on her behalf?

3 CHAIRPERSON GRIFFIS: It didn't come up.
4 I don't see any reason why we couldn't have a written
5 submission.

6 CHAIRPERSON GRIFFIS: I don't think I am
7 hearing all of it. The persons that testified today
8 -- keeping the record open so they can submit. Is
9 that what you are asking?

10 ZONING SPECIALIST BAILEY: Yes, Mr.
11 Chairman.

12 CHAIRPERSON GRIFFIS: I don't have any
13 difficulty with that, unless Board members oppose
14 that. They can certainly -- Hopefully, they will be at
15 the ANC meetings also and participate in that. Like
16 you said, you know, we are going to -- we will keep it
17 on track for the facts that go to the test and the
18 variance. But I think it would be very appropriate to
19 keep it open for that.

20 ZONING SPECIALIST BAILEY: Well, that
21 being the case then, a June 3 deadline would also be
22 applicable to the neighbors as well. Mr. Chairman,
23 did you need for me to repeat any of this?

24 CHAIRPERSON GRIFFIS: Mr. Flynn, are you
25 clear on the dates?

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1 MR. FLYNN: I'm sorry, the June 3 is --
2 May 23, submit something to you and the ANC addressing
3 your concerns. The meeting will be the 25th, and then
4 June 3 is the deadline -- I'm sorry, for?

5 ZONING SPECIALIST BAILEY: The neighbors
6 and the ANC to file their responses to the Board, and
7 then June 7 is the Board's decision.

8 CHAIRPERSON GRIFFIS: Right. So anything
9 else after the ANC meeting that you want to submit,
10 you need to submit it in by the 3rd. We won't be able
11 to accept much else into the record -- anything else
12 into the record past the 3rd of June.

13 MR. FLYNN: And we are to be here again on
14 the 7th?

15 CHAIRPERSON GRIFFIS: And I will clarify
16 that. It's an excellent question. On the 7th of
17 June, this is set for public meeting, and that is our
18 decision making. There is no additional testimony.
19 There won't be any other information taken into the
20 record. You are, obviously, welcome to be here in
21 person.

22 It will be the time that we will call the
23 case. We will review all the facts in the case, and
24 we will deliberate on those elements of the test and
25 whether this application makes it or not. Then there

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1 will be a motion either to approve/deny, and then we
2 will move on from there. Make sense?

3 MR. FLYNN: Yes.

4 CHAIRPERSON GRIFFIS: Good. Anything
5 else, Ms. Bailey? Anything else for the morning?

6 ZONING SPECIALIST BAILEY: No, that's it.

7 CHAIRPERSON GRIFFIS: Very well. Thank
8 you all very much, and thank you all for coming down.
9 I hope you understand the schedule. If anyone has any
10 process questions, certainly, you can call on the
11 Office of Zoning and get clarification of schedule and
12 submissions.

13 Good, thank you all very much. If there
14 is nothing else, then let's adjourn the morning
15 session.

16 (Whereupon, the foregoing proceedings went
17 off the record at 11:31 a.m.)

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

Time: 1:29 p.m.

CHAIRPERSON GRIFFIS: Good afternoon, ladies and gentlemen. Let me call to order the afternoon session of the 17th of May, 2005. This is the Board of Zoning Adjustment of the District of Columbia. My name is Geoff Griffis, the Chairperson. Joining me today is the Vice-Chair, Ms. Miller, and our esteemed colleague has left us. Mr. Etherly will be right back with us. Representing the National Capital Planning Commission is Mr. Mann, and with us this afternoon from the Zoning Commission is Mr. Hood.

Copies of today's hearing agenda are available for you. They are located on the wall where you entered into the hearing room.

Let me just make note. We are being recorded in two fashions. All proceedings before the Board of Zoning Adjustment are recorded, and they are done so by the court reporter, who is sitting on the floor to my right, who is creating the official transcript.

We also being broadcast live on the Office of Zoning's website. So attendant to both of those, we ask several things. First of all, I ask that people turn off cellphones and beepers at this time,

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1 so we don't disrupt people giving testimony or the
2 transmission of our proceedings.

3 Additionally, I would ask that people fill
4 out two witness cards. Witness cards are available
5 for you at the table where you entered into the
6 hearing room, and also the table where you will
7 provide testimony. Those two cards go to the recorder
8 prior to coming forward to speak to the Board.

9 When coming forward to provide testimony,
10 you will need to state your name and address for the
11 record. You can do this once. Obviously, that is so
12 that we can give you all the credit on the transcript
13 for that which you will say.

14 The order of procedure for special
15 exceptions and variances is: First, we hear from the
16 applicant, their case presentation and all their
17 witnesses. Second, we hear government reports
18 attendant to the application, Office of Planning,
19 Department of Transportation and the like. Third, we
20 will hear from the Advisory Neighborhood Commission.
21 Fourth would be persons or parties in support of the
22 application. Fifth will be persons or parties in
23 opposition to the application. Sixth, finally, we
24 will return to the applicant for their closing remarks
25 and/or rebuttal testimony and witnesses and

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1 summations.

2 Cross-examination of witnesses is
3 permitted by the applicant and parties in a case. The
4 ANC within which the property is located is
5 automatically a party in the case and will, obviously,
6 be, therefore, able to conduct cross-examination.
7 Nothing precludes this Board from limiting the time of
8 cross-examination, the jurisdiction or the direction
9 of cross-examination, and I will be very directive of
10 that, if need be. But we will take that up
11 specifically as is needed.

12 The record will be closed at the
13 conclusion of the hearing on each case, except for any
14 material that we specifically request, and we are very
15 specific on what is to be submitted and when it is to
16 be submitted into the Office of Zoning. Of course,
17 after that material is received, it should be fully
18 understood that no other information would be accepted
19 into the record on any case proceedings, and that that
20 would mean that the record is finally closed.

21 The Sunshine Act requires that this Board
22 conduct its hearings in the open and before the
23 public. This Board may enter into executive session,
24 both during or after hearings on a case, and that
25 would be for the purposes of reviewing records or

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1 deliberating on cases. This is in accordance with our
2 rules, regulations, procedure, and it is also in
3 accordance with the Sunshine Act.

4 We will make every effort to conclude our
5 afternoon by six o'clock. We do have two items on the
6 agenda, and we will get right to it.

7 At this time, let me say a very good
8 afternoon to Ms. Bailey on my very far right with the
9 Office of Zoning, Mr. Moy also with the Office of
10 Zoning on the dais with us today. Ms. Monroe is with
11 us representing the Office of Attorney General.

12 I am going to ask all those people
13 planning to give testimony today if you would please
14 stand and give your attention to Ms. Bailey. She is
15 going to swear you in.

16 ZONING SPECIALIST: Please raise your
17 right hand.

18 (Witnesses sworn.)

19 CHAIRPERSON GRIFFIS: Good. Thank you all
20 very much. Thank you, Ms. Bailey. Let us now move to
21 whether there are preliminary matters for the Board's
22 attention. Preliminary matters are those which relate
23 to whether a case will or should be heard today,
24 requests for postponement or withdrawals, whether
25 proper and adequate notice has been provided. These

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1 are elements of preliminary matters that we can bring
2 up at this time.

3 Ms. Bailey, again a very good afternoon to
4 you. Are you aware of any preliminary matters?

5 ZONING SPECIALIST BAILEY: Mr. Chairman,
6 to everyone good afternoon as well.

7 Yes, sir, there is, and it concerns the
8 first case of the afternoon. It is a civil infraction
9 matter. Mr. Chairman, I'm sorry.

10 CHAIRPERSON GRIFFIS: I turned your
11 microphone off. I'm terribly sorry.

12 ZONING SPECIALIST BAILEY: This is a civil
13 infraction matter. The Office of Zoning assigned
14 number is 03-0002, and the matter concerns a Mr. James
15 McRae versus Department of Consumer and Regulatory
16 Affairs, and there is a request for this case to be
17 continued for an additional 30 days.

18 Very well. Ms. Bailey, is it your
19 understanding that two items involved in 03-0002 can
20 be taken up as preliminary matters or do we need to
21 call the case?

22 ZONING SPECIALIST BAILEY: It is a request
23 for continuance, Mr. Chairman. If you would like for
24 me to call it, I will be more than happy to do so.

25 CHAIRPERSON GRIFFIS: Ms. Monroe, can we

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1 take up the preliminary matters without calling this
2 case? Okay, we've taken up too much time. I'm just
3 trying to save time.

4 MS. MONROE: I think you can do it either
5 way. You can do it either way. I don't see why it
6 matters that much, to be perfectly honest with you.

7 CHAIRPERSON GRIFFIS: Let's call it. I am
8 going to dispense with my opening for a civil
9 infraction, and we will just call the case, Ms.
10 Bailey, if you don't mind. Then we will take it up.

11 If, in fact, we do move ahead and hear
12 this case this afternoon, then I will go back to my
13 opening and go through an entire hearing procedure.
14 Okay.

15 ZONING SPECIALIST BAILEY: Okay. This is
16 a Civil Infraction matter, and the number is 03-0002,
17 and the matter concerns James McRae versus the
18 Department of Consumer and Regulatory Affairs for
19 storage of vehicles without a Certificate of Occupancy
20 permit at premises 3213 11th Street, N.W. The
21 property is zoned R-4, and it is located in Square
22 2845, Lot 813.

23 I think Mr. McRae is in the audience.
24 Would you please have a seat the table, sir.

25 CHAIRPERSON GRIFFIS: If I could ask all

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1 the parties to come up, please. You are going to need
2 to identify yourself for the record. Take your time.
3 Make yourself comfortable. Have a seat. I am going
4 to need you to turn your microphone on. Thank you.

5 MR. McRAE: I am James McRae. I reside at
6 2823 11th Street, N.W.

7 CHAIRPERSON GRIFFIS: Very well. Sir, we
8 have a motion to postpone this and reschedule it or,
9 as the lawyers say, an enlargement of time. We do
10 also have an opposition to that motion and,
11 additionally, a motion to dismiss. Are you aware of
12 all this information in the record?

13 MR. McRAE: Some of it, yes.

14 CHAIRPERSON GRIFFIS: Which some of it?

15 MR. McRAE: The same information that I
16 had when I was here before. Since then, I had hired
17 a new lawyer, and he had been handling it, and I
18 didn't know anything about it until he called me last
19 night. He is out of town, and asked me to come down
20 here today, and he informed me that he had filed a
21 motion.

22 CHAIRPERSON GRIFFIS: Okay. There it is.
23 Board members?

24 BOARD MEMBER MANN: It sounds like a very
25 similar situation that we had last time. That doesn't

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1 really shed a whole lot of information on our decision
2 making process except for the fact that Mr. McRae
3 doesn't appear to have any representation again.

4 CHAIRPERSON GRIFFIS: Indeed. I
5 appreciate that, Mr. Mann, and in addition, it seems
6 that the communication with -- or the poor
7 communication between legal representation is being
8 fallen upon as to why it is not ready to proceed
9 today. Mr. Etherly?

10 BOARD MEMBER ETHERLY: Thank you very
11 much, Mr. Chair. I would also agree. I believe we
12 had what was very important and very pointed
13 discussion at our earlier proceeding regarding this
14 infraction about the desire, I felt unequivocally, of
15 this Board to move forward in a decisive way, one way
16 or another in terms of moving this case today.

17 I think we were fairly clear with respect
18 to our desire for the appellant to secure counsel,
19 ensure that your rights and that your interests would
20 be adequately protected by securing counsel for this
21 proceeding. I think the Board was very generous with
22 the time that it afforded you to do that.

23 While I perhaps can understand that there
24 are difficulties that arise from a scheduling
25 standpoint, I think there is a little bit of a two-way

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1 street that this Board has to give some consideration
2 to with respect to, one, ensuring that you have an
3 opportunity to adequately protect your rights, but
4 also ensuring that the business of this Board can
5 continue to move forward.

6 I am just quite clearly -- I won't say
7 clearly, but I just can't say it unequivocally enough,
8 Mr. Chair. I think we are at a point where we have to
9 move forward and dispense with this case, because I
10 just don't see the movement in a fashion that is
11 satisfactory. I wish it were otherwise, but once
12 again I think the Board was very generous at its
13 earlier proceeding to grant the first continuance.
14 But we were very clear, as was noted in the opposition
15 filing filed by the District of Columbia -- we were
16 very clear that there would be significant
17 consequences if there were not a readiness to move
18 forward, and I think we are at that juncture, Mr.
19 Chair. Thank you.

20 CHAIRPERSON GRIFFIS: I would agree.
21 Thank you. Others?

22 VICE-CHAIRPERSON MILLER: I would concur.
23 The reason that the appellant gave for wanting more
24 time is that the appellant recently retained counsel
25 who is investigating the matter and needs an

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1 enlargement of time in which to file the necessary
2 pleadings due in this matter.

3 It's just saying he needs an enlargement
4 of time, because he needs an enlargement of time. I
5 mean, there is no good reason that was offered for
6 this enlargement of time request. So I concur, and I
7 think that we were quite clear the last time in
8 granting 60 days. That's a good amount of time in
9 which to retain counsel and get the representation
10 needed in this case.

11 I also note that this case is grounded in
12 appellant's failure to respond to notices in the
13 underlying case. So I think there is a pattern here
14 of just not responding, and I think that the end
15 should come at this point.

16 CHAIRPERSON GRIFFIS: I would agree,
17 although just one side note or small note on what you
18 have just stated. Exhibit Number 16, of course,
19 indicates that the attorney is indicating that they
20 are out of the jurisdiction during the week of the
21 17th. I'm not sure what that means, necessarily. But
22 I tend to agree with you that, last we left this three
23 months ago, it was to go find an attorney that could
24 be presented. The date was set. It has always been
25 set for three months. Certainly, that would have been

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1 the initial threshold criterion: Are you going to be
2 available the day of the hearing, and then can you
3 prepare the case?

4 So I think Mr. Etherly and yourself and
5 Mr. Mann have said it accurately enough. I think we
6 ought to take up a motion. Yes?

7 VICE-CHAIRPERSON MILLER: I just want to
8 say that, even if you are outside the jurisdiction, it
9 doesn't mean at this date you couldn't have filed the
10 pleadings. We didn't have any reason why the
11 pleadings weren't filed.

12 CHAIRPERSON GRIFFIS: Right. Well said.
13 I absolutely agree. Okay.

14 MR. McRAE: Excuse me. I was informed
15 last night that he did file a pleading of some type.
16 He did notify the Board that he would be out of town,
17 and he notified the Board in a timely fashion. He
18 also told me he sent two copies to the Board.

19 CHAIRPERSON GRIFFIS: Two copies of what?

20 MR. McRAE: Two copies that he would be
21 out of town or whatever he had to file.

22 CHAIRPERSON GRIFFIS: I understand that,
23 and I think, absolutely, in the first time around on
24 this and we had the request for postponement because
25 he was going to be out of town, certainly it would

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1 have been well received and probably taken up, as it
2 was in the past continuances on this case. But to
3 come at it again --

4 MR. McRAE: I did. I hired a counsel, but
5 I don't have any control on, you know, his coming and
6 going. I did hire counsel.

7 CHAIRPERSON GRIFFIS: You pay him, don't
8 you? Do you pay him?

9 MR. McRAE: Sure, I pay him.

10 CHAIRPERSON GRIFFIS: That's all the
11 control you need. I would say you have total control
12 over him.

13 MR. McRAE: Okay.

14 CHAIRPERSON GRIFFIS: All right. What
15 else?

16 VICE-CHAIRPERSON MILLER: Just to clarify,
17 the attorney did file a -- What he filed was a motion
18 for an enlargement of time. He didn't file the
19 pleadings that were required under our briefing
20 schedule.

21 CHAIRPERSON GRIFFIS: Unless you are aware
22 of something else that he filed.

23 BOARD MEMBER ETHERLY: Mr. Chair, I think
24 it probably would be appropriate at this point to move
25 denial of the appellant's motion for enlargement of

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1 time. I will perhaps just leave the motion at that,
2 as opposed to saying anything else, and invite a
3 second.

4 CHAIRPERSON GRIFFIS: Good. Is there a
5 second?

6 BOARD MEMBER MANN: Second.

7 CHAIRPERSON GRIFFIS: Thank you, Mr. Mann.
8 Speak to the motion, Mr. Etherly?

9 BOARD MEMBER ETHERLY: Thank you very
10 much, Mr. Chair. I think, as was stated earlier, I
11 think the Board was very generous at its first
12 proceeding with regard to providing a continuance. I
13 spoke very strongly, because I was concerned about the
14 absence of counsel at that particular juncture, and
15 felt that it would be appropriate to ensure that you,
16 Mr. McRae, had an opportunity to protect your rights
17 and your interest here.

18 I think, as was indicated by the Chair, 60
19 days, in my thinking, was ample time to secure
20 representation and ascertain that that individual
21 would be able to be here and be responsive to the
22 pleadings and to all the issues that have been raised
23 in the case of this infraction.

24 As Ms. Miller indicated, what we have from
25 the attorney that you retain simply doesn't offer

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1 enough of an argument in any compelling way for a
2 continuation at this particular juncture, once again
3 a second continuation. I think -- I just think it
4 would have been a very basic step for legal counsel to
5 at minimum take a look at this record and see that the
6 Board was very clear and very strident in its language
7 about wanting to move forward today.

8 That, in part, perhaps in significant
9 part, is definitely an issue that you should take up
10 with that individual that you retained, because he has
11 put you in a very difficult position, one which I fear
12 is not going to go very well for you at this
13 particular time. But I think also there is another
14 component here, in that there is a little bit of a
15 responsibility on your end to ensure you secure
16 representation that is going to be able to be here and
17 stand at that table for you.

18 It is an unfortunate circumstance, but I
19 think this Board was very clear, once again, in its
20 language about its posture, if it were confronted with
21 another continuance, which is what we have today.

22 I take very seriously any kind of
23 circumstance that results in someone's issue not
24 getting aired before this body, but I think, once
25 again, we were very, very clear about what the

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1 consequences would be in the absence of an ability to
2 move forward, and in the absence of compelling
3 argument for not moving forward today I just don't
4 think it is appropriate for us to hold on any longer
5 to this case.

6 Thank you, Mr. Chairman.

7 CHAIRPERSON GRIFFIS: Thank you, Mr.
8 Etherly. We are under a motion now. So I can't take
9 additional testimony from you, but we will have a
10 moment after this.

11 Let me just also reiterate, Mr. Etherly,
12 and I think it is important to note, that it is not
13 just not having representation today or not being
14 here. The appellant missed filings, and missed
15 filings back from March 16, 2004, April 14, 2004, and
16 then last our continuation of which we were very
17 specific, and the transcript shows that. They missed
18 an April 26, 2005, filing and briefings on the 10th of
19 May.

20 So it's not just that, oh, there is an
21 emergency; I got called out of town. Three months in
22 which we set this off to have it prepared to go, and
23 set our schedule for you to utilize it have not been
24 met.

25 Further? Anything else?

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1 COMMISSIONER HOOD: Mr. Chair, I would
2 just concur with what I heard. Also, when I look at
3 the transcript, as was stated by both you and all of
4 my colleagues, you all were very clear exactly, if you
5 were faced with another continuance, what the outcome
6 would possibly be.

7 Moreover, to me, that's a slot that
8 somebody else in this city could have gotten, because
9 I believe that it takes, what, 40-50 days -- I don't
10 know how long it takes, but it takes a long time for
11 people to get on this agenda, and I think that we will
12 be doing a disservice to the citizens of the city and
13 those who want to come down in front of this Board if
14 we continue. So I am in agreement with everything I
15 have heard.

16 CHAIRPERSON GRIFFIS: Thank you, Mr. Hood.
17 Appreciate that, and excellent words. Okay, if there
18 is nothing further, then we do have a motion. It has
19 been seconded. I would ask for all those in favor to
20 signify by saying Aye. Opposed? Abstaining? Very
21 well.

22 Ms. Bailey, why don't we record the vote
23 and the motion to deny the enlargement of time and the
24 continuance of the hearing.

25 ZONING SPECIALIST BAILEY: Mr. Chairman,

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1 the vote is five-zero-zero. Mr. Etherly made the
2 motion. Mr. Mann seconded. Mr. Griffis, Ms. Miller
3 and Mr. Hood are in agreement to deny the motion for
4 enlargement of time.

5 CHAIRPERSON GRIFFIS: Okay. Mr. McRae, of
6 course, we have denied the motion for a continuance on
7 this. Did you have something that you wanted to say?

8 MR. McRAE: Doesn't make sense to say it
9 now.

10 CHAIRPERSON GRIFFIS: It always makes
11 sense to say it. I will give you the opportunity. We
12 do have one more thing to take up on this, and that
13 will be whether we dismiss this with prejudice or not.

14 MR. McRAE: Well, simply, yes, I went out
15 and hired an attorney. I had no idea the attorney was
16 out of town until nine o'clock last night when he
17 called me and told me he was out of town and for me to
18 show up down here today. So that's it. That's all I
19 could do. I hired the man.

20 CHAIRPERSON GRIFFIS: And I understand
21 that. I think the Board understands that, but --
22 Well, we also recall last time you were here, you said
23 the same thing. You weren't sure why your attorney
24 didn't file anything, and you got here that day three
25 months ago and said, well, I didn't know my attorney

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1 hadn't represented me for two weeks now and whatever
2 it was.

3 So I'm not sure how -- What do we do next?
4 If we give you 60 more days, there is nothing that
5 shows that we would actually have anything different.

6 MR. McRAE: I have an attorney now.
7 Before, what had happened was the attorney quit on me,
8 and I had no idea the attorney had quit. I had no
9 idea, none whatsoever. If I hadn't been hand
10 delivered a letter on the Saturday night, I would have
11 come down here on the Tuesday and got blindsided,
12 because I had no idea what was going on.

13 CHAIRPERSON GRIFFIS: Okay. All right.
14 I certainly understand the circumstances. Perhaps the
15 lesson learned is to make frequent and often calls to
16 the attorney and see what they are doing and what they
17 are thinking. But let's move ahead in that respect.

18 I believe we should take up, as we have a
19 motion before us from the DCRA in this case asking us
20 to dismiss with prejudice the appeal before us. I'll
21 take discussion on that.

22 VICE-CHAIRPERSON MILLER: Second.

23 CHAIRPERSON GRIFFIS: Oh, sure, we'll take
24 it up as a motion to dismiss with prejudice. I would
25 ask for a second.

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1 VICE-CHAIRPERSON MILLER: Second.

2 CHAIRPERSON GRIFFIS: Thank you, Ms.
3 Miller. Did you want to speak to it?

4 VICE-CHAIRPERSON MILLER: I would support
5 moving to dismiss with prejudice, because the
6 appellant had failed to present a case after being
7 given several opportunities.

8 As a secondary reason, I don't know that
9 this is shared by the Board, but I also believe that
10 this decision may not even be properly before us, as
11 it is an appeal of appellant's failure to respond to
12 notices of an infraction and, therefore, not being
13 granted a hearing under 16 DCMR, Section 3102.1 and
14 3102.3. But I don't think we need to reach that
15 issue, but that is part of -- Part of my reasoning
16 here is I just don't think that this case deserves to
17 go forward at all.

18 No case has been presented to us, and I
19 don't believe that it is properly before us, to begin
20 with, that it even has -- the appeal really is about
21 a zoning issue. It is really about not getting a
22 hearing before another agency.

23 CHAIRPERSON GRIFFIS: Interesting.
24 Others? Okay. I totally agree on the first part. On
25 the second, in terms of our jurisdiction, I don't

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1 think that has been met and should not reflect a
2 definitive decision, as you have said. I think that
3 was, in fact, a major part of the substance, if not
4 just the preliminary aspects of this civil infraction,
5 was clarifying whether we would be able to hear that,
6 based on the fact that it was a zoning issue but came
7 at us almost secondarily under the guise of a zoning
8 issue, but was appealing not being able to be heard in
9 another -- I thought it was going to be fascinating,
10 but there it is. We are not going to hear it at this
11 point, as it would appear.

12 Okay. If there's no other further
13 deliberations by the Board, we do have a motion to
14 dismiss with prejudice. It's been seconded. I would
15 ask for all those in favor to signify by saying Aye.
16 Opposed? Abstaining? Very well.

17 Ms. Bailey, if you wouldn't mind.

18 ZONING SPECIALIST BAILEY: Mr. Chairman,
19 you made the motion?

20 CHAIRPERSON GRIFFIS: Yes.

21 ZONING SPECIALIST BAILEY: The Board has
22 voted five-zero-zero to dismiss the case -- with
23 prejudice, Mr. Chairman?

24 CHAIRPERSON GRIFFIS: Yes.

25 ZONING SPECIALIST BAILEY: Mr. Griffis

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1 made the motion. Ms. Miller seconded. Mr. Mann, Mr.
2 Etherly and Mr. Hood are in agreement, and a motion
3 order will be forthcoming.

4 CHAIRPERSON GRIFFIS: Good. Thank you
5 very much. Mr. McRae, clearly we were hoping for a
6 different processing today, but that hasn't been able
7 to come to fruition. So I bid you a very good
8 afternoon, sir.

9 MR. McRAE: Thank you.

10 CHAIRPERSON GRIFFIS: Let's move ahead and
11 call the next case.

12 ZONING SPECIALIST BAILEY: Application
13 Number 17322 of Intrepid, 2501 Acquisition LLC,
14 pursuant to 11 DCMR 3104.1 for a special exception to
15 allow the regulations applicable to that portion of
16 the lot to be located in a less restricted use
17 district to be extended to that portion of the lot in
18 a more restrictive use district under Section 2514,
19 and a special exception from the roof structure
20 setback requirements under Subsection 411.11, and
21 pursuant to 11 DCMR 3103.2 a variance from the floor
22 area ration requirements under Subsection 771, a
23 variance from the lot occupancy requirements under
24 Section 772, a variance from the residential
25 recreation space requirements under Section 773, a

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1 variance from the rear yard requirements under Section
2 774, and a variance from the court width requirements
3 under Section 776, for the construction of a mixed use
4 -- that's a residential retail building.

5 The property is located in C-2-C and R-5-B
6 District at premises 2501 Pennsylvania Avenue, N.W.,
7 also known as Square 14, Lot 73.

8 Mr. Chairman, there is a request for party
9 status in this case.

10 CHAIRPERSON GRIFFIS: Indeed. Let's take
11 that up at this point. Ms. Kahlow? Present. Board
12 members? Actually, Ms. Kahlow, if you wouldn't mind
13 coming forward, we will just have you state your name,
14 address for the record. I think the Board might have
15 some questions, and then we will have the
16 representative of the applicant come to the table
17 also.

18 MS. KAHLOW: Shall I begin?

19 CHAIRPERSON GRIFFIS: Yes, please.

20 MS. KAHLOW: I am Barbara Kahlow. I live
21 at 800 25th Street, N.W., Washington, D.C. 20037.

22 CHAIRPERSON GRIFFIS: Excellent. Thank
23 you. Obviously, with your filing -- not obviously.
24 With your filings, it is clear that you have been part
25 of this process since, oh, perhaps before 1991, but

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1 that's as far back as my memory will serve.

2 That being said, people had standing in
3 the previous cases. What is of pertinence for us is
4 the instant party application request. Can you add
5 onto the submission that you have done today, which is
6 Exhibit 32, to speak about how you would be uniquely
7 or distinctly impacted outside of other individuals in
8 the immediate area or general public?

9 MS. KAHLOW: I'm not sure exactly what you
10 are looking for. However, I did ask our former
11 counsel that represented us in the litigation of the
12 two law suits what his understanding was, and his
13 understanding -- I have a memorandum for you, if you
14 would like it -- is that the agreements that were
15 reached with the city and the former owners were going
16 to be -- to convey to all future owners, and he is the
17 one that negotiated with the city, and he has this
18 statement, if I can put that in the record.

19 If that is helpful or not -- and since I
20 am one of the five co-signers, the agreement says that
21 each future developer has to talk to me, and every
22 single developer except for this one has done so.
23 Every potential developer and then every actual
24 developer on the property -- it has changed many
25 times, and everyone has met with me and others of the

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1 co-signers.

2 CHAIRPERSON GRIFFIS: So this was an
3 agreement signed by who?

4 MS. KAHLOW: I am going to be putting into
5 the record. It was an agreement signed by five
6 individuals in the prior case, and I am going to be
7 putting in the record all the five orders, all the
8 agreements, and all of it are going to be -- That's
9 what the box is, all of the different documents, so
10 you will be able to follow.

11 The prior case, there were 17 mentions of
12 the agreement in all of the BZA orders.

13 CHAIRPERSON GRIFFIS: I guess my question
14 would be: This agreement -- what's its relevancy for
15 the zoning relief that is being requested, or even
16 what's the relevancy for the process in the hearing
17 today?

18 MS. KAHLOW: I must have spoken clearly.
19 The litigation was against the city for different
20 errors made by the city in processing the case, and
21 the consequence --

22 CHAIRPERSON GRIFFIS: What do you mean?

23 MS. KAHLOW: It was DCRA, the zoning
24 authorities, etcetera; and the settlement was
25 reflected in all of the BZA orders, your orders, that

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1 it would be -- it would memorialize 17 different
2 mentions of how the settlement agreement -- how you
3 were going to accommodate it in all of the different
4 ramifications for this case.

5 There was substantial evidence, such as on
6 air and light of abutting homeowners, and you made
7 substantial findings after compelling testimony. I
8 will be presenting all that in my case.

9 I think that the Board will be best served
10 if I can present it and ask on cross-examination. I
11 have detailed, written questions ready for cross-
12 examination. But I am more than willing to give you
13 what the lawyer has written. His understanding of
14 this is in perpetuity with each future developer, and
15 that was our understanding.

