

GOVERNMENT  
OF  
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

+ + + + +

PUBLIC HEARING

+ + + + +

TUESDAY

JANUARY 17, 2006

+ + + + +

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

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

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

ZONING COMMISSION MEMBER PRESENT:

CAROL J. MITTEN	Chairperson
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OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY	Secretary
BEVERLEY BAILEY	Sr. Zoning Specialist
TRACEY W. ROSE	Sr. Zoning Specialist

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

SHERRY GLAZER, ESQ.

OFFICE OF PLANNING STAFF PRESENT:

STEVEN COCHRAN

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TRAVIS PARKER

The transcript constitutes the minutes  
from the Public Hearing held on January 17, 2006.

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P R O C E E D I N G S

2:14 p.m.

CHAIRPERSON GRIFFIS: My name is Geoff Griffis, Chairperson. Joining me today is Ms. Miller, the Vice Chair and Mr. Etherly.

Representing the National Capital Planning Commission is Mr. Moy and representing the Zoning Commission with us this morning is Ms. Mitten.

Today's hearing agenda are available for you. They are located on the table where you entered into the hearing room. You can pick it up and see where you are in the chronology and how much we will get done this morning.

I appreciate everyone's patience, as we have slipped this special public meeting in. I know we will make up time as we get through the rest of the applications.

However, the very important opening aspects that I need to make sure everyone is familiar with. First of all, all proceedings before the Board of Zoning Adjustment are recorded. They are recorded in an important fashion and that is the transcript that is being created. The court reporter sitting on the floor to my right, they are recording everything that is being said. It is very important to

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1 understand that the Board will deliberate only on the  
2 record that's created before us. And that record is  
3 going to be created in the process of a public  
4 hearing.

5 So attendant to that, there are several  
6 things that you need to be aware of. First of all,  
7 prior to coming forward to speak to the Board, I would  
8 ask that you fill out two witness cards. Witness  
9 cards should be available. The reporter is holding it  
10 up. They are available at the table in front where  
11 you will provide testimony. They should also be  
12 available where you entered into the hearing room.  
13 Two cards, filled out with your name, go to the  
14 reporter prior to providing testimony. Then when you  
15 are ready to address the Board, I would ask that you  
16 state your name and address for the record. You only  
17 need to do this once. Obviously, that way we can give  
18 credit and proper spelling to you in the official  
19 transcript.

20 The order of procedure for special  
21 exceptions and variances is as follows: first, we  
22 will have the case presentation by the Applicant. You  
23 will present all of the information you would like us  
24 to deliberate on. Highlight that that is already in  
25 the record, that has been submitted and present in new

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1 fashion, your witnesses. Secondly, we will hear any  
2 government reports attendant to the application,  
3 analysis from the Office of Planning, whether DDOT has  
4 provided an analysis and such.

5 Third, we will go to the ANC within which  
6 the property is located. Fourth, we will hear from  
7 persons or parties in support of an application.  
8 Fifth would be persons or parties in opposition to the  
9 application. Sixth, the final step, we hear from the  
10 Applicant again. You are able to bring rebuttal  
11 witnesses and/or summation in closing remarks.

12 Cross examination of witnesses is  
13 permitted by the Applicant, the parties that are  
14 established by the Board. The ANC, within which the  
15 property is located, is automatically a party in the  
16 case. Therefore, they are a full participant and can  
17 conduct cross examination. There's nothing that  
18 precludes us from limiting the scope and the time of  
19 cross examination, but I won't go further into our  
20 regulations, but will address that specifically, as  
21 needed, in each case.

22 The record will be closed at the  
23 conclusion of the hearing today, except for any  
24 materials that the Board specifically requests and we  
25 would be very specific as to what is to be submitted

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1 and when it is to be submitted into the Office of  
2 Zoning. It is important to understand that because as  
3 I say, that is the record of which the Board will  
4 deliberate on.

5 After any additional information is  
6 submitted, of course, the record would then be closed  
7 and no other information is accepted into the record.

8 The Sunshine Act requires that this Board  
9 conduct its hearings in the open and before the  
10 public. This Board does enter into Executive Session  
11 sometimes during a hearing, perhaps before or even  
12 after hearings on a case. Those Executive Sessions  
13 are used for the purposes of reviewing the record  
14 and/or deliberating on cases. This is in accordance  
15 with the Sunshine Act. It's also in accordance with  
16 our rules and regulations.

17 The decision of the Board in these  
18 contested cases of which all cases before the Board of  
19 Zoning Adjustment for variances and special exceptions  
20 are contested, must be based exclusively on the  
21 record, as I've said numerous times now. We also ask  
22 that people present not engage Board Members in  
23 private conversations so that we do not give the  
24 appearance this afternoon of receiving information  
25 outside of our public setting.

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1                   Let me ask all those persons here present  
2 today in all the cases in this morning, if you are  
3 planning to testify, if you will be please and give  
4 your attention to Ms. Bailey, on my very far left.  
5 Ms. Bailey is going to swear you in. If you are going  
6 to provide testimony or thinking of providing  
7 testimony, please stand at this time.

8                   MS. BAILEY: Please raise your right hand.  
9 Do you solemnly swear or affirm that the testimony  
10 that you will be giving today will be the truth, the  
11 whole truth and nothing but the truth?

12                   Thank you.

13                   (The witnesses were sworn.)

14                   CHAIRPERSON GRIFFIS: Excellent. Thank  
15 you all very much and thank you, Ms. Bailey. And  
16 again, a very good morning to Ms. Bailey. Ms. Rose,  
17 on her right, also with the Office of Zoning; Ms.  
18 Glazer with the Office of Attorney General is on the  
19 dais next to them on the right; and Mr. Moy, who was  
20 with us and will return, also with the Office of  
21 Zoning.

22                   At this time then -- I'm sorry. That was  
23 a fast return. Now he's on my right.

24                   Very well, that being said, the Board will  
25 now consider any preliminary matters. Preliminary

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1 matters are those which relate to whether a case will  
2 or should be heard today. Requests for postponements,  
3 withdrawals, whether proper and adequate notice has  
4 been provided, these are elements of preliminary  
5 matters. If you have a preliminary matter for the  
6 Board's attention or you believe a case on our  
7 schedule should not proceed or you're not ready to  
8 proceed, I would ask that you come forward and have a  
9 seat at the table in front of us as an indication of  
10 having a preliminary matter.

11 Ms. Bailey, I'll ask you if you're aware  
12 of any preliminary matters for the Board's attention  
13 at this time?

14 MS. BAILEY: Mr. Chairman, Members of the  
15 Board and to all, good morning. Staff does not have  
16 any at this point, sir.

17 CHAIRPERSON GRIFFIS: Excellent, then not  
18 seeing any other indications and Staff is not aware of  
19 any preliminary matters, let's call the first case of  
20 the morning.

21 MS. BAILEY: Application No. 17412 of  
22 Galen Heights, LLC, pursuant to 11 DCMR 3104.1 and  
23 3103.2, for a special exception from the lot area and  
24 lot width requirements for eight semi-detached single-  
25 family dwellings on individual lots pursuant to

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1 section 401.3, and a variance to permit parking  
2 between the building and the lot line of each of the  
3 individual lots under subsection 2116.4. The property  
4 is zoned R-5-A. It's located at 1736 through 1750  
5 Galen Street, S.E., Square 5755, Lots 144 through 151.

6 CHAIRPERSON GRIFFIS: Excellent, thank you  
7 very much.

8 Mr. Collins is noted as representing the  
9 Applicant and I see Mr. Collins is here. A very good  
10 morning to you, sir. We do have one preliminary  
11 matter. Of course, you're going to address the fact  
12 that the affidavit proposed was just submitted this  
13 morning. Is that correct?

14 MR. COLLINS: Yes sir.

15 CHAIRPERSON GRIFFIS: Okay.

16 MR. COHEN: There was some confusion  
17 between -- oh, I'm sorry. My name is Craig Cohen. I  
18 am the owner of Galen Heights, LLC. There was a  
19 confusion with the posting. It was, in fact, actually  
20 posted on the required date and maintained  
21 appropriately. The confusion was where the affidavit  
22 should be submitted. My contractor picked up the  
23 signs and believed -- the confusion was that he  
24 thought he was supposed to hand the affidavit to me  
25 for me to hand in today at the hearing.

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1 CHAIRPERSON GRIFFIS: I see. Okay, it's  
2 your testimony, the fact that it was posted properly,  
3 but the actual paperwork, the affidavit was not  
4 submitted until today.

5 MR. COHEN: I witnessed the posting  
6 myself, sir.

7 CHAIRPERSON GRIFFIS: Okay.

8 MR. COHEN: That it was, in fact, posted.

9 CHAIRPERSON GRIFFIS: Very well. Any  
10 further discussion or clarification from Board  
11 Members?

12 Is the ANC-8A present today? ANC members?  
13 Not noting any ANC present. I think we could waive  
14 our posting requirement of the submission of the  
15 affidavit and proceed as it's obvious that the  
16 substance of the affidavit were complied with. Unless  
17 there's any objection from any of the Board Members?  
18 Not noting an objection, we'll take it as a consensus  
19 and move ahead.

20 Mr. Collins?

21 MR. COLLINS: Thank you. Good morning,  
22 Mr. Chairman and Members of the Board. My name is  
23 Chris Collins with the law firm of Holland & Knight.  
24 With me is Tom Carroll, seated behind me to my left.  
25 Seated to my right, as already was introduced is Craig

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1 Cohen of Galen Heights, LLC, the Applicant in this  
2 case. And to my far right, Anthony Frazier from the  
3 Heiserman Group, the architects for this project.

4 This is an application to reinstate BZA  
5 approval under Section 401.3 for lot area and lot  
6 width in the R-5-A zone, as well as a variance from  
7 2116.4 to locate required parking spaces between a  
8 building line and a lot line.

9 Specifically, the approval was previously  
10 granted by this Board under Section 4103 for 12 lots  
11 on Galen Street several years ago. The permits  
12 expired and Mr. Cohen will explain in a little bit  
13 more detail. The permits expired and therefore the  
14 BZA approval expired. And during the course of the  
15 building permit application process, the Zoning  
16 Administrator's Office took the position that BZA  
17 reapproval is necessary. And so that is why we are  
18 here.

19 The lots are developed lots. There are  
20 driveway aprons. There's utilities. There's grading.

21 CHAIRPERSON GRIFFIS: Can I ask a quick  
22 clarification question on this and I think we could  
23 move on. The previous order enabled for the  
24 subdivision to proceed, is that correct?

25 MR. COLLINS: That's correct.

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1 CHAIRPERSON GRIFFIS: And so it was  
2 actually the base building permit, let's say the house  
3 permits?

4 MR. COLLINS: Yes.

5 CHAIRPERSON GRIFFIS: Lapsed.

6 MR. COLLINS: Yes.

7 CHAIRPERSON GRIFFIS: Is it your legal  
8 opinion then, Mr. Collins that the order that approved  
9 the subdivision would have lapsed?

10 MR. COLLINS: No.

11 CHAIRPERSON GRIFFIS: So in effect, was  
12 there anything else in the previous application that  
13 went to the footprints of the houses?

14 MR. COLLINS: It was to approve the lot  
15 area and lot width, but notwithstanding that, we had  
16 two options. One, we could appeal and the other --

17 CHAIRPERSON GRIFFIS: No, I understand  
18 that. And I think that now, I don't fault the Zoning  
19 Administrator from taking that position, but I think  
20 we can bring, obviously, we're the body that can bring  
21 clarification of that position.

22 MR. COLLINS: Yes.

23 CHAIRPERSON GRIFFIS: And so I'm trying to  
24 understand totally the picture. Because as I see it,  
25 the first element of the aspect of the previous order,

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1 I don't think -- it's not been proven to me and  
2 there's been a substantial amount that addressed it in  
3 the record, that the previous order would have lapsed.  
4 I think it was effectuated by the subdivision because  
5 that was the relief that was requested.

6 MR. COLLINS: And there's also been a  
7 long-standing interpretation that once you act on an  
8 application, even partially, you're vested.

9 CHAIRPERSON GRIFFIS: Right. I guess  
10 that's what I mean.

11 MR. COLLINS: Well, there's two.  
12 Actually, number one, the subdivision was created and  
13 that's what the approval was for.

14 CHAIRPERSON GRIFFIS: Right.

15 MR. COLLINS: And then secondly, the  
16 houses, as to the houses, four of them were  
17 constructed and then the contractor, the owner, passed  
18 away and there was no further action on that for  
19 several years. But also, notwithstanding that, we had  
20 two options. One was to appeal, one was to apply. We  
21 applied because also we are now asking for a variance.

22 CHAIRPERSON GRIFFIS: Right. That's  
23 current and I think that's appropriate to be here for  
24 and so that leads to the next preliminary question is  
25 how is parking and I think Ms. Mitten was really

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1 getting on this also, but how was parking dealt with  
2 in the previous application?

3 MR. COLLINS: The houses were narrower and  
4 therefore parking was on the side of the building.  
5 There's actually a photo from Office of Planning, a  
6 very good photo --

7 CHAIRPERSON GRIFFIS: That shows a car on  
8 the side yard.

9 MR. COLLINS: You can see the parking on  
10 the side. But the housing increased in width so that  
11 there was an eight-foot side yard instead of a nine-  
12 foot side yard and therefore an eight-foot side yard,  
13 as you know, a parking space has to be nine-feet wide  
14 and we could not depart from the --

15 CHAIRPERSON GRIFFIS: And that's actually  
16 laid out in the application. So for purposes of this  
17 application, to move forward and clarify, this is my  
18 position and I'll hear from Board Members and ask them  
19 whether they agree or not. I think one, I am not  
20 convinced that the order, previous order lapsed.  
21 However, as it is before us, I think we can rest on  
22 the previous decision with some clarity or some  
23 assurance, I should say.

24 So my point being in my mind, I'm not sure  
25 I want to take too much additional information outside

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1 of that, that that's already been presented in  
2 writing, and that we can now address the parking  
3 element and the variance under 2116.4, I believe it  
4 is.

5 MR. COLLINS: Yes, that's right.

6 CHAIRPERSON GRIFFIS: Any questions or  
7 clarifications, Ms. Mitten?

8 COMMISSIONER MITTEN: I guess the only  
9 thing I would say is if you read the order, the  
10 previous order -- I don't disagree with the way you  
11 want to proceed, but just in reading the previous  
12 order, explicitly, which is our standard language, it  
13 does say it would lapse, unless within such period  
14 which is two years, an application for a building  
15 permit or Certificate of Occupancy is filed. So I  
16 think in cases of this kind, the Board should just be  
17 mindful to the effect that maybe that standard  
18 language should be modified so there's no lack of  
19 clarity on what's intended.

20 CHAIRPERSON GRIFFIS: I think that's a  
21 good point to bring up and we can obviously address  
22 that. What's fascinating even in reading that, the  
23 exact letter, they complied with because they applied  
24 for a permit. The problem is once they had the  
25 permit, it lapsed.

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1 COMMISSIONER MITTEN: I see what you're  
2 saying. Was it a building permit?

3 CHAIRPERSON GRIFFIS: Yes.

4 COMMISSIONER MITTEN: Yes.

5 MR. COLLINS: Yes, 4 houses were built,  
6 but it was for 12.

7 CHAIRPERSON GRIFFIS: The purpose of that  
8 statement at the end of ours is not just apply for one  
9 and let it lapse. The intent is actually to build it.

10 COMMISSIONER MITTEN: Yes.

11 CHAIRPERSON GRIFFIS: But the  
12 clarification, I think we don't need to take too much  
13 time, but I think it's an important aspect generally,  
14 in terms of process that we need to address.

15 Okay, anything else then? Any other  
16 comments?

17 Ms. Miller?

18 VICE-CHAIRPERSON MILLER: I would concur  
19 then. I don't think we really need to revisit too  
20 much the subdivision issue, that that was decided on.  
21 And I don't see why that would have lapsed. I'm a  
22 little bit uncertain about the question about some of  
23 the houses were narrower under the previous order.  
24 Were the houses that were already built before, have  
25 already been constructed, are they narrower than the

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1 houses that are being proposed for the remaining eight  
2 lots?

3 MR. COLLINS: Yes, they're narrower by a  
4 foot.

5 VICE-CHAIRPERSON MILLER: Okay, will you  
6 be addressing why that is? I mean that's related to  
7 the need for the parking area, correct?

8 MR. COLLINS: Exactly.

9 VICE-CHAIRPERSON MILLER: Okay.

10 MR. COLLINS: And to clarify one more  
11 thing, I did misspeak. The permits were issued for  
12 all 12 of the houses. They built only 4 of them, but  
13 the permits were issued for all 12. What lapsed were  
14 the permits that were not acted upon. I did say at  
15 one point that 4 permit applications were filed, but  
16 it was 12.

17 CHAIRPERSON GRIFFIS: I see. I didn't  
18 hear that part.

19 VICE-CHAIRPERSON MILLER: Can I ask one  
20 more question then?

21 So with respect to the eight that are  
22 before us, have they changed from what was approved  
23 from the building permits that were issued for them  
24 previously?

25 MR. COLLINS: Yes, the permits actually

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1 lapsed, and so a new application was filed for a new  
2 plan and we were told we had to go before the BZA for  
3 the lots, but also we're here for the parking.

4 VICE-CHAIRPERSON MILLER: Right, I just  
5 mean were those houses for which the building permits  
6 were approved narrower than what's going to be before  
7 the Board this time?

8 MR. COLLINS: Yes. The buildings that  
9 were approved for construction had nine-foot side  
10 yards.

11 VICE-CHAIRPERSON MILLER: Okay.

12 MR. COLLINS: These have eight-foot side  
13 yards.

14 VICE-CHAIRPERSON MILLER: Okay.

15 CHAIRPERSON GRIFFIS: So these made the  
16 houses bigger, but a compliance side yard, but not the  
17 ability to park in the rear.

18 MR. COLLINS: Or the side.

19 CHAIRPERSON GRIFFIS: Or the side, sure.

20 MR. COLLINS: That's correct.

21 CHAIRPERSON GRIFFIS: Good, everyone  
22 clear?

23 MR. COLLINS: Well, I will proceed with  
24 the understanding that no Board reapproval is  
25 necessary for the lot area and lot width under Section

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1 401.3?

2 Should we testify as to that or just not  
3 testify to that?

4 CHAIRPERSON GRIFFIS: Actually, in my mind  
5 it was here, but you were going to rest on the  
6 previous order and the information that's already --  
7 basically stand on the record. But if you want us to  
8 do just that, I'm sure the Board is fairly amenable to  
9 that and we can make that decision. I'm just not sure  
10 we were going to be that -- there it is. I think  
11 you're here, the application is set forth, let's just  
12 move ahead.

13 MR. COLLINS: Okay, then we will stand on  
14 the record for the lot area and lot width issue under  
15 Section 401.3. As to the parking, the parking is  
16 proposed between the building line and front lot line,  
17 therefore the variance from 2116.4 is required. But  
18 we have a support from the Office of Planning. There  
19 are no other reports in the record. The Applicant has  
20 met with the ANC, but no report has been filed and if  
21 he has information on that issue, specifically, if  
22 you'd like to ask him about that.

23 The parking in front of the building  
24 requires a variance from this Board and the property  
25 is affected by an exceptional situation or condition.

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1 As you will hear and as you've seen in the filing that  
2 we have, the properties have a depth of over 100 feet,  
3 but with no alley access. There is an alley that's  
4 shown on the plans, but it is a paper alley, it's not  
5 paved. It, in fact, has a 15-foot slope at points  
6 from one side of it to the other side, so it cannot be  
7 paved in its current condition. But it is, in fact,  
8 not improved. And there's a steep upward slope at the  
9 rear of the property as well. So there's no rear  
10 access to the property.

11 The practical difficulty, there would be  
12 several options for matter of right parking here. One  
13 would be to park in the building. As you will hear  
14 that would require a garage. The houses are just  
15 under 14 feet in width and a parking space 9 by 19, a  
16 garage typically at minimum, 10 by 20. So if you were  
17 to have a garage in the front of each one of these  
18 buildings on the first floor at a depth of 20 feet and  
19 these houses being 45 feet in depth, you'd take up  
20 approximately 25 percent of the building as a garage.  
21 And the buildings are two stories in height and  
22 they're modest sized dwellings, ample sized dwellings,  
23 but modest and to take up 25 percent of parking would  
24 create a practical difficulty in that respect.

