

GOVERNMENT

OF

THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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PUBLIC MEETING

+ + + + +

TUESDAY

MAY 21, 2002

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The Public Meeting 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
ANNE MOHNKERN RENSHAW	Vice Chairperson
DAVID LEVY	Board Member (NCPC)
CURTIS ETHERLY, JR.	Board Member
PETER MAY	Board Member
JAMES HANNAHAM	Board Member

COMMISSION STAFF PRESENT:

Sheri Pruitt, Secretary, BZA  
 Beverly Bailey, Office of Zoning  
 John Nyarku, Office of Zoning

D.C. OFFICE OF CORPORATION COUNSEL PRESENT:

Marie Sansone, Esq.  
 Patricia Young, Esq.

**NEAL R. GROSS**  
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 WASHINGTON, D.C. 20005-3701

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

(9:30 a.m.)

CHAIRPERSON GRIFFIS: I appreciate your patience this morning with us getting started. I do have a few things that I would like to go over this morning briefly.

We will go through our decision making. We have three cases that are on the schedule for decision making at this time. We will then take a short break before we call our public hearing to order.

So I would anticipate if people are here for the public hearing, I will make the announcement as we get through this, because we will probably not be starting at 9:30, as it is 9:30 at this point.

Okay. We are full this morning, and I want to make a special announcement, and take a brief moment. We have had a major tragedy in the Office of Zoning in the past week.

Mr. Paul Hart, of which all of us are familiar, and some of you may be familiar, has passed away, and there will be services held this Thursday, and if people in the audience need information, you can certainly get that in the office before you leave.

It goes without saying that Mr. Hart was a very important part of our whole process, not to mention a very good friend, and I found him to be an incredibly joyful man, and full of love for specifically his daughter, and others around him. If

1 we could have a moment of silence.

2 (Moment of Silence Held.)

3 CHAIRPERSON GRIFFIS: All right. Ms. Pruitt.

4 SECRETARY PRUITT: Good morning. Application  
5 Number 16810 of Laurie Trautwine, pursuant to 11 DCMR 3103.2, for  
6 a variance from the minimum lot dimension under Section 401; lot  
7 occupancy requirements under Section 403; side yard requirement  
8 under Section 405; court requirements under Section 406; rear  
9 yard requirement under Section 404; and the non-conforming  
10 structure requirements under Subsection 2001.3, to allow an  
11 addition to a single family dwelling in an R-3 District located  
12 at 1324 - 27th Street, Northwest, Square 1236, Lot 818.

13 Hearing dates for this case were January 2nd,  
14 February 26th, March 12th, April 9th, and April 16th. Board  
15 Members participating were Mr. Griffis, Ms. Renshaw, Mr. Etherly,  
16 Mr. May, and Mr. Levy.

17 This is before you for disposition. You do have  
18 draft orders from the applicant, and from one of the parties, Mr.  
19 Joiner.

20 CHAIRPERSON GRIFFIS: Thank you very much. Let me  
21 just get clarification, because this application actually was  
22 before us quite a few times in order to establish exactly what we  
23 were doing, and I think it is important to do in any case, of  
24 course, when we take the time required to get through this.

25 However, I believe a relief variance under Section

1 405 was removed, and we were looking at Section 401 for lot  
2 dimensions, and 403 for lot occupancy, and 404 for rear yard, and  
3 406 for courts, and 2001.3. Board Members, are you in agreement  
4 with that?

5 (Members in Agreement.)

6 CHAIRPERSON GRIFFIS: All right. In which case, we  
7 will deliberate on those pieces, and I think actually it brings  
8 up an interesting point if I was to go through all of this.

9 There was some testimony and issue during the case  
10 about how unprecedented it was that you would have so many  
11 variances on one single application.

12 And let me just address that because I think that  
13 is a smaller issue. This is certainly not unprecedented by any  
14 means, and in fact the nature and the uniqueness frankly of this  
15 piece of property and its size and shape, obvious then evoke all  
16 of those issues of non-conformity with the zoning regulations  
17 that created this non-conforming piece.

18 And I will open up to others to speak further if  
19 you want.

20 MEMBER MAY: I would just want to note for the  
21 record that even though I was not here for the last hearing, that  
22 I did receive a transcript, and read the record on that.

23 MEMBER LEVY: Actually, Mr. Chair, the same goes  
24 for me. I should have made that statement as well.

25 CHAIRPERSON GRIFFIS: Good. Thank you both.

1 MEMBER LEVY: Mr. Chair.

2 CHAIRPERSON GRIFFIS: Yes.

3 MEMBER LEVY: At the risk of being redundant, and I  
4 apologize as I was conferring with corporation counsel on the  
5 issue of the relief requested, but I think it is important in our  
6 discussion of this case to keeping mind what is important in  
7 general in a variance case.

8 There was a lot of testimony over the course of  
9 these many hearings as to what potential adverse impact there  
10 might be if certain things went wrong during construction, and if  
11 certain things changed in the design, and so forth.

12 And I think it is just important that we keep in  
13 mind that the adverse impact is more appropriately related to  
14 that caused by the completed structure on neighboring properties.

15 CHAIRPERSON GRIFFIS: I think that is an excellent  
16 point, and I think in fact this specific case, the testimony in  
17 it, in terms of construction impact, that there was quite a bit  
18 of evidence and testimony from the property owner that they would  
19 work in conjunction and mitigate any of that issue, and certainly  
20 that is what we look for in any event.

21 Clearly, and I think you are also going to the fact  
22 that there is always impact with construction, no matter what and  
23 where it is. That is the nature of it. It is a change.

24 So I think it is important to establish the fact  
25 that the basis of our deliberations are not on that, but rather

1 on the impact of the permanent structure that is under the  
2 application for relief.

3 And so let's just run through some of the specifics  
4 that were actually talked about. There was a space between the  
5 adjoining addition and the proposed addition that was thought to  
6 maybe create an adverse impact.

7 And there was testimony that was based on how that  
8 could be in construction, and mitigated, if not totally removed.

9 One of the aspects was in fact adjoining the two if it was  
10 approved and creating a common party wall, which is similar to  
11 that of the existing structures, and of characteristics of the  
12 townhouses.

13 There is also water drainage, all  
14 of which are dealt with either within other building codes, or in  
15 fact were addressed and could in fact be mitigated with the  
16 proposed design.

17 There were issues of surrounding  
18 walls of fencing, and again I think that goes directly to your  
19 point that these are issues of construction and can actually be  
20 dealt with and safely ensure that that they will continue to  
21 exist.

22 Or obviously the responsibility and  
23 it was set by the property owner and the applicant, and that it  
24 is their responsibility then to render any situation that may be  
25 damaged during construction.

1 I think we need to talk  
2 specifically about the variance cases that were made, but I guess  
3 the last thing that I would say with that is that in that --  
4 clearly we have started with what -- well, the kind of  
5 neighborhood impact and the adverse impact, and I think that was  
6 a majority of obviously the opposition that came to us.

7 I can say straightforward and  
8 directly that the adjacent neighbor that actually has a similar  
9 addition, I did not find was persuasive in showing a negative  
10 impact of what that addition might be on his adjacent property.

11 And I think we spent a lot of time  
12 flushing out that out, and I think what we have just addressed is  
13 in fact a lot of the issues that he brought up, in terms of  
14 construction impact. The light and air issue brought up by that  
15 property did not and was not convincing to me.

16 However, the other adjoining  
17 neighbor, the Joiners, are also a party in the case, and I  
18 believe have that issue. And certainly the impact is more so on  
19 that property. But I was -- well, again in deliberation, one  
20 needs to focus on level of impact.

21 And certainly as we suggest in  
22 construction, any sort of addition will have a change in the  
23 environment. It will be a physical structure that wasn't there  
24 before.

25 So light and air will obviously be

1 impacted, but the level of impact I think is what is of  
2 importance, in terms of the tests for the variances.

3 And I took quite a bit of time  
4 looking at the evidence submitted, and reading over some of the  
5 testimony and my own notes of testimony. I was very persuaded by  
6 some of the three dimensional drawings, and also the photographs  
7 that were submitted.

8 If you recall, board members, we  
9 had axons that were submitted, and granted the design changed a  
10 little bit because of them trying to address the larger issues.

11 And I might say a bit of a  
12 digression here, but with so many parties, and not only the  
13 parties that we establish, but with so many entities that had  
14 opinions and review on this, it was I think understandable.

15 But the designs would change and be  
16 flexible, and move around as one, as the property owner would try  
17 and frankly go to some sort of common ground and agreement.

18 Obviously that wasn't struck in  
19 this case, and they have set on a certain design. In fact, we  
20 sent them off to do that, and have come back with it. But even  
21 so the documentation -- and my point being that even the axons  
22 and the three dimension documentations that were given I think  
23 show whether it was the end design or not.

24 It shows the impact that was --  
25 that I found to be limited, in terms of the adjoining properties.

1 I think the rear yards and the siting and the adjacent  
2 properties still allow an adequate, if not more than adequate,  
3 amount of light and air.

4 And certainly I did not find it  
5 persuasive that the use would be impacted severely, or actually  
6 halted in terms of the exterior space of the adjoining property.

7 MEMBER LEVY: Mr. Chair?

8 CHAIRPERSON GRIFFIS: Yes.

9 MEMBER LEVY: First of all, I would, I suppose,  
10 reiterate your point about the neighbor, too. I believe it is  
11 the south, the adjoining neighbor, which would be the Giese  
12 property. I also was unconvinced that there was adverse impact  
13 to that property owner.

14 And frankly the majority of the testimony from that  
15 neighbor spoke to potential problems during construction, which I  
16 think we have already adequately covered.

17 I would agree also that there is impact to some  
18 degree to the neighbor to the north, to the Joiner property. I  
19 also had to weigh what degree of impact that I thought the  
20 addition, the applicant's addition, would have on the light and  
21 air of that property.

22 One factor that I keep coming back to in  
23 consideration of that impact is in fact -- well, two things  
24 actually. One is the existing addition on the Giese house, which  
25 is approximately the same size and height of the proposed

1 addition.

2 And the other is the tree that existed in the  
3 applicant's property prior to the hearing, and I think that given  
4 the angle of the sun, and given frankly the testimony that we saw  
5 about the angle of the sun, that those two factors, and the  
6 existence of the addition on the Giese house, and the prior  
7 existence of the tree on the applicant's property, both would  
8 have had some similar impact on the neighbor, on the Joiners'  
9 property.

10 So I question whether the applicant's addition  
11 would have a significantly greater impact than that which was  
12 already there.

13 CHAIRPERSON GRIFFIS: Mr. May.

14 MEMBER MAY: Okay. I will go along the same vain.

15 I find the impact or the potential adverse impact on the Giese  
16 property to be insignificant at the least, or at the very best.

17 It is practically non-existent given the positions  
18 of the property and where the sun is coming from. I mean, you  
19 couldn't make -- well, they certainly have made arguments about  
20 tangential issues which I don't think are our area to decide.

21 I mean, construction impacts are not the basis on  
22 which we can decide this case or any other. That having been  
23 said, I don't find that the impact on the properties to the north  
24 of the Trautwine property, I think that there is significant  
25 concern.

1           It is not to say that it wouldn't be similar to  
2 what was there when the tree was there, but the tree is not  
3 something that we can control. You know, anybody can grow a tree  
4 and crowd the light out of some of their neighbor's property.