16 It is in the agreements which, as I say,
17 I will be entering into evidence, if this is helpful.

18 CHAIRPERSON GRIFFIS: So we don't have the
19 agreement.

20 MS. KAHLOW: Well, you will get it. I can
21 add that now, if that is helpful. I was going to add
22 it as part of my testimony. What's your pleasure?
23 Shall I bring all the agreements up now and all of the
24 formal orders? I mean, I have enough copies for you
25 to put in the record, because I didn't think you could

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1 make an informed judgment without it.

2 CHAIRPERSON GRIFFIS: I'm just trying to
3 get clarity on paperwork here. There is one
4 agreement? There's 17 agreements?

5 MS. KAHLOW: There's 17 mentions in your
6 orders of the first agreement.

7 CHAIRPERSON GRIFFIS: So there is one
8 agreement?

9 MS. KAHLOW: There is one agreement in
10 '93, and there's 17 mentions. There are several --

11 CHAIRPERSON GRIFFIS: That's all right.
12 Let's stick to that. So there's one agreement, and
13 how large is it? How many pages?

14 MS. KAHLOW: I want to say 20-ish.

15 CHAIRPERSON GRIFFIS: That's fine, just
16 roughly.

17 MS. KAHLOW: But I have it right here for
18 you.

19 CHAIRPERSON GRIFFIS: Yes. Okay. Other
20 questions? Mr. Etherly?

21 BOARD MEMBER ETHERLY: No questions, but
22 perhaps just to cut to the chase, and I know we
23 haven't heard from the applicant. My inclination
24 would -- Well, I am inclined to just move forward and
25 be expeditious. I am a little hesitant at -- I'm

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1 trying to think the best way to phrase this.

2 There clearly is expertise and history
3 with the subject property that Ms. Kahlow brings to
4 the table, and I can, to an extent, see how that can
5 play a very -- that could play a compelling role in a
6 party status application.

7 I think, in perhaps one other case since
8 I have been on the Board, we have been confronted with
9 a similar issue, and I am inclined to kind of see that
10 connection.

11 My concern perhaps is getting too far
12 afield in the external agreement, which I know this
13 Board has at times tried to deal with, just in all
14 types of different settings: What do we do with these
15 externally negotiated agreements that come from other
16 forums in terms of when people bring them here?

17 CHAIRPERSON GRIFFIS: Perhaps we could
18 look at it this way, as I understand Ms. Kahlow
19 stating that her significantly and distinctly unique
20 impact is the fact that she is now the protector of
21 the agreement, no matter the substance of the
22 agreement, but in that it ties directly with the
23 development and the development of this area.

24 Does that set apart from the general
25 public and rise to a level of being party --

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1 MS. KAHLOW: I also have a court order
2 that required us to go into mediation with the city
3 and the developer. I have that with me, too.

4 CHAIRPERSON GRIFFIS: Okay. What Mr.
5 Etherly is saying, and I think it is very important
6 for everyone as we proceed into this, everyone to
7 clearly understand -- Mr. Etherly is saying there may
8 be all that. There is an awful lot of history here,
9 and not all of it is going to be jurisdictional or
10 relevant to our hearing as we go forward today.

11 So what we are going to have to do is very
12 quickly get through it and figure out what we should
13 be looking at or what we should not be spending our
14 time with, because if you've got an agreement and
15 there's court orders and everyone signed on it, that's
16 great. Go implement the agreement, and there is
17 really no reason for us to be involved in it.

18 We've got a variance/special exception
19 case that we need to take. As it pertains to those,
20 certainly, it is important.

21 BOARD MEMBER ETHERLY: And I think that is
22 perhaps part of where Ms. Kahlow's party status
23 application is also going perhaps in an implied way,
24 that the experience of all of that expertise and
25 history with this case gives you a unique, shall we

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1 say, gloss or unique set of understandings that you
2 would bring to bear on the variance analysis before
3 us.

4 Perhaps someone might say that might be an
5 expansive reading of it, but I could see that, once
6 again not necessarily answering the question yet on
7 party status, because we haven't heard from the
8 applicant. But that's kind of the way I am taking it,
9 but your clarification is very important, Mr. Chair,
10 not getting too far into the agreement side of it.

11 CHAIRPERSON GRIFFIS: Excellent. I wanted
12 to say one thing that I did not find persuasive in
13 your request was indicating that you are a long time
14 advocate of historic preservation, and you are saying
15 some of the impacts on this.

16 Just for clarity, that is absolutely
17 laudable and important. That doesn't rise to the
18 level of uniqueness, because, you know, impact in a
19 historic nature, even a historic district, obviously,
20 is to the more general public. But Mr. Etherly, I
21 think, has invoked an awful lot of specificity that is
22 important in this. Ms. Miller?

23 VICE-CHAIRPERSON MILLER: Good afternoon.
24 Can you tell me how the agreement relates to the
25 zoning relief that is requested here?

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1 MS. KAHLOW: It speaks specifically to
2 almost everyone of those pieces, air, ratio, height,
3 etcetera. It speaks to each of them, and my testimony
4 will not be about historic preservation, since I sent
5 it to the Historic Preservation Review Board. It will
6 be about each of the cases that were requested for
7 zoning relief.

8 VICE-CHAIRPERSON MILLER: And the
9 agreement speaks to any development on the property,
10 regardless of who the developer is?

11 MS. KAHLOW: That is correct. It goes
12 from developer to developer, and that's what the
13 agreements say. I will be presenting that testimony.

14 CHAIRPERSON GRIFFIS: It seems to me like
15 the World Court would sign that agreement.

16 MS. KAHLOW: Well, this was a law suit
17 against the District that the courts made us go to
18 mediation and --

19 CHAIRPERSON GRIFFIS: I'm being humorous,
20 but it seems very complicated. How could one -- I
21 mean, was it recorded in the deed of the property that
22 all this would happen?

23 MS. KAHLOW: It was -- When we get to
24 talking about the agreement, it says that, once there
25 is a building permit issued -- there was a building

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1 permit applied for but not issued -- then there would
2 be a covenant, and it would be. But since they never
3 filed the covenant, you just have to read about the
4 covenant. But that's the understanding.

5 CHAIRPERSON GRIFFIS: Okay.

6 VICE-CHAIRPERSON MILLER: Would you be
7 speaking for yourself or for all five -- did you say
8 there were five signatories?

9 MS. KAHLOW: I am going to be speaking for
10 myself, and I am introducing as testimony one of the
11 other co-signers. There are only three of us still
12 active in land use in D.C., and two of the three of us
13 feel the same way. I am also speaking for owners on
14 25th Street. I have letters to submit for the record
15 from them, the immediately impacted neighbors; because
16 we've worked together for years.

17 CHAIRPERSON GRIFFIS: Indeed. As Mr.
18 Etherly likes to say, let's cut to the chase. Mr.
19 Collins, do you have any objections or comments on the
20 party status request?

21 MR. COLLINS: Yes, I do. Thank you, Mr.
22 Chairman, members of the Board. My name is
23 Christopher Collins of the law firm of Holland &
24 Knight.

25 I would like to address the party status

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1 issue, if I may. A number of things have changed
2 since this case was -- a prior case on this property
3 was first head in 1991.

4 One of the most important things is that
5 the rules for party status have changed. In 1997 and
6 again in 2000, the Zoning Commission revised the rules
7 for party status.

8 The rules for parties appear in Section
9 3106.2 of the zoning regulations, and say in pertinent
10 part that, in order to participate as a party, certain
11 things must be done 14 days in advance. Sections A
12 through D give information, name, address, proponent
13 or opponent, things of that nature. But at Section E,
14 subsection E, 2(e), that has the real meat of the
15 test.

16 The test is really divided into two
17 general parts. Number one, the person who is
18 requesting party status must establish what is their
19 property interest, and that's in Sections 1, 2 and 3.
20 Number 1 asks for listing the property owned or
21 occupied by the person that would be affected by the
22 zoning relief -- that would be affected by the zoning
23 relief.

24 Second, the legal interest of the person
25 in the property, such as owner, trustee, mortgagee,

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1 whatever. And third, the distance between the
2 person's property and the property that is the subject
3 of the appeal or application.

4 So once you establish the property
5 interest, where the property is, how it would be
6 affected, then you go to the second part of the test,
7 Sections 4 and 5, which are really more specific than
8 that.

9 Section 4 says the environmental,
10 economic, social or other impacts likely to affect the
11 person and/or the person's property if the zoning
12 relief requested is approved or denied. Then if that
13 burden is satisfied, then the Board asks for an
14 explanation of how the person's interest, as
15 identified in that previous section, would likely be
16 more significantly, distinctively or uniquely affected
17 in character or kind by the proposed zoning relief
18 than those of other persons in the general public.

19 Then to be even more specific, Mr.
20 Chairman, Section 3106.3 says that, in considering any
21 request for party status, the Board shall grant party
22 status only if the person requesting such status has
23 clearly demonstrated that the person's interests would
24 likely be more significantly, distinctively or
25 uniquely affected in character or kind by the proposed

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1 zoning relief than those of other persons in the
2 general public.

3 Let's take a look at what has been filed.
4 Ms. Kahlow states in certain terms of her party status
5 that she owns two of the 157 units in the Westbridge
6 Condominium, doesn't occupy them but owns them, and
7 that that is located within 200 feet of this site.

8 She talks about negative effects on the
9 three abutting landmark, low scale Mullett townhouses,
10 the negative effects on the historic preservation
11 issues. Well, that's been decided by the Historic
12 Preservation Review Board. They have already granted
13 conceptual approval to this design.

14 She talks about the negative effect on the
15 last intact row of low scale historic townhouses in
16 the West End, those on 25th Street. Well, those are
17 not historic. The Historic Preservation Review Board
18 specifically denied a request for historic status for
19 those properties.

20 CHAIRPERSON GRIFFIS: I think we can
21 dispense with a lot of the historic elements.

22 MR. COLLINS: I've got the transcript.
23 I've got the vote. Okay, I'll go on to the next.

24 CHAIRPERSON GRIFFIS: I think we can move
25 beyond to the larger issue.

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1 MR. COLLINS: The third, the quality of
2 life of residents in the immediate area, such as
3 reduced light, air, for some residents. She is not
4 addressing her own property rights. She is addressing
5 those of others. That's not what this test requires.

6 Then going on to 3106.2(e)(5), in response
7 to the request about the explanation about how the
8 person's interests are more significantly impacted,
9 she says that she has been a party to a prior BZA
10 case. But the party status -- As I said, the party
11 status rules changed in 1997.

12 In the earlier case on this site, there
13 were 21 parties. Under the present rules, there could
14 not be 21 parties. There could not be 21 people who
15 are differently affected than everybody else.

16 She alleges, in response to the request
17 for information of how you are more likely
18 significantly impacted, she said she is a signer of
19 the settlement agreement arrived after a court ordered
20 mediation and represented by counsel.

21 Well, as we will develop in the course of
22 the hearing when we get to that point, when the
23 testimony comes, that she is mistaken as to the facts.
24 The mediation that happened in the litigation in 1991-
25 92 was the same mediation that is required of the

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1 Superior Court in most every civil case. The parties
2 are required to either do mediation or arbitration.
3 This Judge selected mediation, put the --

4 CHAIRPERSON GRIFFIS: So the agreement
5 arises out of a civil infraction or a civil case?

6 MR. COLLINS: I'm sorry, say it again.

7 CHAIRPERSON GRIFFIS: You said there was
8 a civil proceeding?

9 MR. COLLINS: There were some law suits
10 filed by Ms. Kahlow's associates -- I'm not sure how
11 to describe them -- neighbors, several law suits filed
12 by Richard Price, the named plaintiff, and the Foggy
13 Bottom Association back in 1991.

14 It's interesting to note, the record in
15 this case, both Mr. Price appears as the ANC
16 Commissioner for the single member district, and the
17 ANC unanimously voted support of this application, and
18 the Foggy Bottom Association, which was a plaintiff in
19 the earlier litigation, is in support of this
20 application.

21 In this case, the ADR, the Alternative
22 Dispute Resolution process, is supplied by the -- or
23 requested by the Superior Court in all types of case.
24 Here, there was mediation requested. Mediation is not
25 binding on the parties. The mediation was not

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1 successfully, apparently because there was a trial
2 scheduled.

3 The trial was scheduled. During the
4 course of that scheduling and discovery, there --

5 CHAIRPERSON GRIFFIS: Okay. But we are
6 going too far into all the details.

7 MR. COLLINS: Well, okay. But there was
8 a settlement agreement that came.

9 CHAIRPERSON GRIFFIS: Let's stick to the
10 straight, and I agree with you that --

11 MS. KAHLOW: May I correct the most
12 important thing he just said? The mediation was
13 successful.

14 CHAIRPERSON GRIFFIS: After I'm finished.

15 MS. KAHLOW: Oh, sorry.

16 CHAIRPERSON GRIFFIS: The Zoning
17 Commission did change and, clearly, this Board looks
18 at the current iteration of the requirements. First
19 of all, although eloquently argued, I don't
20 necessarily -- I am not persuaded by the ownership
21 issue that you are bringing up.

22 MR. COLLINS: Well, let me just, if I can,
23 please -- Since this Board --

24 CHAIRPERSON GRIFFIS: Let me lay it all
25 out, just so we are very pointed and we speak directly

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1 to this.

2 First of all, we can get quickly up and
3 over the ownership issue, because you are going to
4 have to then say to me why the Foggy Bottom
5 Association couldn't be a party in this case as it
6 represents an area or people that live in a certain
7 area. It's not necessarily specifically on ownership.
8 Certainly, I don't see anything in the regulations
9 that requires one to occupy that piece of property.
10 But moving on, and I think more substantively and
11 importantly, what, I think, has come out here is we
12 have this agreement, and I really don't want to, as a
13 preliminary matter, get into the substance of the
14 agreement and all of those issues. But does that rise
15 initially to the level of setting Ms. Kahlow apart as
16 the signor of this agreement that has some sort of
17 control over the property?

18 It either does or it doesn't. That is
19 what we are going to be persuaded by in the next three
20 minutes.

21 MR. COLLINS: Well, all right. Well, let
22 me then turn to the examination of the cases that were
23 decided by this Board since the time that the Zoning
24 Commission changed the rules for party status.

25 CHAIRPERSON GRIFFIS: Okay.

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1 MR. COLLINS: If one was to go to the OZ
2 website and put in the words "party status," you would
3 find 238 cases that would pop up, Board of Zoning
4 Adjustment cases. If you look at those cases, you
5 will see time and again that, other than when an
6 organization represents immediately impacted
7 neighbors, that the immediately impacted neighbors
8 must be those who --

9 CHAIRPERSON GRIFFIS: Oh, I don't disagree
10 with you. It would have some sort of adjacency, if
11 not directly adjacent.

12 MR. COLLINS: They have to be abutting or
13 adjacent.

14 CHAIRPERSON GRIFFIS: But I don't take Ms.
15 Kahlow's application for party status as saying she is
16 the individual owner of a property that is impacted by
17 this, but rather it is a larger sphere in
18 representation. She has even stated today, and which
19 she will give us documentation, that she represents a
20 whole street.

21 MR. COLLINS: That's not the test. If we
22 are going to apply the test, we should apply the words
23 of the test, and the words of the test are very
24 specific about the property owned or occupied by the
25 person that would be affected by the zoning relief.

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1 Then you must show how the granting of the
2 relief would affect that property. Well, if you look
3 at those cases, and other than a neighborhood
4 organization representing those adjacent or in close
5 proximity, all the cases involving individual
6 residents, individual people asking for party status,
7 the Board has only given it to those who live -- who
8 are either abutting or live adjacent to. I've got
9 four examples. I didn't want to get all 238 for you,
10 but I've got four examples. Let me just go through
11 them, if I can. I have copies.

12 I'll just go through them very quickly.
13 The first -- and these are just examples. These are
14 not the only ones. These are examples. The first one
15 is Application 16556 by the Jewish Primary Day School.

16 You may recall that case had two
17 synagogues on 16th Street across from each other, and
18 this Board granted -- The Board says, "The Board may
19 grant a person party status only if that person has
20 clearly demonstrated his or her interest will be more
21 significantly adversely, uniquely affected in
22 character or kind by the proposed zoning relief."

23 Then the Board determined that only three
24 requests would be granted: Those who lived behind and
25 adjacent to one of the synagogues and another party

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1 that lives behind the other synagogue. There were in
2 that case only three of 17 people requesting party
3 status were granted party status.

4 The next: Application 16643, D.C. Public
5 Schools. The Board denied party status to a neighbor
6 who lived 100 feet away, because his property was not
7 contiguous to the site. His property is not separated
8 from the site by an alley or other access, and his
9 property is located approximately 100 feet from the
10 site; whereas, other residentially zoned properties
11 are located closer and would be more directly
12 affected.

13 Third, 16696 of Craig and Ann Goodman. In
14 that case, two abutting owners were granted party
15 status. Three other abutting owners were not granted
16 party status, because their dwellings are situated
17 farther away from the proposed addition, and they
18 would not likely be more significantly, distinctively
19 or uniquely affected than other persons.

20 CHAIRPERSON GRIFFIS: I don't disagree
21 that you could find party applications that were
22 denied based on where an applicant had resided or
23 owned property. But I don't think that is
24 definitively conclusive in denying it on this case.

25 Ms. Miller has a quick interruptive

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1 question, and then we will move on to the agreement.

2 VICE-CHAIRPERSON MILLER: The way I see
3 the regs, 3106.2 sets forth filing requirements, and
4 these are things that the Board looks at. But 3106.3,
5 I think, is really the crux of the test, and it talks
6 about a person demonstrating that they are going to be
7 more significantly, distinctly or uniquely affected in
8 character and kind by the zoning relief being
9 proposed.

10 I think that is where we basically look,
11 and often -- most often, they are going to be affected
12 if they live next-door or whatever. But I think in
13 this case, what we are trying to figure out is: Is
14 there something in this agreement that makes Ms.
15 Kahlow significantly, differently, uniquely affected
16 by the zoning relief that is being proposed? We
17 haven't seen this agreement.

18 MR. COLLINS: Right. And you haven't, and
19 maybe we are just talking in a vacuum, but the
20 agreement --

21 VICE-CHAIRPERSON MILLER: If you can
22 identify it for us.

23 MR. COLLINS: Let me say flat out, the
24 agreement does not apply to this applicant. This
25 applicant did not --

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1 MS. KAHLOW: We disagree.

2 MR. COLLINS: This applicant did not sign
3 the agreement. The agreement does not convey to
4 successors and assigns. When you see it, you will
5 quickly see that. This is a different application
6 from the prior application.

7 The prior application was started in 1991.
8 You will notice in the prior cases that they all have
9 the same number, because the application did not die.
10 It was amended over time. That application is dead.

11 CHAIRPERSON GRIFFIS: Right.

12 MR. COLLINS: That agreement that Ms.
13 Kahlow will show you does not run to successors and
14 assigns. Moreover, it does say that each party has
15 been represented by counsel.

16 CHAIRPERSON GRIFFIS: Can you answer very
17 -- and I'll give it to you both at this point, because
18 one thing -- There is no way it could be proven to me
19 today that we are the jurisdictional body to decide
20 this agreement and whether it applies or doesn't
21 apply, and I don't want to get into the situation and
22 waste a lot of everybody's time trying to deal with
23 that.

24 Can you answer: Does that agreement speak
25 to anything at the zoning questions or relief that is

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1 being requested today? I mean, just on -- what? --

2 MS. KAHLOW: Yes.

3 CHAIRPERSON GRIFFIS: -- on a theoretical
4 idea, does it deal with those elements?

5 MR. COLLINS: It doesn't go into the
6 zoning tests at all. It was a settlement agreement
7 that was reached during the course of the litigation,
8 and as a result of that settlement agreement the
9 litigation was dismissed with prejudice.

10 The settlement agreement does not live in
11 some kind of court decision. There was no court
12 decision affirming the settlement agreement or
13 anything else like that. The litigation was
14 dismissed, because settlement was reached.

15 CHAIRPERSON GRIFFIS: Okay.

16 MR. COLLINS: It was reached between that
17 applicant -- that applicant -- and those parties who
18 signed the agreement.

19 CHAIRPERSON GRIFFIS: And your point is
20 the agreement went to the development scenario, no
21 matter who the developer was, but the development
22 scenario of the last application of which was being
23 modified?

24 MR. COLLINS: No, that's not my point at
25 all.

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1 CHAIRPERSON GRIFFIS: I see.

2 MR. COLLINS: My point is that that
3 settlement agreement went to that property owner and
4 those litigants. That's who it went to.

5 CHAIRPERSON GRIFFIS: Right, which was the
6 subject of the past applications which --

7 MR. COLLINS: Right, but it did not go --
8 Well, Ms. Kahlow can speak to whether she tried to get
9 others to sign the agreement and was unsuccessful in
10 getting them to sign the agreement. She did talk to
11 many people, but that's jumping too far ahead. We are
12 still in the party status.

13 MS. KAHLOW: I'm sorry. What are you
14 talking about? Yes, they signed it.

15 MR. COLLINS: We have --

16 MS. KAHLOW: And it talks about the BZA
17 and the agreement, which I will be presenting. It
18 says the furtherance of the settlement agreement -dah-
19 dah-dah -- held with the BZA. You are specifically
20 mentioned in here. And then you are mentioned 17
21 times in the orders; you mention this agreement as
22 memorializing it.

23 MR. COLLINS: What it does -- Since I have
24 the floor, what it does is it sets a -- It was a
25 settlement agreement -- As many settlement agreements,

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1 everyone swallowed hard and said how do we get this
2 behind us; we'll make the building smaller, we'll
3 tweak it certain ways, we'll do certain things. We'll
4 make certain agreements.

5 CHAIRPERSON GRIFFIS: That's what I was
6 meaning. It went to the last iteration and the last
7 application. So what you are saying is it may have
8 spoken to those elements as it pertained to the last
9 application, but it has no bearing on this application
10 today.

11 MR. COLLINS: That's right. That's
12 correct.

13 CHAIRPERSON GRIFFIS: Okay, let's hear
14 from you.

15 MS. KAHLOW: And I disagree, and that's
16 why -- The lawyer -- Chris was not the lawyer in the
17 room in the mediation or the settlement agreements,
18 and the lawyer who represented the community gave me
19 a letter that said it does go from owner to owner of
20 the property. It has nothing to do with the prior
21 owner and, in fact, we met with every prior owner
22 except for this one prior to its being purchased, and
23 this was -- and during the bidder's conference for
24 this, it was revealed to everybody these settlement
25 agreements existed.

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1 CHAIRPERSON GRIFFIS: But say it doesn't.
2 Say it doesn't pertain to this applicant or this
3 developer. Say it doesn't. Does the substance -- How
4 does that change your standing? Is there a body of
5 knowledge or is there a body of information that will
6 be impacted that would somehow rise to the level of
7 granting you party status?

8 MS. KAHLOW: I believe so. I am going to
9 be giving you historical documents that are very
10 relevant to this Board, especially what this Board has
11 previously decided, what it considered. The shadow
12 studies, for example, it has looked at, things that
13 you spent so many hearings on of what was important
14 because of the immediate neighborhoods.

15 CHAIRPERSON GRIFFIS: It's the same
16 development as it was before?

17 MS. KAHLOW: The same exact site, same
18 exact square footage and same plot, same lot.

19 CHAIRPERSON GRIFFIS: Same max'ing?

20 MS. KAHLOW: No, it's more.

21 CHAIRPERSON GRIFFIS: Same use?

22 MS. KAHLOW: Uses are mixed before, and
23 mixed now. But it's the same site. It's the same
24 thing. It's just a new developer, and the same people
25 that lived there -- nothing changed on who lives there

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1 on either side, and that's why the Board's findings
2 are so important, and I'll use the most -- example so
3 obvious, shadow studies.

4 We had hours and hours of testimony from
5 affected mothers that their children would no longer
6 be able to have air and light in their apartments, and
7 that was when it was going to be 70 feet. Now it's
8 going to be 90 feet abutting them. That's why it is
9 so important to bring in this historical context which
10 you decided, you historically, the BZA, and not you
11 individually.

12 CHAIRPERSON GRIFFIS: Right.

13 BOARD MEMBER ETHERLY: Here is kind of
14 where I'm heading, Mr. Chair, and I know it is
15 difficult, because we don't have the agreement in
16 front of us. I am just concerned about letting that
17 cat out of the bag, because once it comes out, we
18 can't necessarily put it back in.

19 My inclination at this point is to look
20 more toward something that Ms. Kahlow said at the
21 outset of her remarks, and that was that she did have
22 permission or authorization on behalf of other
23 residents in the vicinity of the subject property.
24 That, to me, might be a somewhat more compelling peg
25 and somewhat cleaner peg to hang this argument on.

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1 I am just concerned about the agreement
2 being too much of a slippery slope. So just as an
3 indication for my colleagues as to kind of where I am
4 leaning right now, I'm just concerned about the
5 complications.

6 MS. KAHLOW: May I clarify that? In the
7 abutting -- the most directly affected abutting 25th
8 townhouses, there are four units. I am representing
9 two of those. One other has to recuse himself,
10 because he is a real estate professional, and the
11 fourth person we don't know who that is anymore.

12 COMMISSIONER HOOD: Mr. Chairman, thus far
13 I will tell you I am not persuaded, at least from my
14 point of view, Ms. Kahlow should give party status.
15 I understand that she's been in the history, and she
16 possibly has been involved early on as maybe an
17 officer of Foggy Bottom and whatever other positions
18 she held. But as I look at her submittal and I heard
19 her testimony, I am not in favor of granting her party
20 status, especially as Board Member Miller pointed out
21 3106.3 I don't see where she meets that.

22 CHAIRPERSON GRIFFIS: Thank you. Others?

23 VICE-CHAIRPERSON MILLER: Ms. Kahlow, did
24 you want to just testify and present those studies in
25 this case or are you intending to present witnesses as

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1 a party?

2 MS. KAHLOW: I expect to cross-examine
3 each of the parties. I have specific written
4 questions I have prepared, and I will be presenting
5 testimony, and I will explain why they are not here.
6 One is out of town in Europe, one broken ankle, one
7 this and that, and they have asked me to represent
8 them.

9 VICE-CHAIRPERSON MILLER: And do you have
10 written authorization?

11 MS. KAHLOW: I do.

12 VICE-CHAIRPERSON MILLER: Okay. Mr.
13 Chairman, my inclination is I don't believe that Ms.
14 Kahlow met the test to show that she is uniquely
15 impacted. However, what's hanging out there is
16 whether this agreement shows that. I haven't heard it
17 really articulated, but I would like to take a look at
18 it, just to make sure, if that's all right.

19 BOARD MEMBER ETHERLY: Mr. Chair, I think
20 perhaps where I'm at is kind of falling on the side of
21 the fence where Mr. Hood is at. I think there is an
22 alternative route through which we can take in some of
23 this information and perhaps, shall we say, control it
24 a little better, and that is that there still can be
25 valuable testimony that Ms. Kahlow can bring forward

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1 for this Board's contemplation in the form of written
2 testimony, which could be accompanied by whatever she
3 chooses to submit.

4 I just haven't heard a compelling enough
5 connection between this particular case and this
6 agreement that we've talked about to suggest bringing
7 it forward. Once again, I am more leaning toward
8 erring on the side of trying to keep that genie in the
9 bottle as opposed to letting it come out too early and
10 complicating this application as it currently stands.

11 I think there still can be a voice, of
12 course, that Ms. Kahlow can have in this case through
13 testimony, but I think I am going to side with Mr.
14 Hood in terms of not necessarily being thoroughly
15 convinced that the party status application threshold
16 has been met.

17 CHAIRPERSON GRIFFIS: Excellent. Thank
18 you very much, Mr. Etherly. I think you've really
19 focused it for the Board. I would tend to agree. I
20 think we can allow ample time, Ms. Kahlow, for you to
21 provide testimony, and we will, obviously, look for
22 testimony that is directly to the application that is
23 before us.

24 Comparative studies -- and just one
25 example that you used in terms of shadow studies or

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1 light and air studies -- of previous scenarios of mass
2 development aren't going to be that persuasive. Let's
3 stick right to what we have today.

4 The other aspect of this agreement -- and
5 I said it before, and I absolutely will hold to it.
6 We can't be the jurisdiction that starts to decide,
7 you know, how much it is controlling or not
8 controlling.

9 It also, just in the limited information
10 we have on it, goes to other law suits within the
11 District of Columbia and court ordered mediation.
12 These are elements that have either been satisfied to
13 everyone's liking or not, and I don't think could, in
14 fact, rise to the level of us taking jurisdiction or
15 having relevancy to us. I think we need to move ahead
16 very expeditiously at this point with the application
17 that is before us, and I will leave it at that. Ms.
18 Miller?

19 VICE-CHAIRPERSON MILLER: I just want to
20 say, after listening to my colleagues, that while I
21 did say that I might have liked to look at the
22 agreement, the rules under 3106.2 do provide for
23 filing the information that someone who wants to be a
24 party wants us to consider in the party status
25 application, then that the burden was with Ms. Kahlow

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1 at that point to explain further perhaps this
2 agreement or submit it at that time.

3 So I would go along with my colleagues.

4 CHAIRPERSON GRIFFIS: Very well. Let's
5 move ahead then, and I will take that, unless there's
6 others that would like to speak, as a consensus to not
7 accept Ms. Kahlow as a party in the case, with the
8 note, of course, that we are looking for an expanded
9 time and testimony this afternoon in order to gather
10 all the information of what she has done to come
11 before us.

12 MS. KAHLOW: Thank you. What about my
13 questions? Should I give them to you to ask, the
14 questions I have -- No? Okay, because I would -- that
15 I would ask under cross. Okay. Just wanted to know.

16 CHAIRPERSON GRIFFIS: It would be my
17 recommendation, first of all -- this is not including
18 me, but all other Board members are very smart and
19 attentive Board members, and I think that often your
20 questions, if they are pertinent, will be asked by
21 someone on the Board, and if not, work them into your
22 presentation. I think that would be the important way
23 to go.