25 The second, parking could be in the side

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1 yard which would require the reduction of the building  
2 width by one foot to get a nine-foot wide side yard.  
3 In fact, the four houses that were constructed were --  
4 had nine-foot side yards, but the market has changed  
5 and the goal that this developer is trying to achieve  
6 here in bringing these houses to market, to the  
7 community, they were different designs from the  
8 previous houses. They have a little bit more in the  
9 way of amenities and every foot counts and Mr. Cohen  
10 will talk about that in a little more detail.

11 Loss of one foot of interior space, in this  
12 case, is pretty significant.

13 Parking could be in the rear, under the  
14 current configuration by use of a seven-foot wide  
15 driveway from the street to the back of the houses,  
16 but that driveway would be in some instances 80-feet  
17 long and then require a parking pad that would take up  
18 most of the backyard. So you'd have impervious  
19 surfaces covering the vast majority of the properties,  
20 resulting in really no substantial ability to do any  
21 landscaping on the site.

22 Finally, there will be no adverse impact,  
23 in our view, if the variance was granted. The  
24 buildings are purposely setback from the street to  
25 provide privacy in a sense of openness. It is a

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1 narrow street. It's a 50-foot right of way. And at  
2 this end of the street where these houses are located,  
3 this gives a little more openness, a little more  
4 privacy, a little better feeling at the end of the  
5 street in terms of urban design and the ability to  
6 maximize green space between buildings, if we do not  
7 have to put parking or a driveway on the side yard.

8 The Office of Planning report had an  
9 interesting phrase in it. They said that the R-5-A  
10 District is intentionally flexible. And what we're  
11 asking the Board to do here is exercise that  
12 flexibility to accommodate the goal here to provide a  
13 common sense design within the context of this  
14 particular neighborhood.

15 We have a statement of the Applicant,  
16 which we submitted. We have several exhibits in that  
17 case. You can see A, Tab A, is the plans, the  
18 Sanborne Map, the Based Map. B is the zoning map.  
19 You can see it's located in the R-5-A zone. C is the  
20 final order from 1998 approving the lots. D is the  
21 subdivision approving the lots. E and F are the  
22 outlines and testimony and Exhibit G are the plans for  
23 the project.

24 So unless there are any questions, at this  
25 point I'd like to go to the first witness, Mr. Craig

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1 Cohen of Galen Heights LLC.

2 CHAIRPERSON GRIFFIS: Excellent.

3 MR. COLLINS: Mr. Cohen has already been  
4 introduce and identified for the record.

5 Will you proceed with your testimony?

6 MR. COHEN: Okay, the issue in question is  
7 one foot. One foot makes a huge difference in this  
8 house. The vision that I had when acquiring this  
9 property was to build eight side-by-side units,  
10 duplexes that would cater to families. When I first  
11 visited the site, when I found out that it was  
12 available, I drove up Galen Street. I was at the end  
13 of the street, there's Fort Stanton Park which has a  
14 whole bunch of trees. As the rear of the property  
15 lays out, there's a slope running upwards, so it  
16 creates this wonderful park setting, believe it or not  
17 and it really has a real nice warm feel. The previous  
18 developer built, as we mentioned before, it was two  
19 duplexes, four units and he used a modular  
20 manufacturing company to erect these homes. And  
21 they're very cookie cutter. And that was also seven  
22 years ago.

23 What my goal was was to provide a three-  
24 bedroom house, two and a half baths, that allow for  
25 families to relocate from an apartment or a condo and

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1 provide a cost-effective dwelling for them in a safe,  
2 quiet environment. And by parking on the side or in  
3 the back, parking on the side would reduce it by one  
4 foot which would then limit some of the features that  
5 we've been -- the home owners have been requesting in  
6 my experience in the District, what they need as far  
7 as efficiency in the house, storage space, bedroom  
8 sizes, bathroom sizes and so on and so forth.

9 And that would limit, in my opinion, the  
10 vision and the functionality of the house. By parking  
11 in the rear and creating all that impervious area  
12 would have two problems. First of all, it would ruin  
13 the intent to keep as much green space as possible,  
14 working off of the park that's nearby and the slope  
15 that's in the rear of the property and create this  
16 sort of quiet environment. The second issue would be  
17 that it would drastically increase the construction  
18 costs for this project, therefore taking it in another  
19 category of costs and sales price for the family or  
20 the market that I'm going after for these units.

21 So basically, the vision I had was to  
22 create eight simple, clean units using stick  
23 construction, not a prefabrication unit, creating a  
24 warm environment, warm architecture and an efficient,  
25 affordable layout for a three-bedroom, two-and-a-half

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1 bath in this area.

2 We approached the ANC, presented our plan.  
3 There was no major comment and no -- we made several  
4 efforts to get a letter of approval or some type of  
5 response from them and they had no comments  
6 whatsoever. They actually sort of, in the meeting  
7 they said they liked the idea of it, but didn't have  
8 any -- weren't opposed to anything.

9 So by limiting the parking on the side or  
10 requiring that -- not granting the request would  
11 negatively affect the layout, the affordability of the  
12 project, as well as my purpose. Thank you.

13 CHAIRPERSON GRIFFIS: Excellent. Thank  
14 you very much. Questions from the Board,  
15 clarifications?

16 Ms. Miller?

17 VICE-CHAIRPERSON MILLER: I just have a  
18 basic question. I mean it sounds like we're talking  
19 about the difference of one foot, but I'm not clear  
20 whether that's what's driving the variance. I mean  
21 even if you weren't seeking to change the width of the  
22 houses, would you not still be seeking this parking  
23 variance based on all the other factors that you're  
24 talking about?

25 MR. COHEN: I'm sorry, repeat the

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1 question?

2 VICE-CHAIRPERSON MILLER: Maybe I'm  
3 mistaken then.

4 CHAIRPERSON GRIFFIS: I think the question  
5 is even if you didn't move the footprint of the house  
6 out a feet, wouldn't you also need some sort of relief  
7 from the parking requirement. My statement off the  
8 record was I think you would be able to park per our  
9 regulations in the side yard, but what I'm  
10 understanding the application is stating is if you're  
11 providing nine feet, then you're paving all the way up  
12 to the house and you're parking a car right next to  
13 the house, right next to the property line, or you're  
14 taking the driveway all the way into the rear to a pad  
15 which basically, as you look at these as they're laid  
16 out and the width and the dimension, you're  
17 essentially asphaltting a majority of the site.

18 Is that correct, Mr. Cohen?

19 MR. COHEN: Basically, the driveway would  
20 lead from the front all the way in the back and then  
21 sort of make an L into the rear of the property, so  
22 there would be basically no green space in the  
23 property --

24 CHAIRPERSON GRIFFIS: All we require for  
25 the regulations is a 9 by 19 dimension in a certain

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1 area. It's either going to be in the side yard or the  
2 rear yard. So if it's in the rear yard, then you have  
3 to comply with the driveway that gets you there,  
4 right?

5 So I'll just take your site plan and draw  
6 it out if you look at the adjacents here. What I'm  
7 doing is drawing an area of which would need to be  
8 paved and it's along the side yard.

9 So it's my understanding that you're  
10 complying with a side yard. Not here for a variance  
11 for the side yard requirement, correct?

12 MR. COHEN: Correct.

13 CHAIRPERSON GRIFFIS: So the matter of  
14 right is you're able to move that building, that  
15 footprint to that eight-foot dimension, away from the  
16 property line. So you have a compliant side yard. So  
17 really, I don't know if you've made this, but it seems  
18 to strike me that there's another practical difficulty  
19 in complying with one or the other.

20 Conceivably, if you comply fully with  
21 allowable footprint and a complying side yard, you  
22 could go to zero, right? Or you could come to eight  
23 feet. So you've complied with that side yard. Well,  
24 that starts to create by doing a matter of right  
25 dwelling, it starts to create another element of

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1 practical difficulty in complying with where you park  
2 this.

3 Did you -- obviously you had public space  
4 or DDOT permit approval for the curb cuts?

5 MR. COHEN: Those were --

6 CHAIRPERSON GRIFFIS: The previous.

7 MR. COHEN: Yes, the previous developer  
8 did -- when he pulled the permit for the original  
9 development for all 12 units, he did all the curb,  
10 gutter --

11 CHAIRPERSON GRIFFIS: So all the civil  
12 work, the streets and all that was done?

13 MR. COHEN: Yes, and then he passed away  
14 and then it sat for seven years.

15 CHAIRPERSON GRIFFIS: Gotcha. So he  
16 essentially prepared for that development to happen.  
17 I see.

18 MR. COHEN: Correct.

19 CHAIRPERSON GRIFFIS: Further follow-up?  
20 Is that clear?

21 VICE-CHAIRPERSON MILLER: I'm sorry, it's  
22 just not totally clear to me whether -- I just was  
23 trying to clarify whether this one-foot difference in  
24 width is what's driving this variance relief and I'm  
25 under the impression that even and correct me if I'm

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1 wrong, that's what I'm seeking, even without this one-  
2 foot difference, you would still be seeking the  
3 variance relief?

4 MR. COHEN: Yes, correct.

5 VICE-CHAIRPERSON MILLER: Okay. Thank  
6 you.

7 CHAIRPERSON GRIFFIS: Oh, I see. Good  
8 question.

9 Ms. Mitten?

10 COMMISSIONER MITTEN: I'm very in tune  
11 with what Ms. Miller was saying just a minute ago, so  
12 I'm glad you were asking that line of questions.

13 I don't understand, in particular, that  
14 is, if we agree with your argument about why the  
15 variance is needed, why do you need the variance on  
16 Lot 150 and 151 when they're both 25 feet in width?

17 MR. COHEN: The purpose for the variance  
18 for the end units are the ones that are on the end  
19 that are larger is to keep construction costs down, to  
20 keep everything consistent, and to keep these units  
21 all in a uniform construction fashion, so we can  
22 provide for a cost-effective way to build them was the  
23 purpose, to keep it uniform.

24 COMMISSIONER MITTEN: I think that that  
25 just reinforces what Ms. Miller was exploring.

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1 CHAIRPERSON GRIFFIS: Okay.

2 COMMISSIONER MITTEN: Thank you.

3 MR. COHEN: Sure.

4 CHAIRPERSON GRIFFIS: Anything else?

5 Questions for the Applicant?

6 Clarification of the site plans? If not,  
7 Mr. Collins, anything else?

8 MR. COLLINS: Mr. Frazier is here in case  
9 of any questions of Mr. Frazier, the architect, to  
10 discuss.

11 CHAIRPERSON GRIFFIS: Any other questions  
12 of the architect? There's no way we can miss the  
13 stamped optional no porch. Is there an additional  
14 porch that can be provided? Will that have any  
15 implications of the zoning regulations?

16 MR. FRAZIER: It's just over the main  
17 entrance area. It's not proposed to come out any  
18 further than the bay windows, not coming out any  
19 further than that.

20 CHAIRPERSON GRIFFIS: I see, okay. Good,  
21 that's something we need to review. Very well. If  
22 there's nothing further then, let's move ahead.

23 Is there anything else, Mr. Collins, at  
24 this time?

25 MR. COLLINS: No further information.

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1                   CHAIRPERSON GRIFFIS:     Very well, if  
2                   there's nothing further this time, why don't we move  
3                   ahead to our government reports and of course, Office  
4                   of Planning has put an excellent analysis of this  
5                   application. Let's turn now to the presentation.

6                   MR. PARKER:    Good morning, Members of the  
7                   Board. My name is Travis Parker with the Office of  
8                   Planning.

9                   I think that the Board has hit on our  
10                  analysis of this case. I think what it really comes  
11                  down to, the real exceptional situation for these  
12                  properties lies on their position, mainly the lack of  
13                  alley access from the rear and their position next to  
14                  the park. That also speaks to their seclusion at the  
15                  end of a dead-end road. They'll have less substantial  
16                  detriment on any surrounding neighborhood in terms of  
17                  the parking in the front yard.

18                  But specifically, the lack of access from  
19                  the rear and the lack of any size within the -- any  
20                  area within the buildings to provide interior parking  
21                  led us to accept the Applicant's arguments in terms of  
22                  exceptional situation and practical difficulty for  
23                  putting parking on the side or in the rear of these  
24                  buildings and we recommend in favor of the proposed  
25                  variance.

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

3 Are there questions from the Board of the  
4 Office of Planning?

5 Does the Applicant have any questions for  
6 the Office of Planning?

7 MR. COLLINS: No sir.

8 CHAIRPERSON GRIFFIS: Very well, thank you  
9 very much, Mr. Parker. We appreciate that analysis.  
10 Let's move ahead then to other governmental reports of  
11 which Mr. Collins, I have no other record of other  
12 government reports unless you're aware of any other  
13 submissions? Very well, we can move ahead again. Let  
14 me ask if ANC-8A is present, ANC member present? Not  
15 noting any member present. We also do not have a  
16 report from the ANC, although the Applicant has  
17 testified that they did present in front of the ANC.

18 Are you aware of any written report from  
19 the ANC?

20 MR. COHEN: No, there is no written  
21 report.

22 CHAIRPERSON GRIFFIS: Very well, we'll  
23 move ahead then. Let me ask for anyone here present  
24 to provide testimony for the Board, persons present in  
25 support of the application or in opposition to

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1 Application 17412, if you would come forward at this  
2 time?

3 Not noting anybody coming forward to  
4 provide additional testimony in regards to this  
5 application, I think we can move to any closing  
6 remarks that you might have, Mr. Collins or Mr. Cohen.

7 MR. COLLINS: Thank you, Mr. Chairman and  
8 Members of the Board. We do believe that based upon  
9 the record and the testimony today that we have set  
10 forth the elements for relief for variance,  
11 specifically the properties affected by an exceptional  
12 situation or condition. It is very deep, these lots,  
13 that have no alley access in the back. It poses a  
14 practical difficulty.

15 We could either park in the buildings  
16 which would reduce the building liveable area by about  
17 25 percent. We could park in the side yard by  
18 reducing the width of six of the buildings by a foot  
19 which does have implications in terms of the type of  
20 amenities and other items that Mr. Cohen talked about.

21 When you reduce a building of this width  
22 -- the interior dimensions are just over 13 feet and  
23 when you reduce by a foot, things start to squeeze to  
24 a point where they really squeeze and the ability to  
25 provide certain amenities, when stairways are required

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1 to be a certain width and hallways are required to be  
2 a certain width, then what has to give is the  
3 bathrooms and the bedrooms and the kitchen. So when  
4 you lose a foot there, you are really turning these --  
5 the purpose -- let me say it another way.

6 The purpose of this development, as Mr.  
7 Collins said, is to try and provide a comfortable  
8 living arrangement in a nice setting in this  
9 neighborhood.

10 Finally, moving to parking on the side or  
11 the rear would require on six of the eight units and  
12 the last two, to have virtually the entire side yard  
13 to be paved if they were to be parking in the rear or  
14 at least half of the side yard to be paved if it was  
15 in the front. And the paving would go not from  
16 building to lot line, but in fact, from building to  
17 building because practically speaking, you could get  
18 by with a 7-foot driveway, but that will leave you one  
19 foot of space and probably either next to the house or  
20 in the middle, but in fact, you'd have with those  
21 houses, you'd have a paving from side to side which  
22 would preclude the ability to landscape.

23 And you see we have a master site plan in  
24 the record. It is a conceptual site plan, but it  
25 gives you the idea of the type of landscaping that

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1 could not happen if you were to put parking either on  
2 the side or on the rear. You'd have to leave those  
3 spaces open. And you'd have a car there. So it would  
4 read that the look on the street would read, car,  
5 building, building, car, car, building, building, car  
6 -- it would have no real open space or opportunity for  
7 landscaping along the front, or even, in fact, on the  
8 side if somebody was to plant tomatoes or pansies or  
9 whatever they plant on the side, given the orientation  
10 of houses, you get some really good reflection off the  
11 house to warm your tomatoes in the off-season and grow  
12 some nice vegetables. So that could not happen if you  
13 were to have this driveway situation.

14 And the purpose here was -- in terms of  
15 the impervious surface, you'd have a tremendous amount  
16 of impervious surface and the site does slope even  
17 with the grading. You see the slope of the site and  
18 you have water sheeting off. And this way it gives  
19 you the ability to perk into the soil next to the park  
20 land.

21 And we believe that there's no adverse  
22 impact on the public good because of the attempt to  
23 create some interest, some staggering of the  
24 footprints of the building, to create some interest,  
25 to create some architecture that makes the buildings

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1 look like two separate buildings.

2 If you look at the OP report and the  
3 aerial photo, you'll see that the two buildings in  
4 those first four houses, the peak of the roof ran the  
5 opposite direction from the peak here. The peak here  
6 runs from side to side and in the rear it ran front to  
7 back. And it looked like the houses actually looked  
8 like two halves -- it looks like one house with two  
9 front doors. That's what it looks like and the idea  
10 here is to create some interest. And some more room  
11 and some flexibility and some ability to provide for  
12 home ownership and a three-bedroom house, where the  
13 other houses are not quite so generous.

14 So for all those reasons, we believe that  
15 we've met the test for variance relief and request  
16 your approval at the earliest possible date.

17 Thank you.

18 CHAIRPERSON GRIFFIS: Mr. Cohen, thank  
19 you. Board Members, last questions, clarifications?

20 If there's nothing, I think the record is  
21 full on this and unless there's any opposition, I  
22 think we can proceed today in terms of a brief  
23 deliberation or as much deliberation as we need.

24 Let me begin that by saying I have two  
25 great concerns with this one. One is the vinyl siding

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1 which is going to be reflected to grow tomato plants,  
2 but the aspect of -- in all seriousness, that's one of  
3 the materials that I absolutely can't stand. However,  
4 I'm not sure that anything in this application leads  
5 me to the direction of actually having jurisdiction  
6 over materiality on the building. And so I will let  
7 that go, and then move to what I intend to agree with  
8 in the closing statements of Mr. Collins and in terms  
9 of the massing of this.

10 Looking at the photograph in the initial  
11 plans, was not that intrigued with the kind of  
12 architectural placement of the buildings and the  
13 topology, but as he got further into the details, I  
14 think it is an excellent address of the existing  
15 conditions. And the existing conditions are  
16 important.

17 Well, let me say my last concern. My last  
18 concern is parking in the front. I think one of the  
19 best sections in the regulations that we have is  
20 2116.4 and it basically stops where I find is a more  
21 suburban element of that being parking in front of a  
22 house. I think one of the worst type of architectural  
23 topologies is you have a drive-in garage at the front  
24 of the house. I think that is actually being  
25 mitigated here as we've talked about not parking on

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1 the entire first level and entering on the side or  
2 entering on the rear. And it's kind of a house for  
3 your car and I live there too.

4 But looking now specifically at the  
5 ability to comply with 2116.4, I think in large part  
6 I would be more in favor of granting 100 percent from  
7 parking. I think granting the variance from parking  
8 in front of the building.

9 Now I caveat that in specificity because  
10 it goes to the uniqueness of this application and one  
11 aspect of the uniqueness and that is a previous  
12 approval. I don't think, see how I can move beyond  
13 that uniqueness to -- even if I could -- change this  
14 particular application, my point being there was a  
15 previous approval for the subdivision and there was  
16 also approval that allowed for the work to be done to  
17 allow the parking and in terms of the character of the  
18 block, this is what's happening on the block itself.

19 So it is not as if this is creating the  
20 character, but rather I think, addressing elements of  
21 the character on the block and I think in the most  
22 positive fashion that can be at this point.

23 So when I look at this, I clearly see that  
24 there are incredible unique aspects and special  
25 circumstances; the previous approval of the

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1 subdivision that's already been done, and the curb  
2 cuts. I think as we go into the practical difficulty  
3 of complying with therefore providing one parking  
4 space per unit on the lot, I say it is -- I think it's  
5 been persuasive on the practical difficulty on its  
6 face alone, that there's no rear access.