5           There is always that potential, and I guess that  
6 one could make the argument that if there had been a wall of  
7 bamboo along there, as it occurs in Georgetown from time to time,  
8 that would have had the same negative effect on those properties;  
9 growing at the same height, and sufficient density.

10           But we are talking about a building, and we are  
11 talking about something that is -- that I think would have a very  
12 significant impact on the yard of the Joiners to the north.

13           When you look at the photographs that were  
14 submitted most recently, and that show the progression of  
15 daylight over those yards to the north. And you can see how the  
16 shadow of the Trautwine property moves across those properties,  
17 you can definitely see the impact, and how much more shadow would  
18 be cast by a full building there.

19           That is part of the impact, but you also look at  
20 the property that is directly north of the existing Trautwine  
21 house, which unlike the other properties to the east and west, it  
22 is a barren patio.

23           There is not a lot of stuff growing there, and  
24 where there is stuff growing, it is growing very close to the  
25 house where I can get some light. I would encourage you to take

1 another look at those photographs.

2 And I think that that is the fate that may await  
3 this property. I don't have a good view of what is in the Joiner  
4 property right now, but they are not going to be able to grow  
5 very much that requires sunlight toward the south end of their  
6 property as a result of this addition.

7 Now, granted there is a certain automatic blockage  
8 that is going to happen with the fences that everyone puts up,  
9 and the fence that is there right now, or the wall, or what have  
10 you.

11 And I think we would be talking about a very  
12 different case if this were a single story addition. But with a  
13 two-story addition, I think that the impact on the neighboring  
14 property to the north, and in particular to the Joiner property,  
15 is substantial.

16 VICE CHAIRPERSON RENSHAW: Mr. Chairman, I will  
17 pick up from my colleague, Mr. May. Just to point out that part  
18 of the fabric of Georgetown are these small, very historic  
19 quarters, which speak of the past use of the property, and we  
20 might say days long gone by.

21 And properties in Georgetown are not especially  
22 conducive to today's living, where families want family rooms,  
23 and exercise rooms, and walk-in closets, and big bathrooms, and  
24 home offices.

25 That is not what you are going to find able to

1 happen in these small properties in Georgetown. These are very  
2 unusual properties in today's circumstances, but they are of a  
3 time.

4 Now, this property is in a historic area, and I am  
5 trying to find here the argument for the uniqueness of the  
6 property itself, and I don't come to grips with this in the  
7 materials that we have been given by the applicant.

8 The house is small as we have said, and the lot is  
9 quite small. Again, it is historic, and they can't go up. They  
10 can only go back, if indeed the applicant gets BZA approval.

11 The house needs repair. This was noted by the  
12 owner when she purchased the place, but that in and of itself is  
13 not necessarily unique. They said that nearby all the houses on  
14 the square have additions, but not so on 27th Street.

15 There are plenty of properties, small properties,  
16 in Georgetown of equal size, or nearly equal size, that do not  
17 have additions. Now, Ms. Trautwine was attracted to Georgetown  
18 as she said in her testimony, because it was one of the prettiest  
19 streets in Georgetown, and I am quoting from the transcript.

20 "When I bought the house, no one assured me that I  
21 could build an addition. My decision to purchase was not  
22 dependent on the ability to build the addition. In fact, I was  
23 aware that I had to get approval from the BZA."

24 "Nevertheless, I believe that given the size of the  
25 house, I had a reasonable case to present in anticipation of

1 having a family needing more space, and noticing that there was  
2 an addition on the house next store to me."

3 So, Ms. Trautwine it seems took a look at the  
4 house, and saw the addition of the Giese property, and thought  
5 that she had a case for having an addition of her own.

6 But again that property that she has acquired  
7 unfortunately is not very unique given what else is in  
8 Georgetown. It is small, and yes, definitely it is small. But  
9 she is not going to be able to stuff into that property all of  
10 the space that is needed for a growing family.

11 So again I don't find much in the argument for  
12 uniqueness, and perhaps one of my colleagues would like to pick  
13 up and argue the opposite side of the coin, and perhaps convince  
14 me otherwise. But right at this point the uniqueness argument is  
15 just not there.

16 CHAIRPERSON GRIFFIS: Good. Thank you very much,  
17 Ms. Renshaw. I find it interesting though that you started out  
18 describing this house unique, if that wasn't your own words. And  
19 I think there is substantiation for that.

20 One, I think it goes to, and it ties to, some of  
21 the historic aspects of this. Certainly Georgetown is an  
22 intriguing and old area. This is part of the historic area.

23 What I found fascinating in -- and I know that we  
24 will get to the larger issues here, but the testimony from the  
25 Citizens Association of Georgetown talked about this, and I think

1 in terms of a historic perspective, and in terms of preservation,  
2 we often look to the front elevation, and more of the design and  
3 the impact that it might have on the street fabric.

4 I don't see any adverse impact of an addition on  
5 the rear. In fact, having several in the area somewhat similar  
6 to what is being requested here, shows that the historic fabric  
7 is not impacted.

8 But more importantly, I think the fact of how we  
9 make historic structures useable and adaptive to current living  
10 situations is of utmost importance to their own preservation.

11 And this is a bit of digression from zoning issues,  
12 but I think it is an important piece to what we are dealing with  
13 here, and I think it goes to the case that was presented before  
14 us.

15 We have a house that is with this addition 794  
16 square feet. I have been in rooms that are larger than that in  
17 some houses. It seems to me that just on the basis of the fact  
18 that that is what they are talking about, and the case being made  
19 is just to make this liveable, it is important for us to be able  
20 to view these opportunities and to be sympathetic to the historic  
21 fabric, but still allow these structures to be used and inhabited  
22 quite frankly.

23 The Citizens Association of Georgetown gave  
24 testimony in opposition to this. What was interesting in their  
25 testimony is that they brought up the fact that there are similar

1 properties, perhaps in Georgetown, that I don't believe that that  
2 renders this totally un-unique.

3 I think it is unique in its diminutive size. But  
4 also in their testimony, they stated that although most of those  
5 have been joined together to make liveable residences, or have  
6 had additions made on to them, I have a hard time balancing then  
7 why would that not be an opportunity afforded to this piece of  
8 break if in fact -- well, I think it probably could be  
9 substantiated in terms of the argument that the other houses were  
10 found not to be liveable.

11 But be that as it may, that is a digression off the  
12 other properties. I think that also is substantiated in terms of  
13 the condition of this property, and the amount of work that would  
14 be needed in order to make it again habitable. So in terms of  
15 the uniqueness, I have found it to be apparent in the case made  
16 before us.

17 MEMBER LEVY: Mr. Chair.

18 CHAIRPERSON GRIFFIS: Yes.

19 MEMBER LEVY: I don't think that you are digressing  
20 so much from the subject of zoning, but perhaps you are  
21 digressing from the subject of uniqueness. Your argument goes  
22 perhaps more towards the case of practical difficulty in talking  
23 about the size of the house.

24 The applicant's testimony that it is too small to  
25 live in, or that would be impractical to live in given the size

1 of the house. And I think Ms. Renshaw's comments go to that as  
2 well.

3 I don't think the applicant is trying to build a  
4 large mansion. The rooms that are being added are simply a  
5 bedroom and a dining room, which are considered to be fairly  
6 standard rooms for a house.

7 I mean, if it goes from a one bedroom house to a  
8 two bedroom house, and it gets a dining room added. So I don't  
9 see that the addition is in any way unreasonably luxurious. I  
10 think it is an argument of practical difficulty that goes to  
11 living in what is in there now.

12 I am not sure that I am swayed by the argument of  
13 uniqueness, however, given that there are many other properties  
14 of this size in the neighborhood.

15 MEMBER MAY: Let me sound off on the uniqueness  
16 question. I can follow the arguments made for uniqueness, and  
17 understand them completely, and actually buy into it very  
18 significantly.

19 I can also make the case that given the number of  
20 similar properties, and that we are dealing with a sort of class  
21 of uniqueness.

22 You know, you get below a certain size, and you  
23 have got a whole bunch of ones that would ordinarily be  
24 considered unique, and certainly would be considered unique if  
25 they were in a different neighborhood context.

1 I don't buy the argument that simply by virtue of  
2 being small that it is unique, or that the existing living area  
3 is so small as to make it unique. There are many, many small  
4 accommodations that one can have.

5 You know, from one bedroom apartments, and condos,  
6 and what not, to one story, former store front type houses that  
7 are smaller than this, and not in Georgetown, but all over the  
8 city. And so it is --

9 CHAIRPERSON GRIFFIS: Are they legal, Mr. May?

10 MEMBER MAY: They are not -- you wouldn't be able  
11 to build one today in some of these cases, but there are  
12 certainly plenty of others that are legal. I don't think we want  
13 to get into the code issues of what makes any of these things  
14 legal from that perspective, because there are other  
15 entanglements there.

16 In the end, I think that I would not rely on this  
17 as an argument on the uniqueness to either make this case or  
18 break the case, is what it comes down to. And so I think it  
19 hinges on -- well, the other two, which leads then to -- I mean,  
20 I have already had my say on adverse impact. And I think if we  
21 go into practical difficulty, the --

22 CHAIRPERSON GRIFFIS: If I could just interrupt you  
23 quickly.

24 MEMBER MAY: Please.

25 CHAIRPERSON GRIFFIS: I think that there are a lot

1 of issues that go to the uniqueness, or the physical aspect, and  
2 I think that the record will show that there was a confluence of  
3 issue, and I think the size was just one of the aspects that then  
4 actually leads to a lot of others.

5 I mean, I think the historic aspect is a pertinent  
6 one also that goes to these, but I understand your point. We can  
7 always belabor and look to finding other examples of similar  
8 properties, or similar conditions, across the city.

9 And I think the point that we need to look at is in  
10 fact how this uniqueness then lends itself to its practical  
11 difficulty, and the entire test for this specific property. And  
12 I frankly am convinced of that, but I think I have stated that.

13 MEMBER ETHERLY: Mr. Chair, I just would like to  
14 associate myself with the other remarks of my colleague, Mrs.  
15 Renshaw. I believe that she spoke to my thinking on the question  
16 of uniqueness, and I believe that Mr. May was getting there to an  
17 extent.

18 I would perhaps take a somewhat different tack with  
19 regard to the substantial conversation we had with respect to the  
20 issue of adverse impacts. I believe both adjacent properties,  
21 that of the neighbor to the south, and that of the Joiner  
22 property, did make a somewhat compelling case with regard to  
23 negative impacts, albeit perhaps not an excruciating detail, but  
24 I believe there is enough there to warrant some serious  
25 consideration.

1           And whether or not this property, or this addition,  
2           regardless of how it is designed, could conceivably avoid a  
3           detrimental impact to the integrity of the foundation of one  
4           property to the south, and with respect to the light and air  
5           access for the property to the north. Thank you, Mr. Chair.

6           CHAIRPERSON GRIFFIS: Well, I appreciate your  
7           comments. However, I strongly disagree that the integrity to a  
8           structure, without being told more, be an adverse impact, in  
9           terms of a zoning issue.

10           In that if there was an adverse impact to the  
11           structure, it seems to be a construction issue that would be the  
12           responsibility -- unless we saw somehow how the nature of this  
13           structure was so different that it could not be assumed that the  
14           adjacent structure could be accommodated to stand with this new  
15           addition.