24 Okay. With that, Ms. Kahlow, thank you
25 very much. Mr. Collins, if you are ready.

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1 We are establishing expert witnesses, Mr.
2 Collins?

3 MR. COLLINS: Yes. Yes, we do. We have
4 one expert witness, Mr. Domenic Giordano, who has
5 previously testified before this Board as an expert
6 witness. We ask that he be accepted as an expert in
7 architecture.

8 CHAIRPERSON GRIFFIS: Questions from the
9 Board? I don't see any reason why we wouldn't
10 establish an expert witness in this case at this time,
11 unless there's any objections from the Board. Very
12 well, let's move ahead.

13 MR. COLLINS: Thank you. Mr. Chairman and
14 members of the Board, this is an application for
15 special exception and variance relief to allow the
16 development of a mixed use residential and retail
17 project at 2501 Pennsylvania Avenue, N.W.

18 This applicant has worked closely with the
19 community representative, specifically the Advisory
20 Neighborhood Commission, the Foggy Bottom Association,
21 and with the HPRB staff and the Board of the HPRB
22 itself to develop a plan that achieves the goals of
23 historic preservation and appropriate infill
24 development on this site.

25 The zoning relief in this case sounds like

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1 a lot, but it is actually very simple. The site
2 constraints and design requirements imposed because of
3 the historic status of the property dictate a certain
4 design of the project.

5 Special exception 2514.2 to allow the
6 height and bulk regulations of the C-2-C zone to be
7 extended into the R-5-B zone: The evidence and
8 testimony will show that there will be no adverse
9 impact on the present character or future development
10 of the neighborhood.

11 Section 411.11, the roof structure special
12 exception: This is for setback requirements. The
13 evidence in that case will show that the location of
14 portions of the roof structure within the setback area
15 will not materially impact the intent and purpose of
16 the regulations or adversely impact light and air.

17 The variances: There are five, and the
18 evidence will show that there is an exceptional
19 situation or condition. There are actually a number
20 of them. The site is small, irregularly shaped,
21 split-zoned, occupied by historic landmark, and the
22 facades are required to be retained. There's
23 subsurface rock, and strict design parameters imposed
24 by the requirements of historic preservation.

25 The testimony will show the practical

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1 difficulties imposed, if the strict application of
2 regulation would be required in each of those
3 instances, and the testimony will show that there is
4 really no adverse impact if the variances are granted.

5 We do have the support in the record of
6 the Office of Planning and the Advisory Neighborhood
7 Commission. We also have the support of the Foggy
8 Bottom Association, Council Member Jack Evans, and a
9 number of residents in the area.

10 Also, I believe, in the record is an
11 editorial in support from the Westbridge Guide -- the
12 West End Guide, I'm sorry -- the West End Guide, which
13 is a local community monthly newsletter.

14 The statement of the application, the
15 booklet that we have filed, you all have seen it, and
16 it is almost the size of a PUD filing. I apologize
17 for that, but there is a lot of meat to this case.

18 Exhibit A is the Sanborn plat showing the
19 location of the site in relationship to other sites in
20 the area.

21 B is the building plat which shows the
22 angular shape and nature of the site, how it narrows
23 down to the north.

24 C, the zoning map; D, the orders in the
25 prior proposed development in the prior case, 15461,

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1 which was discussed here a little bit before earlier,
2 and that synopsis of those prior cases in the earlier
3 application are described more fully in pages 4
4 through 7 of our statement of the applicant.

5 The HPRB staff reports for this case, this
6 project -- there are three of them from October of
7 '04, December of '04, and February of '05.

8 Exhibit F is the architectural plans.
9 Exhibit G is the architectural exhibits, and we will
10 be presenting those in a PowerPoint presentation for
11 you this afternoon, going through them.

12 H is the ANC letter. Exhibit I is the
13 letter from Jack Evans in support, and Exhibit J is
14 the testimony of John Mason.

15 K is testimony of Domenic Giordano, and
16 then L is a revised page 2 of the self-certification
17 form which was necessitated by the changes that were
18 made to the design, specifically the court and things
19 of that nature. We wanted to have an accurate self-
20 certification form for you. So we filed that as well.

21 Unless there are any questions at this
22 time, I'd like to turn to the first witness. We have
23 two witnesses today, Mr. John Mason who is with
24 Intrepid Real Estate, the applicant in this case.

25 CHAIRPERSON GRIFFIS: Actually, two things

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1 before we move ahead. You just indicated a self-
2 certification in your Exhibit J. Those were changes,
3 and those were out of the HPRB proceeding?

4 MR. COLLINS: That's right. They were
5 changes made to the project.

6 CHAIRPERSON GRIFFIS: And so the original
7 filing, obviously, didn't have that in as you were
8 processing through HPRB. So this is the latest --

9 MR. COLLINS: It did not have those
10 numbers.

11 CHAIRPERSON GRIFFIS: -- in fact, what we
12 are looking at. Also, you made a statement, you were
13 sure we had seen your filing. Not only seen it and
14 carried it around, but we have read all of it. So we
15 are ready to proceed, unless there are other initial
16 questions at this time.

17 Oh, yes, one directive aspect, Mr.
18 Collins. Let me get your legal answer to the question
19 of: 2514.2 goes to moving the boundary line, of
20 course, on the property. If that boundary line was to
21 move into the R-5, it would carry in all of the lesser
22 restrictive zone restrictions. Correct?

23 MR. COLLINS: That's our view. That's the
24 purpose of that regulation.

25 CHAIRPERSON GRIFFIS: Indeed, and you have

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1 put in an application for relief from 2514, but also
2 from the FAR?

3 MR. COLLINS: Yes.

4 CHAIRPERSON GRIFFIS: Now if 2514.2 was to
5 be approved, then what would that do to your request
6 for relief of FAR?

7 MR. COLLINS: We believe that we don't
8 really need the request for FAR, the FAR variance.

9 CHAIRPERSON GRIFFIS: Those are the
10 comparative of 1.8 and 6, and 6 would carry it to the
11 whole project site. Is that correct?

12 MR. COLLINS: When the use item bulk
13 regulations of the C-2-C zone are moved 20 feet, in
14 this case, into the R-5-B zone, all of the C-2-C
15 regulations move into the R-5-B zone, the height, the
16 FAR, the lot occupancy, the courts, the yards.

17 CHAIRPERSON GRIFFIS: So it moves this 6
18 FAR allowable, if that's the right number in my
19 memory, over to the entire site?

20 MR. COLLINS: Yes, that's correct.

21 CHAIRPERSON GRIFFIS: Okay. So in that
22 case, what I would suggest you do, if it is amenable
23 to yourself and the Board members, I think we proceed
24 with this, rather than staging this whole application,
25 but proceed with this under 2514.2.

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1 Intrepid Real Estate, and a fourth generation
2 Washingtonian, and I am the current owner of the
3 property located at 2501 Pennsylvania Avenue, N.W.

4 For many years, I have been aware of this
5 property. In fact, I drive by it each and every day
6 on my to and from the office. I have regretfully
7 watched the property deteriorate while the surrounding
8 neighborhood has undergone a remarkable renaissance.

9 Examples of this renaissance are the
10 Columbia Hospital project, a historic mixed use
11 residential and retail complex which sits directly
12 across 25th Street to the east of our property. The
13 Atlas and the Sovereign to the north at 24th and M and
14 25th and M, respectively provide both residential
15 condominiums and rental apartments. 2600 Pennsylvania
16 Avenue, located to the southwest of our site, is
17 another mixed use residential condominium and retail
18 project that was recently completed.

19 The Egyptian Military Attache Building at
20 the corner of 26th and L is yet another recent
21 residential project, which also includes the offices
22 of the Egyptian Defense Mission.

23 I have studied the prior BZA orders
24 describing the proposed developments by the previous
25 owners. Our concept is a radical departure. We

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1 propose a very small number of large luxury
2 residential units, two or three per floor, in many
3 instances with elevator access directly to the unit.

4 I believe this concept has many benefits.
5 It meets a need in the market that has previously been
6 unfilled, and at the same time minimizes the impact of
7 the project on the neighborhood.

8 When we were initially given the
9 opportunity to purchase the site, the first thing we
10 did was to contact and arrange meetings with the local
11 neighborhood groups representing the area, the
12 Advisory Neighborhood Commission and the Foggy Bottom
13 Association.

14 The idea was to discuss our concept and
15 plans and to get their feedback and input. It was
16 critically important for us to collaborate with the
17 neighborhood. We were acutely aware of what had
18 transpired in the past, and we had no desire to get
19 mired in the kind of acrimonious disputes that
20 prevented this important site from being developed for
21 so many years.

22 After gaining the support of key members
23 of both the ANC and the Foggy Bottom Association, we
24 went to the Office of Planning to seek input from the
25 zoning staff and historic preservation staff. The

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1 goal was to discuss the concept and the proposed
2 design and to get an idea of what they expected and
3 what would be required of us.

4 Only after all of these discussions and
5 meetings, which occurred over a period of months, did
6 we gain a sufficient level of comfort that this
7 concept was not only achievable, but that we had the
8 support of all the relevant parties. It was only then
9 that we decided to proceed and purchase the property.

10 We went before the Historic Preservation
11 Review Board three times between October of last year
12 and February of this year. As we went back, the plan
13 was revised, amended and massaged to address every
14 concern raised by both the Board and the staff.

15 Before every visit to the HPRB, we made a
16 presentation to the ANC. Each time they voted
17 unanimously to approve our project. Prior to our
18 final visit to the HPRB, we were allowed to have a
19 working session with both the Historic Preservation
20 staff and two of the architect members of the Board in
21 conjunction with our architects. This was a very
22 productive meeting.

23 We were able to focus on all aspects of
24 the project, down to the smallest exterior design
25 details. It was, in fact, their input that not only

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1 brought us to what I believe is the superior design
2 you see here today, but has also led us to seek the
3 relief we are now requesting.

4 I truly believe this collaboration led to
5 the elegant and historically sensitive design you see
6 here before you.

7 Prior to coming here to the BZA, we met a
8 final time with the ANC, which once again unanimously
9 -- and I quote -- "enthusiastically" endorsed our
10 application.

11 We have attempted to reach out to the
12 community as much as possible and, as you can see, we
13 have a number of letters of support in the record. I
14 have also been personally approached on the street, at
15 the local gym, and other places by people and
16 neighbors who have told me they are extremely pleased
17 to see this development finally moving forward. A few
18 of these people even offered to send in some of the
19 letters you see today in our file.

20 Were it not for the enthusiastic support
21 and encouragement of the very active and concerned
22 neighborhood organizations and many of the neighbors
23 living around the site, we would not have undertaken
24 this ambitious redevelopment.

25 Due to the unusual shape of the property,

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1 the split zoning of the site, the historic landmark
2 facades, the presence of rock below grade, and the
3 small size of the site, we are not able to design a
4 project that meets all the zoning requirements.

5 The extensive review and revision of the
6 plans by the HPRB and its staff has resulted in a
7 superior building design. However, this design also
8 requires variance and special exception relief from
9 this Board.

10 As you will hear from our architect, the
11 special challenges posed by these various factors is
12 precisely the reason we need these variance and
13 special exception approvals. We believe that we can
14 meet the test for these approvals, and we are pleased
15 to see that the Office of Planning and the Advisory
16 Neighborhood Commission and the local Council Member,
17 Jack Evans, representing this district have agreed
18 with us.

19 We are extremely excited about the
20 project. We hope to finally add the jewel to the
21 crown of the renaissance of the West End. We are very
22 anxious to proceed, and we respectfully request your
23 approval of our application. I would be happy to
24 answer any questions you may have. Thank you for your
25 consideration.

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1 CHAIRPERSON GRIFFIS: Good. Thank you
2 very much. Any initial questions from the Board?
3 Very well, let's proceed.

4 MR. COLLINS: The next witness is Domenic
5 Giordano of Brennan Beer Gorman Monk Architects. Mr.
6 Giordano, would you please state your name and
7 identification, and then proceed with your testimony.

8 WHEREUPON,

9 DOMENIC GIORDANO

10 was called as a witness by counsel for the applicant
11 and, having previously been duly sworn, testified as
12 follows:

13 MR. GIORDANO: Good afternoon, Mr. Chair,
14 Board. My name is Nick Giordano or Domenic Giordano.
15 I go by Nick Giordano. I live at 1722 Hoban Road,
16 N.W. I am a partner with Brennan Beer Gorman Monk
17 Architects and Interiors. I have been practicing
18 architecture in the District for 20 years, with that
19 firm for 16 years, and that firm is 16 years old here
20 in the District right now.

21 We also have -- Well, we are located at
22 1030 15th Street here in the District. We also have
23 offices in New York City, Beijing, China, Sydney,
24 Australia, and Scottsdale, Arizona. We do large
25 scale, mixed use master plans that include office

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1 buildings, residential, whether they are apartments or
2 condos, and hotels. Then depending on the economic
3 cycle, we generally do one or so of those building
4 types at a time. Today, obviously, condominiums are
5 the king, and that's what we are doing a lot of these
6 days.

7 Some of our local projects you might
8 recognize are the Mandarin Oriental that opened about
9 a year ago, the condominium at 12th and K which is on
10 the market and will open in a month or two, and an
11 Embassy Suites at 10th and K which is midway through
12 construction.

13 I have been involved with this -- Am I
14 close enough to the mike? I have been involved with
15 this project since 1996, and I am pretty aware of all
16 the special challenges and the site constraints on it.

17 The site that has been mentioned is at the
18 northwest corner of Pennsylvania Avenue, which is
19 right here, and 25th Street, N.W., which is right
20 here. That's our little existing site right here.
21 About a block and a half to the west is Rock Creek
22 Park and the overpass to Georgetown. A block and a
23 half to the east is Washington Circle. The recreation
24 center is up here. Tennis courts are above that. I
25 think you all are familiar with the rest of the area.

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1 CHAIRPERSON GRIFFIS: I think we've seen
2 a lot of applications in that area.

3 MR. GIORDANO: I beg your pardon?

4 CHAIRPERSON GRIFFIS: I think we've seen
5 most of the applications for the new buildings in that
6 area.

7 MR. GIORDANO: This is a picture of the
8 property as it existed sometime in the past. It was
9 built in 1896. There was an existing tower here that
10 is no longer there. This is Columbia Hospital on the
11 corner you see here, which is obviously being under
12 construction right now.

13 MR. COLLINS: And that photo is from
14 approximately what date? Do you remember?

15 MR. GIORDANO: No, I don't.

16 MR. COLLINS: If I said 1913, would you
17 agree?

18 MR. GIORDANO: 1913 sounds right.

19 MR. COLLINS: Does that slide just show
20 the top four floors of the Luzon? Is the lower level
21 shielded by the berm in front of the Columbia
22 Hospital?

23 MR. GIORDANO: Yes. There is a berm right
24 here that is blocking the lower portion of the
25 building. Actually, also this area has been removed

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1 already. Part of that will be replaced.

2 The proposal is to retain these existing
3 facades, add back a tower, and remove the back of the
4 buildings, which are currently not something you would
5 want to get into. This is the current status of the
6 site. This is the property right here. The tower is
7 missing. The area to be infilled is back here behind
8 these trees to the west and to the north right over
9 here.

10 Down the street you see existing West
11 Bridge. Up this way is where the Columbia Hospital
12 is, and to this side here is -- The condominium
13 building was put up about two years ago, and a hotel
14 right adjacent across the street here.

15 This is our proposed design. Again, this
16 is the existing Luzon fixed up. This has all been
17 added back, with the tower being added. This is the
18 northern portion of the site done in brick and
19 limestone. This is the Pennsylvania side, all with a
20 limestone finish.

21 The Board has asked us to stay off of the
22 background of this property here and has pushed all of
23 our density back and up away from the corner.

24 MR. COLLINS: Mr. Giordano, when you say
25 the Board, you meant the Historic Preservation Review

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1 Board?

2 MR. GIORDANO: Oh, excuse me, the HPRB,
3 Historic Preservation Review Board.

4 I am going to run through what was
5 submitted in your package there real quickly. I
6 understand you've looked through it and probably
7 understand this, but just for the briefing.

8 This is Pennsylvania Avenue again. This
9 is 25th Street. The entrance is here on Pennsylvania.
10 There is a small retail here, a larger retail over
11 here, and the garage entrance is off 25th Street.
12 There are two small efficiencies entered off 25th
13 Street, and the loading is back here. This alley is
14 about six feet higher than this entry grade over here.

15 These are the garage plans. You can see
16 how tight the site is, the triangular shape of it.
17 This is where the core can fit, allowing for
18 circulation around here, and the cars are sort of put
19 in as best we can. It's two levels below grade. This
20 is the other one.

21 This again was the ground floor we have
22 already seen. Here is a typical or second floor plan.
23 It has three units per floor. They are fairly large.
24 Here is one unit right here, another unit that comes
25 up here, and this is the third unit up here. There is

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1 a pretty contorted core for this building, and we'll
2 get into the various reasons for that.

3 The third through fifth floor are
4 essentially the same, just the addition of the bays
5 here happen on those floors.

6 On the sixth floor, we step back off the
7 existing Luzon, which is here. We can't quite make it
8 all the way. There's a little bit here -- It's just
9 too tight a throw to get through. On these floors we
10 go to two units, the smaller unit in the back and a
11 larger unit in the front. These have access out to
12 this terrace.

13 On the seventh floor we have the same or
14 similar unit, putting a terrace on the front on
15 Pennsylvania here. Then this becomes a two-story
16 unit. The size has gotten so small, with a spiral
17 stair or the monumental stair going up to the eighth
18 floor, which is right here. It is a partial eighth
19 floor. The penthouse is also part of the eighth floor
20 right here.

21 This is the upper roof plan, showing --
22 looking down on the various steps happening from the
23 higher portion of the penthouse to the lower and down
24 to the lower roof.

25 This is a section from Pennsylvania Avenue

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1 showing the sight line for a person at that point
2 again. This is cut through the height of what would
3 be the existing building, with the addition behind on
4 the west side and up here on the left.

5 This is the facade on Pennsylvania Avenue.
6 This is the existing building here. This is the
7 infill building here. It is set back at this point
8 and then way back at that point, that being the
9 seventh floor and eighth.

10 This is the 25th Street view, this being
11 the existing property with the added tower on it, this
12 being the new property here, and that being the
13 western portion of the site on the other side.

14 These are the rear elevations. They have
15 just been projected. It's a tight little corner, as
16 you noticed in the plans. So they are projected out
17 from the corners.

18 The plans here today have been through an
19 extensive design and redesign with HPRB. The HPRB has
20 given this concept approval, as Chris mentioned. It's
21 also got support of the ANC, and they have been very
22 helpful and supportive through this whole process.

23 The HPRB approval required that the
24 overall mass of this building be lower than what we
25 could have done as a matter of right. We have had to

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1 push the building back to the north and to the west to
2 stay off the existing property line -- or the existing
3 property area of the existing building.

4 This has essentially moved everything up
5 and away from the corner, which is a big reason we are
6 into some of the zoning relief we need at this point,
7 and the main reason that's necessitating the zoning
8 relief.

9 As Chris mentioned, we are here for two
10 special exceptions and five variances. The first
11 special exception was 2514.2, adding the -- or taking
12 the split zone of the C-2-C over across into the R-5-
13 B.

14 The second special exception which we are
15 looking for is regarding the penthouse, a roof
16 structure. That's Section 411.11, that it's difficult
17 to do the one-to-one setback from the upper parapets.
18 The roof penthouse, by the way, is only eight feet
19 tall.

20 Then from there into the variances, the
21 first variance is a variance from a rear yard
22 requirement, which would require, if we were to do it,
23 a 15 foot gap along Pennsylvania Avenue.

24 The second variance is a variance from lot
25 occupancy. Again, this is -- Being forced to put our

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1 density to the back of the site has also forced us to
2 fill out most of the site.

3 A variance from the residential recreation
4 space. There's just not any roof area left or site
5 area left to put any at the outdoor portion of the
6 residential recreation space, and no internal area
7 either.

8 The variance from the FAR requirement may
9 be necessary. I think you all already talked about
10 that. We will, I guess, set it aside for the moment.

11 The variance from the court width
12 requirements. Although the court is not required or
13 allowed in rear yard in this zone, we do have a court
14 on the back of the building that doesn't quite meet
15 the requirements. We ask for relief there.

16 My testimony is to summarize all of these
17 reasons for these variance and special exceptions. If
18 I missed anything, I would like adopt the filing we
19 made.

20 MR. COLLINS: That's the prehearing
21 statement.

22 MR. GIORDANO: The prehearing statement.

23 MR. COLLINS: Adopted as your testimony.

24 Thank you.

25 MR. GIORDANO: Let's start with the

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1 boundary lot crossing the C-2-C. We are requesting a
2 special exception to allow us to move the height, bulk
3 and density regulations of the C-2-C district, which
4 is here -- whoops, up to here -- so over 92 percent of
5 the site. The R-5-B is up here. It is under eight
6 percent. We are asking relief -- special exception to
7 move it all up into this area of the site.

8 The applicable standard is that the
9 extension shall have no adverse effect upon the
10 present or future development or the present character
11 or future development of the neighborhood. As you can
12 see from this exhibit here, this is our area where we
13 are asking for the special exception. This is all C-
14 2-C zone, C-R zone.

15 Essentially, we are covered with the
16 exception of this small pocket of R-5-B with all
17 buildings at 6 FAR and 90 foot height all around. The
18 townhouses in that R-5-B zone are also nonconforming.
19 They are four stories, and I think we believe they
20 exceed their allowed FAR as well.

21 The regulations also state that the Board
22 may impose requirements pertaining to the design or
23 appearance, screening, that sort of thing.

24 CHAIRPERSON GRIFFIS: So what is your
25 conclusion? Does it or does it not affect the present

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1 character or future development?

2 MR. GIORDANO: I do not believe it affects
3 the present character, particularly based on all of
4 the build-out that is going on now, which is all 90-
5 foot buildings all around here and 6 FAR.

6 CHAIRPERSON GRIFFIS: Okay. In terms of
7 height, lot occupancy, overall massing. What about in
8 terms of architectural character or how would it -- or
9 would it preclude any future development of the area?

10 MR. GIORDANO: The site is -- Did you want
11 to address that? Well, we tried to blend that
12 portion. That portion is all going to be R use. It
13 sits on the R-5-B, which would be allowed in the R-5-B
14 anyway, and the building is designed to be consistent
15 with the townhouses over there. They have bay windows
16 that project out.

17 CHAIRPERSON GRIFFIS: Okay. So your
18 testimony is that you have integrated that now and
19 kept in mind the two contexts, the historic on the
20 corner and the townhouses down the rest of the block?

21 MR. GIORDANO: Yes.

22 CHAIRPERSON GRIFFIS: Okay.

23 MR. GIORDANO: And we set back at the
24 higher floors from that.

25 CHAIRPERSON GRIFFIS: Are you aware of any

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1 other evidence or discussions or anything else in all
2 the iterations you have been to that have brought to
3 light elements that would be changed? Obviously, we
4 have the jurisdiction to impose great design features
5 on this, and do the whole thing over again and pick
6 materials and colors, which we are not going to do.
7 But nonetheless, it's there. We need to look at it.

8 First of all, in all seriousness, I think
9 we are going to -- myself I think the Board will put
10 great reliance on the historic preservation review
11 process, which goes directly into those elements and
12 speaks to more detail of the requirements under 2514
13 than we necessarily need to get into. But I just want
14 to get two more sentences perhaps on how this fits
15 into the character and the development and the future
16 development of the neighborhood. then I think we can
17 move ahead.

18 MR. GIORDANO: Well, I think you have hit
19 it in the board. This has been -- on the head. This
20 has been approved by the HPRB to be consistent with
21 the adjacent neighborhood and adjacent properties.
22 They have also asked us to push this density up there.
23 We set it back, mitigated it as best we can, but it's
24 a party wall situation. It's not going to block
25 anybody's light and air, and it is certainly no

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1 taller, and it is certainly a smaller footprint than
2 the buildings around it.

3 MR. COLLINS: And just a question.

4 CHAIRPERSON GRIFFIS: And the height --
5 I'm sorry. The last thing you said, the height
6 wouldn't be consistent with that which is allowable in
7 the R-5. Is that correct?

8 MR. GIORDANO: The height would be
9 consistent with C-2-C. It's the 90-foot height at
10 that point. The use would be consistent with the R-5-
11 B, being a residential use.

12 MR. COLLINS: I would just like to follow
13 up. As an expert witness, do you think that there is
14 any substantial difference in the present character or
15 would there be substantial difference in the present
16 character and future development of the neighborhood
17 if this zoning line was kept where it was or whether
18 it is moved 20 feet to the north? I'm referring to
19 Drawing 1.2. In your expert opinion?

20 MR. GIORDANO: No, not in my expert
21 opinion. It is such a small portion of what you see
22 of the R-5-B which is set within the bigger zones.

23 CHAIRPERSON GRIFFIS: Okay. Let's move
24 ahead.

25 MR. GIORDANO: Previously, the Board did

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1 grant this special exception relief in Application
2 Number 15461.

3 The next special exception is a roof
4 structure special exception. The roof structure
5 relief is appropriate where full compliance is
6 impractical or because of operating difficulties, size
7 of the building and the like and so forth.

8 In this instance, HPRB has asked us again
9 to move the building back off of the existing Luzon
10 building, which is this structure. We do need to be
11 able to have elevators and machinery up here on the
12 roof. We do need a machine room.

13 This penthouse is only eight feet above
14 this floor. This partial eighth floor is actually 10
15 feet above this same floor. So the penthouse is
16 actually two feet lower than the eighth floor of the
17 property, which is at the 90 feet.

18 This green area is showing where our
19 penthouse -- This is the extent of our penthouse here,
20 this outline. The dotted area is showing where we
21 would be if we had to follow the one-to-one setback.

22 Based on being back this far, we are not
23 able to use this area. The area we are asking for is
24 only 1.15 of the FAR available for the penthouse. We
25 are well back from the property line on this side. We

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1 are well off the property line on this side and,
2 obviously, here.

3 We believe in a recent ruling there may
4 not be a requirement for a setback on a party wall,
5 internal party wall.

6 So the full compliance would be
7 impractical. Mainly, as you see, where our elevators
8 and cores are, are set up based on both building codes
9 as well as having set our density. This elevator
10 won't even fall -- the override won't even fall within
11 the penthouse area and does need to go up there.

12 CHAIRPERSON GRIFFIS: I think the diagram
13 -- I understand what you are trying to do. It would
14 be my assumption that it may be confusing some Board
15 members. So let's walk it through very quickly.

16 First of all, one of the duplexes, I
17 thought, on that side was actually walking out to a
18 roof terrace, which is a private roof terrace, which
19 wasn't going to the residential rec, because it wasn't
20 accessed publicly. Right?

21 MR. GIORDANO: Correct.

22 CHAIRPERSON GRIFFIS: Is there a roof
23 access on that side where the penthouse is being --

24 MR. GIORDANO: There is no roof access
25 envisioned at this point. This is probably where we

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1 are going to have our condensers for the individual
2 units.

3 CHAIRPERSON GRIFFIS: So those doors are
4 showing access into the penthouse?

5 MR. GIORDANO: This is equipment access.

6 CHAIRPERSON GRIFFIS: Right. Okay. And
7 the elevator access is that, but not even above onto
8 the roof, because --

9 MR. GIORDANO: This is just an elevator
10 overrun. The elevator is not even coming up here.

11 CHAIRPERSON GRIFFIS: Not even into that
12 area?

13 MR. GIORDANO: It's just the overrun.

14 CHAIRPERSON GRIFFIS: The HPRB didn't want
15 you to run the elevator all the way up with the stairs
16 to the roof. Is that correct?

17 MR. GIORDANO: They wanted the roof to be
18 -- the penthouse to be at eight feet or lower.

19 CHAIRPERSON GRIFFIS: Right, which is the
20 massing across the way.

21 MR. GIORDANO: Right.

22 CHAIRPERSON GRIFFIS: Okay. So the green
23 is showing what is actually the roof enclosure.

24 MR. GIORDANO: Correct.

25 CHAIRPERSON GRIFFIS: The dashed is

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1 showing what would be if you set it back --

2 MR. GIORDANO: One-to-one.

3 CHAIRPERSON GRIFFIS: -- from all those
4 edges. Okay. Is that clear?

5 MR. GIORDANO: Is that clear?

6 VICE-CHAIRPERSON MILLER: I just want to
7 ask a general question on that. Does the placement of
8 the penthouse impact any neighboring property?

9 MR. GIORDANO: No, it doesn't. This is
10 the alley right here, up in this area. The
11 neighboring properties set at a 45 and then go up.
12 The adjacent townhouse, Mullett Townhouses, actually
13 stop somewhere back in here, and these properties are
14 lower. And then, obviously, we have the large
15 setbacks here. I actually have some diagrams that
16 show which -- A person standing on Pennsylvania Avenue
17 looking at the little light in this -- you can barely
18 see it; here's the penthouse right here. It's well
19 out of the sight line from Pennsylvania Avenue.

20 From 25th Street, this being the edge of
21 the penthouse, again that is precluded by the view of
22 -- the sixth floor terrace stops here. You don't even
23 see the penthouse from the street.

24 MR. COLLINS: Mr. Giordano, if you could
25 go back to Drawing 2.1 and point to the western wall

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1 of the property. Just to be clear, Mr. Giordano
2 mentioned briefly, pursuant to a recent ruling, we are
3 not sure whether this setback is required in that
4 area.

5 That ruling has not yet been published, we
6 understand. So we are asking for that relief on that
7 side, but we do understand that an oral decision was
8 made that, because of the party wall situation, it is
9 not an exterior wall and, therefore, wouldn't require
10 a setback. But we are proceeding as if the setback is
11 required.