7 Now we get into more detail of okay, where  
8 else can we provide this to comply and I don't see  
9 that we really need to progress much further. It  
10 seems to be not only practically difficult, but I  
11 think it would probably be an adverse condition for  
12 the independent owners, not to mention the surrounding  
13 area if you had that much paving and not having the  
14 open space. And therefore, I think, the placement,  
15 the site plan placement of the parking together is the  
16 most positive that can be done in this particular  
17 aspect.

18 That being said, I don't think this would  
19 rise to the level, nor has it been persuasively proven  
20 that it would tend to impair the intent or the  
21 integrity of the zone plan.

22 That's my brief overview of the  
23 application. I'll open it for others' comments.

24 COMMISSIONER MITTEN: Mr. Chairman?

25 CHAIRPERSON GRIFFIS: Yes.

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1                   COMMISSIONER MITTEN:    I agree with a  
2                   number of things that you said, but the irony of one  
3                   of the things that you said is that you'd be more in  
4                   favor of granting them a 100 percent parking variance  
5                   than allowing them to park in the front yard and one  
6                   of the kind of quirks of the ordinance is that we  
7                   don't preclude parking in the front yard. We preclude  
8                   counting parking in the front yard as required  
9                   parking.

10                   So we could give them 100 percent variance  
11                   and they would still park in the front yard. They  
12                   just wouldn't be able to count it. So that's kind of  
13                   a strange circumstance, because I agree with you, I  
14                   don't -- we have a PUD in front of us now where  
15                   there's an awful lot of these garages that you drive  
16                   in or parking in the front yard which is being  
17                   proposed and it's really troubling because it is sort  
18                   of a suburban type of -- an undesirable suburban  
19                   design feature.

20                   I'm not in favor of the -- of granting the  
21                   variances for parking and I want to emphasize that,  
22                   especially as it relates to the two lots that are 25-  
23                   feet wide, because I think the Applicant's argument  
24                   falls apart there. If you follow the progression from  
25                   exceptional or unique circumstance to practical

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1 difficulty and so on, I understand their motivation.  
2 I just don't think that that's what -- that's the  
3 purpose of granting variances.

4           And I think what's interesting is that one  
5 of the unique aspects of this is that there is a  
6 previous approval and the fact that there have been  
7 four houses that have been constructed that we haven't  
8 -- it hasn't been represented to us that those houses  
9 are not marketable. It's just that this is not the  
10 intent of this particular developer to build houses  
11 like that. He's targeting a different -- he's trying  
12 to create a different property type, but we haven't  
13 had anything represented to us that those four houses  
14 that did allow for parking in the side yard, that  
15 they're in any way not acceptable in terms of being  
16 places for people to live.

17           So I think that while I understand that  
18 they don't want to build this or it will cost more,  
19 perhaps, to build parking around the side and I'm not  
20 even suggesting that that is the most desirable way to  
21 accommodate the parking, but under these circumstances  
22 there are other ways of dealing with this problem.  
23 And I would also emphasize the fact that there's no  
24 longer a requirement to use impervious surface for  
25 parking. And to the extent that the rest of the Board

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1 is in favor of granting the variance, I would  
2 encourage you to require that a pervious surface be  
3 used, if you will -- if you intend to allow parking in  
4 the front yard.

5 CHAIRPERSON GRIFFIS: Excellent comments.

6 Others?

7 VICE-CHAIRPERSON MILLER: Before I make my  
8 comments, I just am wondering, Ms. Mitten, what you  
9 mean by other ways of dealing with this problem?  
10 Which problem are you referring to?

11 COMMISSIONER MITTEN: Of accommodating the  
12 required parking.

13 Mr. Collins discussed the two other ways  
14 of accommodating the parking. One is to build a  
15 garage that would be entered from the front and there  
16 are many instances, as undesirable from a design  
17 perspective as they may be, there are many instances  
18 of building houses that have garages that you enter  
19 from the front.

20 It's just that for this particular design,  
21 in terms of the size of the house, Mr. Collins is  
22 suggesting that 25 percent of the house as it is  
23 designed would be taken up by a garage. But there's  
24 nothing precluding a different design that would allow  
25 for a garage that's entered from the front. There are

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1 hundreds, if not thousands of examples in the city for  
2 new construction of that type.

3 And then the other alternative is to have  
4 a narrower house with a nine-foot side yard where the  
5 parking could be providing in the side yard as is true  
6 of the four houses that are immediately adjacent.

7 That's what I meant by different ways to  
8 accommodate the requirement.

9 VICE-CHAIRPERSON MILLER: Thank you. I  
10 just wanted to see whether that would affect my -- the  
11 way I'm looking at this.

12 It seems like -- the reason I was asking  
13 about the one foot was because I heard practical  
14 difficulties that seem to arise regardless of the one-  
15 foot difference between the houses that were already  
16 constructed and the ones that are being proposed and  
17 that being the one that Office of Planning focused on,  
18 the lack of alley access, which made this particular  
19 situation unique which is the first criteria. And  
20 then the practical -- it also being the practical  
21 difficulty.

22 And so I guess I'm not following what you  
23 said with respect to if there's a garage built how  
24 that would affect the 25 percent calculation that the  
25 Applicant presented that they would have to cut into

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1 the house in order to provide that kind of parking  
2 alternative, which would with this size development,  
3 would make it economically unfeasible from what I  
4 understand from the papers.

5 So I think that there's a practical -- a  
6 great practical difficulty here and the fact that it  
7 was acceptable for the previous four houses or that  
8 there could be a lower standard, I don't really  
9 addresses the practical difficulty here. I'm not sure  
10 that the whole parking situation was looked at with  
11 respect to all 12 together or all 4 at this point. It  
12 may be that -- well, I don't know.

13 I don't see that those four -- there's  
14 something about those four that take away from the  
15 practical difficulty that's been shown here and then  
16 I think also there would be an adverse impact from all  
17 that paving that seems to be very counter productive  
18 to the goals of the comprehensive plan, even to have  
19 appealing, residential development.

20 COMMISSIONER MITTEN: Let me just make one  
21 general comment to maybe to give you my broader  
22 perspective on this, is that basically what's at issue  
23 here is that this Applicant is saying that they want  
24 to take the cheapest approach to providing required  
25 parking. That's what's being requested. And the one

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1 thing that they cannot do is get at it from the rear  
2 which you could have a parking pad at the rear, they  
3 wouldn't need our help. So they need our help, but  
4 what's driving this is they want the lowest cost  
5 alternative.

6 So what's going to stop the next person  
7 who doesn't happen to have alley access and there are  
8 plenty of circumstances like that in the city from  
9 making the very same arguments which is I don't want  
10 to park in the side yard because it's a lot more  
11 paving and nobody wants that. And I don't want to  
12 build a garage because that's more expensive and it's  
13 going to make the unit more expensive. I don't want  
14 to do that. So this is -- what are you going to say  
15 to the next and the next and the next applicant?

16 CHAIRPERSON GRIFFIS: Excellent. Good  
17 points. The next applicants, we're going to have to  
18 look at their application and address them for the  
19 specifics which I know you agree with, but I do have  
20 some caution and I think when we start looking at  
21 alternatives, I think we have been very diligent in  
22 not redesigning applications that come in.

23 However, it is an important aspect for  
24 this specific application when we start looking at  
25 what's the basis of the practical difficulty and that

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1 testimony, that case presentation has to go to why  
2 can't you comply? And what I'm hearing and what I see  
3 in this application, it begins and it ends or could  
4 begin and end with the fact that you don't have rear  
5 access.

6 Now Ms. Mitten has indicated that well,  
7 there was now testimony from the Applicant that said  
8 we're looking for a cost conservative alternative and  
9 the lowest cost maybe that is -- I think I'm not going  
10 to get too far into that. But there was also the  
11 aspect, well, with that point, I would tend to agree.  
12 I'd be concerned if we were just looking at cost  
13 conscious aspects, is that becoming more detrimental  
14 or is that kind of a negative impact that's happening?

15 I think here the higher cost, actually,  
16 has the more negative impact and then this lower cost  
17 impact -- and then I look at the regulations and how  
18 they read if we want to get too detailed into this  
19 thing. But say we did park in the first floor. Well,  
20 then the driveway is essentially in the same place in  
21 which the pad is now being presented. You know what  
22 I mean?

23 I'm not seeing a lot of -- I'm seeing us  
24 as being responsible for pursuing -- how you might  
25 want to say -- good design as much as it is regulated

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1 with the jurisdiction we have in the regulations. And  
2 I think even though this may be the lowest cost  
3 provision as was testified. I can't assess that, but  
4 even if it is, it seems like it's actually the best  
5 alternative not to mention the fact that I think it  
6 does meet the threshold of proving practical  
7 difficulty just being on the fact that it can't be at  
8 the rear. And then you kind of get to you have to do  
9 a common sense check here.

10 What are we getting? What are we  
11 protecting? What good is being provided if we require  
12 parking in the side yard and increase that amount of  
13 asphalt? In terms of Ms. Mitten, I think brings up an  
14 excellent point of encouraging impervious surfaces.  
15 I think that would be a great alternative if that was  
16 provided.

17 However, that's where I am at this point.

18 Others?

19 (No response.)

20 Very well, then let's continue our  
21 deliberation, substantively, but under a motion and in  
22 order to encourage that to continue I would move  
23 approval of Application 17412 and that would be as we  
24 have indicated, for the special exception for the lot  
25 area, lot width requirements and also for the variance

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1 to permit the parking between the building lot, lot  
2 line for each individual lots in accordance, rather,  
3 in a variance to 2116.4 and that's for the premises as  
4 noted in the application 1736 to 1750 Galen Street,  
5 S.E. and I would ask for a second?

6 VICE-CHAIRPERSON MILLER: Second.

7 CHAIRPERSON GRIFFIS: Thank you very much,  
8 Ms. Miller.

9 I would note for the record if this motion  
10 does proceed positively and an order is issued that we  
11 make a note that -- I'll put it to the Board, that we  
12 make a note that we have found that we are pursuing  
13 the application as advertised and submitted. However,  
14 the Board is not -- well, I don't know. I would like  
15 to add some language to the fact that we haven't  
16 determined that they are actually required to have  
17 been here for special exception for the lot area and  
18 lot width.

19 However, for our own deliberation, the  
20 motion is presented. Of course, I think we can rely,  
21 first of all, on the previous order that was granted.  
22 I think it's very difficult for the Board to remove  
23 itself from a previous order without reopening or  
24 investigating that previous order. I think we can  
25 rely with great confidence on the previous Board's

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1 deliberation and decision, but also we have the  
2 additional record that's been created before us for  
3 that aspect.

4           Going to the parking and the variance, I  
5 think that the uniqueness of this is a confluence of  
6 elements that have been presented today, the most  
7 persuasive on face would be that there is a paper  
8 alley in back. It doesn't look like there's a great  
9 chance that that will get done currently or ever.  
10 Therefore, there is no rear access to provide the  
11 required parking as we looked at alternatives of how  
12 that might be provided as opposed to just coming in  
13 for a strict variance from the requirements. I think  
14 that we've sufficiently deliberated on the aspects of  
15 that.

16           The other uniqueness which we've talked  
17 about which arises is the practical difficulties, the  
18 previous order, the subdivision that's currently  
19 there. We have the curb cuts that have already been  
20 laid out and produced and I'll leave it at that as my  
21 other comments are also standing, and open it up for  
22 others for deliberation on the motion.

23           COMMISSIONER MITTEN: I would just like to  
24 move an amendment to the motion since I have a feeling  
25 I'm not going to prevail on the other arguments I was

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1 making, that the Applicant be precluded from using an  
2 impervious surface to provide the parking in the front  
3 yard. There are numerous pervious materials that are  
4 permitted under the ordinance now.

5 CHAIRPERSON GRIFFIS: Okay. I don't have  
6 a fundamental objection to it. However, my concern is  
7 the basis, what's arising to create that kind of  
8 condition to that order. I mean what are we trying to  
9 avert or -- what's the reasoning for it?

10 COMMISSIONER MITTEN: Okay, the reasoning  
11 is this, since you can -- well, inasmuch as the motion  
12 that you made includes all eight lots and in the case  
13 of the last two the argument about not being able to  
14 park in the side yard falls down for the last two lots  
15 because there is enough room to do that, and then it  
16 turns on the amount of paving that would be required,  
17 I think that at least from an environmental  
18 perspective, there seems to be a concern there about  
19 paving and one way to mitigate that concern is to not  
20 allow the use of impervious paving materials.

21 Now perhaps it's a different concern or  
22 there's another concern, but that's why I made that --  
23 moved the amendment.

24 CHAIRPERSON GRIFFIS: Okay, so conceivably  
25 though on that condition they could, in fact, just put

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1 gravel down or --

2 COMMISSIONER MITTEN: Gravel is not  
3 permitted by the ordinance.

4 CHAIRPERSON GRIFFIS: Oh, it isn't?

5 COMMISSIONER MITTEN: No.

6 CHAIRPERSON GRIFFIS: What are the  
7 permitted previous surfaces for parking pads?

8 COMMISSIONER MITTEN: I don't remember.

9 CHAIRPERSON GRIFFIS: I mean just to be  
10 clear because I'm not sure --

11 COMMISSIONER MITTEN: I can tell you  
12 gravel is not one of them.

13 CHAIRPERSON GRIFFIS: And what you're  
14 talking about is like green blocks that would actually  
15 be able to hold the weight of a vehicle, but allow  
16 grass to grow through it?

17 COMMISSIONER MITTEN: Yes.

18 CHAIRPERSON GRIFFIS: And more importantly  
19 allow water to filter through it?

20 COMMISSIONER MITTEN: Yes.

21 CHAIRPERSON GRIFFIS: Other comments?

22 VICE-CHAIRPERSON MILLER: Mr. Chairman, I  
23 know our practice is once we go into the deliberation,  
24 we don't hear from the parties, but I feel that if  
25 we're going to consider a condition like this about

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1 which we have no evidence in the record, I would want  
2 to hear from Office of Planning and the Applicant on  
3 the subject.

4 CHAIRPERSON GRIFFIS: Excellent point and  
5 so would I. I was going to have any quick Board  
6 questions or comments on that. That being said, we'll  
7 invoke our parliamentary understanding and just table  
8 the motion for a moment so that we could have Office  
9 of Planning, first of all, address that aspect of  
10 pervious surface for the driveway if they have any  
11 comment or analysis on that.

12 MR. PARKER: Only that the argument has  
13 been made that one of the reasons to do it in the  
14 front yard was the amount of paving, so I think that  
15 certainly brings the relevance of the issue to the  
16 Board and would make it a reasonable amendment or  
17 condition for approval.

18 CHAIRPERSON GRIFFIS: Okay.

19 VICE-CHAIRPERSON MILLER: I guess my  
20 concern is not the relevance, but the implications,  
21 the impact of doing this.

22 MR. PARKER: The implications of  
23 impervious or of pervious paving or the implications  
24 of the condition on future cases?

25 VICE-CHAIRPERSON MILLER: No, no future

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1 cases, just in this case what the impact of that is,  
2 if there is one to consider.

3 MR. PARKER: I don't know. I think you'd  
4 have to turn to the Applicant.

5 VICE-CHAIRPERSON MILLER: Okay. Thank  
6 you.

7 CHAIRPERSON GRIFFIS: Good point. Mr.  
8 Collins?

9 MR. COLLINS: Thank you, Mr. Chairman.  
10 Maybe there's some confusion that we caused, but our  
11 argument was that to pave from the street, along the  
12 side of the house to the backyard or even to the side  
13 yard, creates a lot of impervious surface.

14 The plan that's shown here, creates a very  
15 minimal amount of impervious surface on each lot,  
16 specifically the driveways, they're about the size of  
17 a car that's going to park there. So there's not a  
18 lot of impervious surface being created by this plan,  
19 rather, our argument was that by strict application of  
20 the regulations would allow, would require a lot more  
21 paving, whether it's pervious or impervious.

22 This minimal amount of area here we're  
23 showing is as driveway is actually the size of a  
24 vehicle that's going to park. It's a parking pad and  
25 then it allows also a walkway from the parking pad to

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1 the house.

2 CHAIRPERSON GRIFFIS: Right.

3 MR. COLLINS: And that's what we were --  
4 that's the issue we were talking about and I'd like to  
5 turn it over to Mr. Cohen to talk more.

6 MR. COHEN: As far as a practicality with  
7 using an impervious type of parking pad or driveway,  
8 from my experience in the climate that we're in with  
9 rain, snow and the changing of the seasons, it causes  
10 just a tremendous amount of problems dealing with  
11 maybe like a paver type of situation setting on sand  
12 with grass growing in between.

13 First of all, there's a maintenance aspect  
14 of it and just the nature of how it's constructed as  
15 far as a constructability you're going to get sinking  
16 no matter what you do from various different pavers,  
17 so there's tripping hazards and issues like that.  
18 Aesthetically, in Arizona and areas like that, it  
19 looks wonderful. In this area, I just don't see it  
20 holding up as it does in the other non-extreme,  
21 volatile climates that we have in this area.

22 It has been done. We've done it in other  
23 developments and over time I've gone back and visited  
24 and see if they've put down either concrete or asphalt  
25 in place of it, so it leaves me to believe that it's

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1 just in this particular climate that we're in it's not  
2 the most appropriate use of materials.

3 MR. COLLINS: Could you address  
4 specifically as to this and you were talking about  
5 pervious and not impervious.

6 MR. COHEN: I'm sorry, yes.

7 MR. COLLINS: In terms of like walkway  
8 from the house to the driveway.

9 MR. COHEN: Like I mentioned, as far as  
10 walking on it or getting access to it from the car,  
11 you know, walking on it with high heels or whatever  
12 the case is, spots of ice that may have formed during  
13 the winter, it would be, in my opinion, not the most  
14 practical use and not the best materials.

15 CHAIRPERSON GRIFFIS: Anything else? Any  
16 other questions of the Applicant, clarifications?

17 Very well. Let's bring back the motion.  
18 Ms. Mitten has asked to have a modification to the  
19 motion in order to put a condition of requirement on  
20 it. I am not in strong favor of including that in the  
21 motion at this point. I think Ms. Mitten brings up an  
22 excellent aspect of pushing to have the most  
23 impervious surfaces, based on the application that's  
24 coming before us and I think if we were lending to a  
25 driveway of 100 feet to the rear, I would absolutely

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1 be in favor. I think in this particular circumstance  
2 and spot, I tend to agree with what has just been said  
3 by Mr. Cohen, the Applicant.

4 In terms of the maintenance, but also the  
5 aesthetic, when I was first looking at this I thought  
6 well, you know, at least this is perhaps -- well, I  
7 looked at it and I thought this will be a place for  
8 the basketball hoop, you know, and a place to play  
9 outside. There's nothing that would preclude anyone  
10 from paving their entire yard and some hardscape and  
11 softscape, I think, is valuable, not to mention  
12 practical in terms of walking up as just has been  
13 indicated, and in terms of whether, if this was again  
14 and the other circumstances were and we've had  
15 substantive discussions on pervious and impervious.

16 If it was the driveway all the way to a  
17 parking pad, I think it's absolutely an important  
18 aspect to look at, and one that can be creatively  
19 utilized so that it doesn't look like you've paved the  
20 entire surface, but with what's presented before us,  
21 I don't find it persuasive to adopt that.

22 Others?

23 VICE-CHAIRPERSON MILLER: Based on what  
24 the Applicant stated, I would be opposed to adding  
25 that condition. I think that conditions are for the

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1 purpose of addressing adverse impacts that might be  
2 related to the relief. And in this case, we've heard  
3 that there's going to be less impervious surface as a  
4 result of the relief granted and that there would be  
5 some real problems as a result of that condition.

6 I think it was offered with very good  
7 intent, but based on what we've heard, I don't think  
8 it should be part of the order.

9 CHAIRPERSON GRIFFIS: Okay, others?

10 MEMBER MANN: I also agree with that  
11 position. In fact, as well intentioned as it was, I  
12 don't understand the difference between requiring a  
13 pervious surface versus the example that the Chairman  
14 gave that he didn't care for vinyl siding. I mean we  
15 can't require that they don't use vinyl siding. I  
16 don't understand why in this case -- I didn't hear an  
17 argument that substantiated requiring a pervious  
18 surface.