16           I mean, for goodness sakes, the structures are  
17           attached not 10 feet away. I don't see how we could look at this  
18           structure and it be so grossly different, and so beyond the means  
19           of a general contractor to ensure the stability of an addition  
20           that is adjacent to this proposed.

21           CHAIRPERSON GRIFFIS: Well, just a turn of words  
22           from Mr. May's comments. My thinking doesn't necessarily hinge  
23           solely on that particular issue. I think this uniqueness  
24           question is a very critical one in this case, and as Ms. Renshaw  
25           noted, there is not a dearth of properties that have a very

1 similar footprint from a building standpoint, or from a lot size  
2 standpoint.

3 I mean, of course, we got into some significant  
4 conversations with the Office of Planning representative  
5 regarding surveys, and assessments of the -- the kind of general  
6 area with regard to properties of this size.

7 Given the nature of many of the properties in many  
8 of the neighborhoods in Georgetown, once again I believe Ms.  
9 Renshaw has hit the proverbial nail on the head, in that we are  
10 not looking at something that is necessarily unique or so  
11 incredibly singular as to merit an outcome in this case. Thank  
12 you, Mr. Chair.

13 CHAIRPERSON GRIFFIS: Well, I appreciate that. I  
14 think we ought to be cautioned in finding the uniqueness --

15 VICE CHAIRPERSON RENSHAW: Mr. Chairman --

16 CHAIRPERSON GRIFFIS: I mean, no property can have  
17 similarities with anything else in order to be established  
18 unique. Well, frankly, that may clear up a lot of our schedule.  
19 So maybe it is not such a bad thing. Ms. Renshaw.

20 VICE CHAIRPERSON RENSHAW: Mr. Chairman, you  
21 mentioned just a moment ago that when we were talking about the  
22 foundations that these buildings would be attached.

23 But there is in this case the concern about the gap  
24 between the Giese property and the Trautwine property, which when  
25 we ended the case, was out there, and it is still kind of

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1 tentatively sketched in.

2 It has not been shall we say tightly defined enough  
3 for me to say that these are going to have the kind of structural  
4 integrity because these two buildings will be joined together.

5 Even though there was some discussion about ways in  
6 which the architect could design some kind of a roof attachment,  
7 if that is the case, and if all parties agree to that.

8 But then there was the matter about the survey.  
9 Now, we did not have a definitive survey of this property, and  
10 because the property is so tiny, that any movement of several  
11 inches is going to -- which may impact the Joiner property, which  
12 of course will have greater negative adverse results on the  
13 outdoor enjoyment of the Joiner property.

14 So even if this shifts a bit because of a survey  
15 that we have not seen, and we don't have with this small property  
16 definite dimensions as to where that is going to be placed.

17 And again I think without this that it just impacts  
18 both properties, both the Giese property and the Joiner property.

19  
20 MEMBER MAY: Can I speak up on that one? This goes  
21 to the issues of the gap, the issues of impacts of construction,  
22 and issues of this survey. All of these, we could make a very  
23 compelling case that they are not -- that they are all  
24 surmountable.

25 You can't build anything without a real survey, and

1 you always have to when you build something have to be wary of  
2 the impacts of what you do on your neighbor's property.  
3 Otherwise, you are subject to litigation, and you have -- you  
4 know, builders have insurance, and all sorts of reasons.

5 You could make a very strong case that all of these  
6 things can be addressed adequately. The most important issue  
7 here is that they should have no relevance on what we are  
8 considering. I don't see any issue with this in terms of the  
9 uniqueness, the practical difficulty, or the adverse impact.

10 It's just not there. It just is not our business.

11 CHAIRPERSON GRIFFIS: Thank you. I think that is  
12 very well said, Mr. May. Okay. I think we should probably  
13 proceed in this and --

14 MEMBER ETHERLY: Mr. Chair, just very quickly.  
15 Just to clarify so that there is an absolute level of comfort  
16 then with perhaps my thinking, and perhaps even that of my  
17 colleague, Ms. Renshaw, that I don't want --

18 CHAIRPERSON GRIFFIS: We don't need to be comforted  
19 in thinking.

20 MEMBER ETHERLY: No, but clarity, for the sake of  
21 clarity. As it relates to the uniqueness, it just is not there  
22 for me. As it relates to the practical difficulty, I believe  
23 that is very closely tied to the issue of uniqueness.

24 Once again, we are not talking about a property  
25 that is unusual or a footprint that is unusual in Georgetown. I

1 can't recall whether or not we had any substantial testimony to  
2 the fact that this property is unlivable because of the size of  
3 the building as it currently exists.

4 As to the adverse impacts, I am swayed by the  
5 discussion that we have had regarding the impacts of light and  
6 air access for both the Joiner property and the Giese property.  
7 Thank you, Mr. Chairman.

8 VICE CHAIRPERSON RENSHAW: And, Mr. Chairman, on  
9 this matter of the survey that Mr. May said was just not our  
10 business, just to point out that in dwelling on this adverse  
11 impact on the Joiner property, I can feel that the impact is  
12 going to be greater, and therefore Mr. May's arguments earlier on  
13 the adverse impact take more importance.

14 When I realized that the survey or the lack of  
15 survey has not documented exactly where the property, or where  
16 the addition is going to land on the side of the property that  
17 backs up on Mr. Joiner's or Dr. Joiner's property backs up on.

18 In other words, there is that consideration that  
19 the addition may be more towards Dr. Joiner's house. Therefore,  
20 Mr. May's arguments about the adverse condition of Dr. Joiner's  
21 property takes on more significance.

22 CHAIRPERSON GRIFFIS: Okay. Well, I think that we  
23 can probably disagree with that, because if it moves a matter of  
24 inches, what is the level. But I understand what your point is.

25

1           And I think the point that was made in the  
2 application, and in the testimony, was the fact that the addition  
3 is going to be situated on the property, and the property is a  
4 certain dimension, and it will fit within that dimension.

5           So therefore the survey was not felt by this board  
6 to be of a requirement for us to deliberate. So we are here. I  
7 would move this along, and ask for further discussion, but I  
8 would like to do it to discuss a motion.

9           And I would move that we approve the Application  
10 Number 16810 of Lori Trautwine, pursuant to the variances as  
11 indicated in the reading of the record, and that would be for  
12 Section 401, lot dimensions; and Section 403, for lot occupancy;  
13 Section 404 for rear yard; and Section 406 for -- well, not 406.

14  
15           Yes, 406, and 2001.3 for the expansion of a  
16 nonconforming structure for the premises at 1324 - 27th Street,  
17 Northwest. And this is in an R-3 district. And I would ask for  
18 a second.

19           MEMBER ETHERLY: Mr. Chair, I will second that for  
20 further discussion, though I am not swayed at this point in time.

21           MR. GELL: Mr. Chairman, I would ask to be heard.  
22 I would like respectfully to withdraw our application.

23           CHAIRPERSON GRIFFIS: I guess we can entertain  
24 that, in which case we will note that the application as stated,  
25 16810, has been withdrawn.

1 MR. JOHNSON: We do object to that for the record.

2 CHAIRPERSON GRIFFIS: And we will note an  
3 objection. All right. Let's move along. For those who are  
4 joining us, we are in our deliberate and public meeting. We have  
5 three cases, and we have just heard one. We have two more to go.

6 After those two, we will take a short recess and  
7 then we will come into our public hearing for the 14th. What is  
8 the date today? Oh, the 21st rather. I would anticipate that we  
9 don't start our public meeting before 11:00 for those people  
10 scheduled, and you can stop back in and take a look at that.

11 Okay. Next for us -- and, Mr. May, I appreciate  
12 your appearance here today, and I will be with you shortly.

13 SECRETARY PRUITT: The next item on the agenda is  
14 Application 16710, of Vinay Pande, pursuant to 11 DCMR 3104.1 for  
15 a special exception under Section 223 to allow the construction  
16 of a canopy over a driveway and stairway leading to a single  
17 family dwelling that does not comply with the side yard  
18 requirements of Section 405, in an R-1-B District, located at  
19 5210 Klinge Street, Northwest, Square 1438, Lot 44.

20 The hearing dates were July 10th and October 6th of  
21 the year 2001, with decision dates in November and December 4th  
22 of 2001. This is a motion for reconsideration.

23 On December 4th of 2001, the motion for the  
24 application failed for a lack of majority, and therefore the  
25 application was denied. The vote was two in favor, and two in

1 opposition, with one in abstention, with the Mayoral appointee  
2 not sitting and not voting.

3 The Board's order was issued on March 1st of 2002,  
4 and the applicant has filed a motion for reconsideration. The  
5 Board is also in receipt of a response to the motion from Single  
6 Member District, Mr. Finney.

7 On May 14th, the Board voted to approve the  
8 applicant's request for reconsideration of its December 4th  
9 decision. The staff has provided Mr. Etherly with the records so  
10 that he can participate, and at this time this case is before you  
11 for deliberation.

12 CHAIRPERSON GRIFFIS: Thank you very much. I  
13 believe you stated it, but just for my own clarity. On the 14th,  
14 we did approve the motion to reconsider, and so we are in  
15 reconsideration now.

16 As you stated, Mr. Etherly has been given the  
17 entire transcript and the entire record, and we are here today,  
18 Board Members, to reconsider our deliberations in the past, and  
19 entertain the new thoughts from Mr. Etherly here, to freshize we  
20 should say.

21 So where is Mr. Hannaham, and so why don't we wait  
22 a moment so that we don't run into the same problem that we have  
23 in the past. Indeed, it doesn't take long to make the circle  
24 around, as long as the door is not locked.

25 (Brief Pause.)

1 CHAIRPERSON GRIFFIS: Okay. Just to review some of  
2 the things to refresh, of course we have all taken the time to  
3 deliberate again on this, and as I have indicated, Mr. Etherly is  
4 joining us for the deliberation of a full board.

5 As you will recall there was substantial concern  
6 from the community about this, and actually there was quite a bit  
7 of concern about the existing canopy that was as I said existing,  
8 and that had been there, I guess, for some time.

9 And there was great opposition to that, and there  
10 was great concern that that be taken down before any new  
11 consideration or designs actually be looked at.

12 I found that clearly a factor of the case, and it  
13 would have been certainly helpful to have had more feedback and  
14 communication about the proposed design. But we have what we  
15 have, and let us go into it. And there was -- well, what it  
16 really comes down to, of course, is a special exception.

17 So it does come down to impact, and I think we need  
18 to really spend a few minutes to talk about that. There was  
19 testimony from the ANC, but also from the adjoining neighbor,  
20 about what kind of impact might be made by the structure.

21 As you recall, the design was open all around, and  
22 it was not enclosed. It was a cover, and it was a permanent  
23 structure covering the parking area, and also the area that would  
24 be accommodating the lift, and the walkway down to the residence.

25 So we need to talk about impact there, and I think

1 we also do need to talk about how this is an accommodation for a  
2 handicapped person, and whether it is a reasonable accommodation  
3 to be expected, in terms of this cover and protection for  
4 entering and exiting an automobile.

5 MEMBER LEVY: Mr. Chair, we had of course  
6 considerable deliberation at the last decision meeting in this  
7 case about impact. A lot of discussion about -- well, not so  
8 much the size perhaps of the planned structure, but the location,  
9 and the elimination of the side yard, and the fact that it was  
10 several feet from the property line at the end of the driveway.

11 So I think that the impact went strongly into those  
12 two points; that it was visible over the fence of the adjoining  
13 neighbor, and that it was up against the fence, and that there  
14 was no side yard.