12 CHAIRPERSON GRIFFIS: Good, and I don't
13 think you are going to get a definitive answer from
14 the Board on that, but rather we will hear your
15 application in undue caution and assurance of what you
16 are bringing forth for the special exception of the
17 setbacks, and not get into a long lengthy conversation
18 about what that eventual order will actually state.

19 MR. COLLINS: All we know is --

20 CHAIRPERSON GRIFFIS: It's not lost in the
21 order. In fact, there was a substantive discussion in
22 executive session, but again I think it is valuable
23 for us to proceed in what we have before us, and you
24 are -- Well, that's fascinating.

25 MR. COLLINS: Mr. Giordano, one more

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1 question. Just to be clear, MR. Giordano, the dotted
2 lines show where the penthouse could go on that
3 particular roof, if there was no historic preservation
4 limitation. Is that correct?

5 MR. GIORDANO: In full compliance with the
6 zoning regulations, yes.

7 MR. COLLINS: And the green shows that
8 portion where the roof structure does go beyond the
9 dotted line, by virtue of this being pushed as far
10 north as possible?

11 MR. GIORDANO: As far back as we could
12 push it, right, and to give up this area that would
13 otherwise be available to us.

14 MR. COLLINS: Right.

15 CHAIRPERSON GRIFFIS: And you said it in
16 the parking plan and also in the written submission.
17 This drawing is clear that that's where the core has
18 to be for circulation, for the floors to work, based
19 on the other buildings that are there. I mean, it's
20 not as if you could move it somewhere else.

21 MR. GIORDANO: No. This core can't really
22 move and still get circulation down in the garage.

23 CHAIRPERSON GRIFFIS: And of course, the
24 test in the 411 subsection is that it is not practical
25 to locate it anywhere else, or it becomes difficult

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1 to. Okay, let's move ahead.

2 MR. COLLINS: And that push-back, the
3 setback from the south is as a request of HPRB's
4 mandate on the design. Is that correct?

5 MR. GIORDANO: That's correct.

6 MR. COLLINS: Okay, thank you. And one
7 more question. I have one last question. Is it your
8 expert opinion that the location of the roof
9 structure, as designed, will not materially impair the
10 intent and purpose of the regulations?

11 MR. GIORDANO: That's correct. We don't
12 believe it will affect the light or air of the
13 adjacent buildings. Again, it is on a property wall
14 situation to the adjacent properties, none of which
15 have windows or views at the site.

16 MR. COLLINS: Thank you.

17 MR. GIORDANO: Shall I go on?

18 CHAIRPERSON GRIFFIS: Please.

19 MR. GIORDANO: The variance reliefs: The
20 property is affected by a number of exceptional
21 situations that Mr. Collins touched on briefly a
22 little bit ago.

23 The site is relatively small and
24 irregularly shaped. It is split zoned, as we have
25 mentioned before, and there is an individually

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1 designated historical landmark with a rather unique
2 design and position relative to the street grid on a
3 corner of our property.

4 As a result of extensive reviews with the
5 HPRB staff and some individual members of HPRB, we
6 have come to this design which sets the bulk of the
7 building back away from the existing building
8 footprint, pushing it north and west.

9 The resulting design or the result of
10 these design pushes have been to create a very
11 inefficient building that's running at about a 19
12 percent core versus something substantially lower and
13 a 14 percent or so for a standard residential
14 property.

15 Because of the existing facade location,
16 five percent or so of the southeast corner of our site
17 is not available for us for use, and as well, based on
18 where those walls are relative to the street grids, it
19 is dictating how we can build our new -- the new
20 addition to the property, as well as rock that starts
21 somewhere around the middle of the first basement and
22 it would be cost prohibitive to go any further down.

23 CHAIRPERSON GRIFFIS: When you are talking
24 about this rock, let me see if I understand what you
25 are saying in terms of the written testimony. Maybe

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1 this will expedite it a little bit.

2 You are saying it is -- First of all, you
3 got to get through it. So there is an economic
4 element to it.

5 MR. GIORDANO: Correct.

6 CHAIRPERSON GRIFFIS: We don't want to see
7 these performance on it, but there's -- The economics
8 go into the aspects of how difficult it is, and that
9 means you have this historic structure and, if I'm
10 correct in my recollection, you are going to blast or
11 it may take some blasting to remove that rock. Is
12 that correct?

13 MR. GIORDANO: Correct.

14 CHAIRPERSON GRIFFIS: Okay. So that means
15 you've got to hold this historic building and
16 everything else around it. Is that right?

17 MR. GIORDANO: Correct.

18 CHAIRPERSON GRIFFIS: And that's what is
19 adding cost and complication and practical difficulty?

20 MR. GIORDANO: That is adding significant
21 cost. I think you have seen other facades retained
22 around the city. It is a large steel structure. This
23 will have to go unusually deep to stay stabilized
24 while we blast or rip out the rock. It's probably
25 going to be blasted.

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1 CHAIRPERSON GRIFFIS: Okay. All right, I
2 think that is pretty clear. Let's move on.

3 MR. GIORDANO: The Board previously
4 determined in the application 15461 that the site is
5 affected by exceptional situation or conditions, of
6 which we have mentioned.

7 The first one will be the rear yard. With
8 a measuring point on 25th Street, which is over here,
9 the rear yard would then be over on this western
10 property line between -- Well, our edge of the
11 building would have to be held 15 feet back from the
12 building to the west of us, creating a gap-toothed
13 appearance on the street wall of Pennsylvania Avenue.

14 CHAIRPERSON GRIFFIS: Couldn't the rear
15 yard be on the north side?

16 MR. GIORDANO: For our benefit, the
17 maximum point to get our eye would be to have a
18 measuring point --

19 CHAIRPERSON GRIFFIS: I see. So your
20 measuring point is at the other side. Okay.

21 MR. GIORDANO: So taking the measuring
22 point here puts the rear yard over there.

23 CHAIRPERSON GRIFFIS: Excellent.

24 MR. GIORDANO: As you can see, it's really
25 tough to say there is a rear yard back there.

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1 CHAIRPERSON GRIFFIS: Sure.

2 MR. GIORDANO: The gap along Pennsylvania
3 Avenue would be inconsistent or, in my opinion, pretty
4 poor urban design, which is why we would like to be
5 able to fill it in. On top of that, if we go up the
6 building with this same 15 foot rear yard, you can see
7 the amount of space that is being lost from the
8 property all the way up, which -- This square footage
9 that is being placed here could otherwise have been
10 put here on the front side of the site, but it is
11 being, again, forced back by HPRB.

12 The loss of this square footage, if you
13 take it cumulatively, is 8,330 square feet, basically
14 bigger than one of our floors, which would create a
15 pretty big economic impracticality for the project.

16 The Board previously determined in strict
17 application of the rear yard regulations would result
18 in practical difficulty for this property.

19 The rear yard, we --

20 MR. COLLINS: May I ask a couple of
21 questions on that. Is it your testimony then that the
22 building bulk that would normally be placed to the
23 front on the sixth, seventh and eighth floors has been
24 pushed toward -- into the rear yard?

25 MR. GIORDANO: Correct. Were we able to

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1 -- A rear yard assumes a rectangular plain building on
2 a plain site where you would put -- which we could put
3 the density here, which we are being prevented from
4 putting within our height limit is what is forcing the
5 FAR to be distributed over the rest of the site.

6 MR. COLLINS: You may have mentioned this,
7 but is it your expert opinion about the gap that --
8 Did you give an expert opinion about the gap that
9 would result along Pennsylvania Avenue, if the rear
10 yard was required to be --

11 MR. GIORDANO: Yes. It is my opinion that
12 the 15 foot gap along Pennsylvania Avenue would result
13 in not a favorable urban statement where you would
14 have a gap-toothed position in the otherwise
15 continuous street wall.

16 MR. COLLINS: Did you also do any
17 calculation as to what the FAR of the building would
18 be if the 15 foot rear yard was required in
19 conjunction with all the setbacks required in the
20 historic preservation process?

21 MR. GIORDANO: Yes. I believe, if we had
22 to do both of those, our resulting FAR for residential
23 would be 4.69 as opposed to 6 we are allowed.

24 MR. COLLINS: Thank you. And do you have
25 an opinion about that?

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1 MR. GIORDANO: Yes. I think that creates
2 an economic difficulty for the site.

3 MR. COLLINS: Thank you. Would you
4 address the rear yard, the adverse impact?

5 MR. GIORDANO: Yes.

6 VICE-CHAIRPERSON MILLER: Excuse me. Can
7 you just elaborate a little bit on that point, how it
8 creates an economic problem or whatever you just said.

9 MR. GIORDANO: Well, a big reason I think
10 this building has been sitting here for so long is the
11 size of the building is so small with also the
12 constraints, it's hard to make it work economically to
13 get it going forward.

14 The current application is probably at a
15 marginal level of square footage to be put on the
16 market to be sold. If we lose 8,330 square feet, that
17 is essentially a little more than one floor. That's
18 got to be more than the profit margin of the job, plus
19 some. I can't see it being viable.

20 We believe that the reason this is viable
21 is HPRB has allowed to go an extra floor over the
22 previous applications.

23 CHAIRPERSON GRIFFIS: What was that?

24 MR. GIORDANO: This particular design is
25 a floor greater than the previous applications for the

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1 site, which we believe is what is making it
2 economically viable right now. To lose that whole
3 floor, it takes us back to where it's been for the
4 last 15 years.

5 CHAIRPERSON GRIFFIS: Okay. But, Mr.
6 Collins, you don't think that it requires, in order to
7 be a successful variance test, to show that it could
8 not be done based on economics, but that it is
9 practically difficult to comply wholly with the
10 regulations. Is that correct?

11 MR. COLLINS: That's correct. The
12 intended test is practical difficulty. It's not an
13 economic test. It is a number of things, but Mr.
14 Giordano was just making an opinion about the economic
15 viability, but it is not a critical test here. It's
16 just a simple fact that, with all these constraints on
17 the site, we are at 5.99 FAR, but we are also at a
18 greater core factor than normal. We also have
19 significant site constraints and costs that a normal,
20 vacant, rectangular site would not have.

21 CHAIRPERSON GRIFFIS: Right, and that is
22 where it comes out, the uniqueness and the difficulty
23 and the practical difficulties of making this all
24 work.

25 MR. COLLINS: It is even more than a

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1 practical difficulty. It's an economic difficulty as
2 well.

3 CHAIRPERSON GRIFFIS: Okay. I see. So
4 it's a little addition to it. I think the Board is
5 very sensitive, because this morning we probably heard
6 four times, well, this is economically difficult. But
7 what does mean? So when you start rising to a level
8 of having to make assertions and judgments on that, we
9 are either going to get into great substance and
10 number crunching or we are going to have to have a
11 firmer understanding of what that means.

12 Now in this situation, as I understand it,
13 8000-plus square feet removed from a project, which
14 isn't maximizing all of that mass which is allowed in
15 the regulations -- certainly one could sensibly say
16 that that would have an economic impact on it, and a
17 viable use impact, you know, in terms of the program
18 that is going. I think that's -- what the testimony
19 we are hearing now. Is that correct?

20 MR. GIORDANO: Correct.

21 CHAIRPERSON GRIFFIS: Okay.

22 MR. COLLINS: If we -- We do make a
23 practical difficulty argument. We also refer to
24 economics. If it is better for us not to discuss the
25 economics --

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1 CHAIRPERSON GRIFFIS: No, I don't think
2 it's not to -- I don't want to prohibit it, but I want
3 to note that just saying it doesn't make it so, is
4 what it comes down to.

5 MR. COLLINS: I understand, and please
6 understand we are not making our case on economic
7 hardship. It is practical difficulty. Thank you for
8 that clarification.

9 CHAIRPERSON GRIFFIS: Indeed. Okay.

10 MR. GIORDANO: We don't believe there is
11 any substantial detriment to the public good if the
12 building is constructed without the rear yard. The
13 lot is actually -- A corner has no rear. It's just
14 got a little pinch of a back there on the alley.

15 The C-2-C zone makes no provision for
16 alternatives to deal with a rear yard, particularly in
17 a triangular site like this. The C-3-B, which has a
18 lower density and height, does allow you to do a court
19 in lieu of rear yard.

20 The proposed configurations we have of the
21 setbacks, both on the sixth floor here and the upper
22 setbacks here, we believe, are more than necessary to
23 allow a volume for light and air. We believe there is
24 sufficient light and air to the units within the
25 subject building as well as the surrounding

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1 properties.

2 It's hard to tell with the overlaid color,
3 but these are the -- These are windows back here, here
4 and here being used with quite a good court at that
5 point. Along here these bedrooms face forward, and
6 those face backwards. There are no windows on this,
7 being a party wall, and there are no windows on this
8 adjacent property, being a party wall.

9 I would just like to note that the Board
10 previously granted rear yard variance relief in
11 application 15461.

12 MR. COLLINS: One question. You were
13 gesturing to the walls where there are no windows.
14 That small angled wall at the northwest corner -- are
15 there windows along that wall?

16 MR. GIORDANO: This angled wall has been
17 put in, because there is a 90 degree bend in the
18 adjacent property. It has a window looking out that
19 way.

20 MR. COLLINS: So are there windows along
21 that?

22 MR. GIORDANO: There are now windows in
23 this portion of our property.

24 MR. COLLINS: Thank you.

25 CHAIRPERSON GRIFFIS: And is that --

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1 that's not a court, is it?

2 MR. GIORDANO: Sorry?

3 CHAIRPERSON GRIFFIS: What is that?

4 MR. GIORDANO: It's a court niche.

5 CHAIRPERSON GRIFFIS: It's twice in one
6 day we got to use that phrase.

7 MR. GIORDANO: Move on to the next one?

8 CHAIRPERSON GRIFFIS: Yes.

9 MR. GIORDANO: The next is the lot
10 occupancy. We are requesting a variance for lot
11 occupancy. The C-2-C zone permits 100 percent lot
12 occupancy for commercial buildings and 80 percent for
13 residential or residential use. The R-5-B, which is
14 the northern 20 feet of the site, allows a 60 percent
15 lot occupancy. Taking a blend and prorated mix, if
16 you left that as an R-5-B and a C-2-C, our combined
17 lot occupancy limitation would be 78.4 percent.

18 The lot occupancy -- or the occupancy
19 limitations in the zoning regulation --

20 CHAIRPERSON GRIFFIS: What is 78.4
21 percent?

22 MR. GIORDANO: If you took -- On our 92
23 percent of our site, which is C-2-C, if you took 80
24 percent allowed as lot occupancy, and on the little
25 less than 8 percent took a 60 percent lot occupancy,

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1 the aggregate or average would be 78.4 percent. It's
2 a tough number.

3 CHAIRPERSON GRIFFIS: I understand. So if
4 you didn't go through the first -- If it wasn't
5 approved, the special exception, at 25.14 you are
6 calculating, what you would have to bring in the
7 aggregate --

8 MR. GIORDANO: Would be 78.4, yes.

9 CHAIRPERSON GRIFFIS: But that's not what
10 we are looking at?

11 MR. GIORDANO: No. The special exception
12 C-2-C would be an 80 percent allowed.

13 CHAIRPERSON GRIFFIS: Right.

14 MR. GIORDANO: The varied shaping and
15 sculpting of this project and putting the mass further
16 back has forced us to fill out the property, which is
17 hard to get lot occupancy directly on the ground
18 floor. There is an open area on the back, the front
19 corner, and a little here.

20 As you move up, the building steps in,
21 providing more and more open area. You go up to the
22 typical floors, you have the same areas of open in the
23 building as be in the existing front. Upon the sixth
24 floor, it steps back considerably, getting much larger
25 on the seventh floor. We step back here as well of

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1 all this, and on the top floor you've got the partial
2 eight here, leaving a majority of the site open.

3 The historic preservation constraints are
4 what led us to push this building back and not having
5 enough site area left for lot occupancy. The average
6 lot occupancy of all these eight floors, if you put
7 them altogether -- I don't know if you noticed while
8 I was going through this, they all had a different --
9 it's right down here -- a different occupancy per
10 floor, this one being 22.6 percent.

11 Again, if you blended all those together,
12 our average lot occupancy for the site is 75 percent.

13 CHAIRPERSON GRIFFIS: What is it actually?

14 MR. GIORDANO: Actually, I would have to
15 go back to the cover page, actually what it is on the
16 ground floor. It's actually what it is on the ground
17 floor.

18 CHAIRPERSON GRIFFIS: Right.

19 MR. GIORDANO: Because it is sculpted as
20 you step back --

21 CHAIRPERSON GRIFFIS: I understand that.
22 I understand this exercise, very informative to do it.
23 but you know, at the end of the day if there is an
24 approval of an additional lot occupancy.

25 MR. GIORDANO: Ninety-five percent, just

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1 to answer your question.

2 CHAIRPERSON GRIFFIS: Ninety-five is what
3 it is on the first floor, which is, of course, where
4 basically it would be calculated from. And how much
5 -- That's also the retail floor, is it not? Could you
6 not count that as part of the 100 percent lot
7 occupancy, the commercial?

8 MR. COLLINS: We could, if we did not have
9 two small efficiency units on 25th Street.

10 CHAIRPERSON GRIFFIS: That's right. They
11 are on that level.

12 MR. COLLINS: Otherwise, that would be 100
13 permitted on that floor, and 80 on the other floors.

14 CHAIRPERSON GRIFFIS: I understand.
15 Obviously, very unique aspect of just the programming
16 and layout of this. Okay.

17 MR. GIORDANO: If the property was
18 required to meet the 80 percent lot occupancy, this
19 would mean eliminating 1,528 square feet on the ground
20 floor.

21 CHAIRPERSON GRIFFIS: I think all that
22 exercise shows us why it is difficult to make it. We
23 aren't interested in what the implication would be if
24 you did it.

25 MR. GIORDANO: Okay. Well, if you took

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1 that out every floor up, it would reduce our -- make
2 our lot occupancy on the site 59.9 percent, reducing
3 it significantly.

4 Well, let me just add, the Board has
5 previously concluded that to comply with the lot
6 occupancy limitation would result in practical
7 difficulty on this site.

8 VICE-CHAIRPERSON MILLER: Could I just
9 interpose one question. You keep referring to
10 previous Board decisions on the property, but the
11 application has changed. So I'm not exactly sure what
12 the relevance is in each case when you say that they
13 previous found it.

14 MR. GIORDANO: Sure. Pointing out history
15 for this prior site. Yes, the application is
16 different. The applicant is different.

17 MR. COLLINS: It is a new application. It
18 is a new application, and we want to make sure that it
19 is treated as a new and different application, as a
20 historical fact.

21 VICE-CHAIRPERSON MILLER: Okay. I mean I
22 understand that the topography or whatever or the
23 shape of the property or the historic building --
24 those things haven't changed. But when you are
25 applying the variance test, what I'm not following is

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1 the significance of the previous Board's decisions,
2 because the application is in a different form now.
3 It is so changed. You've made so many changes as a
4 result of HPRB, etcetera.

5 So if there is some special significance
6 as to the previous Board's decision, let us know.
7 Otherwise, I guess we will take it for history.

8 MR. COLLINS: Certainly, with regard to
9 the exceptional situations or conditions affecting the
10 property, those are the same, the shape of the
11 property, the historic status of the property. In
12 fact, there is a case that says the fact that there is
13 a historic landmark on the property by itself creates
14 a practical difficulty -- an exceptional situation or
15 condition.

16 We've got multiple exceptional situations
17 or conditions, most of which were exactly the same as
18 before, the shape of the site. The rock hasn't moved.
19 We have a landmark on the site, the facade of which
20 has to be retained.

21 The shape of the building now, the
22 mandates by this HPRB approval versus the previous,
23 are different. Sure. So just for historical
24 purposes. Thank you.

25 VICE-CHAIRPERSON MILLER: Thank you.

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1 MR. GIORDANO: Back to lot occupancy, we
2 do not believe there is a substantial detriment to the
3 public good if this variance is provided. The average
4 minimum lot occupancies I showed you in that exhibit
5 there is 75 percent, which is less than the 78.4
6 percent we had done under that blended ratio, and the
7 proposed lot occupancy does not affect or adversely
8 affect the neighboring buildings, because these are
9 party walls -- the party wall relationships to the
10 buildings to the north and to the west. There are no
11 windows opening in that direction. The buildings are
12 actually lower than our property, on a wider alley.

13 The next variance we are requesting is
14 from residential recreation space. This again is the
15 property right here. You see Rock Creek over here.
16 Up the street here is the tennis courts and the
17 recreation center right up here. I forget the name of
18 it. You've obviously got the Fairmont and the
19 Washington Sports Club in the area, and down here is
20 the -- we said Four Seasons and the Washington Circle
21 here.

22 We believe the strict application of the
23 residential recreation space would require us to take
24 7,528 square feet somewhere out of this property to
25 provide for recreation space. Due to the rock

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1 conditions, it is impractical for us to excavate for
2 this, and it would only allow for less than half of
3 that area to be used down there.

4 Because of the historic preservation
5 limitations, there is no elevator access to the
6 seventh and eighth floor. So there is no really roof
7 area available for recreation space, and in order to
8 meet that 7,500 square feet, we would either have to
9 take a floor out of the building or take a quarter of
10 each floor out to get to that sort of square footage.

11 We don't believe there is any detriment to
12 the public good if the building does not meet the
13 residential recreation space regulations. As the
14 plans show, there is considerable public space
15 adjacent to the property, as well as each of the units
16 having their own balconies, the majority of the units
17 having balconies, the big ones there, here and up
18 here, which is about 2,600 -- well, 2,679 square feet.

19 In addition, these are large units. They
20 have family rooms and libraries inside of them for
21 passive recreation space and, as I pointed out, the
22 site has got a lot of active or passive recreation
23 space around it.

24 CHAIRPERSON GRIFFIS: That's an
25 interesting perspective that we haven't really heard

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1 before. Oftentimes we have -- you know, the private
2 balconies, obviously, don't count, and that is what
3 you are indicating here. But having the size of the
4 units as actual space to look at in terms of weighing
5 this. Obviously, none of that counts toward the
6 requirement, as you well know.

7 MR. GIORDANO: Correct.

8 CHAIRPERSON GRIFFIS: Nor does even your
9 free memberships to the Sports Club for L.A. at the
10 Ritz for Zoning Commission and BZA members. But
11 nonetheless, I think what I'm understanding you
12 saying is not that -- Well, one of the things let me
13 clarify is on the roof you indicated that HPRB is
14 limiting the massing. So, obviously, this isn't
15 pushing up. So you are not taking your elevator up,
16 and that is what is limiting the amount of roof
17 access. Is that correct?

18 MR. GIORDANO: Correct. Due to the
19 reduced height of the penthouse, we don't really have
20 an elevator access up there, which would then put us
21 in accessibility or ADA noncompliance.

22 CHAIRPERSON GRIFFIS: Right. So there is
23 nothing up there -- there is no way to get there. Of
24 course, our regulations indicate that we want half of
25 this residential recreation space to be outside. It's

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1 an element that the Board has struggled with in terms
2 of its meaning and its real purpose for the overall
3 city. Nonetheless, it is our regulations.

4 Looking at this, what I understand you are
5 saying is the uniqueness of -- It's the same
6 uniqueness factors. You've got this massing that's
7 already happening with the historic structure. You
8 are adding into this with the historic review in order
9 to maintain the character of it. You are having to
10 fill out so much of this site. It is an inefficient
11 garage, to begin with. Going down even further just
12 makes it implausible, but also just for the rock.

13 Putting residential recreation space three
14 levels below grade doesn't seem to really satisfy the
15 intent of the regulations. It may satisfy some of the
16 letter of it. Still, you got to get outside. Your
17 lot occupancy and the shape and all that, there is no
18 outside space.

19 MR. GIORDANO: Just don't have the site
20 space.

21 CHAIRPERSON GRIFFIS: I think the
22 practical difficulty in providing the residential rec
23 is pretty clear. Am I correct that you are only
24 providing -- how much is it? -- 100 square feet,
25 though?

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1 MR. GIORDANO: Yes.

2 CHAIRPERSON GRIFFIS: And where is it?
3 It's on the front portion of the --

4 MR. GIORDANO: It is within the lobby,
5 actually.

6 CHAIRPERSON GRIFFIS: Oh, right. You were
7 indicating that there is outside space. There's --

8 MR. GIORDANO: This is public space, but
9 it's a considerable amount of area.

10 CHAIRPERSON GRIFFIS: -- actually terrace
11 space beyond the property line. Now as part of this
12 development, are you actually going to control that
13 space? Are you going to landscape it?

14 MR. GIORDANO: Yes.

15 CHAIRPERSON GRIFFIS: I was asking the
16 developer if he is going to do it. You may think you
17 are going to do it.

18 MR. MASON: We are initially, and we
19 assume the condo association will continue to do that
20 into the future.

21 CHAIRPERSON GRIFFIS: Okay. But you are
22 actually spending money to landscape that?

23 MR. MASON: Absolutely. All around the
24 property, but especially within those sort of -- the
25 green areas right there. Absolutely.

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1 CHAIRPERSON GRIFFIS: Indeed. Okay. So,
2 clearly, that doesn't count, but it obviously goes
3 toward the intent of the regulations of providing
4 outside space. And as I understand you saying, in
5 terms of the aerial photograph, you've got the Rock
6 Creek Park that runs along it. Is it Francis that's
7 to the north?

8 MR. MASON: The Francis tennis courts,
9 yes.

10 CHAIRPERSON GRIFFIS: Okay. Good enough.
11 Yes, Ms. Miller?

12 VICE-CHAIRPERSON MILLER: I think I might
13 have misheard you, but I just want to ask. Did you
14 say something about libraries providing recreation?

15 MR. GIORDANO: Well, there is the West End
16 Neighborhood Library. Oh, in the units themselves
17 they have room for passive recreation you wouldn't
18 find in a normal condominium, not just a living room.
19 You have a family room, and you have a library in
20 these units.

21 VICE-CHAIRPERSON MILLER: Okay. That went
22 to your point about the size of the units.

23 MR. GIORDANO: The size of the units and
24 the terraces. There's only 18 units in this property,
25 and they have a fairly spacious ability to get out and

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1 get recreation when they need it.

2 CHAIRPERSON GRIFFIS: They are big enough,
3 they don't ever have to leave. Okay.

4 MR. GIORDANO: Or they can put a treadmill
5 in its own room.

6 CHAIRPERSON GRIFFIS: Or just do laps
7 around them.

8 MR. GIORDANO: But again, it doesn't meet
9 the requirement.

10 CHAIRPERSON GRIFFIS: I mean, I bring it
11 up only -- It obviously doesn't count, but I think it
12 lends a little bit of discussion, perhaps not
13 specifically to this application, but it does go to
14 the fact of how the units have changed. If you look
15 at the beginning of when this regulation was written,
16 there was probably more in the housing code where we
17 were worried about having a window in every bedroom.
18 Now we are looking at units that are so sizeable --
19 Anyway, we won't waste everybody's time.

20 MR. GIORDANO: From a marketing
21 standpoint, we determined that most of our tenants
22 would either go to the gyms that you mentioned or have
23 exercise rooms in their units, and that's what was
24 desirable to them. I think you'll find that a lot
25 with the newer, larger units being built.

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1 CHAIRPERSON GRIFFIS: Right. Well, and
2 this is the last thing I'll say. I think it also is
3 in the intent of the city, which does in fact turn to
4 your zoning relief, but I think the intent of the city
5 is to get people more out on the streets and
6 interactive and utilizing the retail or being part of
7 the neighborhood or picking up trash across the
8 street, you know, whatever they are going to do.

9 MR. GIORDANO: Good point. I'll remember
10 that for the next one.

11 MR. COLLINS: An observation, Mr.
12 Chairman. Certainly, as Mr. Hood knows, because he
13 will be sitting on it in late June, the Zoning
14 Commission is going to be taking up the residential
15 recreational space requirement.

16 CHAIRPERSON GRIFFIS: Indeed, they are.

17 MR. COLLINS: And many of the
18 justifications that we put forth today are elements of
19 the special exception relief that was published in the
20 Notice of Hearing in that case. So we are intending
21 to -- you know, seeking a variance here, showing the
22 practical difficulties, showing no adverse impact
23 based upon what is available, but also it's
24 interesting to note those same arguments that we are
25 using would be found in the special exception

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1 provisions that are published for hearing.

2 CHAIRPERSON GRIFFIS: Good. That's why
3 discussion is always excellent to have. Okay, let's
4 move ahead. What else do we have?

5 MR. GIORDANO: I'm going to skip this
6 exhibit. Courtyard: We are asking relief from the
7 courtyard. The strict application of the courtyard
8 width regulation results in some practical difficulty
9 for us. The courtyard, as we have shown it right now
10 -- and again, the courtyard is not required; we just
11 have a courtyard for our own light and air. So
12 meeting the regulations of the width of the court, we
13 have 18 feet.

14 Based on the height of the building, it
15 would be required to be 6 foot 3 bigger than that or
16 24 foot 3 inches, which would come over to this dotted
17 line over here, which nips the top of the stair a
18 couple of feet and goes well into the stair that
19 creates the communicating stair between the seventh
20 and eighth floor of this unit.

21 In order to comply with this, we would
22 have to move our fire stair here down, which pushes
23 the whole core down. There is a relationship in the
24 building code between the separation of these stairs
25 which has to be maintained, which then makes our

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1 garage not possible to circulate here on the lower
2 floor.

3 So you can see how we've gotten a very
4 funny shape on this stair rather than a regular stair,
5 trying to maintain a clearance in the garage, having
6 to force that down -- this stair is just going to have
7 to move, which makes it very impractical to circulate
8 in the garage; as well, if this communicating stair
9 for this seventh and eighth floor unit were to be
10 taken off and moved over, you can see how narrow the
11 throat is here.