19 CHAIRPERSON GRIFFIS: Okay.

20 COMMISSIONER MITTEN: Could I just ask  
21 perhaps on someone who is in favor of the motion to  
22 just for my edification articulate how the lot -- the  
23 two 225-foot lots meet the standard for the variance?

24 CHAIRPERSON GRIFFIS: Absolutely. I'd be  
25 happy to address and I'll let others address. There's

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1 a motion, again, I go to the fact of our requirement  
2 is for placement and that is the first portion and I  
3 think the most positive is require parking in the rear  
4 of the building. There is no rear access.

5 In fact, I think you could look at a  
6 strong application -- that's not what this is based  
7 on, but that it could well be an independent and  
8 strong application just on the fact that there's no  
9 rear alley or access to the property.

10 The fact that this was previously approved  
11 and the subdivision is already set, I think it lends  
12 itself into the other lots more than the last lot, but  
13 I think that's a fairly persuasive argument for the  
14 last. And in the uniqueness and the practical  
15 difficulty, again, even though there is the size that  
16 is there, the available driveway or the available  
17 parking in the side yard, I don't think that the Board  
18 is required to force an alternative that would come  
19 into compliance, but rather that is -- ours is to  
20 measure what the practice difficulty, not the  
21 impossibility of totally complying, but what's the  
22 practical difficulty in not complying with the  
23 regulations.

24 And the practical difficulty of those two  
25 is similar to the others, but in those two it does go

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1 directly to not wanting to take out that entire side  
2 yard or driving all the way to the rear, creating a  
3 100-foot driveway to the rear access or creating a  
4 stackable condition of cars in essentially looking  
5 like a driveway all the way up the side yards and then  
6 creating more and more asphalted or concreted site.

7 So I don't think the Applicant was saying  
8 that they could not park in the side yard, but rather  
9 it was practically difficult to provide the required  
10 parking in the rear and also in the side.

11 Others?

12 VICE-CHAIRPERSON MILLER: I just want to  
13 make a comment on the previous BZA order and that is,  
14 in my opinion, I think it the rights did vest with  
15 respect to the lots and that it didn't lapse and I  
16 guess I'm understanding that this Board is just  
17 adopting the findings, but not ruling that the rights  
18 vested with respect to the lots on the previous order.

19 I don't know if the Board wants to  
20 consider going that far or not, but I just wanted to  
21 note that that's the way I see it.

22 CHAIRPERSON GRIFFIS: Yes, I would agree  
23 with that. Okay. Any other comments then,  
24 deliberation, address of any of the aspects?

25 Okay, if there's nothing further then, we

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1 do have a motion before us that has been seconded. I  
2 would ask for all those in favor signify by saying  
3 aye.

4 (Ayes.)

5 Opposed?

6 COMMISSIONER MITTEN: No.

7 CHAIRPERSON GRIFFIS: Any abstaining?

8 Excellent.

9 Mr. Moy, if you wouldn't mind recording  
10 the vote.

11 MR. MOY: I believe it's Ms. Bailey.

12 CHAIRPERSON GRIFFIS: I'm sorry.

13 MR. MOY: No, that's fine.

14 CHAIRPERSON GRIFFIS: Ms. Bailey. I have  
15 my rights, my lefts, which way do I look?

16 (Laughter.)

17 MS. BAILEY: I'm sorry, Mr. Chairman. The  
18 vote is recorded as 4:1:0 to approve the application.  
19 Mr. Griffis made the motion; Ms. Miller seconded; Mr.  
20 Mann, Mr. Etherly are in agreement; Ms. Mitten is  
21 opposed to the motion and are we doing a summary  
22 order, Mr. Chairman?

23 CHAIRPERSON GRIFFIS: I'll hear from  
24 others. I don't see any reason why we couldn't waive  
25 the rules and regulations and issue a summary order on

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1 this, unless there's any opposition from Board  
2 Members?

3 Not noting any opposition and we have no  
4 parties in opposition in this case, I think we can  
5 issue a summary order.

6 MS. BAILEY: Thank you, sir.

7 CHAIRPERSON GRIFFIS: Thank you very much.  
8 Thank you all very much. We appreciate this  
9 application dialogue. And with that, let us then take  
10 five minutes and we'll let the next Applicant get  
11 ready and prepare and then we'll bring this, the next  
12 Application 17416.

13 (Off the record.)

14 CHAIRPERSON GRIFFIS: Very well, let's  
15 resume.

16 Ms. Bailey?

17 MS. BAILEY: Thanks, Mr. Chairman.  
18 Application No. 17416 of Nationwide Properties of 1st  
19 Place, N.W., LLC, pursuant to 11 DCMR 3104.1 and  
20 3103.2, for a special exception and variance to extend  
21 the C-2-A District zoning regulations by forty feet  
22 onto a portion of the premises zoned R-5-A under  
23 subsections 2514.2 and 2514.2(a), and a variance from  
24 the court width requirements under subsection 776.3,  
25 to allow the construction of an apartment house. The

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1 property is split zoned. It's R-5-A/C-2-A and it's  
2 located at 5414 through 5418 1st place, N.W., Square  
3 3393, Lot 858.

4 MR. DONOHUE: My name is Ed Donohue with  
5 the law firm Holland & Knight, speaking for the  
6 Applicant, Nationwide Properties.

7 CHAIRPERSON GRIFFIS: Excellent. I think  
8 we're ready to roll.

9 Oh, I'm sorry, do we want to take that up?  
10 Is the ANC present? ANC member present 4B? If you  
11 wouldn't mind coming forward.

12 Mr. Donohue, are you in receipt of the ANC  
13 letter that was received by the Office of Zoning  
14 today, January 17th at 9:11?

15 MR. DONOHUE: I have just received a  
16 couple of things from the ANC and I'm not all together  
17 clear I have everything. I have actually three pieces  
18 of paper.

19 CHAIRPERSON GRIFFIS: Three?

20 MR. DONOHUE: I have a letter dated  
21 January 16, two letters dated January 16.

22 CHAIRPERSON GRIFFIS: Okay, we don't have  
23 that.

24 The letter I'm looking at is dated the  
25 15th of January.

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1 MR. DONOHUE: Then there's another letter.

2 CHAIRPERSON GRIFFIS: Excellent, it's  
3 coming forward.

4 I'm sorry, just for clarity, do you have  
5 the January 15th letter?

6 MR. DONOHUE: No sir.

7 CHAIRPERSON GRIFFIS: It looks like this.

8 MR. DONOHUE: No sir, I don't.

9 CHAIRPERSON GRIFFIS: Do you have an extra  
10 copy of that?

11 MS. WHEELER: I have not seen the letter,  
12 so I don't have one.

13 CHAIRPERSON GRIFFIS: You haven't?

14 MS. WHEELER: I have not.

15 CHAIRPERSON GRIFFIS: Excellent. Why  
16 don't you introduce yourself for the record?

17 MS. WHEELER: I am Faith Wheeler,  
18 Commissioner, ANC-4B. And I've been authorized by the  
19 Vice Chair Cherita Whiting to represent the ANC who  
20 had a special meeting on Saturday, January 14 in  
21 regard to this particular case.

22 CHAIRPERSON GRIFFIS: Okay, were you at  
23 that special meeting?

24 MS. WHEELER: Oh yes sir, I was.

25 CHAIRPERSON GRIFFIS: And are these

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1 letters a product of that special meeting or are these  
2 something --

3 MS. WHEELER: The letter that you showed  
4 me which I believe is from Chair Judi Jones who was  
5 not present at the special meeting, I have not seen  
6 and didn't know about until this morning when Clifford  
7 Moy told me that there was such a letter.

8 CHAIRPERSON GRIFFIS: Okay, it seems to be  
9 requesting a postponement of this hearing. Is that  
10 something that was voted on by the ANC?

11 MS. WHEELER: No sir.

12 CHAIRPERSON GRIFFIS: Is it your  
13 understanding, Ms. Wheeler, that that is not an  
14 official position of the ANC then?

15 MS. WHEELER: Yes sir.

16 CHAIRPERSON GRIFFIS: Okay. Board  
17 Members, questions? Okay.

18 Then have you put anything into the record  
19 today?

20 MS. WHEELER: Yes. I've just given to Ms.  
21 Bailey three documents.

22 CHAIRPERSON GRIFFIS: I see, so this goes  
23 to the presentation of the ANC's position?

24 MS. WHEELER: Yes sir.

25 CHAIRPERSON GRIFFIS: I see. Okay. All

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1 right then, everybody clear?

2 VICE-CHAIRPERSON MILLER: I just have a  
3 quick question because I haven't had a chance to read  
4 all these letters that just came before us, but are  
5 you prepared to go forward on behalf of the ANC today  
6 in this case?

7 MS. WHEELER: Yes ma'am.

8 VICE-CHAIRPERSON MILLER: Thank you.

9 CHAIRPERSON GRIFFIS: Okay, any other  
10 questions, clarifications?

11 Does the Applicant have any comment?

12 MR. DONOHUE: Well, I guess I wanted to be  
13 clear what I have in front of me is what the Board  
14 has.

15 CHAIRPERSON GRIFFIS: Good.

16 MR. DONOHUE: I have a letter dated  
17 January 16th from the ANC. It's a three-page letter.  
18 It's signed by Cherita Whiting. Portions of it  
19 reflect a date of January 14th, but the header is  
20 dated January 16th.

21 CHAIRPERSON GRIFFIS: Right. And Ms.  
22 Wheeler has put that into the record today.

23 MS. WHEELER: Yes.

24 CHAIRPERSON GRIFFIS: Good.

25 MR. DONOHUE: I also have a letter dated

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1 January 16th, a one-page letter, also signed by  
2 Cherita Whiting.

3 CHAIRPERSON GRIFFIS: Also put in the  
4 record today by Ms. Wheeler.

5 MR. DONOHUE: And then a resolution dated  
6 today, January 17th.

7 CHAIRPERSON GRIFFIS: Correct.

8 MR. DONOHUE: And lastly, a letter dated  
9 January 15th, a letter signed by Judi Jones, again a  
10 one-pager. And this is the one that the Chair says  
11 requests a postponement. And as Ms. Wheeler says was  
12 not the position of the ANC. Is that all the letters  
13 that are out there, I guess is what I'm asking.

14 CHAIRPERSON GRIFFIS: That is my  
15 understanding and also that is the submissions that I  
16 have, four elements, all of which, of course, will  
17 have exhibits which I don't have in front of me at  
18 this point.

19 MR. DONOHUE: I guess my question is this,  
20 the resolution that is purported to be January 17th,  
21 was that an action of the ANC taken today?

22 MS. WHEELER: January 14th.

23 MR. DONOHUE: January 14th. Okay.

24 CHAIRPERSON GRIFFIS: So the clarification  
25 you were just provided, that obviously wasn't picked

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1 up on the record, was that this is just dated as its  
2 submission date, but down below indicates the 14th was  
3 actually when the resolution was presented and  
4 adopted.

5 MS. WHEELER: Yes, that's correct, sir.

6 CHAIRPERSON GRIFFIS: Okay. Is everybody  
7 clear then on what we have? Excellent. Thank you  
8 very much. Then I think we're ready to proceed. Ms.  
9 Wheeler, you can take a more comfortable seat back and  
10 we'll call you up in a moment for cross examination  
11 and also the presentation of the ANC's position.  
12 We'll address that when we get to it.

13 Yes, Mr. Etherly? Right, when the ANC  
14 comes in, we'll address all the elements and  
15 submissions that are there and that way we can provide  
16 further clarification.

17 Yes?

18 MEMBER ETHERLY: My only slight hesitancy  
19 because I think I'm clear on what we have in front of  
20 us, but my only slight hesitancy with that course is  
21 just because there is a postponement request included  
22 here.

23 And I think I'm fairly clear that or I'm  
24 leaning towards being fairly clear that I would not  
25 treat it as a formal request on behalf of the ANC. I

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1 think that's fairly clear. But as there is still one  
2 on the table, I'm just wondering whether or not it's  
3 appropriate just to dispose of it somehow for  
4 clarity's sake, rather than kind of complicate the ANC  
5 presentation --

6 CHAIRPERSON GRIFFIS: I think that's fine.  
7 I think we can address it. That's an excellent point  
8 in terms of process.

9 First of all, I don't think -- we don't  
10 entertain a motion outside of those that have party  
11 status in a case. So if this isn't and that's the  
12 pertinent question, is this the official position of  
13 the ANC that would put it as a party, a motion from a  
14 party, having an individual, Ms. Jones, as an ANC  
15 member, proposing a motion to postpone.

16 We might hear some comment on it, but I  
17 don't think it would have standing for our actions.  
18 But let me hear from others --

19 MEMBER ETHERLY: And I would tend to agree  
20 with that direction, Mr. Chair. I think, as you  
21 noted, there will probably be some benefit to having  
22 a little bit of discussion about it just so we're  
23 clear about the nature of the ANC vote and dialogue  
24 around the application, but I would tend to oppose the  
25 postponement as it's currently noted.

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1           Clearly, with the submittal of the ANC  
2 documents here that would have to, I think, be a  
3 waiver action to receive the report as it is coming in  
4 on time, which I would not have an objection to, but  
5 I would be in support of simply moving forward and  
6 denying the request for the postponement.

7           CHAIRPERSON GRIFFIS:    Okay.    I would  
8 second that if that's a motion.

9           Comments?

10          VICE-CHAIRPERSON MILLER:  I would agree.  
11 I think we might as well dispose of this since I think  
12 we are going to be going forward, in which case we  
13 would be denying it, to the extent that there's even  
14 standing to seek it.

15          CHAIRPERSON GRIFFIS:    Excellent.   Any  
16 other comments?

17          COMMISSIONER MITTEN:    Mr. Chairman, I  
18 would just -- rather than deal with this in a motion  
19 and I understand that you want to deal with it  
20 decisively, but I wouldn't want to give someone the  
21 impression that they had standing when they, in fact,  
22 don't.

23          CHAIRPERSON GRIFFIS:    Indeed.

24          VICE-CHAIRPERSON MILLER:  I would concur  
25 with that as well.

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1                   CHAIRPERSON GRIFFIS: Good. Okay, then  
2                   having so much clarification brought to this one  
3                   element, let's proceed. I take it as a consensus of  
4                   the Board that we will not postpone this. In fact, it  
5                   doesn't even rise to the level of having merit of a  
6                   motion. If it did, and we actually talked about the  
7                   substance of it, I would say the only substance that  
8                   has been provided is that which is our jurisdiction  
9                   and we will hear in the hearing and that is why C-2  
10                  and R, why are we doing this, you know, and we have it  
11                  even more articulately laid out in the regulations in  
12                  which we'd have to prove having more time to discuss  
13                  with the community is often a good idea. I don't find  
14                  anything that rises to that. But we don't even need  
15                  to read that threshold, so it's clear in the consensus  
16                  the Board can dispose of this as not properly before  
17                  the Board in terms of a motion and move ahead. And  
18                  note that the comments in here will be, obviously,  
19                  understood and looked at by the Board.

20                         Okay, anything else? Very well, let us  
21                         then move ahead.

22                                 Mr. Donohue?

23                                 MR. DONOHUE: Thank you, Mr. Chairman.  
24                   Good morning. My name is Ed Donohue with the law firm  
25                   of Holland & Knight. Seated to my right is Mike

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1 Lewis, who is the owner and developer of the project.  
2 To Mr. Lewis' right, my colleague and associate, Kyrus  
3 Freeman. To his right, Mr. Steve Sher, who is our  
4 zoning expert, has been accepted by this Board in the  
5 past as such, and we're going to ask that he be  
6 qualified or deemed to be expert in zoning. And  
7 finally, to the far right is the project architect,  
8 Mr. Bill Middleton.

9 My intention is to have Mr. Lewis,  
10 followed by Mr. Middleton, followed by Mr. Sher  
11 speaking and I'm going to go over what they intend to  
12 cover.

13 Let me just take up your request as having  
14 Mr. Sher as an expert witness in this case. It's been  
15 very clear that we have established him before, but  
16 let me ask if there's any comments or questions of Mr.  
17 Sher from the Board, is there any opposition and does  
18 the ANC have any opposition to establishing Mr. Sher  
19 as an expert witness in this case?

20 Noting they have no opposition, the ANC's  
21 position, I'll allow the Board to comment with any  
22 comments and we can move ahead with Mr. Sher being an  
23 expert witness in this case, in relation to zoning and  
24 regulations in the District of Columbia.

25 MR. DONOHUE: As Mr. Lewis will explain,

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1 this project is pretty straight forward. It's an all  
2 residential project. Mr. Lewis is proposing to  
3 replace an old vacant structure with a new one for 20  
4 units, parking to be provided on the site.

5 The property is, in fact, split zoned, as  
6 the Chair mentioned a moment ago. It's split between  
7 a C-2-A and the R-5-A zoned categories. Accordingly,  
8 the Applicant is proceeding under 2514.2 to allow an  
9 extension of the C-2-A zone into the R-5-A portion of  
10 the property.

11 Additionally, there are two variances that  
12 are before the Board. In our view, pretty straight  
13 forward. We want to apply the C-2-A zone standard for  
14 an additional five feet, therefore covering the full  
15 40 feet that is currently zoned R-5-A. That requires  
16 a variance. Mr. Lewis and Mr. Middleton will be  
17 speaking to the variance standards in some detail.

18 Additionally, there's a court variance.  
19 We have had some discussion with the Office of  
20 Planning about the nature of the court variances. My  
21 intention is to have Mr. Sher go into that in some  
22 detail. Mr. Middleton will call your attention to  
23 where those occur and Mr. Sher will address that  
24 insignificant detail.

25 As recently as January 10th, this Board

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1 had occasion to review Section 2514.2 and to conclude  
2 in that case that the section does allow the Applicant  
3 to use both the bulk as the section states and also  
4 the FAR in the less restrictive zone into the portion  
5 of the property that is more restrictive. That case  
6 is known as 17399, a hearing on December 6th and a  
7 decision on January 10th.

8 In our view, that case is really on all  
9 fours. I know that there was extensive discussion in  
10 that case about the Lewis plan, about the  
11 applicability of the FAR and about the difference  
12 between bulk and FAR and I would submit to you that if  
13 you will recall the discussion there, I think that it  
14 will make your deliberations today somewhat easier.

15 Mr. Lewis will also speak and testify to  
16 community outreach. There's been a great deal since  
17 the time he has acquired the property. He's owned the  
18 property for a good long while. We do enjoy the  
19 support from the South Manor Neighborhood Association  
20 and you should have in your packet a letter dated  
21 January 5, 2006 indicating that support.

22 Mr. Lewis has been diligent in trying to  
23 secure support from the community. You know now that  
24 the ANC has met as recently as Saturday and Mr. Lewis  
25 is going to talk to you about that. The ANC's

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1 position is a bit unclear, but we're going to have  
2 some discussion about that down the road. I will say  
3 that the project does enjoy community support.

4 I'll also note before handing the  
5 microphone over to Mr. Lewis that there are a number  
6 of things in the Office of Planning report that we're  
7 frankly very pleased to see, specifically OP agrees  
8 that the density, the proposed density is consistent  
9 with that found in the designation in the  
10 comprehensive plan, at least in the upper ends of the  
11 moderate density designation.

12 Additionally, the Office of Planning  
13 concludes that the bulk would not adversely affect the  
14 neighborhood development.

15 And finally, the Office of Planning did  
16 not -- or agrees -- that no additional screening,  
17 lighting or other restrictions, requirements would be  
18 necessary should the Board decide it wanted to grant  
19 approval. So while we don't -- we wish we had had  
20 full-blown support from the Office of Planning, we  
21 certainly can find some things in there that are very  
22 encouraging and very supportive of the project.