15 And also that the structure came basically out to  
16 the street at the end of the driveway. A couple of concerns  
17 about the issue of the Fair Housing Act, because I don't believe  
18 that this Board -- I am thinking of the issue of the cover for  
19 the lift itself, versus what is essentially a carport.

20 And my recollection, and a review of my notes, is  
21 that the applicant did not testify that in fact the carport  
22 itself, the entire carport, was somehow an accommodation for the  
23 applicant's disabled mother.

24 I don't think the Board at any point in its  
25 deliberations had any problem with the fact that the wheelchair

1 lift itself needed a cover from the elements. And in fact the  
2 wheelchair lift itself I don't believe requires any type of  
3 variance.

4 But it is a part of the structure that actually --  
5 am I incorrect? But it is part of the structure that encompasses  
6 the carport that is really in question here. So I have to ask  
7 myself that in considering the Fair Housing Act, and considering  
8 reasonable accommodation, whether the carport really serves that  
9 purpose, or whether the carport is maybe  
10 -- maybe it has another purpose in addition to that.

11 CHAIRPERSON GRIFFIS: Okay. So your point is that  
12 just the covering of the walkway and the lift would be within the  
13 realm of expected accommodations, but it would be more or --  
14 well, I don't know how you would say it, but an unexpected  
15 increase of scope to continue the covering over the automobile.

16 MEMBER LEVY: I asked myself whether the applicant  
17 made the case that somehow that covering over the automobile,  
18 that entire carport, was in response to any kind of reasonable  
19 accommodation for the applicant's mother.

20 CHAIRPERSON GRIFFIS: But wouldn't you say that  
21 they are both kind of attendant? I mean, the fact of the matter  
22 is that if you are getting in and out of a car, you would want  
23 the area to be covered, and if you were getting in and out and  
24 trying to maneuver a wheelchair and yourself into an automobile,  
25 and that you would want that area covered.

1                   And where would that covering stop? Where would be  
2 the logical area for it to stop, and then become more of a  
3 luxury?

4                   MEMBER LEVY: Well, I would agree that -- and if I  
5 could, Ms. Renshaw, just to finish my thought. The idea is to  
6 get the passenger from the car to the house. I would question  
7 whether that means that the carport violates the entire side yard  
8 or the rear yard.

9                   I don't think a reasonable accommodation would  
10 include that someone should be able to get out from any position  
11 in the car -- left side, or the right side, and move around the  
12 car. I just think that is sort of stretching the envelope.

13                   And I don't think that the applicant made the point  
14 that was necessary for reasonable accommodation. The other thing  
15 that I am really struggling with, and I would welcome discussion  
16 on this point.

17                   I am struggling with the fact that this argument is  
18 being made around the Fair Housing Act. Yet, there is no  
19 wheelchair lift. There never has been a wheelchair lift.

20                   In fact, there was a preexisting canopy, a  
21 preexisting carport, that was here originally before the new  
22 designs were put on the table. Yet, there was no wheelchair lift  
23 in place.

24                   So I am having a hard time getting my mind around  
25 the fact that this is a reasonable accommodation.

1 CHAIRPERSON GRIFFIS: I don't really follow that in  
2 terms of this is what is being proposed, and this is why they are  
3 here with an application, in order to install.

4 How can you ask the applicant to have what they are  
5 proposing when maybe this changes -- I mean, I don't think we can  
6 project on what happens if they do or do not get this.

7 MEMBER LEVY: Well, I guess my point would be that  
8 this very hearing, the hearing on this case began with a request  
9 to approve a structure that was already in place.

10 CHAIRPERSON GRIFFIS: Right.

11 MEMBER LEVY: And when that proved to be an  
12 unsuccessful direction, the applicant then substituted a new set  
13 of drawings for a proposed structure that would replace the one  
14 that is already there.

15 That does not change the fact that the structure  
16 was already there. But it wasn't there for any type of  
17 accommodation of any disabled person. There is no disabled  
18 person living there, and there was no wheelchair lift. I just am  
19 not convinced that that was the case.

20 CHAIRPERSON GRIFFIS: I follow your statements, but  
21 I am not sure that I agree. I mean, I am not sure that you are  
22 actually -- well, there are numerous other logical progressions  
23 where things can change just because the canopy was there.

24 But I don't think that we need to continue in that  
25 vain. Ms. Renshaw, you wanted to add something, or you had

1 something with urgency to say.

2 VICE CHAIRPERSON RENSHAW: Yes, Mr. Chairman.  
3 There is considerable adverse impact to the next door neighbors  
4 on Hawthorne Place, John and Elaine Kennedy. Because the side  
5 yard -- their side yard is very much impacted by this port  
6 coucher going up against their property, and their site line from  
7 their front yard, and from the front area of their home, is cut  
8 off because this intrudes out so far towards the street.

9 The pictures that we have in the files of this port  
10 coucher as it is at present, and we don't -- and according to the  
11 ANC, that is still -- that structure is still up, is very much  
12 too high for the car.

13 In fact, the car looks like a little mini-wagon  
14 underneath this large port coucher. What we were not presented,  
15 but what could ultimately happen to satisfy any Fair Housing  
16 arguments is to have half of a port coucher, which would be an  
17 extension of a cover over the wheelchair lift.

18 And would accommodate a cover, and it would be a  
19 cover of the driver's side of the car, or the passenger side of  
20 the car, and allow the attendant to get the mother into the car  
21 protected, but would not intrude upon the next door neighbor's  
22 property.

23 There does not have to be such a large port  
24 coucher, and as it stands now, I think that the drawings are far  
25 in excess of what shall we say the Fair Housing might require.

1 CHAIRPERSON GRIFFIS: Okay. Well, first of all,  
2 you made a statement that the cutoff of the site line from the  
3 adjacent neighbor, but the adjacent neighbor has a wood stockade  
4 fence there, and I am not sure what in terms of the view that is  
5 actually impacted.

6 I find that they have in fact established their own  
7 definition of what the site lines will be. This being an open --  
8 and I would turn the Board's attention to the drawings submitted,  
9 which are the most current design.

10 And they are dated the 1st of October, '01, of  
11 which the applicant did get a new architect to look at this. The  
12 establishment of a no site line off of the adjacent property is  
13 done so by their own doing, by the stockade fence.

14 And the port coucher that is being anticipated or  
15 proposed is open, totally open. If that fence was to go away,  
16 you in fact would have a better view down the street. So that is  
17 of their own volition to do that.

18 Secondly, to assess this application by the  
19 existing canopy structure is absolutely incorrect, because what  
20 is before us with this special exception is an application for a  
21 new construction.

22 Now, the elevations that were done -- and I would  
23 turn people's attention to Sheet A-2 -- show the difference  
24 between the existing canopy, which you pointed out in those  
25 photographs, to the proposed.

1                   And I would again say that if you are talking about  
2 adverse impact, in fact both of these A-3 and A-2, I think,  
3 illustrate very well the changes in order to accommodate the  
4 criticism which I think we all are a hundred percent in  
5 concurrence of the criticism of the current structure that is  
6 there.

7                   However, we are not dealing with that. Rather, we  
8 are dealing with what is proposed, and you see that there is a  
9 substantial height reduction, and the peak of this coucher as  
10 proposed is substantially below the existing canopy.

11                   And I also think it is frankly in keeping with the  
12 architectural design. If you look at A-3, the peak of the  
13 existing canopy is shown, and the proposed is shown substantially  
14 below that.

15                   In the Section on A-2, again you see as the  
16 photographs are showing, you see the height, the maximum height  
17 of the existing, and then the proposed is shown. And it is also  
18 stepped back from the property line if the staff's line in the  
19 drawings are correct.

20                   VICE CHAIRPERSON RENSHAW: Can you tell us how much  
21 of a reduction that is?

22                   CHAIRPERSON GRIFFIS: Substantial.

23                   VICE CHAIRPERSON RENSHAW: What is substantial  
24 though? I can't quite see it on the plans.

25                   CHAIRPERSON GRIFFIS: Well, actually, it is not

1 scaled, and so I have no idea. However, by looking at the scale  
2 dimension that is on this, I would say that the existing canopy  
3 peak to the proposed peak is probably upwards of 2-1/2 to 3 feet  
4 reduction.

5 VICE CHAIRPERSON RENSHAW: But that is a guess on  
6 your part?

7 CHAIRPERSON GRIFFIS: Oh, a hundred percent guess.

8 VICE CHAIRPERSON RENSHAW: Okay. Good.

9 MEMBER ETHERLY: Mr. Chair, while we are discussing  
10 these matters, just to give a little bit of context to my  
11 colleagues. I originally was not in favor of reopening the  
12 issue.

13 But I was somewhat swayed by your comments at our  
14 prior session, Mr. Chairman, regarding the fact that we did not  
15 necessarily have resolution that there could not necessarily be  
16 findings of fact, or conclusions of law, in this case because of  
17 the absence of a mayoral appointee, and in this particular  
18 instance, myself.

19 Now that the matter is before us, Mr. Chairman, I  
20 am inclined to grant the special exception. I wanted to hear a  
21 little bit of conversation regarding the adverse impacts and  
22 specifically as related to the issue of the site lines, because  
23 there seemed to be a great deal of conversation in the record  
24 regarding that particular issue.

25 But I was swayed by the fact that you are

1 discussing -- what we are discussing here is an open design with  
2 regard to the port coucher, and that we are not talking about an  
3 enclosed structure, and that as you noted, Mr. Chairman, thee is  
4 already the existence of a structure in between the site line of  
5 the adjacent neighbor and the proposed new structure.

6 That being said, Mr. Chairman, in the interests of  
7 brevity and perhaps just as a guide for further conversation, I  
8 am inclined to grant the special exception, unless to take Ms.  
9 Renshaw's tact from our prior discussion with the previous  
10 application, unless there is some compelling information that I  
11 am missing. Thank you.

12 CHAIRPERSON GRIFFIS: Thank you.

13 MEMBER ETHERLY: Compelling information, that is,  
14 Mr. Chairman, with regard to adverse impact.

15 SECRETARY PRUITT: Excuse me, Mr. Chair. Is that a  
16 motion?

17 CHAIRPERSON GRIFFIS: That's what I was going to.  
18 Mr. Etherly, you want to make that a motion?

19 I would move then that we approve Application Number 16710 of  
20 Vinay Pande, pursuant to 3104.1, for a special exception under  
21 Section 223, to allow the construction of a canopy over a  
22 driveway and stairway, leading to a single family dwelling, that  
23 of course would not comply with side yard requirements under  
24 Section 405.

25 And the property is located in an R-1-B district,

1 at 5210 Klinge Street, Northwest.

2 MEMBER ETHERLY: I second that, Mr. Chairman.

3 CHAIRPERSON GRIFFIS: Okay. Thank you.

4 Discussion? I think we have had substantial discussion on this,  
5 and unless others have comments further that they want to make in  
6 terms of the motion.

7 VICE CHAIRPERSON RENSHAW: Well, I have not heard  
8 anything in the discussion today that would allow me to change my  
9 vote. I don't think that the -- I agree with my colleague, Mr.  
10 Levy, in his remarks about the Fair Housing.

11 I don't think there is anything additional that is  
12 going to allow me to vote in favor. I don't think the design is  
13 one that should be in that location as presently defined in the  
14 dimensions.

15 I think that it is too large, and I feel that we  
16 could accommodate the handicapped family member with a much  
17 smaller port coucher that would be much more accommodating to the  
18 neighbors, and would not be so intrusive. And that would still  
19 satisfy the Fair Housing demands.