12 There is just no way to have that fit
13 there. It is going to have to go somewhere inboard of
14 the unit, which is going to result in losing square
15 footage in that unit or the ability to put rooms in
16 that unit, making the premium unit here now a normal
17 unit in the property.

18 We don't believe this will have any
19 adverse impact on the adjacent properties. The
20 current court as it is shown is actually above -- the
21 top of it is above the surrounding properties. It
22 does not block anybody's light and air. The buildings
23 here have their back walls at this point with windows
24 looking that way. These are over here looking that
25 way, and certainly, the upper portion of our building

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1 is above the lower building. So it is not affecting
2 their light and air.

3 This setback really only is affecting
4 these top two floors. that back area, what I was
5 showing you. The court complies from there on down.

6 MR. COLLINS: I've got a question on the
7 practical difficulty discussion. You talked about the
8 fact that, if the circular stair had to be relocated
9 inboard on the site -- I'm not sure that you -- Maybe
10 I missed what you said the result of that would be.

11 MR. GIORDANO: The result of moving that
12 stair inboard in the site would mean we would lose a
13 room or two on both the seventh and eighth floor of
14 that unit, which is now no longer a nice, big premium
15 unit, but becomes a standard unit in the property.

16 MR. COLLINS: When you say standard, like
17 a one bedroom?

18 MR. GIORDANO: A one bedroom, due to the
19 setback on the eighth floor for the -- to meet with
20 HPRB's request to step back up there.

21 MR. COLLINS: Could you relocate that lost
22 space someplace else?

23 MR. GIORDANO: No. The space couldn't be
24 relocated anywhere else, because again the HPRB has
25 asked us -- or mandated us to push all of the space

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1 back to the north and west of the property.

2 MR. COLLINS: So in summary, is it your
3 expert opinion that the site is affected by
4 exceptional situations or conditions?

5 MR. GIORDANO: Yes. As mentioned earlier,
6 I think the site is affected by numerous exceptional
7 situations, causing practicalities for meeting the
8 letter and law of the various regulations we have
9 asked for relief from.

10 MR. COLLINS: Is it your expert opinion
11 that the strict application of regulations would
12 impose a practical difficulty if the requirements
13 pertaining to lot occupancy, rear yard, residential
14 recreation space, court width would be required?

15 MR. GIORDANO: Yes. I hope I have pointed
16 out in each of those cases where the practical
17 difficulty is, but again it is based on moving the
18 site -- being forced to put the density on the site
19 where we would not normally put it to meet with the
20 zoning regulations. Again, this is being mandated by
21 HPRB, as well as the difficulty of dealing with the
22 existing facade retainage and the stone on that site
23 below grade.

24 MR. COLLINS: And finally, is it your
25 expert opinion on the variances that the relief from

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1 those provisions can be granted without substantial
2 detriment to the public good?

3 MR. GIORDANO: Absolutely. None of these
4 requested variances or special exceptions have any
5 effect or virtually no effect on the adjacent
6 properties. These are party wall buildings that look
7 in the opposite direction. It is not affecting their
8 light and air.

9 MR. COLLINS: And would that substantially
10 impact the intent and purpose of the regulations as
11 well?

12 MR. GIORDANO: Correct.

13 MR. COLLINS: With regard to the special
14 exceptions, it is your expert opinion that moving the
15 height and bulk regulations from the C-2-C zone into
16 the R-5-B zone will have no adverse effect on the
17 present character and future development of the
18 neighborhood?

19 MR. GIORDANO: I don't believe it will
20 even be noticed. It certainly shouldn't have any
21 effect on the present or future character.

22 MR. COLLINS: Present character and future
23 development?

24 MR. GIORDANO: Oh, excuse me. Present
25 character and future development.

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1 MR. COLLINS: Okay. I'm sorry, one last
2 thing. Is it your testimony then that the special
3 exception from the roof structure setback requirements
4 can be granted -- or that they are in full compliance
5 with the unduly restrictive, prohibitively costly or
6 unreasonable? Is that your expert opinion in this
7 case?

8 MR. GIORDANO: Yes, it is.

9 MR. COLLINS: All right. Thank you very
10 much.

11 MR. GIORDANO: The picture of the site
12 again. I will be available for questions.

13 CHAIRPERSON GRIFFIS: Anything else, Mr.
14 Collins? Any other witnesses?

15 MR. COLLINS: No, that concludes our
16 presentation.

17 CHAIRPERSON GRIFFIS: Excellent.
18 Questions from the Board?

19 VICE-CHAIRPERSON MILLER: I just have one
20 question for clarification. How many residential
21 units will there be?

22 MR. GIORDANO: Eighteen.

23 VICE-CHAIRPERSON MILLER: Okay. I think
24 there was a small discrepancy between the Office of
25 Planning report and your application.

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1 MR. MASON; It's 16 large units and two
2 efficiencies, which are -- They could actually just be
3 put together as one unit or two efficiencies.

4 VICE-CHAIRPERSON MILLER: Okay. Thank
5 you.

6 COMMISSIONER HOOD: Question: What you
7 have up here, H-16, on the lower end where I can see
8 the roof on the ground floor -- what is that called?
9 What is that?

10 MR. GIORDANO: That is a retail projection
11 that is existing right now. We are building back
12 something new in the same shape, configuration.

13 COMMISSIONER HOOD; So I guess the ideal
14 is something that already existed. It's already a
15 retail establishment in there already.

16 MR. GIORDANO: Right. And HPRB would
17 rather have it built back than try to build in the
18 missing portion of the building here, which would be
19 obviously a different color brick and so forth.

20 COMMISSIONER HOOD: And the entrance is
21 where? Where is the entrance?

22 MR. GIORDANO: The entrance is right here.
23 This would be the retail entrance to the main retail
24 on the ground floor there.

25 COMMISSIONER HOOD: Right, to get to that

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1 retail establishment I would have to --

2 MR. GIORDANO: Yes, this retail is right
3 there. This is the main entrance for the residential.

4 MR. MASON: Just to clarify, there is no
5 retail in there right now. There was in the past, but
6 the building is condemned.

7 COMMISSIONER HOOD: Right. When you get
8 ready to use it, that's what you are going to use it
9 for?

10 MR. MASON: Absolutely, and the
11 neighborhood has been very in favor of us putting some
12 sort of retail in there that provides a service to the
13 neighborhood.

14 COMMISSIONER HOOD: Okay. thank you.

15 CHAIRPERSON GRIFFIS: Ms. Miller.

16 VICE-CHAIRPERSON MILLER: This is an
17 interesting picture, and I'm wondering if you could
18 point out to me where the penthouse is on it.

19 MR. GIORDANO: See what a good job we did
20 masking it. This is the penthouse. You see, it is
21 two feet below the eighth floor or the partial eighth
22 floor on the north side.

23 CHAIRPERSON GRIFFIS: Anything else?
24 Other questions? The open area on the historic
25 building and that roof portion is private terraces.

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1 Is that correct?

2 MR. GIORDANO: This is private terraces
3 for this unit and that unit.

4 CHAIRPERSON GRIFFIS: And if we were to
5 say, well, gosh, why don't you make that common,
6 counting toward residential rec, it would be because
7 your court is back, and it has to access through
8 private units?

9 MR. GIORDANO: Correct.

10 CHAIRPERSON GRIFFIS: Okay. Anything else
11 then? Any other questions from the Board?

12 BOARD MEMBER MANN: Just briefly.

13 MR. MASON: Sir, it is also a privacy
14 issue. The windows come out from those units. You
15 would actually have people in there -- on that patio
16 looking in or directly into people's bedrooms and
17 other rooms.

18 CHAIRPERSON GRIFFIS: Right.

19 MR. MASON: That's a big reason why that's
20 not practical.

21 BOARD MEMBER MANN: What is going to go to
22 the restored tower unit at the sixth floor level?

23 CHAIRPERSON GRIFFIS: I'm sorry. What was
24 that?

25 BOARD MEMBER MANN: What is going into the

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1 restored tower unit at the sixth floor level?

2 MR. GIORDANO: This will be an enclosed
3 space which will be sold with this unit here.

4 MR. MASON; Sort of like an enclosed
5 gazebo, but it is actually very small. It is only
6 eight feet inside. So maybe you would get a small
7 table and two chairs at most inside that.

8 BOARD MEMBER MANN: I see. Thank you.

9 CHAIRPERSON GRIFFIS: Anything else? Can
10 I use A-5 on your roof plan very quickly?

11 MR. GIORDANO: See if I can get all the
12 way back there.

13 CHAIRPERSON GRIFFIS: All right. Never
14 mind.

15 MR. GIORDANO: There we go.

16 CHAIRPERSON GRIFFIS: Okay, good. Can I
17 use your pointer? Okay. Let me see if I understand
18 correctly. We were just looking at that three-
19 dimensional piece. We were talking about the roof
20 area, and that was this area here. Of course, that is
21 being accessed off of units which aren't showing
22 totally here. Correct?

23 When Ms. Miller asked you to point to the
24 penthouse, you did, and you pointed to this wall here.
25 Correct?

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1 MR. GIORDANO: That's the penthouse,
2 right.

3 CHAIRPERSON GRIFFIS: Okay. You are not
4 calling this a party line wall.

5 MR. GIORDANO: No.

6 CHAIRPERSON GRIFFIS: Because it's a
7 single building. When you referred to you had a
8 property line or a party wall, it was here.

9 MR. GIORDANO: Right there.

10 CHAIRPERSON GRIFFIS: Is that correct?

11 MR. GIORDANO: Correct.

12 CHAIRPERSON GRIFFIS: That wasn't shown on
13 that three-dimensional image, was it? You couldn't
14 have seen that wall.

15 MR. GIORDANO: No. It would be behind
16 anyway. That's the back side. You know what I think
17 it is, that image was an earlier image that shows the
18 penthouse stopping right here. I think that's what
19 you are getting to.

20 CHAIRPERSON GRIFFIS: The three-
21 dimensional that you threw up, I think, was a little
22 deceiving, but I'm not sure that's what we were being
23 deceived by.

24 MR. GIORDANO: The intent was not to --

25 CHAIRPERSON GRIFFIS: I think there was a

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1 shadow on that level. But the point --

2 MR. GIORDANO: This is what we are looking
3 for as the built penthouse area.

4 CHAIRPERSON GRIFFIS: I think you need to
5 put up an elevation.

6 MR. GIORDANO: Here is an elevation right
7 here, a little faint, but --

8 CHAIRPERSON GRIFFIS: There it is.

9 MR. GIORDANO: Here is the -- You are
10 looking at it obliquely. So you are seeing a corner,
11 too, but this is the penthouse. Because of the
12 cockeyed view of Pennsylvania and 25th, it looks much
13 bigger than it is physically, but it does go all the
14 way over to two feet off the wall.

15 CHAIRPERSON GRIFFIS: Okay. Does that
16 make sense? Excellent. Okay. Any other questions
17 from the Board?

18 MR. MASON: The three-dimensional
19 perspective actually was earlier before the last HPRB,
20 an it actually -- You are correct. It does not show
21 the penthouse projecting all the way over to the other
22 side, as it will, and as it does on here.

23 CHAIRPERSON GRIFFIS: Right. And that's
24 fine. Okay. Anything else? Any other
25 clarifications? Good.

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1 We are going to take a 10-minute break.
2 We are going to come back. We are going to go right
3 to the government reports, Office of Planning, and
4 then move ahead. We will finish this today.

5 MR. MASON: Thank you.

6 MR. GIORDANO: Thank you.

7 (Whereupon, the foregoing matter went off
8 the record at 3:44 p.m. and went back on the record at
9 4:00 p.m.)

10 CHAIRPERSON GRIFFIS: Very well, let's
11 resume. Let's move ahead to Office of Planning.

12 MS. THOMAS: Good afternoon, Mr. Chairman,
13 members of the Board. I am Karen Thomas with the
14 Office of Planning, and I will highlight OP's report
15 to address the applicant's requests.

16 The applicant is requesting five variances
17 and two special exceptions to permit construction of
18 a mixed use residential/commercial building at 2501
19 Pennsylvania Avenue.

20 The site development proposals and various
21 Board approvals since 1991 have been documented by the
22 applicant and briefly outlined in our report to
23 provide some context for analysis.

24 Essentially, the requests throughout the
25 past 14 years were a combination of variances and

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1 special exception relief to the lot occupancy,
2 extension into the R-5-B zone, yard requirements and
3 roof structure setbacks, reflecting the attempts to
4 fit some type of design on an irregularly shaped lot,
5 while maintaining the integrity of the existing
6 historic landmark.

7 The current owner has proposed a mixed use
8 building, including ground floor retail, 16
9 condominium apartment units in the upper floors of the
10 building, and two efficiencies accessible from 25th
11 Street, with two levels of below grade parking
12 providing 26 spaces.

13 Due to the historic landmark status of the
14 building, the Luzon building, the Historic
15 Preservation Board recommended that the mass of the
16 new construction above the level of the Luzon building
17 be pushed as far to the north as possible. New
18 construction should not include any footprint of the
19 building and remain as low as possible.

20 These design constraints have resulted in
21 the need for a number of areas of zoning relief,
22 including variances from the lot occupancy,
23 residential recreation space, rear yard and court
24 width, as well as special exceptions to allow the roof
25 structure setback, not meeting the one-to-one

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1 requirement, and extension of the C-2-C district
2 portion into the R-5-B portion of the split zoned lot.

3 For split zoned lots, Section 2514.2 of
4 the zoning regulations allows for the least
5 restrictive portion of the lot to be extended into a
6 more restrictive portion for up to 35 feet. The
7 proposal extends the line up to 20 feet, and this
8 extension will allow the building to be designed under
9 one set of zoning regulations.

10 If this 784 square foot area were not
11 included, then the structural configuration and
12 function of the building could be affected. Extending
13 the height and bulk requirements of the C-2-C zoned
14 district toward the north will not affect the
15 development of the adjacent properties in the zone
16 district, and OP supports HPRB's recommendation, which
17 assures that the present character of the neighborhood
18 is respected and maintained through the design and
19 appearance proposed by the applicant.

20 Section 411.11 requires a one-to-one
21 setback for roof structures, and the Board may grant
22 relief from the strict requirements if the deviations
23 do not adversely impair the structure, light and air
24 of adjacent buildings.

25 The irregular shape of the lot and the

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1 requirement that the existing building's footprint is
2 not compromised with additional structure constrain
3 the site to the extent that the resulting remaining
4 space had to be efficiently designed to accommodate
5 the mechanical, elevator and stair core.

6 The proposed location of these elements
7 run parallel to the west lot line to efficiently
8 accommodate access to the building from the basement
9 parking and ground level. Any other available
10 location on the site would have resulted in loss of
11 efficiency units on the ground floor, since no access
12 to light and air would have been available for those
13 units.

14 No other adjacent structures would
15 immediately abut the seventh floor of the proposed
16 building, since abutting buildings to the west and the
17 north are five stories high and would each share a
18 party wall.

19 The roof structure is pushed away from the
20 front of the building, minimizes visibility of the
21 structures and reduces the overall massing on the
22 roof, and we believe that the intent and purpose of
23 the zoning regs will not be adversely affected.

24 For the requested variances, Op supports
25 the applicant's statement that the lot is

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1 characterized by an irregular shape, the location of
2 the historic landmark which cannot be demolished in
3 its entirety, the rock formation close to the surface
4 which prohibits extensive underground structures, and
5 the split zone nature of the lot with the C-2-C and R-
6 5-B zoning designation.

7 These factors, in combination, constitute
8 a unique lot which creates inefficiency in the layout
9 of any addition to the site. Therefore, variance
10 requests seem appropriate in this case.

11 Most of the development has to be
12 concentrated away from the prominence of the corner
13 toward the rear of the property. This creates a
14 practical difficulty which affects the overall
15 buildable area on the property, and a practical
16 difficulty to development.

17 OP supports the applicant's statement that
18 there is no practical way to develop the site in
19 accordance with the lot occupancy requirements while
20 providing the preservation oriented setbacks to the
21 landmark structure and ensuring efficient living areas
22 in the building.

23 This is also supported by previous Board
24 approvals of many revisions in the proposed design for
25 this site, which require the lot occupancy variance.

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1 This variance also relates to and results from the
2 rear yard variance request, as discussed in our
3 report.

4 The lot occupancy requirement is aimed at
5 preventing overcrowding and density, to provide light
6 and air to buildings. However, as an irregularly
7 shaped corner lot adjacent to an alley and two other
8 buildings with party walls, circulation of air to
9 properties north and west of the existing structure is
10 already precluded. OP believes that no harm is done
11 to the purpose and intent of the zoning regulations in
12 this regard.

13 Similarly, the residential recreation
14 space cannot be met on the site without affecting a
15 number of residential units and ground floor retail
16 space. The main roof area, as designed, is not
17 feasible for residential recreation use, as there
18 would be no elevator access to the seventh and eighth
19 floors due to HPRB's requirement that a roof structure
20 height be no taller than eight feet.

21 There is a practical difficulty to provide
22 a required percentage of rec space, since all usable
23 space was designed to maximize the efficiency of the
24 livable areas and the required mechanical structures
25 which support the operation of the building.

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1 Given the accessibility of outdoor
2 recreational opportunities in the immediate
3 neighborhood, including Rock Creek Park and the Y pool
4 facilities which are all within walking distance of
5 the Luzon building, we believe that there will be no
6 harm to the intent of the zone plan if these variances
7 are granted -- if this variance is granted, rather.

8 In previous decisions, the Board
9 determined that a proposed project without a rear yard
10 would be appropriate, since it would continue the
11 street parking along Pennsylvania Avenue, and this
12 also holds true in this case. Retaining a rear yard
13 will also affect the provision of retail space along
14 Pennsylvania Avenue. Therefore, OP does not believe
15 that variance relief would be detrimental to the
16 public good nor would it impair the intent and
17 integrity of the zoning regulations.

18 For similar reasons, we believe that the
19 applicant has sufficiently demonstrated that a
20 reduction in the court width will allow for more
21 efficient and practical building that will meet all
22 building code requirements. The reduction in the
23 court width is required, because it directly impacts
24 the building's design with respect to the location of
25 the corridor, rear facing units, and it would result

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1 in a smaller roof area, with difficulty in the
2 location of mechanical equipment on the roof.

3 No abutting properties would be affected
4 by the reduced court width, since the court width
5 above the sixth floor is above the height of the
6 buildings primary to the west of the subject property.

7 With respect to the FAR, we do not believe
8 that a variance from the FAR is required, since the
9 special exception request takes in the C-2-C zone 20
10 feet into the R-5-B zone implies an application of the
11 above requirements of the C-2-C zone into the most
12 restrictive residential zone.

13 If the Board determines that this variance
14 request is a necessity, then the integrity of the
15 zoning plan would not be impaired if the variance is
16 granted, since it would be in harmony with the intent
17 of the zoning regulation and the Board's approval of
18 Section 2514.2.

19 We believe that the applicant has
20 demonstrated that these requests, if granted, will be
21 consistent with the intent and purpose of the zoning
22 regulations and will not be detrimental to the
23 community.

24 The property is limited by a variety of
25 factors, the most significant being the shape of the

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1 property and its historic landmark designation, which
2 in this case requires that any addition on the site be
3 set back from the existing structure's footprint.

4 The resulting plan respects the building's
5 landmark status, as it will appear to be wrapped
6 around the existing landmark to appear as two separate
7 structures. Given the extensive reviews and community
8 input on proposed plans to develop the site over the
9 years, OP believes that a project could not be
10 attempted as a matter of right, due to the inevitable
11 site constraints.

12 Therefore, the Office of Planning supports
13 the variances and special exceptions to allow the
14 construction of the mixed use building.

15 I would just like to point out some
16 corrections to our report. On page 4 under current
17 proposal, the last sentence in the second paragraph
18 should read "setbacks are 4 to 6" and not 5 to 8, four
19 to six feet and not five to eight feet.

20 On page 4 as well, it should read 16 units
21 and not 15. On page 9, the first line on the top of
22 the page it says "C-2-C allows a maximum." It should
23 say C-2-C allows a maximum of 100 percent lot
24 occupancy and not 80 percent for development. Eighty
25 percent of a max. Fifty is residential development.

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1 On page 11 the second line from the top
2 should say north side rather than south side. Thank
3 you.

4 CHAIRPERSON GRIFFIS: Good. Thank you
5 very much. Are there questions from the Board? Ms.
6 Miller?

7 VICE-CHAIRPERSON MILLER: On page 5 of
8 your report, you say that the design constraints
9 mandated by the HPRB have resulted in the need for the
10 number of areas of zoning relief. My question is:
11 Which areas of relief does the HPRB mandates not
12 affect, if you know what I mean?

13 I am under the impression that perhaps the
14 HPRB constraints affect all the variances that are
15 being requested. Is that not true? It is driven in
16 large part by that, for all of them?

17 MS. THOMAS: In effect, yes, I do believe
18 that. We did find that the need to push the building
19 further to the north and to move the mass further to
20 the north spread more of the lot occupancy out into
21 the side, pushed the rear yard. So it resulted in
22 rear yard, as well as in having to design the floor
23 plates, it pushed a lot of the core structures by the
24 stairs and the elevator into a position where we don't
25 think that it could be moved; because it couldn't put

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1 those into the Luzon building's footprint.

2 So in a sense, yes. So you have the court
3 width being reduced, in effect, the rear yard, lot
4 occupancy, and rec space. Due to the fact that,
5 particularly for the rec space, because you couldn't
6 have an elevator access to that floor, you could only
7 have the elevator -- what do you refer to it as? --
8 the override, yes. You could only have an override.
9 You couldn't have access.

10 So you couldn't provide rec space. So we
11 had difficulty with that, too.

12 VICE-CHAIRPERSON MILLER: Thank you.

13 CHAIRPERSON GRIFFIS: Anything else? Any
14 other questions? Excellent. Thank you very much.
15 Did the applicant have any cross-examination of the
16 Office of Planning? No cross.

17 Very well, let's move ahead then. I don't
18 have any other attendant government agency reports.
19 We do have the HPRB reports, and they were attached
20 into the application.

21 Let's move to the ANC. Oh, I'm sorry.
22 The ANC is represented, are they not? Ms. Miller, are
23 you representing the ANC today? No? Okay, that's
24 fine. That's great. We do have Exhibit Number 29
25 that was recommending approval, and the applicant did

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1 mention it also in their opening.

2 I don't have anything else attendant to
3 the application in terms of agency or community, ANC
4 reports. Unless the applicant is aware of any, we can
5 move ahead to persons to give testimony.

6 Ms. Miller, are you testifying today? No?
7 Okay, that's fine. I'm just getting the roll here.
8 Ms. Kahlow, then when you are ready, why don't you
9 come up to the table, and we will proceed.

10 In the meantime, let's just note that
11 there are numerous letters in the record, Exhibit 28,
12 31, 33, 34, 35, 36, 38, 39, 40, 41, 42, in support.
13 There may be more. I think we got an additional one
14 that was submitted in today while we were in hearing
15 from a Fred Moon, President of 1116 25th Street Condo
16 Association, dated April 29. That was also in support
17 of the application.

18 We have a letter of concern, Exhibit
19 Number 44, also in the record.

20 Oh, I should make note. The applicant did
21 make note of it, but we do have a letter from the
22 Council Member of Ward 2. It is Exhibit Number 27.
23 It is an interesting letter. I noted his first
24 sentence indicating that -- well, he had indicated his
25 support, but also that he had actually been involved

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1 with this even before he was a Council Member. It
2 just shows how long this has been going on.

3 Very well. Ms. Kahlow, whenever you are
4 ready.

5 MS. KAHLOW: To introduce myself again, I
6 am Barbara Kahlow. I live in Foggy Bottom.

7 Since 1990, I have served as the
8 community's lead witness and testimony coordinator
9 before various D.C. bodies, and I list in a footnote
10 18 times I have testified in writing or in person for
11 development of this gateway to Georgetown site.

12 In 1991 after the community filed an
13 Historic District application -- and I have a footnote
14 of what was covered -- a former owner of this site
15 illegally demolished two contributing historic
16 townhouses that were situated on Pennsylvania Avenue
17 between the three landmark Mullett townhouses and the
18 landmark Luzon apartment building.

19 Since then, our community has been
20 frustrated with the unsightly appearance and absence
21 of development of this site. Most are at the point
22 that any development would be acceptable to replace
23 this eyesore. However, I believe that some of the
24 same principles for which we have fought for years are
25 still valid.

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1 The three basic principles from Day One
2 have been: (1) scale; (2) safety; and (3) quality of
3 life.

4 To protect the character of this special
5 gateway, especially its scale, the community filed
6 various law suits. The result of court ordered
7 mediation was a settlement agreement, and I note in a
8 footnote that the OP's report makes a passing
9 reference to litigation but doesn't mention the
10 settlement agreement. But as I mentioned earlier, the
11 BZA mentioned it 17 times in its orders.

12 Signed by five individual versus
13 organizational community representatives, including me
14 that conveyed to each successive owner of the property
15 and provided a maximum height of 70 feet versus the
16 height proposed today of 90 feet -- and I have a
17 footnote that quotes from various things in the BZA
18 orders and the settlement agreements to guide you
19 through that.

20 With counsel I actively participated in
21 mediation. In follow-up, two of us met with each
22 successive owner except the current owner, Intrepid.
23 Clarifying additions were reached for one of them.

24 I checked with the bidders for the
25 ownership change to Intrepid, and was informed that,

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1 in fact, the prior owner's representative did disclose
2 the existence of the settlement agreements. As one of
3 the unsuccessful bidders put it, everyone knew about
4 it.

5 Nonetheless, on April 20th, in reply to a
6 question during an ANC meeting by a Commissioner who
7 is a lawyer, Intrepid erroneously told the Foggy
8 Bottom Left End ANC that this disclosure had not been
9 made.

10 I would like to include the settlement
11 agreements in today's record, Exhibit 1, and I have a
12 copy for you of all the agreements. As Ms. Miller
13 said, you can study them at your leisure, and I have
14 a copy for you. If time permits, I would like to
15 discuss these in detail, but I'm not sure time will
16 permit.

17 Only three of the five community co-
18 signers are currently active in D.C. land use cases.
19 Two of us believe that the current plan for the site
20 can be improved. In addition, other landowners and
21 former witnesses believe the current plan would have
22 an adverse effect and can be improved to protect
23 quality of life, especially in the R-5-B section along
24 25th Street.

25 I would like to include three statements

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1 of opposition into the record, and I have the
2 originals from them which I would like to give to --
3 They are attached, but I would like to -- Two of the
4 three of us were co-signers, Bob Niemic and myself.
5 He couldn't make it today, because his mother had
6 serious surgery.

7 Two of the four immediately abutting
8 negatively adversely affected homeowners also signed
9 letters, as I indicated. One, Bob Kinkead, is opening
10 a restaurant box and couldn't be here today. The
11 second -- Ruby planned to be here, but just broke her
12 ankle, and she explains that. And as I said, the
13 third had to recuse himself, because he is a real
14 estate person, and we don't know who the fourth is.

15 Since 1991 I have been a party to the
16 BZA's consideration of various development proposals
17 for this site. From '91 to '97, I testified before
18 the BZA in writing and in person five times. The BZA
19 issued five orders, and I gave the dates and numbers,
20 in the predecessor case.

21 I would like to include all five in
22 today's records, since they provide detailed summary
23 of evidence of record and findings of fact by the BZA.
24 I understood, but I don't have a copy of the
25 developer's filings, and he may have included some or

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1 all of those. But I would like to include them all in
2 the record, since they have such -- are based on such
3 extensive testimony. We had days and days appearance.

4 CHAIRPERSON GRIFFIS: These are the past
5 orders?

6 MS. KAHLOW: Yes.

7 CHAIRPERSON GRIFFIS: Yes, they are all in
8 this.

9 MS. KAHLOW: Well, I wanted to be sure
10 they are attached, because I am going to be talking
11 about them.

12 Problems with the current proposal: The
13 principal problem with the current proposal is scale,
14 height, mass and lot occupancy, especially along 25th
15 Street. Proposed eight stories reaching 90 feet with
16 95 percent lot occupancy will abut the last intact and
17 low scale historic townhouse row in the West End.

18 As I indicated in one of the other
19 footnotes, we applied for an Historic District of the
20 eastern part of Square 14, which included the three
21 Mulletts, the townhouses that were, unfortunately,
22 illegally demolished, the Luzon, the apartments on
23 25th, the apartments -- the condos and apartments on
24 25th and on M.

25 We never got to a hearing because of the

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1 illegal demolition. So contrary to what you heard
2 earlier, there was no Board decision, since we never
3 got to a hearing on it.

4 CHAIRPERSON GRIFFIS: So this isn't a
5 Historic District?

6 MS. KAHLOW: It is not an Historic
7 District.

8 CHAIRPERSON GRIFFIS: But it's just the
9 buildings around it?

10 MS. KAHLOW: But we thought it was worthy.
11 Pardon me?

12 CHAIRPERSON GRIFFIS: Numerous buildings
13 around it have been designated?

14 MS. KAHLOW: We have four designated
15 buildings, three on one side and one that is the
16 subject of it today. But these are the last intact
17 rows on 25th and M Street in the entire West End.
18 Everything else has been torn up in one way or
19 another. So this is it. This is our character, like
20 the Foggy Bottom Historic District. This is what we
21 have in the West End, the only thing left.

22 The northern part of the site and the
23 townhouse row is zoned R-5-B, which limits the maximum
24 height to 50 feet, not 90 feet, maximum lot occupancy
25 feet to 60 percent, not 95 percent, and maximum FAR to

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1 1.8 versus the proposed overall FAR of 6.0.

2 The applicant admits that the FAR in the
3 R-5-B portion would be 7.6. Now in an area that is
4 zoned 1.8, going to 7.6 is obviously excessive and
5 unjustified. It is to make profit. It has nothing to
6 do with what makes sense.