23 So with that, I'm going to ask Mr. Lewis  
24 to give his testimony.

25 MR. LEWIS: Good morning, ladies and

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1 gentlemen. My name is Michael Lewis. I'm president  
2 and CEO of Nationwide Properties. In May 2004, my  
3 company purchased 5414-18 1st Place, N.W. Our intent  
4 was to demolish the existing structure and the  
5 existing vacant structure and to replace it with 20  
6 modular-built residential units.

7 When we purchased the site in 2004, we did  
8 not know that it was on a split zone. It wasn't until  
9 my architect, Bill Middleton, was getting the 12  
10 clearance letters that we needed from the city to get  
11 our raising permit that we found out that we were on  
12 a split zone, the zones being R-5-A and C-2-A.

13 At that time, we met with Holland & Knight  
14 and basically retained them to navigate us through the  
15 difficulties and to give us the options that we needed  
16 to sit down and design a building.

17 Mr. Middleton and I have sat down over the  
18 past year or so and we put together a building that we  
19 think fits into the scheme and the scope of the  
20 neighborhood. And it also complies with as many  
21 zoning regulations as we were able to move forward  
22 with. But being with the finished product, we do need  
23 zoning relief.

24 Since we purchased the building, we've met  
25 with the South Manor Neighborhood Association on

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1 numerous occasions. Immediately after I purchased the  
2 building, I went there and met with them and on a  
3 couple of other occasions, Kyrus Freeman, to the right  
4 of me, also accompanied me there.

5 As Mr. Donohue stated, we do have support  
6 from the South Manor Neighborhood Association. I've  
7 also contacted the neighbors to the immediate north  
8 and south of us. We do have a letter of support that  
9 was filed to support our project from the neighbor to  
10 the immediate north of us. The neighbor to the  
11 immediate south of us said that he had sent us a  
12 letter. We still haven't been able to locate it,  
13 never got it. And we move forward.

14 As Mr. Donohue stated, we have had a lot  
15 of interaction with the ANC. We met with Cherita  
16 Whiting in October, to sit down and basically get some  
17 dialogue with her and to let her know what we were  
18 planning to do and to try to get their support. Since  
19 then, we've been to two ANC meetings, the first ANC  
20 meeting for a number of reasons, they were not able to  
21 take a vote. We went back this past Saturday and they  
22 finally decided to take a vote and they voted to  
23 support the project with one stipulation, that  
24 stipulation being that we would go out to the neighbor  
25 to the south of us and get a petition for 50 of the

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1 tenants there to support the project.

2 When I left the meeting, Mr. Freeman and  
3 myself sat down, put a petition together. I went out  
4 there knocked on all the doors in the dwelling of the  
5 building and was able to speak to three people in the  
6 building. Two of the people signed the petition. One  
7 was the girlfriend of a tenant and she really didn't  
8 want to get involved.

9 I've spoken with Rick Deeds who is the  
10 owner of that building on numerous occasions, and like  
11 I stated previously, he said that he sent a letter and  
12 verbally he gave us the support and told me if we  
13 needed anything to go ahead and contact him.

14 This is a great project. We spent a lot  
15 of time designing this building. We put a lot of  
16 effort into trying to put something together that  
17 would basically act as -- that would start the  
18 beginning of the development process on the Kennedy  
19 Street area. We've met with Ron Austin on a couple of  
20 occasions and we've -- we have support from them and  
21 they have agreed to assist us in any way and hopefully  
22 we will be able to do future projects in the Kennedy  
23 Street area.

24 In conclusion, we respectfully request  
25 that you all grant our application.

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1 CHAIRPERSON GRIFFIS: Excellent. Thank  
2 you very much, Mr. Lewis.

3 Are there questions of the Board at this  
4 time?

5 Why don't we proceed.

6 MR. DONOHUE: Let me ask Mr. Middleton,  
7 with use of the plans, the elevations and actually the  
8 photograph -- the rendering is -- I've got a  
9 photograph for you so we have that in the record.  
10 Otherwise, the plans are all within the record.

11 Mr. Middleton.

12 MR. MIDDLETON: My name is William  
13 Middleton. I'm a practicing architect. I've been  
14 practicing in D.C. over 30 years. This project was  
15 given to me a little while ago. As Mr. Lewis said, we  
16 have spent quite a bit of time on this project and you  
17 may ask why would anybody spend so much time on a site  
18 that's so small? Well, we did and to achieve all of  
19 the goals that he intended in terms of the yield, in  
20 terms of the units, satisfying the parking and the  
21 recreational space. It was quite a tight fit, but we  
22 believe we have a workable project.

23 Basically, from 1st Place, it's a five-  
24 story building with a basement. The first part of the  
25 building, the front part of the building as you can

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1 see from 1st Place which is -- it's primarily -- we  
2 set this up so we wouldn't over-power the existing  
3 buildings as much as possible, but yet attain the kind  
4 of quality that we were looking for.

5 Without getting in the way and getting  
6 away from the microphone, what you see on this first  
7 board is the first floor plan. In your graphics, you  
8 will see that there are -- we have a central entrance  
9 area, apartment on either side and that's for the  
10 first place and the basement, has four apartments  
11 which will be built, site built. The other four  
12 floors are modular construction.

13 The sides of the buildings which is this  
14 issue of a courtyard, represents the residential  
15 recreation spaces on both floors.

16 So basically, we have 20 units of 16 two-  
17 bedroom and 4 one-bedroom units; 10 parking spaces.  
18 Excuse me, that happens to be my fault, I'm sorry  
19 about that.

20 We have defined the recreational areas by  
21 both ground level, at the basement level, ground level  
22 areas and on the first floor we have these terraces  
23 which in a sense restore the grade line of the  
24 original building almost at the same grade elevation  
25 as the original.

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1           The two adjacent buildings, there are no  
2 windows on either the north or the south sides of  
3 these buildings. So this is -- and our apartments,  
4 because of the narrowness of the site, we have --  
5 every apartment has two window exposures which we  
6 would not have been allowed to do this had this been  
7 -- followed the guidelines of the C-2-A going right up  
8 to the property line, we would not have been able to  
9 accomplish this.

10           And any increase in terms of the side yard  
11 requirements or the court yard requirements would  
12 basically take so much away from the project that  
13 there would be -- basically would not yield what we  
14 would -- our original intentions and the apartments  
15 would be basically -- at the most extreme case would  
16 be one apartment in front of the building, one  
17 apartment in back if we went to the extreme case of  
18 the courtyard requirements or side yard requirements.

19           Also, in regard to the residential space,  
20 we had the option of putting this on -- some of this  
21 on the roof, but then that would have just added more  
22 roof structure, more elevators, stairs, which would  
23 have increased the apparent height of the building, at  
24 least another 10 feet or so.

25           Basically, we have a very, very concise

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1 building that we believe have reached the -- in terms  
2 of all of our maneuvering, accomplished what we wanted  
3 in terms of -- from the owner's standpoint of getting  
4 a better yield out of these apartments.

5 So basically, I think it's very straight  
6 forward and if there are any other questions beyond  
7 that.

8 MR. DONOHUE: Mr. Chairman, Mr. Middleton,  
9 would you talk to the Board a bit about the  
10 constraints of the split zoning and how that affected  
11 design. In other words, height and density bulk, FAR  
12 of the R-5-A versus the C-2-A.

13 MR. MIDDLETON: At this point, we have  
14 under the design with total intent of being in C-2-A,  
15 we're just under the threshold of the 22,000 which  
16 would have been allowed at 2.5. We are at 22,429.  
17 With the lesser zoned, we would have been just a  
18 little bit by 1.74 for the FAR which would overall, we  
19 would have lost, we would have a 6,000 plus square  
20 foot loss out of a 21,000 square foot building and at  
21 that point, again, questions of viability of the  
22 design.

23 MR. DONOHUE: As the project is currently  
24 configured, do we meet or exceed the residential  
25 recreational space for the apartments?

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1 MR. MIDDLETON: We exceed it. By one, we  
2 were at 20 percent. We had -- 4,286 was required. We  
3 were 20.7 percent which is 4,453 square feet, so we  
4 exceeded the residential space requirement.

5 MR. DONOHUE: And those calculations  
6 you're giving us, those are exterior space?

7 MR. MIDDLETON: Under the original  
8 proposal, the 342 was interior, but we're subsequently  
9 -- we felt that -- and revised the numbers to be all  
10 exterior.

11 MR. DONOHUE: So the residential  
12 recreation space -- your calculations, where you say  
13 we exceeded the requirement, that's exterior space.  
14 It doesn't include the lobby, correct?

15 MR. MIDDLETON: Yes.

16 MR. DONOHUE: Thank you.

17 CHAIRPERSON GRIFFIS: Anything else?

18 MR. DONOHUE: No, Mr. Chair. I think what  
19 I'd like to do is ask Mr. Sher to address the more  
20 esoteric points, if you will, the court and also to  
21 speak to us on the variance standards and address the  
22 exceptional extraordinary conditions, practical  
23 difficulties.

24 CHAIRPERSON GRIFFIS: Good. Before we get  
25 into that, and that's an excellent way to do that,

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1 let's take questions. I think we're going to have  
2 some clarification questions for those witnesses that  
3 we've just heard and I guess I'll start with a couple.

4 Mr. Lewis, I appreciated your opening  
5 remarks and the labor you've put into producing a  
6 product such as this.

7 You made one comment that I want you to  
8 follow-up on. You indicated that you spent a lot of  
9 time to make sure that this fits into the  
10 neighborhood, and I'm not sure what elements you were  
11 talking about that make this fit into the  
12 neighborhood.

13 MR. LEWIS: Well, from an aesthetic  
14 standpoint, we wanted to put together a building that  
15 wouldn't deviate aesthetically from the other  
16 buildings that were in the area.

17 CHAIRPERSON GRIFFIS: In terms of what,  
18 size and materials?

19 MR. LEWIS: In size, materials.

20 CHAIRPERSON GRIFFIS: How are they similar  
21 then to the neighborhood?

22 MR. LEWIS: Within the past year on the  
23 corner of North Capitol and Missouri, there was a  
24 senior citizen building built there and this building  
25 from an aesthetic standpoint is pretty much a cookie

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1 cut of that. It is made with the --

2 CHAIRPERSON GRIFFIS: Is that a building  
3 you find celebrated by the neighborhood?

4 MR. LEWIS: Yes.

5 CHAIRPERSON GRIFFIS: It is.

6 MR. LEWIS: Definitely.

7 CHAIRPERSON GRIFFIS: For its  
8 architectural qualities and materials?

9 MR. LEWIS: Well, I wouldn't necessarily  
10 say that, but when we met with the neighborhood  
11 association and the community members that came out to  
12 the ANC, they stated that they liked the building. So  
13 for whatever reason, they found it favorable.

14 CHAIRPERSON GRIFFIS: You brought up the  
15 aspect, so what are your materials on the face?

16 MR. LEWIS: From the exterior, we have  
17 brick from the first floor to the middle of the second  
18 floor. From the second floor, middle of the second  
19 floor to the top of the structure there's Hardie plank  
20 which is a durable, commercial siding grade.

21 CHAIRPERSON GRIFFIS: Okay. How else do  
22 you see it fitting into the neighborhood, is there  
23 anything else?

24 MR. LEWIS: From a height standpoint.  
25 There's also other buildings in the area on the

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1 Kennedy Street area, I'm sorry, actually on Kennedy  
2 Street that have the 50-foot height and on Missouri  
3 and North Capitol there are also structures there with  
4 similar height.

5 CHAIRPERSON GRIFFIS: Excellent, thank you  
6 very much.

7 Mr. Middleton, we appreciate your opening  
8 remarks also. Is there a document that we have of a  
9 larger scale that shows me where the current boundary  
10 line is and then where you're moving it to?

11 MR. MIDDLETON: Current boundary line?  
12 No, there is not, but basically -- okay, the zoning  
13 line would basically split the building at the stair,  
14 at this point right here, almost the center line of  
15 the first two stairs.

16 CHAIRPERSON GRIFFIS: So it splits it?

17 MR. MIDDLETON: Yes.

18 CHAIRPERSON GRIFFIS: So where under  
19 special exception is it moved to?

20 MR. MIDDLETON: I'm sorry, I don't  
21 understand the question.

22 CHAIRPERSON GRIFFIS: There's two steps of  
23 moving this boundary line.

24 MR. DONOHUE: Can you show the Board where  
25 the 35-foot extension would take you and then describe

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1 the additional 5 feet?

2 MR. MIDDLETON: Okay, our building is 62-  
3 foot wide. And it's 9 foot from the side, 35 feet  
4 into -- would put you just about at the edge of our  
5 property line, approximately.

6 CHAIRPERSON GRIFFIS: So why do you need  
7 the next five feet?

8 MR. MIDDLETON: The --

9 CHAIRPERSON GRIFFIS: Or what's making it  
10 practically difficult to comply with the placement of  
11 the zoned line to that point? What makes it  
12 difficult?

13 MR. MIDDLETON: In the sense,  
14 architecturally, it does not affect the mechanical or  
15 structural or anything like that. Basically, it  
16 addresses our FAR and the size of our total bulk of  
17 our building.

18 CHAIRPERSON GRIFFIS: How?

19 MR. MIDDLETON: The FAR is based upon --

20 CHAIRPERSON GRIFFIS: I know how it's  
21 calculated, but we're getting into very specifics  
22 here. What is the impact? I mean the practical  
23 difficulty that you're stating is that okay without  
24 the C-2 -- at the 2.5 being able to be calculated on  
25 that additional five feet of that site, there's some

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1 difficulty in making this happening. And what I'm  
2 asking is what's the implication?

3 MR. MIDDLETON: Well, basically, it's the  
4 side yard or the court yard, basically. It's not  
5 affecting, as you can see by the drawing, we're not  
6 even trying to say that it affects the structural or  
7 mechanical layout of the building, but it does, it  
8 affects total square footages of our residential area,  
9 the recreation space is using that.

10 I would have to --

11 CHAIRPERSON GRIFFIS: Let me ask you  
12 another question when you calculated the FAR for the  
13 building, the portions of the basement calculated, is  
14 that correct?

15 MR. MIDDLETON: Except for the mechanical  
16 equipment, below-grade, basically.

17 CHAIRPERSON GRIFFIS: So essentially the  
18 residential areas calculated toward the FAR. So you  
19 have a basement, plus five levels calculated towards  
20 --

21 MR. MIDDLETON: Yes.

22 CHAIRPERSON GRIFFIS: You essentially have  
23 a six-story building, according to the regulations.

24 MR. MIDDLETON: Yes. Well --

25 CHAIRPERSON GRIFFIS: Mr. Sher, is a

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1 basement a story?

2 MR. SHER: For the record, my name is  
3 Steven Sher, Director of Zoning Services with the law  
4 firm of Holland & Knight.

5 The regulations tell you you count the  
6 number of stories at the point of which you measure  
7 the height of the building. At the front of the  
8 building, I don't believe that story is a basement.

9 CHAIRPERSON GRIFFIS: Okay.

10 MR. SHER: At the point you count the  
11 measure. But the point where you -- let me try one  
12 more time.

13 At the point where you measure the height  
14 is where you count the number of stories and at that  
15 point, it's not a basement.

16 CHAIRPERSON GRIFFIS: Okay.

17 MR. SHER: Where it falls down towards the  
18 back.

19 CHAIRPERSON GRIFFIS: It wasn't clear in  
20 the record. It was just being talked about as a  
21 basement. Good. So we have a cellar at the front  
22 part of the basement.

23 MR. MIDDLETON: Yes, it's exactly 50 feet  
24 from the measuring point.

25 CHAIRPERSON GRIFFIS: Okay. Excellent.

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1 And then let me get some clarification because I know  
2 Office of Planning has some comments on this  
3 additionally, but the residential recreation  
4 requirements and the percentages, you went through  
5 quickly, you also have a sheet that lays out the  
6 percentage. I just want to be clear that that is or  
7 help me be clear, what is that based on? It's based  
8 on the total gross square foot utilized towards the  
9 residential on all of those levels?

10 MR. MIDDLETON: Yes, it is. The  
11 calculations for the residential use are just above  
12 the recreation space tabulations, yes.

13 CHAIRPERSON GRIFFIS: And it's that which  
14 is prescribed in the C-2 zone, is that correct?

15 MR. MIDDLETON: Yes.

16 CHAIRPERSON GRIFFIS: Obviously, because  
17 it wouldn't be in the R-5?

18 MR. MIDDLETON: Yes.

19 CHAIRPERSON GRIFFIS: Okay. All right,  
20 other questions from the Board?

21 Mr. Mann?

22 MEMBER MANN: Can you point out to me  
23 where the courts are for which you're seeking relief?

24 MR. MIDDLETON: I'm going to have to show  
25 it to you on two boards. On the basement level, this

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1 area to the south --

2 CHAIRPERSON GRIFFIS: Sheet A05?

3 MR. MIDDLETON: Sheet A05, goes from the  
4 front all the way to the -- almost to the rear of the  
5 property. And on the north, it's the same. That's at  
6 the basement level.

7 On the first floor level, basically it  
8 does the same thing. Runs from the on A06, runs from  
9 the front of the property all the way to the rear,  
10 both north and south, as well as coming into the  
11 building, the base of the building and the rear  
12 there's some here and north of the elevator and to the  
13 south of the elevator.

14 CHAIRPERSON GRIFFIS: You just pointed to  
15 the rear of the building?

16 MR. MIDDLETON: Yes.

17 CHAIRPERSON GRIFFIS: On the project  
18 north, the top of the sheet, point to that one again,  
19 if you wouldn't mind.

20 MR. MIDDLETON: This is the north.

21 CHAIRPERSON GRIFFIS: Right. And then  
22 towards the rear of the building, you pointed to it.  
23 Why is that a court?

24 MR. MIDDLETON: You asked about  
25 recreational space.

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1 CHAIRPERSON GRIFFIS: I'm sorry, I missed  
2 that point. Okay, he was wanting -- he was asking you  
3 to point out the courts that have been created.

4 MR. MIDDLETON: Yes, that would be this  
5 area here which is approximately 30 foot long on both  
6 sides.

7 CHAIRPERSON GRIFFIS: And you define that  
8 as a court, why?

9 MR. MIDDLETON: Steve?

10 MR. DONOHUE: Mr. Chairman, we can  
11 certainly identify where the court is. We can ask Mr.  
12 Middleton to describe what the intent was with the  
13 court. With respect to responding to OP, I prefer to  
14 have Mr. Sher do it.

15 CHAIRPERSON GRIFFIS: Excellent, we'll get  
16 the definitions and continue to point out, so there's  
17 one on the top project north and then south on the  
18 south side?

19 MR. MIDDLETON: Yes.

20 CHAIRPERSON GRIFFIS: Are there other  
21 courts that were created?

22 MR. MIDDLETON: No.

23 CHAIRPERSON GRIFFIS: Mr. Mann, follow up?  
24 Anything else, any other questions, clarifications of  
25 the Board?

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1 I guess Mr. Sher is going to answer this,  
2 that both courts are calculated based on the C-2  
3 zoning, is that correct?

4 MR. SHER: That's correct.

5 CHAIRPERSON GRIFFIS: Okay, then let's  
6 move ahead.

7 MR. DONOHUE: I guess just one  
8 clarification from us. The recalculation that  
9 demonstrates compliance with the residential  
10 recreation space, that being the exterior calculation,  
11 those plans need to be submitted, so those are not yet  
12 in the record.

13 CHAIRPERSON GRIFFIS: Right, I'm sorry, I  
14 wasn't clear on that either by looking at it. Good.  
15 And do we have those today for submission?

16 MR. DONOHUE: Yes.

17 CHAIRPERSON GRIFFIS: Excellent. Why  
18 don't we get those in as soon as possible.

19 MR. DONOHUE: Yes. Mr. Sher?

20 MR. SHER: Mr. Chairman, Members of the  
21 Board, I want to go right at it, court versus side  
22 yard and what variance is required on that space.

23 Under the regulations, by definition, a  
24 yard is an exterior space other than a court on the  
25 same lot with a building or other structure. A yard

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1 required by the provisions of this title shall be open  
2 to the sky from the ground up. Neither one of the  
3 spaces on either side of this building are open to the  
4 sky from the ground up because of the platforms that  
5 extend out, that abut the lot line on either side.  
6 Therefore, it can't be a yard. It's got to be a  
7 court. It's an open space on the lot.