20 CHAIRPERSON GRIFFIS: Thank you, Ms. Renshaw.  
21 Well, there it is. Others?

22 COMMISSIONER HANNAHAM: I sort of look back over  
23 the period of almost a year that this case has been before us,  
24 and I think it was back in July, and it has been a lot time.

25 And one of the more difficult parts, or one of the

1 things that I think has made this very difficult for us is that  
2 the applicant actually, without any knowledge of the requirements  
3 for advising neighborhood, and the fact that there wasn't even a  
4 zoning question, when ahead on the advice of a canopy  
5 manufacturer or distributor.

6 And that is what got him into this particular bind,  
7 and I was concerned over the fact that there was this contention  
8 between neighbors, and I was very concerned over the long run  
9 that the resolution of this should minimize that kind of a  
10 conflict.

11 The applicant has assured us and certainly has  
12 demonstrated over the period of this year that he is amenable to  
13 making adjustments to the concerns that were expressed with  
14 respect to this particular structure.

15 And I am impressed with the changes that have been  
16 made in this regard, and I don't think that they should obviate  
17 the necessity for going forward to accommodate his mother.

18 I think that this has been a long and very arduous  
19 situation to put this family in, and I think they have made every  
20 effort to be accommodating to the neighbors, in terms of  
21 expending time, et cetera.

22 So I would definitely support the motion to accept  
23 the request for a special exception in this case.

24 MEMBER ETHERLY: Mr. Chair, just on two additional  
25 points with regard to the Advisory Neighborhood Commission 3-D's

1 opposition in this case, which was affirmed so to speak, and  
2 continues as we reconsider this application.

3 That opposition in significant points spoke to the  
4 issue of the site line intrusion, as well as the extension of the  
5 port coucher towards the sidewalk. I have already spoken to the  
6 visual site line issue as not being overwhelmingly persuasive to  
7 me in this matter.

8 And I believe what gives me some measure of comfort  
9 with regard to going against the grain of the ANC's decision also  
10 is this issue of the Fair Housing Act.

11 I am not necessarily inclined as my colleague, Ms.  
12 Renshaw, may be, although I do applaud the effort to perhaps  
13 speak to some type of middle ground here with regard to length of  
14 the port coucher, but I am inclined to leave that to perhaps more  
15 able-bodied persons.

16 And so I am inclined to once again support the  
17 motion with the plans as they have been presented to us without  
18 any desire to necessarily tinker with that desire.

19 But I wanted to be sure to speak to the ANC point,  
20 because there was a letter obviously submitted to the record  
21 detailing their opposition, and some additional paperwork  
22 provided by an ANC Commissioner, Mr. Finney, and so I wanted to  
23 be sure to speak to that, and also to the issue of the Fair  
24 Housing Act, and its relationship here.

25 The Fair Housing Act's role here, I think, is

1 somewhat persuasive and helped to take me to the point where I am  
2 now with regard to supporting the motion. Thank you again, Mr.  
3 Chairman.

4 CHAIRPERSON GRIFFIS: Thank you, Mr. Etherly.

5 COMMISSIONER HANNAHAM: Mr. Chair, may I also  
6 mention that in our December 4th meeting, decision meeting on  
7 this case, we went to considerable -- we had a considerable  
8 discussion with respect to the kinds of options that the Board  
9 might have, including the approval with conditions, and perhaps  
10 even design changes, if that was just in our purview.

11 And there was no consensus to go forward on that,  
12 and so I think we have explored those fine hair splitting  
13 possibilities, where it doesn't make any sense anymore.

14 And to just to look at this as a finished proposal  
15 that has been thought through and presented to us, and I think it  
16 is sufficient to go forward. Thank you.

17 VICE CHAIRPERSON RENSHAW: Mr. Chairman.

18 CHAIRPERSON GRIFFIS: Yes.

19 VICE CHAIRPERSON RENSHAW: We have a letter, dated  
20 May 16th, from ANC-3D, signed by the Chair, that the ANC met on  
21 Wednesday, May 1st, 2002, and a quorum was present.

22 And the Commission voted four to zero, to zero, to  
23 send a letter to the BZA stating that it will stay with its  
24 former letter, in which we suggest that the applicant tear down  
25 the present structure and work with the line of site neighbors.

1                   So they wish to reinstate their position that Mr.  
2 Pande be required to tear down the present structure and work  
3 with the neighbors.

4                   CHAIRPERSON GRIFFIS: I think that we have touched  
5 on that matter several times, and we did in the hearing also  
6 touch on the fact that we had no jurisdiction to order the  
7 removal of the current canopy, and this board obviously doesn't  
8 do that.

9                   But it was referred, and obviously there was a note  
10 out as to people who would have been part of that. So with that  
11 being said, do others want to speak of the motion? I think it  
12 has been fairly persuasively deliberated on.

13                   If not a moment more, then I would ask for all  
14 those in favor of the motion to signify by saying aye.

15                   (Ayes.)

16                   CHAIRPERSON GRIFFIS: And opposed?

17                   (Nays.)

18                   CHAIRPERSON GRIFFIS: And if the Staff would record  
19 the vote.

20                   SECRETARY PRUITT: The staff would record the vote  
21 as 3 to 2 to approve; motion made by Mr. Griffis, and seconded by  
22 Mr. Etherly.

23                   CHAIRPERSON GRIFFIS: Thank you very much, and  
24 thank you all very much. I do appreciate the additional time  
25 that we put in, and Mr. Etherly, I do appreciate your time in

1 reviewing this, and being able to participate. Let us move on.

2 At this time, we are going to -- and the staff will  
3 direct us, but we have -- well, why don't you -- yes, indeed.  
4 You can call the next case, and we will substitute in and out.

5 SECRETARY PRUITT: The last item on your agenda  
6 this morning is Appeal Number 16879, the Appeal of Nebraska  
7 Avenue Neighborhood Association, pursuant to 11 DCMR 3100 and  
8 3101, from the administrative decision of the Zoning  
9 Administrator, Department of Consumer and Regulatory Affairs, in  
10 the issuance of a building permit, Number B442149, issued on  
11 January 22, 2002, to Sunrise Connecticut Avenue Assisted Living  
12 LLC, allowing a modification to a building permit Number B435464,  
13 dated March 8th, 2001, allowing revisions to the roof  
14 plan/structure, including the elevator, in an R-2 and R-5-D  
15 District, located at 5111 Connecticut Avenue, Northwest, Square  
16 1989, Lot 162.

17 This is a motion to dismiss the appeal. On March  
18 19th, 2002, the Appellant filed the appeal. The Office of Zoning  
19 has scheduled a hearing for this for June 18th, 2002.

20 The Intervenor and property owner, Sunrise Assisted  
21 Living, LLC, has requested that the appeal be returned and no  
22 further action taken by the Board because it does not meet the  
23 filing requirements.

24 This decision is before the Board as to whether  
25 that appeal should go forward as scheduled, or be dismissed.

1 CHAIRPERSON GRIFFIS: Good. Thank you very much.  
2 And let us just be clear also that we received a letter to the  
3 staff from the Shaw-Pittman Law Firm, and we have taken that,  
4 although it was not directly stated, but we have taken that as a  
5 motion to dismiss the appeal, and that is what we have before us  
6 today.

7 I am actually -- let me just interrupt for a quick  
8 saying for those that are here for the public hearing. We  
9 obviously are in our deliberative process, and this is the last  
10 case of the morning.

11 By my clock, it is about 10 of 11:00, and we will  
12 be adjourning from this meeting for a small executive session,  
13 and then coming back out, and it will not be before 11:15.

14 So going back now to Sunrise. There are  
15 representatives here for the Sunrise, and can I ask you to come  
16 to the table. And are there other representatives for the ANC or  
17 others here for this application? No one is signifying that.  
18 Okay. Just introduce yourself.

19 MS. PRINCE: Good morning, Members of the Board. I  
20 am Allison Prince, with Shaw Pittman.

21 CHAIRPERSON GRIFFIS: Excuse me just a minute.

22 (Brief Pause.)

23 CHAIRPERSON GRIFFIS: Okay. Board Members, before  
24 we get too far into it, we do have two submissions, and in fact I  
25 think you have just been handed one from the Nebraska Avenue

1 Neighborhood Association.

2 Ms. Prince, are you in receipt of this? It is a  
3 letter, dated May 20th, 2002?

4 MS. PRINCE: May 20th, 2002, filed by NANA?

5 CHAIRPERSON GRIFFIS: Yes, by Ms. Anne Paige  
6 Giopella.

7 MS. PRINCE: The late filing in response to the  
8 motion?

9 CHAIRPERSON GRIFFIS: There is one that I am aware  
10 of. It actually came in today.

11 MS. PRINCE: Oh, no, I do not have a copy of that  
12 letter, and I would appreciate a copy.

13 CHAIRPERSON GRIFFIS: Board Members, we are going  
14 to need to waive this in if we accept it into the record. We  
15 also need to waive in the ANC report, and I don't want to get  
16 into the details.

17 I have been told that there are perhaps mitigating  
18 circumstances or allowances by staff of a day here and a day  
19 there. It doesn't matter, as it is our rules, this Board's  
20 rules, and so we will either need to uphold and stand by them, or  
21 waive them to take this into the record.

22 Are there any objections to doing that from Ms.  
23 Prince? Actually, you have established your objection to it  
24 already.

25 MS. PRINCE: We object, and we certainly object to

1 the most recent letter, which challenges the manner in which the  
2 Board dictated that the timing would be computed.

3 Ms. Giopella has suggested that the timing should  
4 be computed based on her receipt, rather than the date of the  
5 letter, and an allowance of three days for mailing.

6 The letter could not have been more clearer, and  
7 provided three additional days beyond those dictated in the  
8 regulations. It was a lengthy time period that was given for Ms.  
9 Giopella to respond.

10 CHAIRPERSON GRIFFIS: Board Members, I don't know  
11 how much patience you have for going into all of this. It was  
12 fairly clear that we had 13 days; 10 days to respond, and 3 days  
13 to add for the mailing, and it is what it is, and the date and  
14 deadline is set.

15 I don't want to spend time deliberating on whether  
16 that is appropriate or not. Let's take them as singles. The  
17 first one that just came in today, which is just talking about  
18 that as far as I can glean from reading this very quickly, and I  
19 would say that we do not accept that into the record. Any  
20 objection?

21 MEMBER LEVY: Mr. Chair, I would just ask that the  
22 second page of this is post-marked May 3rd. I don't even  
23 understand what we are looking at.

24 CHAIRPERSON GRIFFIS: Nor do I.

25 MEMBER LEVY: We have a letter dated May 20th, and

1 the second page attached is a photocopy of an envelope, post-  
2 marked May 3rd. That is 17 days. So do these go together?

3 CHAIRPERSON GRIFFIS: I don't know. Does the staff  
4 have any indication about what that discrepancy is?

5 MEMBER ETHERLY: No, it would appear, Mr. Chair,  
6 that the xeroxed envelope is a copy of the envelope in which the  
7 Shaw Pittman letter was sent from the Office of Zoning.

8 CHAIRPERSON GRIFFIS: Right.

9 MEMBER LEVY: I'm sorry, you are right. It is an  
10 envelope from the Office of Zoning to the Nebraska Avenue  
11 Neighborhood Association.