7 Also, as OP stated, the lot occupancy
8 requirement is aimed to provide light and air to the
9 buildings. To protect air and light for existing
10 residents, the zoning regulations also require four
11 inches width per foot of height, but not less than 10
12 feet for open courts and not less than 15 feet for
13 closed courts, and I give the cite.

14 The applicant's preliminary statement
15 acknowledges the court width at the northwest corner
16 would be 17 feet 10 inches versus required width of 28
17 feet 10 inches. In contrast, the settlement
18 agreements restricted the height to 70 feet, and the
19 previous BZA orders protected the air and light for
20 the existing residences, especially consistent with 11
21 DCMR, and I give the section.

22 I want to read the footnote: "For
23 example, the BZA required 'no balcony shall be
24 constructed on the western wall of the project' and
25 'removal of the windows along the top floor and

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1 vertically down the rear portion of the west
2 elevation.'" "

3 The BZA took so much testimony in this,
4 and they asked for shadow studies. We had to come
5 back, a massing model. So everybody -- members could
6 see exactly what would happen to the people that live
7 there, and they asked us to negotiate all -- you name
8 it. The BZA got very involved in this.

9 In addition, the applicant's preliminary
10 statement reveals that the plan includes 1450 square
11 feet "not on the lot" but in public space. I object
12 to this removal of public space for use by private
13 parties.

14 The HPRB shared my concern. The HPRB
15 stated, "The treatment of the public space on the 25th
16 Street side should be restudied." Any use or
17 enclosure of public space shall be limited.

18 Now just for you, you need to look at the
19 developer's Exhibit 5.2 where he shows that "green
20 area" which is our wide sidewalk. The reason I moved
21 to this area of town and that block specifically was
22 the character with the wide walks, with the
23 streetlight, and that would be taken away on 25th
24 Street. Their Exhibit 5.2 shows --

25 CHAIRPERSON GRIFFIS: That's not the way

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1 I read it.

2 MS. KAHLOW: Well, that's what they want.
3 They want to use public sidewalk space.

4 CHAIRPERSON GRIFFIS: I'm not so sure.

5 MS. KAHLOW: Yes, they do. That's what
6 they say, and that's what they told us in the ANC.
7 They told us now, they want to use public sidewalks.

8 CHAIRPERSON GRIFFIS: Well, outside of you
9 and I bantering back, let's look at the streetscape.
10 It seems to me that that is actually what is called
11 the parking area or the public space. It's not as if
12 they are diminishing the sidewalk, or are you saying
13 they are diminishing the sidewalk on 25th Street?

14 MS. KAHLOW: They are diminishing the
15 sidewalk in public space, as they said in their own
16 statement, not on the lot but in public space. That
17 is their statement. That is what they told us, and I
18 think that the 25th Street --

19 CHAIRPERSON GRIFFIS: Are you saying that
20 the front yards -- what appears to be the front yards
21 as you go north on 25th Street would become larger as
22 you get to the corner when you hit this property, or
23 is it in line with those properties that go --

24 MS. KAHLOW: It is in line with some of
25 the properties but not others. But the point about

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1 that block is that it had on both the Pennsylvania
2 Avenue side and the 25th Street side large sidewalks.
3 That's the character of this landmark. You look down,
4 and you see something distinctive.

5 CHAIRPERSON GRIFFIS: Okay. Well, we got
6 to establish that then. What is the size of the
7 current sidewalks, because just saying it doesn't make
8 it understandable?

9 MS. KAHLOW: I don't have photographs. I
10 could take them for you for the record. I'm sorry.
11 I didn't measure them. I didn't know I needed to. I
12 don't know what to tell you.

13 CHAIRPERSON GRIFFIS: Well, we got enough
14 documentation in here.

15 MS. KAHLOW: Okay. I think that the
16 shadow studies and, more importantly, the massing
17 model would have shown you, if you had been able to
18 see.

19 CHAIRPERSON GRIFFIS: Do you have 1.1? do
20 you have their submission?

21 MS. KAHLOW: I do not. They weren't kind
22 enough to give it to me.

23 CHAIRPERSON GRIFFIS: Do you have an extra
24 submission?

25 MS. KAHLOW: I have their preliminary

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1 submission, however, and I can show you on that.

2 CHAIRPERSON GRIFFIS: Why don't you go to
3 Exhibit G.

4 MS. KAHLOW: All right. I have to get it
5 first before I can say anything about it.

6 CHAIRPERSON GRIFFIS: First, Exhibit G,
7 1.1. This is the site zoning sheet.

8 MS. KAHLOW: This is where they show -- I
9 think, where they have little brick look is what I
10 would call it, for lack of a better term, the little
11 brick things along there. That's public sidewalk
12 space at this point. We have large --

13 CHAIRPERSON GRIFFIS: So the heavier hatch
14 and the tree boxes are sidewalk. Correct?

15 MS. KAHLOW: Where they are putting tree
16 boxes is public sidewalk space, if I understand this.
17 This little cross-hatch -- They have two sets of
18 cross-hatches.

19 CHAIRPERSON GRIFFIS: Right. Let's start
20 with the curb.

21 MS. KAHLOW: The first one is the plaid,
22 we'll call it. That's part of the sidewalk. The next
23 one is the odd-shaped. That's public sidewalks now
24 all the way down.

25 CHAIRPERSON GRIFFIS: So here's my

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1 question to you. You see where all that where the
2 heavy hatched transitions into the bigger hatch so it
3 looks like little brick to big brick?

4 MS. KAHLOW: Yes.

5 CHAIRPERSON GRIFFIS: You are indicating
6 to me, in their testimony that that small brick area
7 is not the current size of the sidewalk?

8 MS. KAHLOW: It is currently public
9 sidewalk. Is that what you are saying?

10 CHAIRPERSON GRIFFIS: Is that being
11 diminished or is it being --

12 MS. KAHLOW: Yes. They are going to use
13 it for making little patios. That's my understanding.

14 CHAIRPERSON GRIFFIS: I don't think I am
15 being clear. Well, the issue is this. That's the
16 sidewalk. Right? Now do we have photographs of the
17 houses up 25th Street? Do you have any documentation
18 of those sites?

19 MS. KAHLOW: I would be willing to bring
20 it for the record.

21 CHAIRPERSON GRIFFIS: Can I use your
22 architect for a moment, Mr. Collins? I think, unless
23 I am totally wrong here, I think we can put this to
24 rest rather quickly.

25 Let me see. My understanding is that --

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1 You have 1.1. You know your document. Correct? This
2 is a site plan that's showing. On 25th Street, what
3 is being said is that you are encroaching on what is
4 currently public sidewalk area. Can you --

5 MR. GIORDANO: The distance from the
6 property line to the curb is actually called parking.
7 The amount of sidewalk, physical sidewalk, that is
8 there is actually -- versus the amount of green area
9 or landscaped area is really dictated by public space,
10 and that's the agency that agrees with what it is.

11 What we've got is we have picked up the
12 fence line that exists all the way up 25th Street. So
13 we keep the same sidewalk. They don't like it when
14 the sidewalk widens or narrows abruptly, particularly
15 people that have visibility problems.

16 CHAIRPERSON GRIFFIS: So for my
17 clarification, you are not increasing or decreasing
18 sidewalk that's on 25th Street?

19 MS. KAHLOW: They are decreasing it to
20 make it similar to other townhouses down the street.

21 CHAIRPERSON GRIFFIS: I see what you are
22 saying. You are saying today --

23 MS. KAHLOW: But I'm saying the corner was
24 distinctive.

25 CHAIRPERSON GRIFFIS: Today you could walk

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1 in, and all that is paved, and you can't tell really
2 what is there or --

3 MS. KAHLOW: Right. We had massive trees
4 that covered it, and they are going to take down the
5 tree. But that is not their fault, the tree. The
6 HPRB wanted them to put the parking entrance there.
7 So taking out a massive tree, when they go ahead and
8 do that, then they would be taking the public
9 sidewalk.

10 CHAIRPERSON GRIFFIS: So for that small
11 amount on 25th Street, you want that whole thing to be
12 open?

13 MS. KAHLOW: That is correct.

14 CHAIRPERSON GRIFFIS: Because the corner
15 is still open. You see that?

16 MS. KAHLOW: But it's not just the corner.
17 The idea of the whole block when I moved there was
18 that the whole thing had wide sidewalks, both
19 Pennsylvania and 25th, until you got to the townhouse
20 row. That was what made this special, why the
21 apartment building was special, etcetera. That's part
22 of the context of the apartment building.

23 CHAIRPERSON GRIFFIS: And that open space
24 will be diminished by them landscaping it?

25 MS. KAHLOW: Well, it's not landscaping.

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1 They are going to make it private patio space, my
2 understanding. It's not -- If it were landscaped,
3 that would be one thing. It's to be private patio
4 space.

5 CHAIRPERSON GRIFFIS: I don't think it can
6 be private, because it is not done on private
7 property. But --

8 MS. KAHLOW: It's on public property, but
9 it would become private property. That's what they
10 intend to do. But I would like to finish my
11 testimony, which at some point I will.

12 MR. COLLINS: Mr. Chair, to the extent
13 that that is a legal issue that she started to raise,
14 may I address that?

15 CHAIRPERSON GRIFFIS: Yes.

16 MR. COLLINS: The street distribution, as
17 you started to talk about the parking versus the
18 sidewalk -- the street distribution is the same at
19 this point, this street point, as it is all the way up
20 25th Street. At 25th Street it is 90 feet wide from
21 property line to property line. The curb-to-curb
22 width is 30 feet, and there's 30 feet of public space
23 on each side.

24 The street distribution -- I don't have
25 the exact numbers for parking that is provided, and

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1 the 25th frontage of this site is the exact same as
2 the sidewalk going north of this site on 25th Street.

3 CHAIRPERSON GRIFFIS: So it is consistent
4 all the way down 25th Street.

5 MR. COLLINS: Right, and the parking that
6 is shown on here is the same as the parking all the
7 way up and down. As you know --

8 CHAIRPERSON GRIFFIS: That was my point.

9 MR. COLLINS: -- in the regulations a
10 property owner is required to maintain the parking,
11 and can fence it in up to three and a half feet of
12 height of the fence.

13 CHAIRPERSON GRIFFIS: Exactly. I mean,
14 that's what I was trying to get to in terms of
15 context. Is it the same as what is happening north on
16 those townhouses? And oftentimes at townhouses it may
17 even have a retaining wall, and that's your front
18 yard, and you walk up three steps. So everyone looks
19 at it and say you've got a beautiful front yard, and
20 you have to say, yeah, but it's not mine.

21 MR. COLLINS: It's actually public space,
22 and you are required to maintain it.

23 CHAIRPERSON GRIFFIS: Right. Right. It's
24 good to know, because I've been waiting for the guy to
25 come and mow my lawn. Okay. Oh, we do have a

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1 photograph. Perfect. In the original filing, Mr.
2 Etherly has found it. This is absolutely perfect. In
3 the original filing, the exhibit it's Exhibit Number
4 G. On that it shows --

5 MS. KAHLOW: Well, that's what we are in.

6 CHAIRPERSON GRIFFIS: So there actually is
7 enclosures on that area. I see. Do you see that?

8 MS. KAHLOW: I don't have that.

9 CHAIRPERSON GRIFFIS: You said you had the
10 original.

11 MS. KAHLOW: No, I have the pre. I don't
12 have that.

13 CHAIRPERSON GRIFFIS: That's this.

14 MS. KAHLOW: Oh, well, then maybe I do
15 have that. Let me just -- Give me one second. I'm
16 sorry, I may not have that.

17 BOARD MEMBER ETHERLY: It's the submittal
18 dated March 11, 2005, from the applicant.

19 MS. KAHLOW: I do have that. Thank you.
20 I don't have the current one. Can I keep this copy
21 and write on it?

22 CHAIRPERSON GRIFFIS: So it's the third
23 photograph in.

24 MS. KAHLOW: Third photograph in, under G?

25 CHAIRPERSON GRIFFIS: Yes.

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1 MS. KAHLOW: That's the current
2 conditions.

3 CHAIRPERSON GRIFFIS: Right. Okay. So
4 that shows us where the sidewalk line is, and then
5 where the parking is, the privately maintained public
6 space.

7 MS. KAHLOW: Attached to my testimony is
8 a two-page chart which I prepared to compare
9 Intrepid's request for five variances and two special
10 exceptions with the terms of the 1993 settlement
11 agreement and the various BZA orders.

12 I have sent this repeatedly to the
13 developer to make sure that it is accurate, and at one
14 point they gave me some changes we did, and since then
15 they haven't told me if it is or it isn't accurate.
16 But to the best of my reading, it is accurate. But I
17 thought it would help you, and I would like to go
18 through it so you can get an idea of the kinds of
19 problems, height, the windows in the back and the
20 court niche and, most importantly is page 2.

21 I am going to discuss that in the next --
22 after I finish the next thing, but I'd like to go
23 through page 2, because those were the special
24 provisions we made after the BZA hearing.

25 CHAIRPERSON GRIFFIS: So the second chart

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1 after what is labeled B.

2 MS. KAHLOW: That's right, because that
3 tells you with a summary of what is in the agreements.
4 I mean, I know you will read them, but it tells you
5 what's in it and their yeses, noes and question marks,
6 and I am going to discuss some of those. But I
7 thought that would be helpful. That, I know, is
8 written. I don't know if they are a little off by one
9 or two percentage points. I've asked for their
10 requests multiple times and haven't gotten it.

11 The bottom line is that, besides the
12 points I have already mentioned, Intrepid does not
13 intend to honor most of the negotiated special
14 conditions. I have met with and exchanged some e-
15 mails with Intrepid, but its position has largely been
16 take it or leave it.

17 This contrasted with each other previous
18 owner the property, who was interested in being
19 responsive to many of the concerns as possible. Let
20 me use an example of two of them.

21 One is that the people in the immediately
22 impacted two neighbors, 1112 and 1114, don't have
23 back-front access. So they can't empty their trash.
24 Currently, they do it in the de facto alley. So they
25 have nowhere to get to their trash unless they were to

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1 walk all the way around the entire block, if this was
2 built in.

3 So that is why the developer and the
4 settlement agreement of the BZA said, okay, you can
5 remove your trash in our building, because otherwise
6 they can't get to the trash.

7 CHAIRPERSON GRIFFIS: What building are we
8 talking about?

9 MS. KAHLOW: The people immediately
10 adjacent on 25th Street. There are two sets of
11 townhouses, 1112 and --

12 CHAIRPERSON GRIFFIS: On the north side?

13 MS. KAHLOW: On the north side, right.
14 They don't have north-south access. Only a few of the
15 units do. So currently in that area -- you were
16 looking at that area -- there is a de facto alley, and
17 they can walk back there. Once they build to abut it,
18 these people can't empty their trash. They have
19 nowhere. Unless they were to walk all the way around
20 to the West Bridge, all the way down the street to
21 almost the corner of 25th and M, they can't empty
22 their trash. That's why the developer said, oops,
23 this is a problem in the original conception of that
24 building; we promise we will take care of their trash.
25 That's an example.

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1 CHAIRPERSON GRIFFIS: I think that's an
2 excellent agreement. I need a little bit more
3 persuasion that it rises to the level of a zoning
4 issue.

5 MS. KAHLOW: Well, it's what the BZA came
6 up with. They said this is a real problem, and then
7 we came up with an agreement. I was using that as an
8 example.

9 CHAIRPERSON GRIFFIS: But the Board is not
10 perfect, and I think it's a great agreement to have
11 established. But I still think we need to set our
12 sights in this application on zoning issues.

13 MS. KAHLOW: All right.

14 VICE-CHAIRPERSON MILLER: May I just
15 follow up on that? Who are these people? Are these
16 people who you are representing who couldn't get here?

17 MS. KAHLOW: Yes. They are letters.

18 VICE-CHAIRPERSON MILLER: Who are they?

19 MS. KAHLOW: Bob Kinkead and Ranee
20 Lewison. I have two of the four letters. One was
21 the real estate guy who had to recuse himself, and one
22 we don't know who it is. There are four owners.

23 Okay. In sum, to protect the scale of
24 this special gateway, 90 feet is too high on 25th. To
25 protect safety is critical. The ground floor retail

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1 brings street life to the block, and being open at
2 night versus anything like a planned banking
3 institution.

4 To ensure quality of life, the air and
5 light to the existing windows in the abutting building
6 on 25th Street need to be further protected, including
7 to project no more than matter of right shadows for R-
8 5-B zoning with a maximum height of 50 versus 90 feet.

9 Raneew Lewison, who really did plan to be
10 here other than breaking her leg, talked about her
11 children and how they needed -- their bedrooms only
12 had this air and light, and that's why the BZA
13 required these shadow studies and the cutoff, so that
14 there would be air and light to those existing.
15 That's when it was 70 feet, not 90 feet.

16 The questions I was going to ask included:
17 Why aren't there shadow studies? Where is the massing
18 model? Why didn't you talk to the immediately
19 impacted neighbors for which we had these special
20 provisions? They were never contacted. Why weren't
21 the West Bridge owners noticed? They are within 200
22 feet. They did notice the condominium board, but
23 because we didn't have a committee set up, none of the
24 owners, resident or nonresident owners, were ever
25 notified about this project, and we are within 200

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1 feet as owners.

2 What do you do about the trash? What do
3 you do about the Pennsylvania Avenue sidewalk? What
4 we wanted, because the city can't handle everything,
5 is to protect the people on 25th, to protect the
6 character on Pennsylvania. The sidewalk is in
7 absolute disrepair. We wanted the owner to fix it,
8 brick it up, and the owner said, of course, we will do
9 that.

10 CHAIRPERSON GRIFFIS: A couple of things.
11 Those are issues, frankly, that are perfect if we were
12 in a PUD, kind of amenities and how we could -- You
13 know what? If we had the authority to demand certain
14 things, I think I'd take it in two seconds, because --

15 MS. KAHLOW: But the air and light is
16 yours. The BZA is responsible for maintaining the air
17 and light of existing residential units, even if they
18 were not originally within code or whatever.

19 CHAIRPERSON GRIFFIS: I understand that.

20 MS. KAHLOW: And that's why that was the
21 most compelling testimony. Apparently, their court
22 niche is an unusual --

23 CHAIRPERSON GRIFFIS: The court was one
24 issue. I was addressing your Pennsylvania Avenue
25 sidewalk.

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1 MS. KAHLOW: Yes. But I was using that as
2 an example of what I would have asked. You told me --

3 CHAIRPERSON GRIFFIS: I think at the end
4 of the day, certainly, the developer who is putting
5 something of this nature on this corner, I would hope,
6 would also invest a little bit in the sidewalks. It
7 might make for good marketing of the building itself.
8 But be that as it may, it is off the property.

9 Let me ask you also. You testified at the
10 Historic Preservation Review Board. Correct?

11 MS. KAHLOW: I testified, as I said, many
12 times. The last three times I was --

13 CHAIRPERSON GRIFFIS: But let me ask
14 specifically --

15 MS. KAHLOW: -- I have submitted letters.

16 CHAIRPERSON GRIFFIS: A lot of the things
17 you are saying, and I don't want you to leave today
18 thinking we didn't think they were serious issues.
19 They are serious issues. I just need to make sure
20 that you understand what jurisdiction we have and
21 where they might be.

22 A lot of this -- So far you have talked
23 about the character and how it fits in and such --
24 would have been perfect at the Historic Preservation
25 Review.

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1 MS. KAHLOW: We talked to them. We met
2 with them, talked to them extensively, the staff. We
3 didn't testify in person for various professional
4 reasons, but submitted three letters.

5 CHAIRPERSON GRIFFIS: Okay. On this
6 application you worked with them.

7 MS. KAHLOW: Yes.

8 CHAIRPERSON GRIFFIS: And you've seen
9 where it's gone through that.

10 MS. KAHLOW: Yes. Unfortunately, I think
11 the first iteration was 1,000 percent better than this
12 last iteration. It was more attractive. It was more
13 balanced for the character of the neighborhood, and I
14 think it's great they took it off the existing
15 landmark, but I think their current one is ugly. I
16 don't think it will sell. I think it's a disaster.
17 But yes, I was involved, and they kept moving in the
18 right direction. In the end, I'm not happy with it,
19 to answer your question. Yes.

20 Then I was going to ask various questions.
21 I haven't seen a letter from the Foggy Bottom
22 Association, which they mentioned. I don't know if
23 you have it or not.

24 CHAIRPERSON GRIFFIS: Exhibit Number 39.

25 MS. KAHLOW: I wonder if I can get a copy.

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1 CHAIRPERSON GRIFFIS: Absolutely.

2 MS. KAHLOW: I hadn't seen that, and now
3 I have a copy of their stuff. I'd like to add, my
4 Exhibit 3 is the attorney who negotiated with D.C.,
5 his statement of the continuing applicability. I'd
6 like to put that as my Exhibit 3. I got that this
7 morning. Otherwise, I would have attached it to my
8 testimony. Do I give this to Beverley?

9 CHAIRPERSON GRIFFIS: Yes, please.

10 MS. KAHLOW: In sum -- I'll wait for a
11 second.

12 CHAIRPERSON GRIFFIS: Okay.

13 MS. KAHLOW: In sum, there's a lot of
14 improvements, I think, that can be made, and the BZA
15 can make them. If you look at the Attachment A, MR.
16 Niemic, Bob Niemic, and myself and Richard Price are
17 the three still active in land use. His is the one
18 whose mother is sick. He and I both say make
19 improvements. Richard Price is the ANC Commissioner.
20 He says, okay, I can live with it, or actually he
21 likes it.

22 B is Bob Kinhead, Kinhead's Restaurant.
23 He explains all the problems with the windows, and
24 next to it is Raneew Lewison and the problems with all
25 the windows and her children. Then I have the two-

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1 page summary for you, though you will read it
2 yourself, and the agreement. Then I have this Don
3 Dynan document.

4 I think you can make improvements. If we
5 -- What the BZA did the last time is sent us all to
6 the negotiation table with OP convening us to try to,
7 instead of a "take it or leave" attitude, make some
8 improvements. to protect the people. That's what I
9 recommend.

10 Hopefully, that helps answer.

11 CHAIRPERSON GRIFFIS: I think so. Let me
12 ask you a couple of questions, though. Do you find
13 any unique aspects to this property?

14 MS. KAHLOW: Yes. But there are still
15 solutions that can be people friendly.

16 CHAIRPERSON GRIFFIS: Okay. I'm just
17 trying to put full understanding of your opposition to
18 this particular application. So you don't disagree
19 with the unique factors that they have brought
20 forward, the historic --

21 MS. KAHLOW: No.

22 CHAIRPERSON GRIFFIS: -- structure and the
23 shape and lot size?

24 MS. KAHLOW: No.

25 CHAIRPERSON GRIFFIS: Okay. The practical

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1 difficulty -- the elements of residential recreation
2 or the lot occupancy, are any of those -- Do you find
3 that they haven't made their test in terms of --

4 MS. KAHLOW: I don't think they have made
5 the test in court width and in rear yard.

6 CHAIRPERSON GRIFFIS: Court width and rear
7 yard? Okay.

8 MS. KAHLOW: Because of the abutting
9 people on 25th. And if you had either shadow studies
10 or spore massing or both, you would see these patios.
11 You would see the air and light. You would see in
12 those instances.

13 Now you asked a very good question.
14 What's the backs or what's the rear yard. The bottom
15 line is, no matter what the site that he said on 25th
16 is, the Pennsylvania Avenue is 2501 Penn. It is the
17 Pennsylvania Avenue entrance. In the rear are the
18 people that are being affected, and they are the ones
19 that have to be protected, I think.

20 CHAIRPERSON GRIFFIS: In the rear --

21 MS. KAHLOW: 25th Street townhouses.

22 CHAIRPERSON GRIFFIS: Any other questions?

23 VICE-CHAIRPERSON MILLER: I have a
24 question. The BZA does consider light and air and
25 privacy, and I'm just wondering if you can elaborate

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1 a little further. I think that we would know that
2 there were shadows, if we saw shadow studies or
3 something. That really isn't enough for us to go on.
4 Can you give us some kind of concrete information from
5 which we could draw a conclusion that --

6 MS. KAHLOW: It's in the BZA's record for
7 the prior case. They requested shadow studies, and it
8 showed what they would be, but only if it was 70 feet.
9 Now it's 90. So you could see how it was and why you
10 had to build in the special conditions, you the BZA,
11 to protect those existing homeowners. It's in your
12 record.

13 VICE-CHAIRPERSON MILLER; I understand
14 that, but I made the same point to the applicant that
15 the building has changed, and I don't know how that
16 affects the shadows.

17 MS. KAHLOW: It's taller. That's all.

18 VICE-CHAIRPERSON MILLER: It's taller, but
19 that --

20 MS. KAHLOW: And it has windows.

21 VICE-CHAIRPERSON MILLER: There is a
22 setback.

23 MS. KAHLOW: Not there.

24 VICE-CHAIRPERSON MILLER: Not there.

25 MS. KAHLOW: No, it's taller.

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1 VICE-CHAIRPERSON MILLER: So you're
2 saying, on the particular side that you are concerned
3 about, there is no change except it's taller?

4 MS. KAHLOW: It's taller, and they have
5 more windows, all the things that we weren't supposed
6 to have before. So that if you looked at the existing
7 shadow studies -- What happened the first time is we
8 met with the BZA, and they said, developer, come back
9 and do shadow studies so we could actually hear after
10 this compelling testimony, and they did, and it's in
11 your record. Then they said, well, how about this,
12 how about that. We all sat in our negotiation at the
13 request of the BZA, at the direction of them, and
14 that's when we came back to set it back at certain
15 places, have no windows on that side, have no
16 balconies on that side, etcetera.

17 VICE-CHAIRPERSON MILLER: Well, how much
18 more shade is there as a result of this?

19 MS. KAHLOW: I don't know, because I
20 didn't do the shadow studies. I mean, I could hire
21 someone, and we could do that. But I thought that's
22 what the BZA did. Last time the BZA at our request
23 made the developer come in and show the shadow
24 studies. I think it's terribly important, because
25 those are real people, and they would be adversely

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1 affected, and significantly adversely affected.

2 VICE-CHAIRPERSON MILLER: And how would
3 you like to see the building changed?

4 MS. KAHLOW: I would like to be on the
5 25th Street side where it's the R-5-B side -- I'd like
6 it to be, as I said at the end, the shadows to be no
7 more than a matter of right for an R-5-B zone abutting
8 those people, because that is the zone.

9 They are asking for you to carry the C-2-C
10 into the R-5-B area. However, what I think is more
11 appropriate, and I said it in my last sentence,
12 including to project no more than matter of right
13 shadows for an R-5-B zoning with maximum height of 50
14 versus 90 feet.

15 What the BZA required last time was to
16 show where the shadows would be at the R-5-B, where
17 the shadows would be at C-2-C, where they would be if
18 it was 70 feet, etcetera. That's what you all
19 required them to do, various versions of shadow
20 studies.

21 VICE-CHAIRPERSON MILLER: I have not heard
22 before the phrase matter of right shadows.

23 MS. KAHLOW: You -- BZA asked them to show
24 in the shadow studies, and they showed this is what it
25 would be if it was C-2-C, this is what it would be as

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1 R-5-B, this is what it would be matter of right.
2 That's how -- You asked them to develop it, and that's
3 what they presented in the following hearing.

4 CHAIRPERSON GRIFFIS: We were a creative
5 group way back when. But I think the intent,
6 obviously, was on the matter of right height, what
7 shadows would be cast.

8 MS. KAHLOW: And matter of right height in
9 R-5-B.

10 CHAIRPERSON GRIFFIS: What is your
11 assessment on the massing of what is being proposed,
12 because when I look at the site plan --

13 MS. KAHLOW: It's too tall on --

14 CHAIRPERSON GRIFFIS: -- and you look at
15 the corner and the alley and the courtyard now, which
16 is actually being put in, it sets back substantially
17 from 25th Street.

18 MS. KAHLOW: No, not for the people who
19 are living there. They have windows along that wall,
20 and if you were to look at the -- That's why I'm
21 citing all the pictures. If you will look at the 25th
22 townhouses, they have windows down the middle of their
23 wall.

24 CHAIRPERSON GRIFFIS: On the south side?

25 MS. KAHLOW: On the south side of this.

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1 CHAIRPERSON GRIFFIS: The property line
2 wall, they have fenestration.

3 MS. KAHLOW: Yes. They have windows, and
4 they knew that the ones on the top would be covered,
5 but the ones on the south side were --

6 CHAIRPERSON GRIFFIS: What would happen if
7 that was developed matter of right, as you are
8 indicating, and a townhouse was put in there? Would
9 they not cover all those windows then?

10 MS. KAHLOW: Not in the court niche. And
11 what we were talking about is there's this cutout and
12 a little niche.

13 CHAIRPERSON GRIFFIS: What court niche?

14 MS. KAHLOW: In their townhouse, in the
15 25th townhouse, if you have diagrams, they have a
16 little niche.

17 CHAIRPERSON GRIFFIS: And that's where
18 this development has said that they are going to cut
19 their corner?

20 MS. KAHLOW: Uh-huh, but not enough,
21 because the shadows would hit on it.

22 CHAIRPERSON GRIFFIS: What's enough?

23 MS. KAHLOW: Enough so that there will be
24 enough air and light to be able to have a child use it
25 for their room. That was what the issue was before.

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1 So you have the whole wall on 25th, a window at the
2 top everybody knew was going to be knocked out. The
3 windows down their court niche, they needed to have
4 more air and light to be able to make sure the
5 shadows, and from the 70 foot building they had to cut
6 it out and no windows, so people couldn't be looking
7 into their bedrooms, but also at 90 feet there would
8 be even more shadows.