8           There are terraces that come out -- if you  
9 look at Sheet A10, you will see at the level of what's  
10 called the second floor, there are terraces that  
11 extend out to the lot line, so the building is not  
12 open to the sky from the ground up for the whole width  
13 of the lot, therefore, it's not a side yard. Frankly,  
14 if it were a side yard, which I'm going to get to in  
15 about a minute, that would be better for us because we  
16 would have less of a variance, but it's not. It's a  
17 court.

18           The minimum dimensions for a residential  
19 court are four inches per foot of light of court. The  
20 minimum dimensions for a side yard are only two inches  
21 for foot of height. So if I could call it a side  
22 yard, I'm almost to the point where the variance  
23 requested is de minimis, but unfortunately, for us,  
24 it's not. It's a court. And courts can be at various  
25 levels within buildings. I think the Board has had a

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1 lot of experience with courts. You can have a court  
2 on the top of the 10th floor of a building. A court  
3 doesn't have to be open to the sky from the ground up.  
4 A yard does. And so this can't be a side yard. The  
5 two spaces on either side, on the north side and the  
6 south side, they're not yards, they're courts.

7 Our building does extend, technically,  
8 from lot line to lot line, but it's only at that first  
9 floor level where those terraces are.

10 CHAIRPERSON GRIFFIS: I know the other  
11 Board Members are probably well understood on this.  
12 I'm lost, however.

13 MR. SHER: I thought the best one that  
14 showed it frankly was A10, the front elevation.

15 CHAIRPERSON GRIFFIS: Okay.

16 MR. SHER: Where you see on the left or  
17 south side of the building --

18 CHAIRPERSON GRIFFIS: So you're saying  
19 that this can't be a yard, because there's a terrace  
20 that projects out from the first level?

21 MR. SHER: Well, we're calling it the  
22 second floor, actually, but it's not open to the sky  
23 from the ground up because the ground level is below  
24 that terrace.

25 And the same is true, the terraces beyond

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1 -- you see the note on the right hand side of the  
2 drawings and if you turn to A11, the south elevations,  
3 you will see the railing along that terrace on the  
4 south side and if you turn to A12, you can see the  
5 terraces from the rear view.

6 CHAIRPERSON GRIFFIS: Okay. So what is it  
7 calculated below that terrace, then or is that just --  
8 how is that distinguished --

9 MR. SHER: It's covered. It's got to be  
10 -- it's not an open area of the lot, so it can't be a  
11 yard.

12 CHAIRPERSON GRIFFIS: So it's clearly not  
13 the base point at which a court is started to  
14 calculate.

15 MR. SHER: No, the court gets measured  
16 from the level of the court to the highest point of  
17 the bounding wall, not less than 15 feet. We're  
18 actually 13 point something feet, but the minimum  
19 would be 15. At 4 inches, per foot of height, we're  
20 at about 13 feet.

21 CHAIRPERSON GRIFFIS: Right.

22 MR. SHER: But it still has to be a  
23 minimum of 15. Side yard is 2 inches per foot of  
24 height, not less than 6 feet; the height of the  
25 building is 50 feet, the side yard would only have to

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1 be 8.33 feet.

2 On the one hand, we're pretty close to  
3 those, but it's not.

4 CHAIRPERSON GRIFFIS: Good.

5 MR. SHER: If it were, it might be easier.

6 CHAIRPERSON GRIFFIS: Is everyone else  
7 clear?

8 COMMISSIONER MITTEN: Can I just a real  
9 quick question about the terrace? Did you include the  
10 terrace in the lot occupancy calculation?

11 MR. SHER: Yes.

12 COMMISSIONER MITTEN: Okay. Don't act so  
13 --

14 (Laughter.)

15 MR. SHER: I'm sorry. Yes ma'am. It  
16 follows. It's part of the building.

17 CHAIRPERSON GRIFFIS: Okay. Excellent  
18 question. Good. Let's move ahead.

19 MR. SHER: So why then do we have these  
20 spaces that don't meet the requirements of the  
21 regulations? Back to the point that if this were --  
22 if these were courts they'd each have to be 15 feet  
23 wide. The reason that the building itself, not the  
24 terraces, but the main wall of the building itself  
25 doesn't come to the lot line is we needed to have

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1 windows on both sides of the building, as well as in  
2 the front and in the rear.

3 The site is 80-feet wide. If no open  
4 spaces were provided, then we couldn't have windows on  
5 either of those two sides because the walls would be  
6 on the property line. If we set the building in, then  
7 the width of our building drops to 50 feet as opposed  
8 to where it is now.

9 I think the Board has heard enough about  
10 residential apartment houses and so forth to know that  
11 from wall to wall in an apartment house wants to be  
12 about 65 feet with the space that you have and a  
13 corridor and a space that you have for units on the  
14 other side.

15 This is not really a typical apartment  
16 building because it doesn't have a hall down the  
17 middle with apartments lining both sides. It has a  
18 central core, as Mr. Middleton described, with a  
19 stair, an elevator that enters out onto a hallway and  
20 then another stair. But essentially on the four upper  
21 floors, you've got four units almost arranged, I'll  
22 call it a square, even though the dimensions are not  
23 exactly equal. You've got four units centered around  
24 that central court. If you slice off 15 feet from the  
25 property line in, you're making those units much more

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1 narrower and I think Mr. Middleton referenced that  
2 earlier and making them functionally impractical.

3 So it's either no windows and therefore  
4 your units are impractical because you can't look out,  
5 but at the front or the rear or the smaller units that  
6 are not practical if you've got to whack off 15 feet  
7 on either side to meet the court requirements.

8 I'm sensing some sense of confusion and  
9 some sense of understanding. Do I need to explain  
10 that further?

11 CHAIRPERSON GRIFFIS: Questions? Let's  
12 start with the confusing questions.

13 VICE-CHAIRPERSON MILLER: Yes, elaborate  
14 how much narrower or what the impact is on the units.  
15 I see there are no windows.

16 MR. SHER: We're about twice -- the open  
17 space winds up being about twice as wide as it is now.  
18 We're at about eight feet on one side and nine on the  
19 other side. So we lose six feet on one side and about  
20 seven feet on the other side to create a conforming  
21 court on those two sides. And that reduces the widths  
22 of the units in the building.

23 VICE-CHAIRPERSON MILLER: I guess I'm just  
24 asking you to take it one step further. It reduces it  
25 so much so that what happens to the units, why are

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1 they impractical?

2 MR. SHER: For the size of the units and  
3 the size of the building, they get to be smaller than  
4 one would desire to be able to sell those units at  
5 that price point in that market. Could you have a  
6 whole building of efficiencies? Yes. But it wouldn't  
7 be this building and it wouldn't be designed in the  
8 manner that it is, to fit this site. I don't think  
9 that's an appropriate solution for this building. Mr.  
10 Lewis or Mr. Middleton can maybe speak more to what it  
11 is they're trying to achieve out of the building.

12 Could units be small? Yes. People live  
13 in apartment units that are 600, 700 square feet, but  
14 given the neighborhood that this building is in, and  
15 the design that this building is attempting to  
16 achieve, I think that's an impractical solution.

17 COMMISSIONER MITTEN: On that same point,  
18 can we just take a run at it from a slightly different  
19 direction? You just spoke earlier about how it would  
20 be easier to comply with the side yard requirements,  
21 but the fact that you have these terraces precludes  
22 this area from being considered a side yard. So tell  
23 us why the terraces are important to create the court  
24 requirement instead of the side yard requirement?

25 MR. SHER: Part of it is the trade off for

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1 the residential recreation space requirement, to be  
2 able to get enough space in there at the ground level  
3 and on the terrace, to meet that requirement. Part of  
4 it is because there is some fall off in grade between  
5 the front and rear so that you wind up and I think  
6 again you can see that on the -- let me get the right  
7 drawing. You can see it on both the south elevation  
8 All and the north elevation. It's not quite as  
9 pronounced, but you see how the grade falls down to  
10 the rear and so we can get the terraces and recreation  
11 space at two levels adjacent to both what's at that  
12 point the first floor and the second floor.

13 COMMISSIONER MITTEN: How likely are these  
14 spaces to actually be used by people? It struck me in  
15 looking at the floor plans that it's not readily  
16 available.

17 MR. MIDDLETON: On both levels, they're  
18 accessible from within the units, from within the  
19 public corridor areas. Once you get beyond the two  
20 adjacent buildings, there's natural light that's  
21 coming through on both sides.

22 There's no place on here in terms of  
23 recreational area that's not accessible.

24 COMMISSIONER MITTEN: I understand that  
25 it's accessible. But I said readily accessible. So

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1 you have to go -- you're in the elevator lobby and you  
2 go -- there's sort of like a back door or side door to  
3 get out to it?

4 MR. MIDDLETON: Yes.

5 COMMISSIONER MITTEN: And then you're in  
6 a relatively narrow space.

7 MR. MIDDLETON: Yes.

8 COMMISSIONER MITTEN: Okay. I didn't mean  
9 to step on the rest of Ms. Miller's questions. I just  
10 wanted to piggyback on where she was.

11 MR. DONOHUE: Just on that point, Ms.  
12 Mitten. We had originally calculated or wanted to use  
13 lobby space, interior space. This is a recalculation  
14 to demonstrate, really to respond to Office of  
15 Planning had asked us to show it all exterior, but we  
16 believe that the lobby space is properly included in  
17 recreation space or it would be a bonus, I guess is  
18 the way I put it. The Board has often done that in  
19 the past, but this is all exterior, again, to respond  
20 to what we --

21 CHAIRPERSON GRIFFIS: Ms. Miller? No  
22 follow up questions. Others?

23 MR. SHER: The second issue was the  
24 boundary lines splitting the lot that we've talked a  
25 little bit about. The lot is 80 feet wide by 110 feet

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1 deep, 8,800 square feet. The boundary line runs right  
2 down the middle of the lot, so 40 feet to the north is  
3 zoned C-2-A. Forty feet to the south is zoned R-5-A.

4 The building that's there now was built in  
5 the mid-1930s and it was existing at the time that the  
6 zoning regulations were adopted in 1958. It was  
7 existing as a single lot in 1958 and for reasons that  
8 I can't understand and don't have any idea, the Zoning  
9 Commission ran the zoned boundary line right down the  
10 middle of the lot. If you look at the zoning map  
11 pattern for that square, it's kind of atypical for the  
12 strip commercial zones that you tend to see along  
13 major corridors that are zoned commercial and then are  
14 bounded by residential on either side.

15 Exactly why they drew it down the middle  
16 of this lot, I don't know. It did exist in that way  
17 and I've had enough failure at trying to understand  
18 reasons behind what happened in 1958 that I didn't  
19 even bother to look because there just aren't records  
20 that substantiate why particular boundary lines were  
21 drawn in particular ways.

22 What happens though is if you take the  
23 normal special exception amount, allowed for by the  
24 regulations, you get the 35 feet and you've got 5 feet  
25 left over, so that what you then have is 75 feet of

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1 the 80 feet dealt with in one zoning category and the  
2 other 5 feet left in the other zoning category. So  
3 you've got a whole different set of standards  
4 applicable to a 5-foot sliver, whereas the C-2-A  
5 district would then apply to 90 plus percent of the  
6 lot which makes frankly from a plain and simple  
7 straight forward way, it is the most sensible way to  
8 develop the site. You've got a different set of lot  
9 occupancy standards. You've got a different set of  
10 yard and setback requirements. It just doesn't make  
11 sense to apply one set of standards to 75 out of 80  
12 feet and a different set of standards to the remaining  
13 5 feet.

14 The Board has recognized that in other  
15 cases that it's had. We had a property at 910 M  
16 Street where we had almost exactly the same scenario.  
17 We had a 40-foot slice of C-2-A on a piece of property  
18 that otherwise was zoned entirely C-2-C. And the  
19 Board granted the special exception to extend it 35  
20 feet and a variance to extend it another 5 feet. That  
21 was in case number 17167.

22 We had a similar situation on a use  
23 regulation for the World Building at the corner of  
24 16th and K which was split between C-4 and SP-2 where  
25 45 feet were zoned SP-2 and the Board granted a

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1 special exception for the 35 feet and a variance to  
2 let it go 10 feet and that was in Case No. 16343.

3 And a piece of property over on H Street,  
4 S.E., 4638 H Street, was split between R-5-A and R-2  
5 and that was a little more unusual circumstance where  
6 it was an interior part of that lot that was zoned R-2  
7 that didn't -- if you had tried to develop it  
8 separately from the R-5-A, it would have had no street  
9 frontage or anything like that. And that was about  
10 160 feet where the C-2-A, excuse me, the R-2 went  
11 beyond the R-5-A and the Board granted a variance and  
12 special exception in that case and that was 17013.

13 I have copies of all those orders, for the  
14 record, if you want them, as well as a whole bunch of  
15 other cases where the Board has granted the 35-foot  
16 extension to allow the FAR to be taken at the less  
17 restrictive zone. If you want those, I can submit  
18 them for the record.

19 CHAIRPERSON GRIFFIS: Yes, put those in.

20 MR. SHER: And actually, if you want them  
21 also, I have copies of the plats of the first three  
22 that I mentioned and the zoned boundary line showing  
23 where the boundary is and how it affected those three  
24 properties. I don't know if you need that or not, but  
25 I've got them.

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1                   CHAIRPERSON GRIFFIS:    Yes, let's have  
2 those also.

3                   MR. SHER:  So for what I would essentially  
4 say practicality reasons, we would suggest that  
5 extending the regulations 40 feet to encompass the  
6 entire southern half of the property as opposed to  
7 only 35 feet would make the most sense for developing  
8 the property as a whole and we would suggest that the  
9 variance provisions are the appropriate way to deal  
10 with that kind of a scenario where you just have a  
11 sliver that doesn't make any sense to leave as if it  
12 were R-5-A.

13                  CHAIRPERSON GRIFFIS:    Go ahead, Ms.  
14 Mitten, questions?

15                  COMMISSIONER    MITTEN:            Unless I  
16 misunderstood, the exchange between the chair and Mr.  
17 Middleton earlier, the only thing that would change if  
18 the variance were not granted is that the FAR would  
19 differ.  You're not building under a separate set of  
20 rules besides those that otherwise apply in R-5-A  
21 within that five-foot area.  Did I misunderstand the  
22 exchange?

23                  MR. SHER:  Well, the FAR is different.  
24 It's 2.5 as opposed to 0.9.

25                  COMMISSIONER MITTEN:  I got that part.

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1 MR. SHER: Lot occupancy in an R-5-A zone  
2 is limited to 40 percent and a C-2-A zone it's 60  
3 percent.

4 COMMISSIONER MITTEN: But you're not --

5 MR. SHER: We're not occupying that part  
6 of the lot, but that changes the calculation for the  
7 property as a whole. I guess I haven't tried to  
8 figure out what that would be, but I guess I have to  
9 pro rate 40 percent of 550 square feet and 60 percent  
10 of a different number of 8800 less 550, 8250 and come  
11 up with a different lot occupancy calculation than  
12 what I have now.

13 Side yard requirement in an R-5-A district  
14 or the court requirements are different. It just  
15 doesn't seem to make sense to take a different set of  
16 regulations and apply them to the sliver than applies  
17 to the property as a whole.

18 COMMISSIONER MITTEN: If you were going to  
19 apply, just as a for instance, let's say the building  
20 occupied the entire lot and you were going to apply  
21 the height that was appropriate in R-5-A to the R-5-A  
22 portion of the site and apply the height limitation  
23 that was appropriate to C-2-A, wouldn't you then just  
24 apply the height for that portion? So a 50-foot  
25 height limit -- or a 40-foot height limit in R-5-A and

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1 then a 50-foot height limit in the C-2-A? Isn't that  
2 how you would do it? You wouldn't pro rate that, so  
3 why would you pro rate the lot occupancy? And why  
4 would you pro rate these other things? Why wouldn't  
5 you just take it on its face for that space that would  
6 remain R-5-A?

7 CHAIRPERSON GRIFFIS: Can I just make sure  
8 everyone is clear on what Ms. Mitten is asking,  
9 because I don't know if everyone is catching that.  
10 Let's take it graphically. What you're saying is if  
11 you have a boundary line that splits the property and  
12 you have that five foot left over, height is an  
13 example you're using. The 50-foot height would  
14 continue to that C zoned and once you stepped over  
15 that line, you're on the same lot, you have to drop  
16 down to 40 feet because that's the allowable in the  
17 R-5?

18 COMMISSIONER MITTEN: Right.

19 CHAIRPERSON GRIFFIS: Is that what you're  
20 saying?

21 COMMISSIONER MITTEN: That's -- right.

22 CHAIRPERSON GRIFFIS: Not taking a pro  
23 ration of a height wouldn't work well in a pro rated,  
24 but you wouldn't average the height and do 45 --

25 COMMISSIONER MITTEN: Average, yes.

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1 CHAIRPERSON GRIFFIS: Is that what you're  
2 asking?

3 COMMISSIONER MITTEN: Well, I'm saying  
4 why, if that's true, if that construct is true, why  
5 isn't that true on these other provisions?

6 CHAIRPERSON GRIFFIS: Right, so taking it  
7 directly, if I understand what you're asking then, you  
8 could conceivably, if you didn't extend it five feet,  
9 you would take the lot occupancy for only that aspect  
10 on the C-2 and then the allowable lot occupancy on the  
11 R-5?

12 COMMISSIONER MITTEN: Right.

13 CHAIRPERSON GRIFFIS: Is there a  
14 difference? What's the lot occupancy in the C-2-A?

15 MR. SHER: Forty versus 60 or 60 versus  
16 40.

17 CHAIRPERSON GRIFFIS: Okay.

18 COMMISSIONER MITTEN: I think if there's  
19 any guidance to be had from the ordinance, I think it  
20 suggests that you should have these discrete -- a  
21 discrete application of the different provisions, not  
22 a pro ration. 2514 suggests that it's discrete.

23 (Pause.)

24 I've made Mr. Sher speechless.

25 (Laughter.)

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1 This is a great day.

2 (Laughter.)

3 It's probably temporary.

4 MR. SHER: That's true, I'm speechless.

5 I have to think before I open my mouth. Clearly on  
6 height, we know that one would apply the discrete  
7 provisions of the zone and for example, on something  
8 like use, one would say if the R-5-A had a more  
9 restrictive use, I mean in this case we're talking  
10 about a use permit in both zones, so it really isn't  
11 an issue.

12 I believe that in respect to lot  
13 occupancy, the practice of the District has been to  
14 pro rate that. I'm not sure I could give you a  
15 specific example, but I believe that's what they've  
16 done, what the Zoning Administrator's Office has  
17 traditionally done over time.

18 I was just trying to think of a case that  
19 we had where we did that that I could cite to you, but  
20 I'm -- the computer is coming up blank at the moment.

21 COMMISSIONER MITTEN: Well, I guess I'd be  
22 more comfortable if you could cite something in the  
23 ordinance that suggests that that was the appropriate  
24 thing to do, because I think if I'm looking at the  
25 ordinance, I think there's guidance in the ordinance

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1 to suggest that you don't pro rate and notwithstanding  
2 the practice of the Zoning Administrator, I'd like to  
3 anchor it in the ordinance, if you could.

4 MR. SHER: I need to think about that a  
5 little bit. You have rendered me speechless.

6 CHAIRPERSON GRIFFIS: Okay, Ms. Miller?

7 VICE-CHAIRPERSON MILLER: Well, I'm just  
8 wondering what happens to this application if it's  
9 interpreted the way Ms. Mitten is interpreting the  
10 regulation?

11 If you look at five feet --

12 MR. SHER: Again, the difference between  
13 -- on FAR, the difference between C-2-A and R-5-A is  
14 1.6 FAR on a land area of 550 square feet which is 880  
15 square feet less in the building. But I'm not -- what  
16 happens is and again --

17 (Pause.)

18 -- we would be at a maximum of under  
19 21,000 square feet of gross floor area when the  
20 building is actually about 1,000 square feet more than  
21 that.