12 MEMBER ETHERLY: But, Mr. Chair, I am inclined to  
13 stand by your position and not accept this into the record.

14 CHAIRPERSON GRIFFIS: Mr. Levy.

15 MEMBER LEVY: I am fine with that. It's okay.

16 CHAIRPERSON GRIFFIS: I think the importance here  
17 is the substance of the matter, and I think that is the case in  
18 every application that we have in front of us, and so let's get  
19 to the heart of it, and let's get to the substance, and let's not  
20 get bogged down in a lot of the schematics of it, unless it gets  
21 us to a direction that we actually need.

22 So now we have the ANC Commission 3-G letter, and  
23 which also is being objected to. This was a day late if I am not  
24 mistaken.

25 SECRETARY PRUITT: I'm sorry, Mr. Chair, but it was

1 more than a day late.

2 CHAIRPERSON GRIFFIS: Oh, it was?

3 SECRETARY PRUITT: Yes. It was a couple of days  
4 late. The deadline was the 15th, if we do the 10 days, plus 3.

5 CHAIRPERSON GRIFFIS: Yes, but wasn't it filed on  
6 the 16th?

7 SECRETARY PRUITT: No, that was NANA's letter.

8 CHAIRPERSON GRIFFIS: Oh, is that right? You see,  
9 I can't even keep the dates straight. All right. Well, there it  
10 is. I would say, number one, that this prejudices in any way any  
11 of the participants in this.

12 I mean, I think we have the motion at hand that we  
13 can get to, and will get to, and whether we accept this letter.

14 MEMBER LEVY: Are we talking about the May 15th  
15 letter, Mr. Chair?

16 SECRETARY PRUITT: Correct, Mr. Levy. And it was  
17 received in our office on the 17th.

18 MEMBER LEVY: And the deadline was the 15th?

19 SECRETARY PRUITT: Correct.

20 CHAIRPERSON GRIFFIS: Was there anything else in  
21 addition to this?

22 MS. BAILEY: Mr. Chairman, we do have a document  
23 that came in from Ms. Prince yesterday, and I don't know if you  
24 have that in front of you or not.

25 CHAIRPERSON GRIFFIS: I had better, huh?

1                   MEMBER LEVY: I have a letter from Shaw Pittman  
2 that is stamped as May 17th. Ms. Bailey, is that the one?

3                   MS. BAILEY: Did you file something yesterday?

4                   MS. PRINCE: I did not.

5                   MS. BAILEY: You did not?

6                   MS. PRINCE: No, we filed our objection to the late  
7 filing on Friday.

8                   CHAIRPERSON GRIFFIS: And that is when your clock  
9 stopped, right?

10                  SECRETARY PRUITT: No, Mr. Chairman. I just  
11 believe that Shaw Pittman is also on a case this afternoon that  
12 was filed yesterday.

13                  MS. PRINCE: I did file something in that case  
14 yesterday.

15                  SECRETARY PRUITT: And she did file something  
16 yesterday on that case.

17                  CHAIRPERSON GRIFFIS: Okay. So we have that, too.  
18 All right. So I would suggest that we also not accept that into  
19 the record, unless there are major objections.

20                  MEMBER ETHERLY: No objection, Mr. Chairman.

21                  CHAIRPERSON GRIFFIS: Mr. Levy.

22                  MEMBER LEVY: None.

23                  CHAIRPERSON GRIFFIS: Okay. Let's proceed then and  
24 speak to the letter that was submitted by Shaw Pittman, which we  
25 are taking as a motion to dismiss the appeal, and there were

1 quite a few issues that were raised for the appeal, just to  
2 clarify, and I think we have quantified them as seven, and I  
3 think Shaw Pittman did the same in putting together their  
4 objection and letter to it.

5 Ms. Prince, I am asking you up here because I  
6 believe that this is our situation at this time. In order for us  
7 really to even deliberate on the motion to dismiss, I think what  
8 the board is going to need is further substantiation of the  
9 evidence that you are proposing, and that there are similarities  
10 and no differences in order to grant the appeal.

11 And I think other board members can speak to this,  
12 but I think the whole point -- well, let me put it in the way  
13 that I think about it, is that the application for the appeal has  
14 said that because of the changes that are made in the new permit,  
15 that they are so substantial that they actually can be granted in  
16 the appeal, because it is new information, and is so different  
17 from the previous.

18 Your submission coming to us is indicating that,  
19 no, in fact there is not a substantial difference. There is no  
20 grounds for an appeal. There is no new evidence, and there is no  
21 new information. There is no substantial change that says it.

22 We have that, and we have in front of us those  
23 words. And what I don't have, and I don't think this board has,  
24 is anything to actually base our decision on.

25 And I would say that we would actually look to

1 -- well, however you want to evidence that, but I think obviously  
2 it goes to the plans. Are there substantial differences in the  
3 plans that are now current, as opposed to what was previously  
4 stated.

5 And how do you want to substantiate the scale is of  
6 great difference. And perhaps that even comes down to the fact  
7 that it is attested to with a letter by the designer or engineer,  
8 or architect, of record that would speak to that.

9 Rather than -- or what it comes down to in a  
10 certain amount -- well, there it is. Is that clear?

11 MS. PRINCE: Well, I believe that in our motion to  
12 dismiss that we went through issue by issue, every single issue  
13 raised in the appeal, the second appeal, and indicated where the  
14 board had fully disposed of that issue, beginning with the  
15 mechanical equipment, and going through the FAR, and going  
16 through every single item that was raised.

17 Now, to zero in on the plans, as this Board is  
18 aware, you decided that we had a conforming penthouse structure  
19 for the Sunrise building. However, the zoning commission, in  
20 exercise of its sua sponte authority, intervened and disagreed.

21 And to make that issue go away, and to eliminate  
22 it, and to make it a non-issue, we removed the offensive  
23 penthouse. It does not exist. And I believe that our effort to  
24 make that issue go away after the Board's favorable decision, and  
25 to eliminate any potential for a future appeal -- which has in

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1 fact become a complete abuse of the administrative process I  
2 should add.

3 And this is the fourth effort to challenge this  
4 building, and while the administrative process has been abused,  
5 the appellant's have not availed themselves of the judicial  
6 process.

7 They allowed the deadline for filing an appeal in  
8 the Court of appeals to lapse, they will only abuse the  
9 administrative process. They have not exercised their remedies  
10 in court.

11 And that almost makes this second appeal more  
12 abusive and that they have not preserved their rights to  
13 challenge your original approval in court. But to suggest that  
14 our removal of the offensive penthouse constitutes a change that  
15 generates your ability to consider a second appeal on this matter  
16 would be outrageous to me.

17 In fact, when this board considered the motion for  
18 reconsideration -- and I should remind you that there were two  
19 motions for reconsideration in this case, and you were forced to  
20 throw out the second, and remind the appellants that there are  
21 not two bites at the apple.

22 That's why we are here four times now. But in the  
23 first motion for reconsideration, you did take into account at  
24 that point that we had revised the plans to address the sua  
25 sponte issue, to address the penthouse issue.

1                   So to even suggest that our willingness to make the  
2 whole issue go away somehow throws us into another appeal is  
3 frightening to us, when we have been at this now for a year.

4                   MEMBER LEVY: Mr. Chair.

5                   CHAIRPERSON GRIFFIS: Yes. Let me just quickly say  
6 that I am not sure that the Board disagrees with your statement,  
7 and what I think we are trying to get to is before we get to the  
8 appeal, having enough information for us to make the decision on  
9 your motion.

10                   And so clearly I did not say it, and I think if we  
11 were to, for instance, hold this motion in abeyance, it would be  
12 without prejudice. And it would just be for the gathering of a  
13 little bit more information and substantiation of the evidence.  
14 Mr. Levy.

15                   MEMBER LEVY: Well, I think what we have before is  
16 a real mix of issues, some of which may have merit, and some of  
17 which may not. The one to which you spoke, Ms. Prince, is the  
18 one that gives me the most concern, and that is the change in the  
19 roof structure, because we don't know what that change was. We  
20 had never seen that change.

21                   And in fact the Zoning Commission, in issuing their  
22 order, specifically did not address or rule on whether the new  
23 roof configuration met the zoning code, and they left it up to  
24 the zoning administrator to decide.

25                   And that issue was one that is listed here in the

1 appeal. So I would agree with Mr. Griffis that we don't have  
2 enough information on several issues, and in particular on that  
3 issue, to rule whether the appeal should be dismissed for lack of  
4 merit.

5 MS. PRINCE: I believe that at the time the zoning  
6 commission took up the sua sponte review, they welcomed us to  
7 submit for the record our drawings so that the penthouse issue  
8 would be eliminated in its entirety.

9 And we did in fact submit to the zoning commission  
10 drawings that are part of the record in this case that eliminate  
11 the offensive penthouse, the penthouse which you held was  
12 acceptable.

13 We cannot be placed in a downward spiral of never-  
14 ending appeals when we are simply trying to remove any issues.  
15 There is no offensive penthouse at this point. It was reduced in  
16 height, I believe, to 18 inches. Yes, 18 inches.

17 And so it doesn't even -- it is not what is there,  
18 and is not required to be set back, and it is less than the four  
19 foot limit, and there is nothing for you to look at.

20 And to have an entire hearing on June 18th about a  
21 penthouse that was removed seems to be an abuse of the  
22 administrative process.

23 CHAIRPERSON GRIFFIS: Right. And frankly other  
24 board members obviously could go to different issues. The issues  
25 of the changing of the elevator's enclosure in the penthouse are

1 not of great pertinence to me, because I think it has -- well,  
2 for the reasons already stated.

3 But I think the other point was,  
4 and perhaps where I was trying to go, and perhaps it is not  
5 direct enough. But even when we look at -- there is a question  
6 of rear yard, and there is a question of FAR, what we are looking  
7 at is the combativeness of where it is being thrown about.

8 And all I was looking for, and I  
9 think the Board would concur, but please voice your opinions, is  
10 that we just have some sort of substantiation, some sort of  
11 evidence that we could put to the words, then we could move on  
12 with it.

13 MS. PRINCE: I believe the evidence is in the  
14 record.

15 CHAIRPERSON GRIFFIS: Okay.

16 MS. PRINCE: I believe the record will demonstrate  
17 that the only change in the plans is the elimination of the  
18 penthouse that gave the zoning commission trouble.

19 To read this, that these issues of FAR, use, rear  
20 yard calculation --

21 CHAIRPERSON GRIFFIS: When you say it is in the  
22 record though --

23 MS. PRINCE: There has been no change in the plans  
24 in any way.

25 CHAIRPERSON GRIFFIS: When you say in the record,

1 just for clarification, you mean in the original appeal, that we  
2 should look to?

3 MS. PRINCE: Right.

4 CHAIRPERSON GRIFFIS: For instance, your submission  
5 in the chart of issues, which is very helpful, Issue 3, 402, FAR  
6 in excess of 3.5, and you indicate that it was raised in the  
7 original appeal, and see Attached Exhibit B, and that's it.

8 I mean, that's what you have, and nothing else has  
9 in fact changed.

10 MS. PRINCE: Are you suggesting that -- well, we  
11 were working with the assumption that the record from the  
12 original appeal would be incorporated into the record in this  
13 appeal. We were working with that assumption.

14 CHAIRPERSON GRIFFIS: Well, I guess -- I mean,  
15 let's get clarification on that from corporation counsel whether  
16 that would in fact be correct or not.