9 Just so you know, Mr. Etherly -- I mean
10 Mr. Griffis, we did these shadow studies for other
11 things. The Zoning Commission has us do that on a
12 regular basis, shadow studies.

13 CHAIRPERSON GRIFFIS: They are rigorous
14 over there.

15 MS. KAHLOW: No, but I'm saying, because
16 you have to deal with the existing homeowners. So for
17 all these PUDs we have had to do the shadow studies.
18 This is not an unusual thing.

19 CHAIRPERSON GRIFFIS: I understand that.
20 I understand that. I think, if we are persuaded that
21 it is needed in applications, we would require that as
22 additional submissions. I'm not having a difficult
23 time --

24 MS. KAHLOW: Well, read the letters from
25 Kinhead and Lewison, because they are the ones that --

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1 CHAIRPERSON GRIFFIS: I'm having a
2 difficult time understanding what the impact would be.

3 MS. KAHLLOW: No air and light.

4 CHAIRPERSON GRIFFIS: I have an existing
5 building on the corner, even without the development
6 proposed, that is on the south side. That sets your
7 light. As you go -- as the light would travel, it
8 would travel west. Correct? Toward the back where
9 you are indicating the impact area, and now you are in
10 not the R-5- zone, but you are in the commercial zone
11 on Pennsylvania Avenue.

12 MS. KAHLLOW: No. No, no. I'm not
13 describing it right. We are talking about the R-5-B
14 only.

15 CHAIRPERSON GRIFFIS: You don't need to
16 describe it. That's the sun travel. The sun is going
17 to travel across the buildings that are going to front
18 Pennsylvania Avenue on the south side.

19 MS. KAHLLOW: But there is also sun in the
20 other direction.

21 CHAIRPERSON GRIFFIS: What other
22 direction?

23 MS. KAHLLOW: From the west.

24 CHAIRPERSON GRIFFIS: Yes. So keep going
25 west. Keep going west, and take it all the way down

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1 to sunset where you have that fabulous brick
2 commercial building with ribbon windows, which is who
3 knows how high, probably 90 feet. That would obstruct
4 the light from that end. That's the furthest on the
5 corner.

6 MS. KAHLOW: Well, I think the only way we
7 will all know is if we see a shadow study what this
8 newest higher building, and higher massing would have
9 greater massing and greater lot occupancy, if we got
10 to see it. And if you would like, I will hire
11 someone. I just thought that you would asked the
12 developer to hire someone, but I don't mind hiring
13 someone, coming back and presenting it. I don't mind
14 doing that. I don't think it should be my obligation,
15 but I will do it.

16 VICE-CHAIRMAN MILLER: Ms. Kahlow, let me
17 ask you a basic question. Something very significant
18 has happened since the previous Board orders. There
19 have now been HPRB orders which have dictated changes
20 in the building to a very large extent, requiring the
21 applicant seeking variances from this Board.

22 So there is a big difference now. My
23 question is: Number one, could the applicant make the
24 changes that you want and still be in accordance with
25 HPRB orders?

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1 MS. KAHLLOW: Yes. What happened the last
2 round is the HPRB made a decision, and then the BZA
3 made a different decision, and then they had to
4 finally -- Actually, it was a whole 'nother floor of
5 the HPRB said it was okay. BZA said no. Then they
6 had to go back to the HPRB. This is not unusual,
7 because it's quite a chicken and egg. Which comes
8 first; what comes second? But the last time they had
9 to go back to the HPRB after the BZA made some
10 changes.

11 VICE-CHAIRPERSON MILLER: So it sounds
12 like you are saying, though, if they made the changes
13 that you are requesting, they would have to go back to
14 HPRB.

15 MS. KAHLLOW: They would if they made any
16 changes. Any changes in the outline of the thing,
17 height, mass, they would have to. And in this case,
18 it's not touching the landmark. It is not touching
19 the streetscape on 25th, which is the most precious.
20 It would be touching the back side of the building, as
21 it were, and that's where there are real people. They
22 don't care if it's cut back there. It would be fine
23 with them. What do they care? It's not affecting the
24 way their landmark was. That's why the last time, as
25 I say, we had to go back to the HPRB.

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1 CHAIRPERSON GRIFFIS: Anything else? Yes?

2 COMMISSIONER HOOD: I'm just -- Maybe I'm
3 missing the point. Ms. Kahlow, I'm just -- Maybe I'm
4 just a little confused. How is everything that
5 happened from what the BZA said previously -- How does
6 it pertain to what's going on here in this case?

7 MS. KAHLOW: It's the same degree of
8 standards, that you have to have air and light, for
9 example, on two existing owners. That's what the BZA
10 -- the regulations require, and that's the BZA's test.
11 You can't have an adverse effect either from lot
12 occupancy, court width, rear yard or any of those
13 things, on existing owners.

14 What we reached before was a compromise.
15 It wasn't perfect, but it was something that both
16 things could exist. I'm not contesting what happens
17 on Pennsylvania Avenue. I'm contesting real people
18 and their quality of life.

19 COMMISSIONER HOOD: Is there -- and this
20 may be getting a little off. I'm trying to understand
21 exactly what you are saying. What you reached before
22 was a compromise, but -- So your plan, did it meet the
23 test?

24 MS. KAHLOW: It met the test, yes. That's
25 why I would like to have that again.

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1 COMMISSIONER HOOD: Met the test?

2 MS. KAHLOW: And yes, I'd like that again.

3 COMMISSIONER HOOD: That was a totally
4 different application.

5 MS. KAHLOW: It doesn't really matter.
6 It's the same site, the same people who live next-
7 door, the same people that would have -- Now it would
8 be taller, more shadows than before. But it's the
9 same test before. You would still have to meet the
10 air and light test.

11 COMMISSIONER HOOD; I will tell you, Ms.
12 Kahlow, to me, you're bringing in all that happened
13 before and, unfortunately -- I don't know if anybody
14 else up here sat on what happened before, but I
15 didn't. So I'm basically -- The decision I render or
16 make will be on what I have here in front of me, and
17 you're bringing in all this other stuff that happened
18 prior.

19 My other point is that it looks as though
20 other people were in opposition early on, too. I
21 guess the ANC and others, and it looks like people
22 have worked --

23 MS. KAHLOW: The ANC actually was not in
24 opposition. They took a pass the last time. They had
25 a split Board. They were not in opposition; they were

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1 not in favor. That's why I asked to see this one
2 letter.

3 COMMISSIONER HOOD: This is the last time?

4 MS. KAHLOW: Every time. The ANC took a
5 pass. This time, they said yes, because they are just
6 frustrated. All of us are frustrated, but those of us
7 that are more intimately involved with the site
8 realize that there could be improvements. We do want
9 development. We just want improvements.

10 COMMISSIONER HOOD; You think a shadow
11 study would help?

12 MS. KAHLOW: Yes. I think, if you can
13 carve out some stuff for the 25th Street and come up
14 with some of their solutions -- I use the trash as an
15 example. There's got to be a way to help the people.
16 Their parking, their trash, everything that we built
17 in before, is lost.

18 They can't get their parking space either.
19 How are they going to get the parking space when they
20 have no -- Their parking is in the back, and they have
21 no north-south -- no east-west access. They have to
22 go all the way around the entire block to get to their
23 parking space or their trash. It's not reasonable.
24 That's why we had those provisions in there before.

25 COMMISSIONER HOOD: Mr. Chairman, I don't

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1 know -- I don't think we would be asking too much if
2 we asked the applicant to give us a shadow study. I
3 know on the Zoning Commission we always -- As she
4 stated -- and I'm one actually who was very much in
5 favor of a shadow study. Thank you. Thank you, Ms.
6 Kahlow.

7 MS. KAHLOW: Thank you.

8 CHAIRPERSON GRIFFIS: Anything else?

9 MS. KAHLOW: I don't have anything else,
10 and I appreciate your letting me --

11 CHAIRPERSON GRIFFIS: No, we appreciate
12 you taking the time to be here. Let's go to -- Well,
13 first before we go to cross -- don't go too far, Ms.
14 Kahlow. Have a seat. Did you put your PowerPoint
15 away? Okay. I'm going to ask, Mr. Collins, if I could
16 have your architect up here again. Also, grab S-1,
17 the cover sheet, and it's a site plan. It's an area
18 map, actually.

19 Ms. Kahlow, what I'm going to have you do
20 is you are going to sit close. I'm going to try and
21 walk you through this. Let's see if I have the
22 understanding.

23 Go to S-1. It is going to be in the first
24 black and white. It's going to be Exhibit F, second
25 sheet, Exhibit F. Board members can do the same.

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1 MS. KAHLOW: Mr. Griffis, the hatching is
2 where the current residential townhouses are. Does
3 that help? This is the current townhouses.

4 CHAIRPERSON GRIFFIS: I'm going to take a
5 site plan on the left side on S-1.

6 MS. KAHLOW: Oh, I'm sorry.

7 CHAIRPERSON GRIFFIS: We are anticipating
8 we are going to have some sort of diagram put into the
9 record for our review, but I want to walk through so
10 I'm understanding the site location on this.

11 The area map -- okay? If we look at the
12 area map, and east is on the right side. Is that
13 correct?

14 MR. GIORDANO: Correct.

15 CHAIRPERSON GRIFFIS: West is on the left
16 side. South would be on the lower side.

17 MR. GIORDANO: Correct.

18 CHAIRPERSON GRIFFIS: The sun is going to
19 start in the east, is it not?

20 MR. GIORDANO: Correct.

21 CHAIRPERSON GRIFFIS: It curves toward the
22 south and ends up in the west. Is that correct?

23 MR. GIORDANO: Correct.

24 CHAIRPERSON GRIFFIS: Its shadows are
25 going to be cast across the corner. Is that right?

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1 MR. GIORDANO: Correct.

2 CHAIRPERSON GRIFFIS: And what's the zone
3 of that corner?

4 MR. GIORDANO: C-2-C.

5 MS. KAHLOW: R-5-B.

6 CHAIRPERSON GRIFFIS: No, the R-5-B is up
7 25th Street.

8 MS. KAHLOW: I'm sorry. I'm on the wrong
9 corner. Show me where he's at there.

10 MR. GIORDANO: The dark colored area here.

11 CHAIRPERSON GRIFFIS: So if you massed out
12 all --

13 MS. KAHLOW: The top part is R-5-B.

14 CHAIRPERSON GRIFFIS: No. A small portion
15 of that north side on 25th is the R-5. But if you
16 massed out -- Forget moving your boundary line. If
17 you massed out that corner, matter of right, 90 feet
18 for that zone district -- Is that correct?

19 MS. KAHLOW: It's not matter of right.
20 Fifty feet.

21 MR. GIORDANO: Correct.

22 CHAIRPERSON GRIFFIS: I'm still in the
23 commercial zone. I'm not in the R-5-B.

24 MR. GIORDANO: It's 20 feet off the
25 townhouses.

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1 MS. KAHLOW: Oh, in here? Okay.

2 CHAIRPERSON GRIFFIS: You could carry it
3 all the way down Pennsylvania Avenue. Is that right?

4 MR. GIORDANO: Correct.

5 CHAIRPERSON GRIFFIS: Would that create
6 the shadow on those townhouses?

7 MR. GIORDANO: No.

8 CHAIRPERSON GRIFFIS: Yes, it would. it
9 would impact the sun, would it not? It's a 90 foot
10 building on Pennsylvania Avenue.

11 MR. GIORDANO: Oh, you mean on -- Noonday,
12 yes. I thought you were saying right in the morning.

13 CHAIRPERSON GRIFFIS: That's a matter of
14 right height of 90 feet.

15 MR. GIORDANO: Correct.

16 CHAIRPERSON GRIFFIS: On Pennsylvania
17 Avenue. It takes the corner up to 25th Street. Is
18 that correct?

19 MR. GIORDANO: Correct.

20 CHAIRPERSON GRIFFIS: I don't see how
21 talking about even the area of 20 feet of the R-5-B
22 impacts the light on those townhouses, based on the
23 matter of right development on that corner.

24 MS. KAHLOW: Because the air comes from
25 all sides, and that 20 feet is abutting the R-5-B.

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1 And if you were to look at the windows, the windows
2 are right at that intersection where you can see the
3 white versus the black. That's where the windows are,
4 and they are at an angle. You have to look at it.

5 I am not -- I just do it in common sense.
6 I walked by there yesterday, and it's just common
7 sense.

8 MR. GIORDANO: Whether 90 feet is at the
9 end of the C-2-C or at the party wall is not really
10 going to affect those properties. It's going to make
11 a foot difference in shadow lines at the maximum sun
12 of the year.

13 MS. KAHLOW: It's 20 feet.

14 COMMISSIONER HOOD; Mr. Chairman, I think
15 I'm sold on your point. I will withdraw asking for a
16 shadow study. I agree with your point.

17 CHAIRPERSON GRIFFIS: Okay. Let's
18 continue then. Is there a question? Okay, Mr.
19 Collins, you have cross?

20 CROSS-EXAMINATION

21 BY MR. COLLINS:

22 Q Ms. Kahlow, in the second paragraph of
23 your written testimony, on the first line you said to
24 protect the character of this special gateway,
25 especially the scale, the community filed various law

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1 suits. Do you know who the named plaintiffs were in
2 those various law suits?

3 A Because of my job situation, I couldn't be
4 the named plaintiff. So we agreed that it would be
5 Foggy Bottom Association on whose Board Mr. Hood
6 acknowledged I sat, and Richard Price, because we
7 needed an individual as well as an organization. But
8 it was only because of my job that I wasn't allowed
9 to.

10 Q That wasn't my question. I just asked you
11 a simple question. Who were the named parties?

12 A I tried to answer.

13 Q Were you a party to that law suit?

14 A Yes.

15 Q You were a party to the law suit?

16 CHAIRPERSON GRIFFIS: Is there relevancy
17 here? Why do we need to know this? Do we need to
18 know who was --

19 MR. COLLINS: There's certain false
20 statements out there with no back-up. I'd like to
21 just explore them. The point of that was that in this
22 case Richard Price sits on the ANC, which has
23 unanimously supported this application, and the Foggy
24 Bottom Association has a letter in the record
25 supporting this application.

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1 CHAIRPERSON GRIFFIS: Okay.

2 MS. KAHLOW: However, I was the one who
3 led the mediation, and I --

4 CHAIRPERSON GRIFFIS: I don't want too
5 far into this, maybe statements in closing.

6 MS. KAHLOW: And I had the deposition and
7 everything else.

8 BY MR. COLLINS:

9 Q Your Item Number 1, the settlement
10 agreement we have heard so much about today. Can you
11 please on this -- The settlement agreement is dated
12 December (blank) 1992. Let's take that one. It is 12
13 pages long and ends with the signature pages.

14 In those first 12 pages, can you please
15 point us to the provision that says that this
16 settlement agreement flows to successors and assigns?

17 A As I stated in my footnote 4, it wasn't
18 obviously in there as explicitly as the understanding
19 that was reached with the city. So we had the
20 additional clarity, and it was on page 5 in the May
21 19, 1996, provision 13.

22 Q Is the party -- Is the city a party to
23 this settlement agreement at pages 1 through 12?

24 A The city did not co-sign this agreement.
25 There was a separate agreement with the city.

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1 Q I see. In this agreement, pages 1 through
2 12, on the bottom of page 10 does it say -- or does it
3 not say that each party has been represented by
4 counsel?

5 A Yes, that's why I presented a letter from
6 our counsel, Dynan.

7 Q And so your counsel said it was always the
8 intention that this was to flow to the parties, and
9 that you were represented by counsel in negotiation of
10 this settlement agreement, but there is no place in
11 this settlement agreement that you can point to that
12 says that it flows to successors and assigns. Is that
13 correct?

14 A I don't have that specific language, but
15 that was clearly the understanding, and you were the
16 drafter. But Don Dynan was one that negotiated with
17 the city, and he's the one that wrote the letter, e-
18 mailed to me saying, yes, that was everyone's
19 understanding.

20 CHAIRPERSON GRIFFIS: This is what I hoped
21 we wouldn't get too far into.

22 MS. KAHLOW: I mean, I'm not sure what we
23 are getting here. Yes.

24 CHAIRPERSON GRIFFIS: The Board keeps
25 asking me what does this have to do with what we are

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1 doing, and what does this --

2 MS. KAHLOW: I was just giving you the
3 context. That's all.

4 MR. COLLINS: And we have heard a lot of
5 discussion. I just want to make sure the Board does
6 not take the settlement agreement into consideration
7 or have the understanding that this might have any
8 applicability to the current owner of the property.
9 That's my purpose for this.

10 MS. KAHLOW: The prior owner has written
11 me an e-mail saying it does, and that he understood
12 that, and that when he was selling it, it does. I can
13 put that in the record. I'm more than willing to, if
14 you need to have that. I mean, I have all kinds of e-
15 mails from every prior owner, including the most
16 recent prior owner.

17 BY MR. COLLINS:

18 Q And you have signed settlement agreements
19 by those previous owners?

20 A All the settlement agreements are in here.

21 Q In where?

22 A What I submitted.

23 Q What you submitted. So you have a
24 settlement agreement between Chatham Lake Associates.

25 A And it says "and assigns." Look at Number

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1 13.

2 Q Okay, 13.

3 A Provision number 13 in the second one of
4 these deals.

5 Q Of pages 1 through 12? Where is Number
6 13?

7 A It's in the next one, as I just said,
8 because it wasn't --

9 Q It's not in pages 1 through 12?

10 A It's in the next one. If I can read
11 number 13: The developer agrees that if the developer
12 transfers, assigns or conveys in whole or in part any
13 of its right, title or interest in or related to its
14 agreement or intent to purchase the property or if a
15 developer transfers, assigns or conveys in whole or in
16 part any of the right, title or interest to or related
17 to development of the property, any such transfer,
18 assignment or conveyance shall include a simultaneous
19 delegation by the developer and assumption by the
20 transferee, assignee, collectively the assignee, or
21 the developer's obligations, duties under which and
22 with respect to this memorandum, such that the
23 assignee shall become liable for the obligations and
24 duties of the developer hereunder. And it goes on and
25 on.

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1 As I say, the person who sold this to the
2 current Intrepid said this applied. I have an e-mail
3 from them.

4 BOARD MEMBER ETHERLY: Mr. Chair, if I
5 could, let me step in here. I am going to agree with
6 Mr. Hood's earlier question. I've heard, I think,
7 enough on both sides with respect to the settlement
8 agreement that I think -- I think, on one hand, we've
9 had some good conversation which talks about a little
10 bit of the spirit around some of the subject matter
11 that the settlement agreement was supposed to get it.
12 But I also think some very strong and compelling
13 questions have been raised about whether or not it
14 actually applies to this current owner,
15 developer/applicant.

16 For me, that's enough. I think it is a
17 valid question of fact as to whether it applies here,
18 but quite honestly, even if it does or if it doesn't,
19 I don't necessarily see it as being dispositive of the
20 zoning questions here.

21 All of that is to say I am willing to just
22 simply split the baby, say that I've heard enough
23 about it, but not necessarily have us quibble and
24 fight over it for the next 30 minutes. But that's not
25 -- Just so everyone is clear, I'm not suggesting that

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1 either one of you have won your argument on this
2 settlement agreement --

3 MS. KAHLOW: Thank you.

4 BOARD MEMBER ETHERLY: -- but I just think
5 it is not ground that's going to be useful for us, if
6 we till it much further.

7 CHAIRPERSON GRIFFIS: I absolutely agree.

8 MR. COLLINS; Thank you.

9 BY MR. COLLINS:

10 Q Ms. Kahlow, on page 2 of your testimony
11 you talk about -- under the heading of "Problems with
12 Current Proposal," the first problem that you cite is
13 that it will abut -- the project will abut the last
14 intact historic townhouse row in the West End.

15 I believe in your testimony you mention
16 that there was an application filed to create a
17 historic district, and that there was no hearing on
18 that. Is that what your testimony was?

19 A If you look at number 2, footnote 2, it
20 explains that we filed this, and after the illegal
21 demolition it couldn't be -- it couldn't happen.

22 Q It couldn't happen or there was no
23 hearing?

24 A There was a hearing on the subdivision.
25 I don't remember a specific hearing on that.

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1 Q I'll save the transcript of that hearing
2 for the rebuttal.

3 A It's 15 years ago, and I could be wrong.
4 But I don't remember it.

5 Q All right. It might be Attachment 4 of
6 your testimony -- A perhaps it is, the letter from Mr.
7 Niemic. Is that --

8 A Yes, there are three letters, one from
9 Niemic, one from Kinkead and one from Lewison.

10 Q And Mr. Niemic lists his address as 1526
11 16th Street, N.W.?

12 A Yes. He owns property in Foggy Bottom but
13 no longer at the West Bridge. But this is where his
14 permanent home is.

15 Q And his property is located where?

16 A In the Foggy Bottom Mews.

17 Q Is that within 200 feet of the site?

18 A It is not, but he was one of the co-
19 signers. That's why I asked him, since it's only he,
20 Richard Price, and I that are still active in land
21 use. He did submit three letters to the HPRB, because
22 they still care.

23 Q And did you also participate in writing
24 the HPRB as well?

25 A Yes, I submitted three letters, as

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1 indicated in footnote 1.

2 Q And did the HPRB respond to your concerns
3 in their decision?

4 A Very responsive except for the final
5 decision. We worked with them closely.

6 Q I see. Did you attend the ANC meeting
7 where the BZA application was discussed?

8 A I did, and I quote about it on page 1 when
9 the answer was that it was not disclosed, and it was
10 disclosed. David Lehrman, the Commissioner, asked
11 specifically -- I spoke, as you know, because you were
12 there, talking about the fact that this was
13 continuing, and it was disclosed, and you said it
14 wasn't disclosed. I have now talked to all the other
15 bidders, I think, but one, and they said, of course,
16 it was disclosed.

17 Q How many people besides yourself spoke in
18 opposition to this application at that ANC meeting?

19 A Only two people spoke besides the
20 Commissioners. One is a real estate developer, and
21 one was myself. The developer said, yes. I said no.
22 Only two people spoke. He lives at 2200 Pennsylvania
23 Avenue.

24 MR. COLLINS: Just a second, please. I
25 think that answered my questions. Thank you.

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1 CHAIRPERSON GRIFFIS: That's it? Okay.
2 Thank you, Ms. Kahlow. Any follow-up from the Board,
3 clarification questions? Very well. Let's move
4 ahead.

5 Is there anyone else here present that
6 would like to provide testimony at this time, either
7 in support or in opposition to the application? Oh,
8 yes, absolutely. Who is next? Oh, I'm sorry. No one
9 else to provide testimony on 17322? Very well then.

10 Mr. Collins, do you want to --

11 MR. COLLINS: All right. Just a couple of
12 questions on rebuttal testimony.

13 Mr. Giordano, on the issue of the windows,
14 the light and air issue of the 25th Street units to
15 the south, are there any windows on the south facing
16 wall, that party wall, of the immediately abutting
17 unit to the north?

18 MR. GIORDANO: No, that's a party wall.

19 MR. COLLINS: There is a court niche in
20 that building?

21 MR. GIORDANO: There is a court niche that
22 can be seen on S-1 at the northern side of our
23 property. The cross-hatching has a little triangular
24 area cut out of it.

25 MR. COLLINS: And that's the shape of the

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1 court niche in that building, and that does have
2 windows in it?

3 MR. GIORDANO: That does have a window in
4 it.

5 MR. COLLINS: A window is on the
6 north/south wall?

7 MR. GIORDANO: Yes, facing west.

8 MR. COLLINS: Facing west. And if you
9 turn then to the, I guess, our second floorplan, A-2.

10 MR. GIORDANO: All the way up the building
11 we have cut back the corner of our property with a 6
12 foot by 6 foot 45 degree to allow some limited light
13 and air, more than -- It matches the same parallel as
14 their existing court niche will.

15 MR. COLLINS: And is that the same cutout
16 that was requested by the Board in the last case, to
17 the extent that the last case has any relevance to
18 this case?

19 MR. GIORDANO: Yes, it is.

20 MR. COLLINS: Okay.

21 MR. GIORDANO: By way of the building
22 code, that window really would not be allowed.

23 MR. COLLINS: Thank you. All right. I
24 just have a few points in rebuttal, then a closing
25 statement, if I may.

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1 The point about the historic townhouses
2 along 25th Street and Ms. Kahlow's recollection of
3 what occurred in that case -- if it is necessary to do
4 so, I am prepared to submit to the Board the HPRB
5 staff report and recommendation recommending denial of
6 the Historic District creation for the 25th Street
7 Historic District or what was called the Square 14
8 Historic District.

9 CHAIRPERSON GRIFFIS: What year was that?

10 MR. COLLINS: 1991.

11 CHAIRPERSON GRIFFIS: Anyone find any
12 relevance to adding that?

13 MR. COLLINS: Okay.

14 CHAIRPERSON GRIFFIS: I don't think we
15 need it.

16 MR. COLLINS: All right. Just a few other
17 points then in rebuttal of various issues that were
18 raised in the testimony of the opposition.

19 The notice -- There was a question raised
20 about notice, that the owners of the Westbridge did
21 not get notice of the application. The Board's rules
22 do provide that, when there is a condominium of more
23 than 25 unit owners, that the notice goes to the
24 condominium board, and that is what happened in this
25 case.

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1 Mr. Chair, to the extent that you wish to
2 hear about the court cases back in 1991 and the end
3 result of those court cases, the dismissal, I have the
4 dismissal orders. The court cases that were
5 referenced in the settlement agreement were all
6 dismissed with prejudice. There is no -- and I can
7 submit those if you like. I don't need to, if you
8 don't want.

9 CHAIRPERSON GRIFFIS: What do you have for
10 submission? The court rulings?

11 MR. COLLINS: The court orders indicating
12 that the cases were dismissed.

13 CHAIRPERSON GRIFFIS: And they are
14 attendant to the agreement that was submitted?

15 MR. COLLINS: They are not attendant to
16 the agreement, and because the court did not adopt the
17 settlement agreements as part of the court order, the
18 court simply --

19 CHAIRPERSON GRIFFIS: And what was the
20 court dismissing?

21 MR. COLLINS: The law suits.

22 CHAIRPERSON GRIFFIS: Which was the basis
23 for the agreement?

24 MR. COLLINS: The parties reached
25 agreement, the private settlement between the parties

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1 -- between the private parties, and the court -- As a
2 result, the law suits were dismissed, just like 90
3 percent of all civil litigation that happens in the
4 country.

5 CHAIRPERSON GRIFFIS: Okay.

6 MR. COLLINS: That's my point.

7 CHAIRPERSON GRIFFIS: I didn't do so well
8 in law school. Maybe I didn't even go. Okay. Do we
9 see any relevancy in putting that into the record?

10 VICE-CHAIRPERSON MILLER: I don't think
11 so. I would think they are just saying that they are
12 not relevant. If they are not relevant --

13 MR. COLLINS: They are really not -- They
14 were raised. There was some discussion about
15 mediation. I didn't want the Board to have the
16 impression that there was some court ordered mandated
17 solution, design solution, in 1991, when in fact there
18 was not.

19 CHAIRPERSON GRIFFIS: Okay. I think we
20 are pretty clear on that. I mean, I think we have
21 aired enough today on this.

22 MR. COLLINS: In closing, I just would
23 like to say that we have submitted substantial
24 evidence and testimony, we believe, including expert
25 testimony that this application meets the requirements

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1 for both special exception relief under Section 2514.2
2 and Section 411.11, plus the variances from the lot
3 occupancy, residential recreation space, rear yard,
4 and court width. And I was asked to remind you, Mr.
5 Chair, about the FAR issue and see what was the
6 Board's pleasure.

7 We are prepared to put that portion of the
8 case on, if you would like, or rest on the record, if
9 you would like, whatever your pleasure.

10 CHAIRPERSON GRIFFIS: Good. At this
11 point, I think we can have you rest on the record. We
12 will take up first in our deliberation 2514.2, that
13 special exception that would move the zone boundary
14 line. If the outcome of that was not successful,
15 then, of course, we would allow you to present
16 testimony and presentation on the FAR.

17 MR. COLLINS: Thank you. Then as I said
18 in the beginning, there's a lot of relief requested
19 here for variances and two special exceptions. It
20 sounds like a lot, but it's really all related to the
21 same thing, where you've got a mass, you've got a
22 zoning density and a zoning height, and through
23 Historic Preservation limitations and rock
24 limitations, you are pressing it here and pushing it
25 there and pulling it in here, and it's like Jello, and

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1 it pops up other places.

2 Where it popped up is places where it
3 required us to get the variances and special
4 exceptions that we requested today.

5 We are retaining a five-story facade that
6 sits on the site. We have no ability to move it on
7 the site. It sits angular to the property lines on
8 the site. The site is irregular shaped. It's split
9 zoned. Ninety-two percent of the site, over 92
10 percent, is in the C-2-C zone with a small portion in
11 the R-5-B zone.

12 We have to keep off the footprint of the
13 Luzon building. We restored the tower at the corner.
14 The courtyard in the rear really has no impact on
15 anyone. It is at a point that the -- It has no impact
16 on anyone. The point where it doesn't meet the
17 requirements is at the seventh floor level, well above
18 the height of the adjacent buildings to the west and
19 to the north. It really has only an impact on us and,
20 actually, no impact on us at all, because there's
21 windows. We have plenty of windows around the
22 property.

23 The result of all these requirements for
24 Historic Preservation is to push the addition away
25 from the corner on 25th and Pennsylvania and off the

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1 footprint of the Luzon building, and step the
2 additions back from the street.

3 The building is substantially seven
4 stories in height with a partial eighth floor, with no
5 roof structure on top of the eighth floor. So the
6 maximum height of the building is 90 feet, whereas in
7 the C-2-C zone it could be 90 feet as a matter of
8 right, and plus an 18 1/2 foot penthouse on top of
9 that for 108 1/2 feet in height.