22 If you didn't take any -- if you follow  
23 that to the conclusion of saying I can't take any FAR  
24 off the R-5-A portion because I don't have any part of  
25 the building in the R-5-A portion.

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1                   COMMISSIONER MITTEN:    I guess where I  
2 would be headed is that if you eliminate all of the  
3 area related things that you were focusing on like  
4 side yard, lot occupancy and so forth, and all that's  
5 left is density, then your variance case is  
6 significantly impaired in terms of being able to meet  
7 it, to meet the burden of proof.

8                   MR. SHER:    We have one building on one  
9 lot.

10                  CHAIRPERSON GRIFFIS:    Wait, now we're  
11 getting into -- here's another element that actually  
12 just came up, because I don't see it that way that  
13 you've just indicated to Ms. Miller's question.  And  
14 let me see if I can restate it.  It is not as if the  
15 boundary line subdivides the property.  I don't see  
16 that at all.  I don't see that there's an averaging of  
17 the restrictions or allowances between the C and the  
18 R, the C-2-A and R-5-A.  But that doesn't mean that  
19 you don't have the FAR of 1.8.  It may be allowed to  
20 be calculated into the building, even though the  
21 structure is on the C portion of the site.  Is that  
22 what you understand?

23                  COMMISSIONER MITTEN:    Right.

24                  CHAIRPERSON GRIFFIS:    But that's not an  
25 averaging.

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1 COMMISSIONER MITTEN: Right, right, right,  
2 right.

3 MR. SHER: Well, that's where I was going  
4 with the same point. I have one building on one lot,  
5 and so I have a portion of the lot that generates 2.5  
6 FAR --

7 CHAIRPERSON GRIFFIS: I want to be clear  
8 though because you made the statement that you don't  
9 have any building on the R-5-A portion, so you  
10 couldn't use that FAR.

11 MR. SHER: Well, that's what I was -- I  
12 was just thinking that through as we got through to  
13 that. I have --

14 CHAIRPERSON GRIFFIS: I think once that  
15 structure stepped over on to that R-5-A, it would have  
16 to then comply with the differing aspects of that  
17 regulation in that district and that would the height  
18 would be impacted here because it would be different  
19 and the lot occupancy would be impacted. That would  
20 be different.

21 COMMISSIONER MITTEN: Here's my reading of  
22 things is that 2514.1(a) says you can move the bulk  
23 from -- you can move the line. You can, in theory,  
24 move the line 35 feet and you can take that bulk from  
25 the more restrictive zone and you can move it over and

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1 use it in the less restrictive zone.

2 MR. SHER: Right.

3 COMMISSIONER MITTEN: Without a special  
4 exception. Then with a special exception you can even  
5 use that on the portion, on the 35-foot portion where  
6 you would move the line. Okay?

7 So that doesn't negate 2514.1(a) which  
8 says you've got to move that density over. So I don't  
9 see that there's any problem with using the density  
10 from the R-5-A portion as R-5-A left in that 5-foot  
11 strip.

12 MR. SHER: Maybe I misheard the question,  
13 because I thought you were asking me what happens with  
14 the 5-foot strip that's beyond the 35 feet. Because  
15 under 2514.1, I can't do anything with that.

16 COMMISSIONER MITTEN: Well --

17 MR. SHER: Not under 2514. Because I'm  
18 beyond 35 feet.

19 COMMISSIONER MITTEN: You could build up  
20 to all the -- you could build using all of the  
21 restrictions that apply in R-5-A. You're not  
22 precluded from constructing something, but in reality,  
23 you're not building anything but a terrace in that  
24 five-foot strip.

25 MR. SHER: Right.

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1                   COMMISSIONER MITTEN: So what I'm saying  
2 is because you're not being directed to average  
3 anything or pro rate anything, the only thing that you  
4 gave through the variance that's being requested to  
5 extend that line another five feet is the density from  
6 that five-foot strip as if it were zoned C-2-A instead  
7 of R-5-A.

8                   And if that's all you get, then your  
9 variance, your burden of proof of your variance has  
10 been undermined.

11                   MR. SHER: I know we get that. I'm not  
12 sure that I would agree that it undermines the request  
13 for the variance, but --

14                   COMMISSIONER MITTEN: Walk us through it  
15 again, then and --

16                   MR. SHER: I think we're entitled under  
17 the regulations to take the FAR from the various  
18 portions of the property and put them in the building  
19 on the lot as long as they don't exceed what the  
20 regulations in total would allow. So if we have an  
21 8,800 square foot lot and we can derive our densities  
22 from the FARs permitted, I think we're able to do  
23 that.

24                   What I'm -- I believe again, based on what  
25 the Zoning Administrator has done in the past, is that

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1 they would say to you either and I think they've  
2 allowed us to pro rate, but if you're taking the  
3 position that we can't exceed the maximum lot  
4 occupancy for the two parts of the zone, then my 60  
5 percent lot occupancy has to apply to less than 8,800  
6 square feet. It only applies to 8,250 square feet  
7 which is the part C-2-A plus the 35 feet and the 40  
8 percent lot occupancy applies to the 550 square feet  
9 which is the remainder beyond the 35 feet. So then I  
10 have a different set of lot occupancy calculations  
11 that I would have if the whole thing were zoned C-2-A.

12 If I -- the side yard or court  
13 requirements in an R zone are I don't think quite the  
14 same as they are for a commercial zone, but let's look  
15 it up and see. R-5-A, minimum width of an open porch  
16 is actually less. It's 4 inch per foot of height of  
17 court, but not less than 10 feet. So instead of it  
18 being required to be 15 feet, I'd be required to be  
19 about 13.5 feet, but I still wouldn't make it either  
20 way because my court is less than that because of the  
21 reasons we talked about before.

22 And again, I don't think it could be a  
23 side yard, even though that might be more beneficial  
24 to us.

25 Having a parking space extend across the

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1 zoned boundary line, if it did, probably wouldn't be  
2 a problem because it's accessory parking and it's  
3 still on the lot. So it's probably FAR and lot  
4 occupancy are the two things that would be affected  
5 most by leaving that sliver, leaving the five-foot  
6 sliver, R-5-A.

7 CHAIRPERSON GRIFFIS: Okay, I suggest we  
8 move ahead. We've got a lot to accomplish and we're  
9 at 1:35 now in the morning session, I'm sorry 12:35.

10 MR. SHER: I didn't think I talked that  
11 long.

12 CHAIRPERSON GRIFFIS: I'm already  
13 calculating my lunch break in.

14 So let's move ahead to Office of Planning.  
15 Of course, we'll have more questions as it goes  
16 through and then we can have the persons giving  
17 testimony and then we can have further Board questions  
18 at closing.

19 MR. COCHRAN: Thank you, Mr. Chair. For  
20 the record, my name is Steven Cochran with the Office  
21 of Planning.

22 I think rather than going through point by  
23 point, I'll try to focus on some of the areas that the  
24 Board has already been discussing. I'd like to  
25 emphasize that although it's true that the Office did

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1 find that the FAR in a proposed building would be  
2 consistent with the generalized land use map, that  
3 doesn't necessarily mean that just because it meets  
4 the generalized land use method that OP necessarily  
5 believes that it meets -- that it satisfies the zoning  
6 requirements.

7 Let's look at the court and recreation  
8 requirements in relation to perhaps even the split  
9 zone. It seems to me that an awful lot of this could  
10 be solved by taking those terraces, making them more  
11 usable, putting them in the back yard, over the  
12 parking within the C-2-A.

13 If you look at Sheet A11, you'll notice  
14 that you've already got a terrace going across most of  
15 the right hand of that sheet. That's the south  
16 elevation. All of where that terrace is up --

17 CHAIRPERSON GRIFFIS: I'm sorry, Mr.  
18 Cochran, are you addressing the usability of Ms.  
19 Mitten's question, about whether that's actually --

20 MR. COCHRAN: No, actually, I'm getting  
21 into whether it would make sense for these to be  
22 viewed as side yard or court variances.

23 CHAIRPERSON GRIFFIS: Okay, but hasn't it  
24 been established that the side yard is actually less  
25 restrictive?

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1 MR. COCHRAN: Correct, and I'm trying to  
2 open up the side yard so that they would need less of  
3 a variance.

4 I'm trying to see if they couldn't make  
5 this into a side yard.

6 CHAIRPERSON GRIFFIS: I see, okay.

7 MR. COCHRAN: Because if we go with the  
8 interpretation -- as we'll be looking at, the variance  
9 requested for the five feet, OP certainly opposes  
10 that, which then imposes further restrictions on the  
11 lot occupancy in that southern portion of the lot in  
12 the R-5-A zone at which then leads to more compression  
13 on the recreation space that they put there. So to  
14 address one problem, you've created yet more of  
15 another.

16 CHAIRPERSON GRIFFIS: I see.

17 MR. COCHRAN: So I'm just suggesting that  
18 the recreation space being put out in a unified way  
19 within the C-2-A portion of the lot would not and by  
20 the C-2-A portion I mean taking it as a split zone, it  
21 would not impair the light or air for the unit that's  
22 in the basement that's on the east side -- west side.  
23 And you just solve a lot of problems it seems.

24 CHAIRPERSON GRIFFIS: Okay, good. Let's  
25 continue then.

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1 MR. COCHRAN: And then I think OP probably  
2 would not have a problem in saying that the Applicant  
3 has met the burden of proof for a side yard variance.

4 Okay, with respect to our not saying that  
5 it requires any additional screening, I agree. But  
6 the reason is -- of course, I agree. It's part of  
7 OP's recommendation. But the reason we said that we  
8 didn't find that it would be useful to add any  
9 additional screening or changes would be because it  
10 already is a building that's five stories in a  
11 building that's -- in a neighborhood that's primarily  
12 two and three story buildings. It's large. It just  
13 wouldn't be possible to screen it without design  
14 changes which aren't within the purview of the Board  
15 in a case such as this.

16 And the recreation space variance we  
17 agree. We suspect it's no longer necessary. We  
18 really haven't had time to examine the Applicant's  
19 drawings thoroughly to verify the square footages I've  
20 gotten orally, but we think it certainly can be taken  
21 care of by what I just suggested with the moving of  
22 the recreation space into the back.

23 Now let me go back into -- our general  
24 recommendation is that we can't recommend overall  
25 approval of the application because the project, as

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1 designed and presented, has greater square footage  
2 than the zoning regulations permit, even with possible  
3 special exceptions and variances. OP doesn't believe  
4 that the application meets all the variance tests and  
5 that it exceeds the intent of Section 2514.

6 I want to first look at the extension  
7 under 2514.2(a), then the extension variance of five  
8 feet, then we can go back into the court with  
9 variances and the question about the side yard, which  
10 I've already alluded to.

11 With respect to the extension, we continue  
12 to have questions about the Applicant's interpretation  
13 of 2514.2, just as we did in Case 17399, I believe.  
14 We believe that the regulations do make a distinction  
15 between bulk and FAR. You've already heard this in  
16 17399, but it seems to the Office of Planning and to  
17 the Zoning Administrator, in our consultations with  
18 the Zoning Administrator, that the Applicant's  
19 conflated bulk and FAR. Bulk refers to the exterior  
20 envelope. FAR refers almost entirely to interior  
21 square footage.

22 As we discussed in previous cases, two  
23 buildings could have the same bulk, but if one has  
24 more floors than the other, it would have more FAR.  
25 As I've said, the Zoning Administrator interprets

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1 Section 2514.2 this way and if you look at the Lewis  
2 Report which was cited in some previous cases, it  
3 seems also implicit in their discussion of what forms  
4 the basis of the District's zoning.

5 On page 106 of the Lewis Report, the FAR  
6 is described as giving an accurate index of population  
7 density as well as direct control over density of work  
8 space. And on page 44, the Lewis Report clearly  
9 equates volume with bulk.

10 Now if we're looking at FAR, yes, we're  
11 talking about density. If we're looking at bulk,  
12 we're not. We're talking about size. That's not --  
13 we're not necessarily looking at square footage.  
14 We're looking at the size of an object, not the square  
15 footage. Density is different. Density does deal  
16 with population.

17 CHAIRPERSON GRIFFIS: I think in general  
18 aspects, you make a good case, but there are very  
19 specifics. They're not even that specific aspects.  
20 For instance, a living unit in a cellar does not count  
21 towards FAR, but counts towards its density of the  
22 units there, so even that begins an interchange of use  
23 of density and bulk.

24 Our regulations, as we discussed  
25 previously, the regulations seem to use the verbiage

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1 interchangeably and nowhere are they specifically  
2 defined to be cemented into one definition. So I  
3 think the Board has had a difficult time in being that  
4 determination that bulk is one, only the massing; and  
5 FAR is independent of that for Section 2514 or any  
6 other sections unless it is specifically stated as  
7 such.

8 MR. COCHRAN: Okay, I think I've said how  
9 OP interprets this and I'm not going to push it any  
10 more. But when we come to the special exception --  
11 excuse me, for the variance for the five feet, it  
12 seems to the Office that the Applicant is essentially  
13 creating the exceptional circumstances in going for  
14 the special exception. And then assuming that it gets  
15 a special exception, it's looking at the practical  
16 difficulty that's created by having achieved a special  
17 exception, that the property doesn't have that  
18 exceptional circumstance minus the granting of a  
19 special exception. So we see it as a self-imposed  
20 difficulty there.

21 The Applicant has said that on page 8 and  
22 page 9 that the lot is too narrow to achieve a 2.5  
23 FAR. We keep coming back to the question of FAR.  
24 With the Applicant assuming or trying to present to  
25 the Board that it is entitled to 2.5 FAR and it has

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1 difficulty getting that without the combination of the  
2 special exception and the variances. The Applicant  
3 isn't entitled to a 2.5 FAR. The Applicant is  
4 entitled to that only if it gets a special exception  
5 that would apply to the entire site.

6 The Applicant could actually get about a  
7 2.28 to 2.3 FAR if we -- if you don't give the  
8 variance for the last five feet. So the practical  
9 application is fairly minor, because I believe that  
10 you would average out the two FARs within the five-  
11 foot extension and within the combined C-2-A sections  
12 that you've given through the special exception. So  
13 the impact would be relatively minor. OP doesn't see  
14 where it's demonstrated that it has either an  
15 exceptional circumstances other than one it generated  
16 by wanting to get to 2.5 and therefore asking for the  
17 special exception. And we don't really see what the  
18 practical difficulty would be on that.

19 At one point, the Applicant says well,  
20 there's a practical -- there's difficulty because we  
21 would have a narrow rodent field, (12:48:37)\* I  
22 believe it is on page 11, 5-foot strip. But then they  
23 go ahead and say well, they're not building anything  
24 on that 5-foot strip anyway, so they're sort of  
25 contradicting themselves there. We just don't see

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1 where they meet that test.

2 And with respect to the impairment of the  
3 intent of the zoning regulations and the integrity of  
4 the zoning regulations, we feel that this -- to go  
5 ahead and grant a variance for a self-imposed  
6 difficulty would be harming the integrity of the zoned  
7 district. This is -- to start with -- an R-5-A. The  
8 Applicant is not entitled, as we said to the C-2-A  
9 bulk, nor to the C-2-A FAR without the special  
10 exception and we just feel that we're putting the card  
11 before the horse here if you go ahead and accept the  
12 Applicant's arguments for that variance.

13 CHAIRPERSON GRIFFIS: Very well, questions  
14 from the Board?

15 Nothing? Cross?

16 VICE-CHAIRPERSON MILLER: I'll just make  
17 a comment. A self-imposed difficulty or hardship  
18 doesn't negate an area variance under the law.

19 CHAIRPERSON GRIFFIS: When is it critical  
20 for the legal reasoning?

21 VICE-CHAIRPERSON MILLER: It's critical  
22 for a use variance.

23 CHAIRPERSON GRIFFIS: Cross?

24 MR. DONOHUE: Mr. Cochran, I believe, and  
25 I'm asking, I believe the Office of Planning has

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1 indicated that it would support a variance from the  
2 side yard requirements if we were to establish, if we  
3 were to reconfigure things and approach the Board  
4 toward that end, is that true?

5 MR. COCHRAN: That's correct.

6 MR. DONOHUE: And yet, here you said that  
7 this is a self-imposed hardship and your testimony  
8 indicates that the property is not affected by an  
9 extraordinary or exceptional condition, correct?

10 MR. COCHRAN: Correct.

11 MR. DONOHUE: What would change in order  
12 to allow the OP to support a side yard variance?

13 MR. COCHRAN: We were looking at -- I was  
14 -- with respect to the self-imposed difficulty, that  
15 would be with respect to the variance for five feet.

16 MR. DONOHUE: What would change to allow  
17 the Office of Planning to conclude that the property  
18 would be affected by an exceptional or extraordinary  
19 condition? I guess that's where I'm not following.

20 MR. COCHRAN: For the side yard?

21 MR. DONOHUE: For the side yard variance.

22 MR. COCHRAN: As you're pushing me on  
23 that, I would have to say that we might not be able to  
24 support it, because it would come out to a question of  
25 choice of the configuration of the units with respect

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1 to light and air and you --

2 MR. DONOHUE: You're on record as  
3 indicating that you would support it, but when asked  
4 to explain it you say well, maybe we wouldn't. That's  
5 not a question. I'll withdraw it.

6 Mr. Chair, with respect to the special  
7 exception requirement and the FAR, not the Ms. Mitten  
8 five-foot FAR, but the allocation of FAR into the  
9 other zone, I'd like to have an opportunity to put Mr.  
10 Sher on for a little bit of redirect on that. I think  
11 that probably would be the most prudent. We do have  
12 the case and it was just decided earlier this month  
13 which is pretty clear precedent as to what this Board  
14 feels about it, but I think that will be the best way,  
15 rather than ask further questions along those lines.

16 We talked about residential recreation  
17 space and I believe what the Office of Planning has  
18 now said is that they suspect we met the requirement,  
19 but you want to check the plans and that's fine. I  
20 think we'll leave it at that. You just got them. So  
21 it's only fair.

22 I think that's all I have, Mr. Chair.

23 CHAIRPERSON GRIFFIS: Very well, let's  
24 move ahead unless the ANC has any cross examination of  
25 the Office of Planning. Any cross?

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1                   Okay, then let's move ahead. We're ready  
2 for your case presentation then.

3                   MS. WHEELER: Thank you, Chairman Griffis.  
4 I am Faith Wheeler, as I stated before, Commissioner  
5 of ANC-4B-02, authorized to represent ANC-4B in this  
6 particular case which we passed a resolution on  
7 Saturday, January 14th in a special meeting.

8                   As noted on the sheet of the resolution,  
9 we have seven sitting Commissioners. Required for a  
10 quorum are four. Present and voting at the special  
11 meeting were five. The vote was five yeas and zero  
12 nays supporting this resolution.

13                   Shall I read the resolution? You have it  
14 before you.

15                   CHAIRPERSON GRIFFIS: No. Has it been  
16 satisfied? One of the contingents upon is that  
17 letters of support of at least 50 percent of the units  
18 adjacent to the property, as well as from owners of  
19 that building.

20                   MS. WHEELER: Yes. I understood from Vice  
21 Chair Cherita Whiting, who is the Commissioner of that  
22 particular Single Member District, that it has not,  
23 that she has not received letters of support from 50  
24 percent of the units.

25                   CHAIRPERSON GRIFFIS: Okay. And let me

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1 ask you in terms of drafting this resolution and put  
2 it before the ANC, of course, we like to see everyone  
3 in agreement to things, but above and beyond that, we  
4 have specific things that have to be complied with  
5 which is what this very exciting dialogue all morning  
6 has been about, the regulations and whether the tests  
7 for a variance or a special exception have been met.

8 In the ANC's perspective and requesting  
9 community support, are there specific substantive  
10 elements that the ANC is waiting to hear from the  
11 community on?

12 MS. WHEELER: Essentially, we're concerned  
13 that the neighbors are comfortable with the proposal,  
14 as made by Nationwide Properties, with the special  
15 exceptions and all. Given that the -- two  
16 considerations. One very important consideration, of  
17 course, is that the ANC is very interested in  
18 upgrading this neighborhood and any neighborhood. And  
19 we want to be sure that the upgrade is as best as it  
20 can be, as good as it can be.