17 MS. PRINCE: Well, the two records obviously have  
18 to be compared to determine --

19 CHAIRPERSON GRIFFIS: Yes, they somehow have to be  
20 tied, and I don't have a problem with that.

21 MS. SANSONE: Mr. Chairman, I think at this point,  
22 the only items from the first appeal that are in this file  
23 consist of the orders that the Board and the Commission entered  
24 into. There are no other factual information in the record.

25 CHAIRPERSON GRIFFIS: Well, how then do we assess

1 the Shaw Pittman letter and the chart of issues that actually  
2 refer back to exhibits in the original appeal case? Are we not  
3 to introduce those, or is that an introduction into this case as  
4 factual evidence?

5 MS. SANSONE: Mr. Chairman, what I would suggest  
6 is, is that this is a dispositive motion, and it is being treated  
7 as one. A request to dismiss or dispose of a case, an appeal.

8 CHAIRPERSON GRIFFIS: Right.

9 MS. SANSONE: And the party making that motion has  
10 the burden of not only making the legal arguments which were set  
11 out in the letter, but actually substantiating those legal  
12 arguments with whatever factual showings are necessary.

13 And so I think what the Board is trying to ask here  
14 is that Sunrise submit evidence, perhaps an affidavit or sworn  
15 statement, that goes through all the issues being raised in the  
16 appeal, and simply clarifies that they are the same in the  
17 opinion of the architect, or engineer, or project manager, or  
18 they are not.

19 And that is all that is being asked for here to  
20 substantiate the arguments in the letter. I believe that in our  
21 motion filed on April 3rd, we laid out every issue, and the  
22 manner in which this board has already disposed of that issue.

23 In addition, we attached to that motion relevant  
24 portions of the record from the earlier appeal that shows that we  
25 have been there and we have done that with respect to every issue

1 that is raised in the second appeal.

2 That is what is the purpose of the attachments  
3 were. It goes through not only -- I mean, the orders which are  
4 clearly part of your records, but in addition some of the  
5 materials that was fully disposed of by the Board, and copies of  
6 -- let's see what we have.

7 If we go through all the issues that were raised in  
8 the earlier appeal, and we have gone through every motion, every  
9 decision of the Board, on how that issue was disposed of.

10 I don't believe that an affidavit should be  
11 required when the attorneys for the applicant have gone through  
12 every issue and explained the manner in which it was disposed of.

13 We are happy to provide that. However, we are most  
14 anxious to dispose of this matter.

15 MS. YOUNG: If I may interject. Patricia Young,  
16 Office of the Corporation Counsel as well. True, your submission  
17 does contain all the issues, but the allegation by NANA and ANC-  
18 3G is that the plans are significantly changed, and therefore  
19 those changed plans are the basis of their new facts.

20 In all fairness to you, you cannot tell from their  
21 submission the precise way in which they are saying that the  
22 plans are changed. But we do need to have someone come forward  
23 and say how it is that the plans are the same if NANA is not  
24 going to say how they are changed other than to say that they are  
25 new.

1 MS. PRINCE: We filed a plan modification to  
2 eliminate the penthouse that this Board deemed was conforming.  
3 That is the only plan modification that has been filed. I will  
4 state that on the record.

5 I don't believe that an affidavit is necessary to  
6 demonstrate that we filed a plan modification. That is the basis  
7 for NANA's appeal. We eliminated the penthouse that this board  
8 was concerned about.

9 We simply took it away. It does not exist. To  
10 suggest that that triggers another appeal, a fourth bite at the  
11 apple for this applicant, who did not even come here today to  
12 defend their case, my motion to dismiss their case, is outrageous  
13 to me.

14 The plans are in the records of DCRA, and we did it  
15 at the request of the zoning commission, and that was at the  
16 specific request of the zoning commission. We were invited to  
17 file the drawings that eliminated their issue.

18 We did in fact do that, and motions for  
19 reconsideration were taken up by this Board after those plans  
20 were entered into the record. This Board could have investigated  
21 our elimination of the penthouse at that point, but saw fit not  
22 to because you didn't have a problem with the penthouse as it was  
23 originally filed.

24 So I am not going to -- you know, there is nothing  
25 that I could give you other than my representation that we filed

1 plans that eliminated this issue, and they are in the record in  
2 the sua sponte appeal.

3 CHAIRPERSON GRIFFIS: Okay. And so it is also your  
4 testimony then that -- well, not your testimony, but rather it is  
5 also your statement for the applicant that on Issue 3 that you  
6 raised for the FAR that in fact the plans have not changed as to  
7 the FAR?

8 MS. PRINCE: They have not changed in any way on  
9 FAR, nor on the yard computations.

10 CHAIRPERSON GRIFFIS: All right. So --

11 MS. PRINCE: And issues raised in the appeal such  
12 as the set down rule, which this Board fully disposed of, should  
13 have been raised with the Court within the time line for filing a  
14 petition for review, and this appellant chose to ignore that  
15 avenue of relief. And rather to continue to abuse the  
16 administrative process.

17 MEMBER LEVY: Mr. Chair.

18 CHAIRPERSON GRIFFIS: Yes.

19 MEMBER LEVY: I just would like to reiterate that I  
20 think from my reading of this file that there is a mix of issues  
21 here, some of which may or may not have merit.

22 I am having a hard time understanding the  
23 difficulty and seeing a revised roof plan given that the Zoning  
24 Commission overturned our ruling on the roof penthouse.

25 The applicant presented a new roof plan, which we

1 have not seen, to the zoning commission, which I have never seen  
2 that roof plan. And the appellant is claiming that the new roof  
3 plan does not meet the zoning.

4 CHAIRPERSON GRIFFIS: Well, I have some difficulty  
5 with that, Mr. Levy, and that we have sent this applicant on this  
6 road to remedy and the change, and we being one issue, and we had  
7 actually a decision on it, and then it went to the zoning  
8 commission.

9 And so what you are saying is that there is proper  
10 grounds for appealing the permit for the new change.

11 MEMBER LEVY: I am saying it is a new permit.

12 CHAIRPERSON GRIFFIS: I see.

13 MEMBER LEVY: And this is a new appeal. And I  
14 think that this matter would be a lot easier to deal with if the  
15 applicant would simply submit some evidence that there are no  
16 changes, except for the roof plan, and show us what the roof plan  
17 is, and I think it would be a lot easier to deal with this  
18 matter.

19 CHAIRPERSON GRIFFIS: Right. And for clarity that  
20 hearing is set for the 14th, and do a full-blown appeal, in which  
21 case that may be successful, or it may well not be. But that is  
22 the status, and I see what you are saying. Okay.

23 MS. PRINCE: I would add that when this Board took  
24 up the motion for reconsideration after the zoning commission had  
25 already taken its sua sponte action, the roof plans were in the

1 record at that time.

2 So if you have not reviewed the roof plans, it was  
3 not for lack of the roof plans being in the record at that point.

4 MEMBER LEVY: I believe that motion was held in  
5 abeyance was it not pending the Zoning Commission's ruling? So  
6 you are assuming that we are familiar with those plans.

7 MS. PRINCE: And then it was disposed of. The  
8 motion was held in abeyance as you will recall while the sua  
9 sponte authority was exercised. Then once the Zoning Commission  
10 completed its review of the matter with those revised restructure  
11 plans in the record, the previous matter that had been held in  
12 abeyance was brought before you, and this Board in fact disposed  
13 of that motion.

14 MEMBER LEVY: Because it was already ruled on by  
15 the Zoning Commission?

16 MS. PRINCE: No, because you were upholding your  
17 earlier decision in every way. Then after you disposed of that  
18 motion, another motion was filed by the appellants to revisit the  
19 identical issues, and that second motion was in fact returned to  
20 the appellants, and was not taken up by this board because there  
21 is no provision in the rules for a reconsideration of a motion  
22 for reconsideration.

23 MEMBER LEVY: I still, Mr. Chairman, don't believe  
24 that that changes the fact that this is a new building permit,  
25 and this is a new appeal, and I think that this is the easier of

1 the two ways to proceed, if we could have a submission that  
2 substantiates the claim that there are no significant changes.  
3 And that the changes that were made comply with zoning.

4 MEMBER ETHERLY: Mr. Chair, here is my challenge. I  
5 am swayed by counsel's argument. Judicial economy, and  
6 administrative clarity aside. Well, let me just highlight an  
7 important point that the corporation counsel made, Ms. Sansone.

8 In that the file that is before me is a very short  
9 and sweet one, and so I don't have the benefit of a lot of the  
10 other meat that we are talking about. What I would like to ask  
11 my colleague, to Mr. Levy, is that when you say this is a new  
12 appeal, is it new just because of the change in the roof  
13 structure?

14 MEMBER LEVY: I don't know.

15 CHAIRPERSON GRIFFIS: I'm sorry, I don't understand  
16 that.

17 MEMBER LEVY: This is a new permit. This is the  
18 appeal of a new permit, right?

19 CHAIRPERSON GRIFFIS: Well, yes, it is.

20 MEMBER LEVY: This is the appeal of a new permit,  
21 and I haven't seen --

22 CHAIRPERSON GRIFFIS: Well, that is one piece to  
23 this application for the appeal. I mean, of all of the issues  
24 that are listed, what they are basically saying is that there is  
25 so much new information here. There is information that we

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1       couldn't get before, and there is so much information that we  
2       have grounds for a brand new appeal.

3                 And our point in looking at this is that if we had  
4       to decide on the appeal right now with what is submitted, it is  
5       not there. We have not been to the appeal, and we have not been  
6       to the hearing. That is the point. NANA would have to get up  
7       and make their case.

8                 Now that we have a motion to dismiss this appeal,  
9       what we are trying to establish is whether there is enough  
10       information for us to dismiss this outright, and I think frankly  
11       the Board in its past deliberations, and in looking at all of  
12       these issues, is very close to being able to do that, but we  
13       cannot do that without additional information in order to assess  
14       some of these things.

15                And I don't know how else to say it, except that I  
16       think the Board Members are feeling that -- well --

17                MEMBER ETHERLY: I mean, I was inclined to go where  
18       you were heading initially, Mr. Chairman, but I mean, what is  
19       that new information. We have don't have the applicant here  
20       saying that there have been no changes to FAR.

21                CHAIRPERSON GRIFFIS: Right. Well, we can believe  
22       it on face right now. That is not a problem. We have the motion  
23       in front of us, and we can go through -- what I was trying to do  
24       was just trying to flush out some of the issues that are raised.

25                If we feel strongly that we want to do that, I

1 support that. If we can deliberate and get something done today,  
2 then let's do it.

3 MEMBER ETHERLY: I mean, the only reason I raise  
4 that issue as I said, Mr. Chair, was that I was comfortable with  
5 the direction in which we were going. But if we are indeed as  
6 close as it sounds we are to resolving this issue, why drag it  
7 on?

8 CHAIRPERSON GRIFFIS: Well, I would tend to agree.  
9 I mean, the fact of the matter is that it is hard to keep all of  
10 the motions together in following this entire case, and it is an  
11 indication that we have looked at this every which way  
12 conceivably possible, and that we have in fact an affirmative  
13 motion that we have upheld on this Board that it has been to the  
14 Zoning Commission and background again.

15 I mean, I am compelled to take the motion up today.  
16 I thought I had an indication from the other board members that  
17 we may need something further, but if that is not the case, then  
18 let's proceed.