10 The penthouse is below the height of the
11 eighth floor. The building does appear as three
12 structures rather than one, as in the earlier approved
13 design.

14 In closing, we would respectfully request
15 that you grant the application. Thank you.

16 CHAIRPERSON GRIFFIS: Excellent. Thank
17 you very much. I am going to ask you a couple of
18 clarifying points on the record here so that we might
19 be able to proceed today.

20 First of all, the issue has been brought
21 up with this court niche and the adjacent property.
22 You are saying that it shows, in terms of -- On your
23 documents it shows in that area that is not hatched.
24 Right? So it's triangular in shape. Is that correct?

25 MR. GIORDANO: Correct.

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1 CHAIRPERSON GRIFFIS: And you have cut the
2 angle in order to create --

3 MR. GIORDANO: A parallelogram.

4 CHAIRPERSON GRIFFIS: Yes, a
5 parallelogram. And it is my understanding of the
6 testimony we have just heard that that is analogous or
7 exactly what was actually proscribed or brought forth
8 from previous developments?

9 MR. GIORDANO: Correct. That is exactly
10 what was proscribed.

11 CHAIRPERSON GRIFFIS: Okay. So that
12 hasn't changed even from the last development
13 patterns.

14 The building next to this, the most
15 immediate, there's been concern about access out the
16 rear. I don't know how to phrase this question, but
17 -- Well, does that -- In your knowledge of the
18 adjacent property, does that have alley access?

19 MR. GIORDANO: I thought it did, but I --
20 Obviously, the one on -- The first one on the corner
21 has alley access along a substantial part of the back,
22 but the second one in -- I thought it did, but --

23 MR. COLLINS: There is an exhibit here,
24 I'm sure, that shows that.

25 CHAIRPERSON GRIFFIS: Exhibit 10 is what

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1 I'm looking at, which is actually the arc of 200 feet,
2 Square 14, Lot 73's perimeter, which shows -- The Base
3 Atlas is what this is, and it is from the Office of
4 Tax and Revenue. It shows the lot. I'm not sure you
5 mentioned a corner lot. You have the corner lot.

6 MR. COLLINS: We are looking at Exhibit
7 A in our submission, in our prehearing submission.

8 CHAIRPERSON GRIFFIS: Good. Actually,
9 it's the same.

10 MR. GIORDANO: I was speaking about 72
11 then.

12 CHAIRPERSON GRIFFIS: Right. Okay, so Lot
13 72.

14 MR. GIORDANO: That's what I was calling
15 corner. It's got plenty of access.

16 CHAIRPERSON GRIFFIS: Is that a
17 condominium building?

18 MR. COLLINS: Yes, it is.

19 MR. GIORDANO: Townhouse structure, but I
20 believe it's been condominium.

21 CHAIRPERSON GRIFFIS: Okay, right.

22 MR. COLLINS: The property rolls would
23 show it as a condominium.

24 CHAIRPERSON GRIFFIS: But am I not seeing
25 correctly? Doesn't one, two, three sides about the

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1 alley?

2 MR. GIORDANO: Correct.

3 MR. COLLINS: All the units along the
4 alley -- All the units along 25th Street abut the
5 alley.

6 CHAIRPERSON GRIFFIS: So they do have
7 alley access. All right. Ms. Kahlow, I am going to
8 ask you very briefly, what is the issue with -- Is
9 there a unit in the building that was cut off from
10 rear access?

11 MS. KAHLOW: Yes. Half don't go back all
12 the way through. Half face the back, and half face
13 the front.

14 CHAIRPERSON GRIFFIS: Isn't that a concern
15 of the conversion of what was done on that property?

16 MS. KAHLOW: That's an existing property,
17 but those people could, because there was a de facto
18 alley there, walk back to their cars and walk back to
19 their trash. Now they have no way to get there.

20 CHAIRPERSON GRIFFIS: Let me just get some
21 clarification on two points. First of all, what is a
22 de facto alley? And two, where was it?

23 MS. KAHLOW: The de facto alley was
24 exactly to the south of the property.

25 CHAIRPERSON GRIFFIS: Okay. So right

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1 along the property line.

2 MS. KAHLOW: Along the property line, and
3 we --

4 CHAIRPERSON GRIFFIS: >From 25th back into
5 the alley.

6 MS. KAHLOW: And we did research with an
7 attorney and, because it had been 50 year, that alley
8 wasn't considered an alley. The answer that we found
9 that it was not, and we presented that, that it was a
10 de facto alley.

11 CHAIRPERSON GRIFFIS: So it was a place
12 that people used?

13 MS. KAHLOW: It was place that everybody
14 used, and they could go their trash, go to their cars.
15 And because of that, we had to come up with a
16 solution, how are they going to access it.

17 So if you look at this, those people in
18 two townhouses, both 72 and the one next to it, have
19 to walk all the way around to the Westbridge, which is
20 the alley, and all the way around the other way to get
21 to their cars and their thing -- half and half.

22 MR. MASON: Your Honor, may I ask one.

23 CHAIRPERSON GRIFFIS: If you call me that,
24 certainly, you can.

25 MR. MASON: Pardon me, Mr. Chairman. What

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1 she is discussing is actually my property line, which
2 is now fenced and has been fenced for quite sometime.
3 As a matter of fact, we've been required, and have
4 done it at the neighborhood's request, to keep it
5 maintained, take off graffiti, everything. But that's
6 been fenced for a long time. It would be a hazard to
7 be open.

8 CHAIRPERSON GRIFFIS: I don't think it is
9 lost on this Board that what has been accessed was
10 actually crossing over onto another piece of property.

11 MR. MASON: Correct.

12 MS. KAHLLOW: Right.

13 CHAIRPERSON GRIFFIS: Okay. Everybody is
14 clear?

15 VICE-CHAIRPERSON MILLER: No. I just want
16 to make clear that the variance relief doesn't affect
17 that issue, does it?

18 CHAIRPERSON GRIFFIS: What issue?

19 VICE-CHAIRPERSON MILLER: Where the alley
20 used to be that was on your property.

21 MR. MASON: No. There was never an alley
22 there. It was actually right through the middle of
23 the property where, I guess, some townhouses were
24 many, many years ago.

25 VICE-CHAIRPERSON MILLER: Right.

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1 MR. MASON: There was never an alley
2 there.

3 VICE-CHAIRPERSON MILLER: But the relief
4 we are granting isn't for that area.

5 MR. MASON: Correct. We are not even
6 talking about that.

7 MS. KAHLOW: If I can answer one other
8 clarification.

9 VICE-CHAIRPERSON MILLER: I just want to
10 get on the record. I mean, we've had a little off-
11 the-record discussion, but in any event, even without
12 the variance relief, he could have built on that
13 property.

14 MS. KAHLOW: The prior Board required the
15 Fire Department to come to see if they could so access
16 from the front and the back, and that -- Hopefully, I
17 thought you were going to get a Fire Department
18 recommendation here, because that's a serious issue.

19 CHAIRPERSON GRIFFIS: We have done that
20 and required it in the past, especially for alley
21 residents, and it has been unequivocally stated on the
22 record by the Fire Marshall and the city that they
23 don't fight fires from alleys. They fight all fires
24 from streets.

25 So the access to that is from getting a

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1 truck out in front, but they would never -- In fact,
2 it wasn't that long ago that they indicated, even with
3 a 30-foot alley access, they would probably not pull
4 a truck into the rear in fear of it getting caught and
5 stuck.

6 So in my understanding, I don't feel the
7 need to look at -- and putting a building there, first
8 of all, with the subdivision and the alley and
9 structures that are there, that we would need to get
10 the Fire Marshall to tell us whether they could access
11 it for fighting a fire, because you do have direct
12 access on 25th and Pennsylvania Avenue.

13 Okay. What else? Where was I going with
14 all this? Oh, I guess that's it. Is that right? So
15 everyone understands that? Okay, we've got light and
16 air and all that. Okay. Anything else then? Any
17 other Board questions, clarifications that are
18 required? All right.

19 If there is nothing further then, I think
20 it would be appropriate to take this up at this
21 juncture. The record is full, unless Board members
22 feel that there is additional information that we need
23 to process this in terms of the variances that are
24 required and special exceptions.

25 If not, what I would like to do is move

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1 ahead in the form of two motions, deliberate each.

2 The first: I would move approval of the
3 special exception under Section 25142, and that is for
4 moving the boundary line. Of course, the regulations
5 allow 35 feet, and this instant application it is to
6 be moved 20 feet. And I would ask for a second.

7 BOARD MEMBER ETHERLY: Seconded, Mr.
8 Chair.

9 CHAIRPERSON GRIFFIS: Thank you, Mr.
10 Etherly. I think the special exception -- It's an
11 interesting point that was brought up that we didn't
12 -- Well, it should be clear that what we are looking
13 at is a special exception here. It is the overall
14 special exception requirements that need to be met and
15 the specifics under 2514, and those specifics go to
16 whether this would, in fact, affect the present
17 character or the future development of the
18 neighborhood.

19 Really, you have to look at that, I think,
20 in context when you look at the regulations of (c) and
21 (d). (d) then starts talking about giving us the
22 jurisdiction to add design elements, screening,
23 locations, lighting. It is almost a similar special
24 exception to that of roof structures, but we will deal
25 with that in a moment.

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1 So it is going to the aspect of -- You
2 know, obviously, you are moving an entire zone
3 boundary. It exists, but you are moving it into an
4 area that it doesn't exist. How is that going to
5 impact the massing and the character? Clearly, those
6 elements come up to light and air, the design
7 character we have talked about.

8 Starting with design, I think, as I said,
9 I would put great deference on the opinions of the
10 Historic Preservation Review Board and their design
11 review. I don't think it is appropriate for us to
12 send in different directions design review, but rely
13 on their more integral and depth, involvement.

14 In terms of the massing, the light, the
15 air, the other aspects of zoning that we go to, moving
16 it into that area -- First of all, I think the largest
17 impact is the height.

18 There has been a cutback of the building
19 itself, but even without that, I look at what matter
20 of right massing would do on the corner, and how it
21 would impact the adjacent R-5-B, and I don't see any
22 persuasive evidence that it would, in fact, somehow
23 adversely affect the present character or future
24 development of the neighborhood, if the commercial C-
25 2-C moved in that frame.

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1 I will leave it open to others for further
2 deliberation on those aspects.

3 BOARD MEMBER ETHERLY: Nothing further,
4 Mr. Chair. I would just echo your comments with
5 regard to both the issue of character -- I think
6 that's definitely been well articulated, both on the
7 HPRB side of the conversation, but then also with
8 respect to the additional testimony that we received
9 here.

10 I definitely listened with interest to the
11 discussion that was walked through by Ms. Kahlow, and
12 I would agree with you, Mr. Chair, in terms of your
13 analysis regarding the outcome of that. I just simply
14 didn't see, shall we say, a compelling or adverse
15 impact from the standpoint of our discussion about the
16 impact of shadows, albeit interesting that perhaps we
17 have coined a new phrase, matter of right shadow, and
18 that's not to make light of what I think was a very
19 important concern for Ms. Kahlow, but I just did not
20 see a marked difference between what we will see with
21 the project as proposed and the matter of right shadow
22 or light impacts that would happen, were this built as
23 a matter of right -- at a matter of right height.

24 So I am in agreement with your analysis
25 there, Mr. Chair.

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1 CHAIRPERSON GRIFFIS: Thank you. Good.
2 Ms. Miller?

3 VICE-CHAIRPERSON MILLER: I just want to
4 add that Office of Planning certainly found that the
5 applicant had met their requirements in 2514, and I
6 think that we should certainly defer to a large extent
7 to HPRB.

8 In this case, they have considered this
9 very, very carefully, and it is very much in their
10 interest to ensure that the present character of the
11 neighborhood is respected and maintained through
12 design and appearance, and it has had a thorough study
13 by HPRB.

14 So I would agree that they have met that
15 requirement.

16 CHAIRPERSON GRIFFIS: Good. Thank you.
17 Others? Lastly, in terms of just the character, I
18 would imagine that HPRB, whether they did or not -- I
19 know that Board members must have looked at how the
20 entire massing fit. So when you talk about putting it
21 into the character and you are adding on an addition
22 to an historic building and you start looking at the
23 fact that, if it was diminished in elevation or in
24 length, then we could conceivably be looking at a
25 matter of right building that would be very pencil

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1 thin as it was tall and as it abutted the historic
2 building, and then turned the corner. It would be a
3 difference piece.

4 That, to me, even goes against the
5 character of how it would actually hold that larger
6 corner. But, see, that's why they don't let us get
7 into design of these things, because it would take up
8 all too much time. But I'm sure that those kind of
9 aspects were actually important in terms of looking at
10 the overall buildings together and how it fit. So I
11 think that does fit directly into 2514.2 requirements
12 of what we have to look at.

13 BOARD MEMBER ETHERLY: I'll agree, Mr.
14 Chair, and I think that the discussion around the
15 sidewalk perhaps is a solid example of that particular
16 point. I appreciated the dialogue that we had and
17 kind of trying to really get a sense of how the
18 sidewalks are articulated with respect to the existing
19 townhouses as you continue up 25th Street.

20 I think it was satisfactorily laid out
21 that there is going to be some continuity there in
22 terms of the character and the design, and the cues
23 that the applicant and development team are trying to
24 maintain along that sidewalk along 25th Street, I
25 think, stick exactly in concert with 2514. Thank you,

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1 Mr. Chair.

2 CHAIRPERSON GRIFFIS: Good. Thank you.

3 VICE-CHAIRPERSON MILLER: Mr. Chairman, I
4 would like to add one other point. That is that it
5 within our purview, certainly, to address the air and
6 light and privacy that perhaps HPRB did not or may not
7 have. I was impressed by the discussion here that
8 there would not be an impairment of that.

9 CHAIRPERSON GRIFFIS: Okay. If there is
10 nothing further then, we do have a motion before us.
11 It has been seconded. I ask for all those in favor
12 signify by saying Aye. And opposed? Abstaining?
13 Very well, why don't we record the vote on the first
14 motion.

15 ZONING SPECIALIST BAILEY: Mr. Chairman,
16 the Board has voted to approve the application as it
17 concerns the special exception under Section 2514.
18 Mr. Griffis made the motion. Mr. Etherly seconded.
19 Mr. Mann, Ms. Miller and Commissioner Hood are in
20 agreement. The vote is five-zero-zero.

21 CHAIRPERSON GRIFFIS: Good. Thank you,
22 Ms. Bailey.

23 Secondly then, I would like to move
24 approval of application 17322. That is for the
25 variance to the lot occupancy under 772.1. 773.3 is

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1 the residential recreation space, also the rear yard
2 under 774, court width under 776.3, and also --

3 BOARD MEMBER ETHERLY: Seconded. My
4 apologies, Mr. Chair.

5 CHAIRPERSON GRIFFIS: One more. Special
6 exception under 411 which, of course, would be the
7 roof structure setback. Thank you, Mr. Etherly.

8 Ms. Miller, did you have questions?

9 VICE-CHAIRPERSON MILLER: No. I just
10 thought you had an additional zoning relief to add,
11 and you did.

12 CHAIRPERSON GRIFFIS: I see. And just to
13 be absolutely clear, of course, that does not include
14 the 771 relief on FAR as, of course, with the boundary
15 line, zone boundary line taking in the other addition
16 of it would then move to the need for relief of the
17 FAR.

18 Let's go -- Well, I am going to start with
19 the variances and perhaps remember to do the special
20 exception of the roof setback also. But it is very
21 clear, the unique aspects that arise, and I think
22 there are always different levels of impact of those
23 unique aspects. But I am going to lay them out.

24 Of course, the irregular shape is
25 certainly with the commercial but also with the

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1 residential. This Board is well aware of the
2 requirements for laying out residential buildings and
3 how they differ from that of large commercial office
4 buildings. But when you put in a much unique shape
5 site, it obviously also arises numerous elements that
6 we have seen.

7 We have an historic landmark, and that is
8 two fashions of the unique character that actually
9 arise out of the practical difficulty. Two of the
10 unique characters, of course, is the historic landmark
11 itself goes through certain reviews, and there are
12 certain aspects that you cannot use.

13 It raises to the level and the threshold
14 of the existing building also and its impact, my point
15 being that an existing structure there, I would find
16 as unique and creating a practical difficulty with the
17 historic landmark. It is even more pertinent through
18 our variance cases.

19 The rock formation, I think, adds some
20 unique aspects and also some of the practical
21 difficulties in pulling it altogether. So that being
22 said, let's race down all of them.

23 The lot occupancy, I think, is -- Well,
24 it's easy enough understood, the uniqueness: One,
25 the existing building and then the Historic

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1 Preservation review which lends itself out of the
2 landmark status, and the odd shape.

3 There's only certain ways you can lay out
4 residential units in residential buildings.
5 Obviously, you need light. The depth of the building
6 may not help in it, and in this case it seems to be
7 fairly difficult in massing this, not touching or
8 impacting the current historic and existing structure.

9 The requirements of diminished areas of
10 use or development by the Historic Preservation also
11 pushes this to spread out, as I think was aptly said
12 in the testimony. You know, you push one side, and it
13 moves somewhere else.

14 It is fairly clear that even the
15 compliance on the first level, which is allowed to be
16 100 percent, is not utilized based on the residential
17 units that are at that level, and as you travel up,
18 the lot occupancy actually diminishes, which I think
19 goes more toward the last test in terms of not
20 impairing the intent and integrity of the zone plan
21 and map.

22 Clearly, it is staying within the intent
23 of it. It is moving back the massing for the
24 residential.

25 It's kind of interesting, the regulations

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1 having 80 percent lot occupancy. It's almost -- Well,
2 I don't need to get into all that.

3 The residential recreation space: Again,
4 fitting that into a building of which the core
5 location is critical and not of great ability to be
6 anywhere within the building. As you start laying
7 that out, you start laying out the units and the
8 requirements for the building, you realize there isn't
9 a whole lot left over for what is residential
10 recreation space.

11 You know, the two arguments that arose in
12 my reading of this application which didn't come up
13 actually in the written testimony -- I may have
14 forgotten one now, but one of them is that, you know,
15 there is a diminished number of units in this
16 building. This isn't five per square foot, as we were
17 talking about how large these units are and the
18 availability of doing laps around the units, but the
19 point being residential recreation is a percentage of
20 that square footage used for residential.

21 You know, it is a high percentage. If you
22 start looking at the number of units, which are not
23 extreme -- there's 16-- and you start looking at how
24 large those are, you know, I would have to question
25 why would the regulations provide it for a building of

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1 this size. But that's not ours to question, but it
2 does raise the level of, as you mass this all out and
3 as you utilize this, and there's three different
4 buildings essentially being pulled together here, the
5 two new and the historic. Where would you put it?
6 You know, how would you accommodate it with so few
7 units without losing units, without making the project
8 then infeasible.

9 I certainly don't think it would impair
10 the integrity of zone plan or map. On this, as I
11 said, I think that it helps the urban quality and the
12 civic quality as we have residents out on the streets
13 and taking care of the sidewalks and walking to the
14 nearby library and donating great monies for the
15 renovation of that library and walking up to the park
16 and utilizing the public pools.

17 Yes, Mr. Mann, did you want to jump in
18 there?

19 BOARD MEMBER MANN: Yes, just because I
20 still don't think it is out of the question to accept
21 the applicant's argument that, because of the very,
22 very large size of the units, that there are sort of
23 recreational opportunities in those large units that
24 you might not have in units of a smaller size.

25 CHAIRPERSON GRIFFIS: Yes. Excellent

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1 point. And there is outside space also available, in
2 that we did see quite a few balconies, although
3 private, that didn't count, and then counting the
4 sidewalk are on the ground level that would be
5 animated and also be maintained.

6 Okay. Rear yard and court width: It is
7 also pretty clear, as you look at both of those sides
8 as they are moving in terms of the massing. The rear
9 yard of this -- You know, one of the things that
10 didn't come up -- I think it was pretty clear -- is
11 just the placement of the rear yard is somewhat
12 unique. Whether that rises to the total practical
13 difficulty or not, but just look at this.

14 You are having a rear yard on the frontage
15 of Pennsylvania Avenue. It doesn't make a whole lot
16 of sense. It's certainly not something the
17 regulations were written to proscribe. But here we
18 have it, and that's a situation that is correctly
19 placed.

20 Just based on the fact of what the
21 original building is based on the size and shape of
22 the lot, I'm not sure how you would get into this
23 building or access this building if you couldn't fill
24 that in. That seems to rise beyond even the practical
25 difficulty, but certainly is a practical difficulty.

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1 The courtyard itself is placed, I think, to
2 accommodate the adjacent properties and also the
3 current development scenario in terms of setting back
4 and making available substantial light and air.

5 So one could say that, in stepping back to
6 help and assist the adjacent and the residential unit
7 in this building, that it is creating that
8 requirement. But the creation of that requirement
9 comes on the -- I haven't seen persuasive evidence --
10 on the shape, that angle off of Pennsylvania Avenue as
11 it cuts back into the building, the placement of the
12 core, based on the historic building and the massing
13 setback. I would see that it would not impair the
14 intent and integrity of the zone plan or map.

15 The roof structure setback had a special
16 exception, lastly. We have taken it up, because the
17 applicant has brought this special exception to us for
18 the setback under 411.11, and it is fairly clear that
19 it is not easy to accommodate anywhere else.

20 The diminished aspect of it, I think,
21 strengthens the fact that we can approve the special
22 exception, as no undue impact has been shown.

23 Lastly, going to that, you know, it is
24 interesting. They had said not less than three times,
25 you know, this seems like a lot of variances and

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1 special exceptions, and each one of these steps out of
2 the exact same circumstances, and they are all tied.

3 The direct link, I think, or the
4 absolutely clearest is the roof structure, its
5 location, the residential rec and historic
6 preservation. As you reduce the height and
7 availability of what can be done, and you have to set
8 back off of a historic landmark, which is perhaps
9 appropriate, you obviously diminish any availability
10 of getting up or out or using any of the open air. So
11 that obviously precludes one from providing the entire
12 residential recreation space required.

13 I think that's all I need to say on this.
14 Others? Mr. Hood.

15 COMMISSIONER HOOD: Mr. Chairman, not to
16 recap everything you said, I would also say that I
17 think that the Office of Planning -- In dealing with
18 the site constraints that it already has, the Office
19 of Planning did a good job on fleshing out the issues,
20 both with the variances and the special exceptions.
21 So I just wanted to say that for the record.

22 CHAIRPERSON GRIFFIS: Good point. Ms.
23 Miller?

24 VICE-CHAIRPERSON MILLER: I don't know if
25 I will be redundant, but I think you have certainly

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1 covered all of the variances and the special
2 exceptions very specifically. But in general, I also
3 want to pick up on Office of Planning just going
4 through the test for a variance, that in this case
5 that there is a clear uniqueness to this property.
6 Office of Planning noted the irregular shape, the
7 historic landmark, the rock formation, and also the
8 split zone. But I certainly think the first three are
9 clearly unique, and they lead to the practical
10 difficulty of complying with the regulations.

11 I explored with Office of Planning
12 whether, in fact, all of these variances could be tied
13 to the design constraints imposed by HPRB, and Office
14 of Planning answered in the affirmative.

15 So I don't think that that means that that
16 was the only factors leading to the practical
17 difficulties, but that they all are a result of that
18 as one of the factors, and a major factor.

19 Then we explored whether or not there was
20 any adverse impacts as a result of the variances, and
21 I didn't hear any. Same with the special exception
22 with respect to the roof structure. A fair case was
23 made why they couldn't place it in accordance with the
24 regulations. A lot is the result for the same reason
25 of the historic landmark and the constraints of the

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1 HPRB to protect the character of this neighborhood.

2 I also want to comment on the settlement
3 agreement that we heard a lot about. I think that, if
4 it were even to apply to this applicant, which I don't
5 think this Board is even going to reach, that
6 violation of that agreement would be in another forum.
7 It wouldn't be before the Zoning Board.

8 CHAIRPERSON GRIFFIS: Excellent. Mr.
9 Etherly.

10 BOARD MEMBER ETHERLY: If I could, Mr.
11 Chair, just to echo Ms. Miller's comments with respect
12 to the settlement agreement, and I agree with her
13 entirely that there is no necessity to reach that, and
14 this decision really in no part kind of takes that
15 into consideration. But I think I will just offer my
16 obligatory dicta comment at the close of the decision
17 making, because I think there was, of course, ample
18 time spent talking about that.

19 As you deal with -- or as you look at the
20 settlement agreement, and as we take into account some
21 of the testimony that was offered by Ms. Kahlow, I
22 think clearly much of what that settlement agreement
23 attempted to struggle with -- and I think HPR tried to
24 struggle with it in terms of reconciling the issue of
25 scale and some of the character issues of the proposed

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1 property -- is that it is a unique location. It is a
2 unique property, and because of that uniqueness and
3 some of those historic constraints, there really had
4 to be a lot of care taken toward addressing some of
5 those concerns.

6 I think what we have here is a strong and
7 compelling application which really tries to maximize
8 a lot of those unique characteristics and address them
9 in a way that is tasteful, that seriously takes into
10 consideration, I think successfully takes into
11 consideration, the issues that were highlighted by
12 HPRB with respect to the existing portions of the
13 property and the existing surrounding streetscape, if
14 you will.

15 Clearly, the scale question, I think, is
16 one that was rightfully appropriate for discussion in
17 the context of the variance analysis, and I think that
18 was a significant component of the concerns that were
19 expressed by Ms. Kahlow, and perhaps was echoed by the
20 earlier settlement agreement. But I think we have a
21 very strong proposal here which takes into account the
22 challenges of the existing property and the way in
23 which it is situated on the subject lot, and maximizes
24 -- You know, really, it makes the best use possible of
25 what is there, while still doing a tremendous amount

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1 of justice in a respectful way to the Pennsylvania
2 Avenue streetscape and also the streetscape along 25th
3 Street, and not simply the streetscape but also the
4 skyline of that particular corner as well.

5 I wanted to just take a little bit of time
6 and just speak to that without necessarily folding it
7 into our analysis, but still making that connection,
8 because I don't think it is lost on this Board what
9 Ms. Kahlow and the settlement agreement were trying to
10 get at. Thank you, Mr. Chair.

11 CHAIRPERSON GRIFFIS: Thank you.

12 VICE-CHAIRPERSON MILLER: Mr. Chairman,
13 just to be complete, I'm not sure whether you stated
14 this or not, but I'd like to give great weight to the
15 ANC in this case that submitted a written report
16 supporting unanimously the application, finding that
17 it was responsive to historic preservation and
18 neighborhood concerns.

19 CHAIRPERSON GRIFFIS: Excellent. Exhibit
20 Number 29. It's well put. Anything else? Very well.
21 Last word. Mr. Etherly, I think you are absolutely
22 appropriate, and Ms. Miller, bringing up the
23 agreement, because I don't think it was lost on the
24 Board that it is important, and we have not been
25 decisive on its impact except to the fact that we --

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1 and I think it is important to understand that this
2 Board, this current Board, looks directly at the
3 regulations and the application before us and process
4 it based on that which is required. It is within our
5 jurisdiction, and oftentimes it is easy to be pulled
6 into larger areas and moved into having authority and
7 control over other aspects.

8 We have seen agreements and conditions on
9 previous orders that went far beyond the jurisdiction
10 of this Board. In fact, the court has reminded us of
11 that several times, one most specifically and
12 recently. So it has been, I think, our direction to
13 look directly at what is relevant and jurisdictional
14 for us, and I think we have appropriately done that
15 today.

16 Very well. If there is nothing else, we
17 do have a motion before, and it has been seconded. I
18 would ask for all those in favor, signify by saying
19 Aye. And opposed? And abstaining?

20 Very well. Ms. Bailey, if you wouldn't
21 mind.

22 ZONING SPECIALIST BAILEY: Mr. Chairman,
23 the Board has voted to approve the application as it
24 concerns the variance for this project, minus the
25 portion dealing with the Floor Area Ratio under

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1 Section 771. The vote is five-zero-zero. Mr Griffis
2 made the motion. Mr. Etherly seconded. Ms. Miller,
3 Mr. Mann, and Commissioner Hood are in agreement.

4 Are we doing a summary order on this, Mr.
5 Chairman?

6 CHAIRPERSON GRIFFIS: That's what I'm
7 trying to decide. Mr. Collins, could you submit a
8 draft order?

9 MR. COLLINS: Certainly. We would be
10 happy to. We can submit it within a certain period of
11 time after the transcript is available?

12 CHAIRPERSON GRIFFIS: Mr. Collins, would
13 you like a full order on this?

14 MR. COLLINS: One may be necessary.

15 CHAIRPERSON GRIFFIS: One may be
16 necessary? Is that what you said?

17 MR. COLLINS: Yes. Yes, that's right.

18 CHAIRPERSON GRIFFIS: Okay. So you would
19 recommend a full order on this?

20 MR. COLLINS: I would.

21 CHAIRPERSON GRIFFIS: There it is then.
22 Good. Right. So you are going to have to wait for
23 the transcript on this. Is that correct?

24 MR. COLLINS: Yes.

25 CHAIRPERSON GRIFFIS: All right. You know

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1 how to deal with that then.

2 MR. COLLINS: Yes.

3 CHAIRPERSON GRIFFIS: Okay. Very well.

4 Is there anything else for us then?

5 ZONING SPECIALIST BAILEY: Not from staff,

6 Mr. Chair.

7 CHAIRPERSON GRIFFIS: Very well. Any

8 questions, clarifications on process?

9 MR. COLLINS: No, sir.

10 CHAIRPERSON GRIFFIS: Thank you all very

11 much. Appreciate everyone being here this afternoon.

12 If there is no further business for the Board, let's

13 adjourn the afternoon session.

14 (Whereupon, the Public Hearing held on May
15 17, 2005, was adjourned.)

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