19 MEMBER LEVY: I would disagree, Mr. Chair. I think  
20 the most efficient way for all parties for us to proceed is to  
21 get some additional information, and substantiate the motion to  
22 dismiss, and let us review that, and make an informed decision.

23 CHAIRPERSON GRIFFIS: And that's fine, and I can be  
24 patient and do that, but believe me the word is not efficient for  
25 that recourse.

1                   MEMBER LEVY: Well, the end result of that may be  
2 less efficient if we don't take that course.

3                   CHAIRPERSON GRIFFIS: Well, the end result may be  
4 more efficient if we can get enough, and we take up this motion  
5 again in two weeks.

6                   MEMBER LEVY: Absolutely.

7                   CHAIRPERSON GRIFFIS: And not go to a full-blown  
8 appeal, which frankly I think is the most efficient and most  
9 effective way for this Board to spend its time.

10                  MS. PRINCE: May I make one comment just for the  
11 benefit of Mr. Levy? We do not have a new permit. We have a  
12 modification of the original permit, and in considering the sua  
13 sponte review, Ms. Mitten, who unfortunately is not here today,  
14 specifically said that she wanted it to be clear that this was a  
15 permit modification so that we would avoid this precise type of  
16 situation.

17                                To give you an idea of how extreme this situation  
18 could become if you were willing to take this up, if we want to  
19 change a doorway mid-construction, is that grounds for an appeal?

20                                Is that grounds for revisiting FAR, side yard, rear yard, roof  
21 structure? I believe it's not.

22                   CHAIRPERSON GRIFFIS: Well, I think that this Board  
23 would absolutely agree that it is not, and I think the point is  
24 that when we look at it, if it is just the moving of a door, then  
25 that is what we would need to see so that we would know that we

1 are not going into the new FAR, or the new rear yard, or anything  
2 intended to the roof that it would require us to look at.

3 Let me ask you quickly, because the NANA letter  
4 that we have indicates two numbers for applications for permit.  
5 Do you want to just speak to that, and that is that -- well, go  
6 ahead.

7 MS. PRINCE: Two applications for numbers for  
8 permit?

9 CHAIRPERSON GRIFFIS: I'm sorry, let me just make  
10 sure --

11 MEMBER LEVY: Two permit numbers?

12 MS. PRINCE: Right. Our modification permit is our  
13 second permit number, and the specific language of the permit  
14 says modification of permit number, the original permit that it  
15 in fact modifies.

16 CHAIRPERSON GRIFFIS: Okay. And that may lead  
17 itself to the clarity of the point that you are making, is that  
18 the original permit application is B442149, and actually the new  
19 one, which would be the modification of the original permit, has  
20 a separate number.

21 MS. PRINCE: Exactly.

22 CHAIRPERSON GRIFFIS: Which is 435464, which may  
23 have in fact been looked at as a separate permit.

24 MEMBER LEVY: And I appreciate the clarification,  
25 but that doesn't change my concern. All of this is a

1 modification to permit number 435464, and specifically -- and I  
2 can't seem to say that today -- a revision to the roof  
3 plan/structure, to include elevator only. I just --

4 MS. PRINCE: Only. Only. I highlight that.

5 MEMBER LEVY: But it doesn't specifically -- I  
6 really -- it would be helpful to me to be able to see a roof plan  
7 that was submitted as part of this permit application to have.

8 And to be perfectly frank, there are very few  
9 issues here before me that concern me. This concerns me, and I  
10 really think it would be wise for us to proceed by getting some  
11 information submitted where we can see the roof plan and feel  
12 comfortable about it.

13 MS. PRINCE: We can submit an affidavit from the  
14 architect and the roof plan, which is already in the sua sponte  
15 record, indicating that no other facets of the drawing were  
16 changed.

17 However, to prevent further preparation time for an  
18 appeal that we hope never happens, I strongly suggest that you  
19 allow us to submit this information within the next 48 hours, and  
20 that you be extremely judicious in the amount of time that you  
21 give to the opposition to comment on this information.

22 And that you place this matter on a special meeting  
23 agenda, or a regular agenda, that will allow us to refrain from  
24 having to prepare for the June 18th scheduled appeal hearing.

25 CHAIRPERSON GRIFFIS: Well, I think that is

1 perfectly appropriate to ask, and I think it is actually  
2 anticipated by the Board. And if you are indicating that you in  
3 fact can produce what we need in 48 hours, then that obviously  
4 sets our clock ahead and can move quite more efficiently.

5 So if within 48 hours, do you mean by the end of  
6 the day on Thursday that you would have your information  
7 submitted?

8 MS. PRINCE: That's fine, and we will serve the  
9 parties.

10 CHAIRPERSON GRIFFIS: So you will serve in person  
11 the parties, and so they will all be served on Thursday, and I  
12 would indicate that we give no more than five business days for  
13 the response to that.

14 SECRETARY PRUITT: Now, I just want to remind you  
15 that we have a holiday in there.

16 CHAIRPERSON GRIFFIS: A holiday?

17 SECRETARY PRUITT: Memorial Day.

18 CHAIRPERSON GRIFFIS: Yes, that's nice.

19 MS. PRINCE: Then we will serve them tomorrow. I  
20 mean, is the issue here that we are trying to make the June  
21 agenda?

22 CHAIRPERSON GRIFFIS: Yes. We are trying to make  
23 the next meeting.

24 MS. PRINCE: We will serve them tomorrow. That  
25 would allow five business days.

1 CHAIRPERSON GRIFFIS: And our next meeting would be  
2 on Wednesday.

3 SECRETARY PRUITT: So my understanding is that you  
4 would serve them by close of business on the 22nd, and then we  
5 will give them a week, which would be the 29th, to respond.

6 That would give us time to copy and  
7 get it into your package for June 5th, and that would be our  
8 first meeting in June given the holiday. I'm sorry, June 4th.

9 CHAIRPERSON GRIFFIS: What is our next meeting  
10 date?

11 SECRETARY PRUITT: Your next meeting date would be  
12 June 29th, a Wednesday.

13 CHAIRPERSON GRIFFIS: May 29th.

14 SECRETARY PRUITT: Excuse me, May 29th, a  
15 Wednesday, because of the holiday.

16 CHAIRPERSON GRIFFIS: Well let's see if we can't  
17 get it all done by then.

18 SECRETARY PRUITT: You could have responses, and  
19 that would give them a week to respond. That's typical.

20 CHAIRPERSON GRIFFIS: Well, typical is one thing.  
21 What is required?

22 SECRETARY PRUITT: We don't really have any hard  
23 requirements.

24 CHAIRPERSON GRIFFIS: There it is then. If it is  
25 served tomorrow, and I will ask Corporation Counsel for those

1 opinions so that I don't get into more trouble than I perhaps  
2 already am, and give ample time to respond by a public meeting  
3 set for the 29th.

4 I mean, we could even give them until the morning  
5 of the 29th and have our special meeting in the afternoon. It's  
6 nice to be able to create the rules.

7 MS. BAILEY: So, Mr. Chairman, you are going to  
8 have the response and the public meeting on the same day?

9 CHAIRPERSON GRIFFIS: Well, the response is going  
10 to be written and submitted.

11 MS. BAILEY: Right.

12 CHAIRPERSON GRIFFIS: And they can have it in on  
13 Friday, but it would be required in by the 29th. But before we  
14 set that, let me see if Corporation Counsel has any major  
15 objections to that.

16 MS. YOUNG: Mr. Chairman, we have no objections to  
17 the time frame you set up.

18 CHAIRPERSON GRIFFIS: Okay. Good. In which case,  
19 let's do that. In order to establish a little bit more time so  
20 that we don't first spend our first half-an-hour dealing with the  
21 motion to extend the time to respond, give them the morning of  
22 the 29th, and we can set a special meeting in the afternoon at  
23 one o'clock. Is that appropriate? Does anyone have a problem  
24 with that?

25 MEMBER ETHERLY: I have no problems, Mr. Chairman.

1 CHAIRPERSON GRIFFIS: Done. Then let's reiterate  
2 that.

3 SECRETARY PRUITT: Actually, Mr. Chairman, for the  
4 record, I just wanted to be clear that we are all on the same  
5 page. My understanding is that Shaw Pittman will serve all  
6 parties by close of business on the 22nd, May 22nd.

7 And responses from NANA and the ANC would be due by  
8 12:00 noon on the 29th, with a special public meeting to be held  
9 at one o'clock, the first thing in the afternoon agenda.

10 CHAIRPERSON GRIFFIS: Is that clear?

11 MEMBER LEVY: Mr. Chairman, I just want to make  
12 sure that we are clear on exactly what it is that is being  
13 submitted.

14 CHAIRPERSON GRIFFIS: Okay.

15 MEMBER LEVY: Because I have only asked for one  
16 thing in particular, but I just want to make sure that all  
17 parties are clear.

18 CHAIRPERSON GRIFFIS: Well, my frame of mind is  
19 this. That we are asking for further information. I am not  
20 inclined to give specific direction to it, and that I think you  
21 can be clear in terms of looking at the issues that if there is  
22 an FAR issue that is being brought up, if there is no actual  
23 change to it, then it either stands the way it is submitted, or  
24 there is further substantiation of that. And how they want to do  
25 that, I am not going to tell them.

1                   MEMBER ETHERLY:    But I think in fairness to the  
2 parties before us, if we are clear that there is only one thing  
3 at issue here, and that is what Mr. Levy has identified with  
4 respect to the roof, and that is all we are going to be expecting  
5 to see -- I mean, somebody help me out with this.

6                   MS. PRINCE:    How about if I tell you what I plan to  
7 file, because I only have 24 hours to do it?  I plan to file an  
8 affidavit from the architect indicating that the plans were  
9 changed in no way, with the exception of the change to the roof  
10 structure, which is in fact fully consistent with the language on  
11 the permit itself.

12                   And I will give you the permit drawings.  If it  
13 would also be helpful to you, I can have the permit drawings  
14 marked to dot in where the penthouse was.

15                   CHAIRPERSON GRIFFIS:  I think that would be ample  
16 and sufficient.  Ms. Sansone, do you have anything additional?

17                   MS. SANSONE:   Mr. Chairman, I just think that it  
18 would be helpful to the extent the appeal identifies issues, that  
19 the architect confirm that there are no changes in rear yard, and  
20 there are no changes in FAR.  I think Ms. Prince said that.

21                   CHAIRPERSON GRIFFIS:  Right.

22                   MS. SANSONE:   But I think it would be helpful if  
23 the affidavit were explicit in that regard, and indicate exactly  
24 which documents it is that the architect has reviewed to make  
25 that conclusion.

1 CHAIRPERSON GRIFFIS: Okay. I would agree, and I  
2 think in fact that if there is not a substantiation of that, we  
3 will be in the same situation, where if there is any question of  
4 any board members, then obviously the easiest remedy is to go  
5 through the appeal on the 18th.

6 So it would only serve Sunrise if it was ironclad,  
7 and there would be no need for further discussion, and we can  
8 decide it then. So, everyone clear?

9 MS. PRINCE: Thank you.

10 CHAIRPERSON GRIFFIS: Thank you. In which case, we  
11 are on for the 29th, at one o'clock, for a special meeting, and  
12 that would then end, unless there is anything else, our special  
13 public meeting of the 21st of May, 2002.

14 And we are going to recess at this point, and  
15 resume at 11:45 a.m.

16 (Whereupon, at 11:25 a.m., the meeting was  
17 concluded.)

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