21 And we realize that this building is  
22 something of a departure in height, for example, it is  
23 an attractive building. There's no question about  
24 that. But that's not your consideration.

25 CHAIRPERSON GRIFFIS: It is or it is not

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1 an attractive building?

2 MS. WHEELER: It is. It seems to -- I  
3 think I can fairly speak for the ANC, that it appears  
4 to be an attractive proposal in aesthetics.

5 And basically our concern is that the  
6 community immediately surrounding this particular site  
7 is in agreement, half of the community.

8 CHAIRPERSON GRIFFIS: I think that's  
9 understandable. Anything else?

10 MS. WHEELER: In addition to what we have  
11 proposed here or what we've stated, I think, nothing  
12 particularly more. I understand that the  
13 representatives of Nationwide Properties have received  
14 two letters of support from the neighbors in the 5410  
15 1st Place, plus a letter of support from the doctor on  
16 the other side of the building, plus a letter of  
17 support from the South Manor Park Neighborhood  
18 Association. And that we're pleased to hear and  
19 pleased to know that.

20 We are particularly concerned about  
21 letters of support have been requested, actually, for  
22 a period of time that we think would be sufficient for  
23 them to have gotten some additional letters of support  
24 than they have at the moment.

25 CHAIRPERSON GRIFFIS: Excellent. Anything

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1 else, Ms. Wheeler?

2 MS. WHEELER: Not at this moment, no.

3 CHAIRPERSON GRIFFIS: Very well, thank you  
4 very much. We appreciate you taking the time to come  
5 down and present all of this information.

6 Questions of the Board? No questions of  
7 the Board for the ANC. I'll just make note of the  
8 other submissions that you did put in which is dated  
9 the 16th of January and it's quite extensive in terms  
10 of the regulation and the elements of analysis and  
11 also the dates and actions that the ANC took. It's  
12 very informative for our record.

13 That being said, does the Applicant have  
14 any questions of the ANC?

15 MR. DONOHUE: No sir.

16 CHAIRPERSON GRIFFIS: No cross. Very  
17 well, thank you very much. We do appreciate it and  
18 although I believe we will need to -- do we need to  
19 waive these into the record? I think we do. So  
20 although they've now been presented, is there any  
21 objection from the Board of waiving our rules and  
22 regulations and receiving these of the ANC and I would  
23 waive for all the submissions, including that of the  
24 Chair's. We can include that, although it's not an  
25 official document of the ANC.

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1           Is there any objection to that being in  
2 the record? Very well, we can move ahead then and  
3 thank you very much, Ms. Wheeler. We do appreciate  
4 it.

5           Okay, let's move ahead then to any other  
6 -- do we have anything else?

7           Mr. Cochran, do you have a question of the  
8 Board?

9           MR. COCHRAN: Yes, Mr. Chair. I wondered  
10 if I could clarify my less than eloquent response to  
11 the Applicant's last question.

12           CHAIRPERSON GRIFFIS: No, it's already on  
13 tape. You can't go back. Go ahead.

14           MR. COCHRAN: Let's assume that the  
15 Applicant is entitled to the height use and bulk  
16 restrictions as the Applicant and the Board seems to  
17 be interpreting them. If that's the case, then it  
18 seems to OP that the Applicant has made a case for  
19 there being exceptional circumstances that affect the  
20 width, may have made a case that affect exceptional  
21 circumstances with respect to the width of the units  
22 and the light that would go into those units.

23           What OP is trying to say is that the five-  
24 foot extension itself seems to be based solely on an  
25 attempt to get more FAR. The Applicant does not seem

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1 to have yet made the case for why it needs the  
2 additional approximately 0.25 FAR in the building.  
3 Some of the units could be redesigned. Perhaps some  
4 of the balconies could be eliminated. We could  
5 speculate anything, but the Applicant has not yet  
6 demonstrated why it needs to get to that full FAR  
7 which is why the Office of Planning is saying that it  
8 hasn't met the test for the five-foot variance. But  
9 we believe that you may have demonstrated, again, if  
10 you accept all the other interpretations, you may have  
11 demonstrated why it meets the tests for the court or  
12 as we prefer to look at it, side yard variances.

13 That's a better, clearer response.

14 CHAIRPERSON GRIFFIS: Okay. Follow up,  
15 Ms. Miller?

16 VICE-CHAIRPERSON MILLER: It's not a  
17 follow up on what you just said, but it is a question  
18 that I would like to ask of you that I didn't before  
19 and that is I believe Mr. Sher made the point that  
20 this lot or this situation in the application is  
21 exceptional and that the split zoning in this case was  
22 different from normal split zoning, that the  
23 Commission has done and I'm wondering if you have an  
24 opinion on that?

25 MR. COCHRAN: No, I don't.

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1 VICE-CHAIRPERSON MILLER: Okay, and could  
2 you just clarify real briefly because I know you went  
3 into a lot of explanation about it, but I just want to  
4 make sure I get the point of why you were recommending  
5 the terraces being on the back of the building?

6 MR. COCHRAN: Well, as Mr. Sher -- perhaps  
7 I'm getting too much into redesign of the building,  
8 but as Mr. Sher said, the side yard variances would be  
9 almost de minimis if you could view these as side  
10 yards.

11 It seems to me you could reduce the  
12 numbers of problems that you might have with the  
13 application by being able to look at them as side  
14 yards, by getting rid of those terraces and you would  
15 also have the ancillary benefit of getting more  
16 consolidated and more usable recreation space by  
17 construction the terraces out over the parking in the  
18 back in a manner that would not then obstruct the  
19 light to the units furthest to the east in the back.

20 VICE-CHAIRPERSON MILLER: Thank you.

21 CHAIRPERSON GRIFFIS: Good, if there's  
22 nothing else from the Board's perspective at this  
23 point, let's call upon anyone who is here present  
24 today to provide testimony, persons present either in  
25 support of the application of 17416 or in opposition

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1 to it. Is anyone here present going to provide  
2 additional testimony? You can come forward at this  
3 time. Not noting anyone proceeding to the table to  
4 present testimony, Mr. Donohue, let's move to your  
5 rebuttal, redirect and closing remarks.

6 MR. DONOHUE: Very well, thank you, Mr.  
7 Chair.

8 Mr. Sher, beginning with the special  
9 exception, would you walk us through the elements of  
10 2514.2 and also speak to -- you had mentioned three  
11 other cases that you found were similar. Speak to the  
12 way that those cases were handled with respect to  
13 averaging, if you will, use of density and bulk.

14 MR. SHER: Without belaboring and going  
15 all the way back to the beginning again, special  
16 exception standards in 2514.2 talk about not exceeding  
17 35 feet. Well, we're obviously at 35 feet and ask for  
18 a variance to go an additional 5 feet. But for the  
19 purposes of the special exception, we can say that the  
20 35 feet are within what the regulations provide for.

21 The next section has to deal with FAR in  
22 R-1 through R-4. We don't have any of that here. So  
23 that's not applicable to this application.

24 Next, the extension would have no adverse  
25 effect upon the present character and future

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1 development of the neighborhood. Well, in our view,  
2 it doesn't. In my view, it doesn't. We're actually  
3 not even asking about any extension of the use  
4 requirements of the C-2-A District. We're talking  
5 about an apartment house which is a use otherwise  
6 permitted in an R-5-A District. So we're talking  
7 about the same use. We believe that with respect to  
8 the design and materials, the impacts and so forth,  
9 that this building would not be adverse and in fact,  
10 would be consistent with what goes on in that vicinity  
11 and in that neighborhood.

12 As noted earlier, the adjoining buildings  
13 on either side to the north and the south have no  
14 windows in the walls facing this property, so  
15 particularly, I guess we're only talking about the  
16 building to the south now and not the one to the  
17 north. But any development on this lot would, if it  
18 cast any shadow to begin with, would be casting a  
19 shadow to the north and not to the south. But if it  
20 had any impact on that side wall of that building that  
21 wall has no windows, so we believe that there would be  
22 no adverse condition or nothing inconsistent about the  
23 present character or future development of the  
24 neighborhood by virtue of extending the height of this  
25 building 10 feet and increasing the density as

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1 permitted under the regulations.

2 And then with respect to requirements  
3 pertaining to design, appearance, screening and so  
4 forth, we think we've done a credible job in designing  
5 the building, but if the Board has any reason to want  
6 to impose conditions, that's obviously at your  
7 discretion.

8 A couple of other things just to sort of  
9 quickly tie up as many loose ends as I can quickly,  
10 the Board is familiar with the standards for granting  
11 special exceptions which the Court of Appeals has  
12 enunciated and the Court of Appeals essential said if  
13 an Applicant meets the burden, the Board is required  
14 to grant the application. We believe we've met the  
15 burden and that therefore we are correct to presume  
16 that we could look at the site as if 35 feet were --  
17 that the boundary line extension did actually occur.

18 As Ms. Miller noted before, the notion of  
19 a self-created hardship, I don't think it applies here  
20 in the first place, but if it did, it doesn't apply to  
21 area variances. The Court said that's a criteria that  
22 applies to use variances and since use is not an issue  
23 here, I don't think the self-created hardship document  
24 applies.

25 As well as being cognizant of what the

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1 Court of Appeals says about the regulations, I think  
2 as a practicing zonist, which is what my wife would  
3 call me, I need to be charged with what this Board and  
4 what the Zoning Administrator and what the Zoning  
5 Commission says about the regulations, and in  
6 particular, with respect to those sections with  
7 boundary lines crossing the lots, I've worked on  
8 personally and reviewed any number of other cases  
9 where the Board in the past has approved precisely  
10 what it is we're asking for here and that is that the  
11 density allowed in FAR, allowed to be taken from the  
12 less restrictive portion, as if the 35-foot line had  
13 been extended over that far.

14 And I handed into the Board for the record  
15 and I know you've had extensive discussion of that in  
16 other cases, so I'm not going to go through them  
17 again, copies of those orders and in particular again,  
18 the one that just comes to mind is that case over on  
19 H Street, S.E., where we took a significant portion of  
20 the site that was R-2 and calculated the density as if  
21 it were R-5-A and put that density in a new building  
22 in the R-5-A portion of the lot. I think that's  
23 consistent with the way the Board has applied the  
24 regulations over time and I think we're all charged  
25 with knowing that and undrestnading that

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1 interpretation of the regulations.

2 And I guess I'm not going to belabor the  
3 three cases where the Board did grant variances to  
4 extend those lines in cases where the facts seemed to  
5 warrant it. And this is just another one of those.

6 MR. DONOHUE: In substantial part, Mr.  
7 Sher has given my closing remarks, Mr. Chair, which is  
8 I think we can all say thank you and I'll be very,  
9 very brief.

10 We believe that we do satisfy the various  
11 elements of 2514 and for the two variances. We've had  
12 extensive discussion about the exceptional situation  
13 and condition, about practical difficulty. We do  
14 believe that rather than look at adverse effect that  
15 this would be a benefit to the neighborhood. You have  
16 the ANC coming in voting in support, albeit it with  
17 the condition and the condition not fully met, but as  
18 the ANC Commissioner testified, they found the project  
19 attractive. She said it was an attractive proposal.  
20 We do enjoy community support from the South Manor  
21 Civic Association.

22 The discussions about interpretation and  
23 about how courts are measured and whether it's a court  
24 or a side yard are interesting, but I think on  
25 balance, we've met the variance standards quite

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1 capably and I think we've pointed you a couple of  
2 precedential cases that we'd ask you to take a look at  
3 in your deliberations. I think this is consistent  
4 with the way this Board has interpreted cases of this  
5 type and we'd ask that you do the same in this case.

6 I'll close with that, unless there's  
7 questions.

8 CHAIRPERSON GRIFFIS: Excellent, thank you  
9 very much.

10 Questions?

11 VICE-CHAIRPERSON MILLER: I was just  
12 wondering if you would articulate the practical  
13 difficulty of not extending the boundary five feet?

14 MR. DONOHUE: The architect and Mr. Sher  
15 testified to some of the applications of light and air  
16 and how that would affect design. We asked at one  
17 point what it would do in terms of number of units and  
18 I don't know, Mr. Middleton, if you can recall where  
19 you came up with on that.

20 MR. MIDDLETON: Basically, we would lose  
21 --

22 VICE-CHAIRPERSON MILLER: Okay, I'm sorry.  
23 I did hear that argument. I thought that went to the  
24 variance for the court. I didn't realize that same  
25 argument went to the variance for extending the five

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1 feet. He doesn't have to repeat that.

2 MR. DONOHUE: Exactly, I believe the  
3 practical difficulty does go to that. It goes to the  
4 light and air and also number of units.

5 VICE-CHAIRPERSON MILLER: Okay, thank you.

6 CHAIRPERSON GRIFFIS: Ms. Mitten?

7 COMMISSIONER MITTEN: I think I'd like to  
8 take you back one step from where Ms. Miller had you  
9 which is if I -- when I read the -- your submission,  
10 what I see, at least as it relates to the five-foot  
11 extension of the zoning line that there are two things  
12 that have been articulated as the unique circumstance.  
13 One is that the site is split zoned which while you  
14 note that there is no other lot in the square that is  
15 split zoned, there are any sites around the city that  
16 are split zoned, which is not unique and it's so not  
17 unique that we actually have a provision in the  
18 ordinance that deals with boundary lines crossing a  
19 lot. So that's no unique to my mind.

20 The second thing which Mr. Cochran noted  
21 as well, is that you represent that the site is too  
22 narrow to accommodate an efficiently designed  
23 apartment house, but again, I think that's a pretty  
24 sweeping statement for one because I think we have a  
25 lot of examples that would argue against that. But is

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1 that a unique circumstance?

2 Is there anything more about what's unique  
3 that you can put on the record or that I perhaps  
4 missed?

5 MR. DONOHUE: We had, not in testimony  
6 today, but in prior submissions, talked about the  
7 building restriction line. I'll just mention that  
8 because that does -- it does affect the property  
9 that's there.

10 The question is whether, under the  
11 variance standard, whether there's an exceptional  
12 situation or condition. I think if you take the  
13 things as a cumulative impact, which we can do and the  
14 Court cases have told us that, you have a building  
15 that's been in there since 1936. Subsequent to  
16 construction of the building, the property becomes  
17 split zoned.

18 We talked about the size. We talked about  
19 the impact that the size would have on it. We  
20 mentioned the building restriction line. We mentioned  
21 some of the things that we talked about today by way  
22 of design configurations. So I think as a cumulative  
23 matter, we do have a pretty exceptional situation of  
24 condition.

25 Unique. I think we meet exceptional or --

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1 I think we meet the exceptional standard, perhaps not  
2 unique. It's not just the split zoning.

3 VICE-CHAIRPERSON MILLER: And then, just  
4 to take it to the next step, not that I'm sold  
5 completely on your argument, but I'll think about it  
6 some more, given that my view is and I don't know what  
7 the rest of the Board thinks about the dialogue that  
8 Mr. Sher and I had, but my view is that the only thing  
9 that you gain by extending the additional five feet,  
10 so that there's no detriment to not gaining it,  
11 there's no practical difficulty created to not gaining  
12 it, is just density. And then what I think I heard  
13 articulated as well, then the building has to be  
14 smaller and that's our practical difficulty. Is that  
15 what the representation was?

16 MR. DONOHUE: To be honest with you, I was  
17 trying to follow where you and Mr. Sher were going and  
18 I got a little confused in some of that debate.

19 CHAIRPERSON GRIFFIS: Why don't we do this  
20 unless you want to answer that directly at this point,  
21 I'm thinking that we're going to set this for  
22 decision. We'll do that at the first meeting in  
23 February which is the 7th. I would keep the record  
24 open for a restatement or a proposed order from the  
25 Applicant and that way you could restate that element.

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1 It's obviously a question that's come forward and  
2 there's been some dialogue on it.

3 So if you want to take the time to do it  
4 now, that's perfectly appropriate, but it might well  
5 be served to have that in the submission.

6 MR. DONOHUE: I think we'd prefer the  
7 latter to papering it, because I think we'd like to  
8 talk to you about precedent as well.

9 CHAIRPERSON GRIFFIS: Right.

10 COMMISSIONER MITTEN: Although I hear  
11 always in this ear there's no such thing as precedent  
12 at the BZA because all the cases are taken on their  
13 own individual merits, but so maybe you want to deal  
14 with that aspect as well.

15 But what I would encourage, since the  
16 record will be open and there will be time for more  
17 consideration is to explore some of the things that  
18 Mr. Cochran was suggesting which is I think that to  
19 the extent that to the extent that there's any problem  
20 created by lot occupancy, the terraces are  
21 contributing to it. So just to revisit the whole  
22 notion of the terraces, where they're located, how  
23 they're -- and all of that, because we have -- I know  
24 you're trying to meet the residential recreation space  
25 requirement. In doing that, the Board and the

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1 Commission have been flexible about that requirement  
2 and especially in light of the fact that at least I am  
3 not sold on the fact that that's going to be a really  
4 well-used, well-configured space for people to  
5 actually enjoy the outside. So I'd rather not just  
6 have a token gesture at residential recreation space,  
7 meeting the residential recreation space requirement  
8 and then creating all these other -- necessitating all  
9 this other relief.

10 So I just say that in support of  
11 revisiting those things. Thank you.

12 CHAIRPERSON GRIFFIS: I don't have any  
13 opposition to that, but let's be clear, if the  
14 terraces were put in back, as Mr. Cochran was  
15 proposing, they would still count towards lot  
16 occupancy?

17 COMMISSIONER MITTEN: Yes.

18 CHAIRPERSON GRIFFIS: Okay. Ms. Miller?

19 VICE-CHAIRPERSON MILLER: Mr. Chairman, I  
20 just have to respond to Ms. Mitten's comment about  
21 precedent. I mean I've been on the Board almost three  
22 years and I think that precedent is very important to  
23 this Board and we look at precedent with respect to  
24 consistency in our application of the law, that we  
25 apply the law the same, but the facts are different

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1 with respect to each case that comes. Each case is  
2 its own case, but precedent is definitely looked at.

3 CHAIRPERSON GRIFFIS: Well said, okay.  
4 Anything else? Any other comments?

5 MR. DONOHUE: No sir.

6 CHAIRPERSON GRIFFIS: Excellent, all  
7 right, let's conclude this and make sure that you're  
8 absolutely clear on what we're requiring and needing.  
9 As I said, let's set this for decision, our first, our  
10 next rather, public meeting which is the 7th of  
11 February, beginning at 9:30. Of course, we will not  
12 have any other additional oral testimony at that time.  
13 However, we're going to keep the record open for  
14 submission, first of all, any letters of support that  
15 come in, we will obviously take into the record and  
16 calculate towards the tipping the scale for the ANC  
17 resolution in support of the application.

18 We'll also keep the record open for  
19 additional submissions from the Applicant which also  
20 has to be served on the ANC. I believe this can all  
21 be done in a draft proposed order and findings.  
22 Unless other Board Members have other thoughts on  
23 that, I think that's the most clear and concise way to  
24 pull it all together.

25 I think as we've had some discussion of

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1 different elements of reconfiguring this, certainly we  
2 won't reject any additional submissions that discuss  
3 that. As you want to further the amazing amount of  
4 design time that's been put in, and look at the front  
5 elevation or the terraces or anything like that,  
6 that's fine. It's not something that obviously the  
7 Board is requiring at this point. It's your  
8 application. It's yours to present and put forward.

9 All right, anything else then? Any other  
10 aspects?

11 MS. BAILEY: Mr. Chairman, is it possible  
12 for us to have all the documents in by January 31st?

13 CHAIRPERSON GRIFFIS: We shall see. Any  
14 difficulty in doing that?

15 MR. DONOHUE: I'll speak for the squad,  
16 yes, we'll make it.

17 CHAIRPERSON GRIFFIS: The 31st. That  
18 allows you roughly two weeks, is that correct?  
19 January 31st gives us time in preparation for the 7th.  
20 That way we can all see it. Okay. If there's no  
21 difficulty with that, we'll have that set. We will  
22 require to be in by 3 o'clock on the 31st, that way we  
23 can get it submitted and sent out.

24 Very well. Anything else? Any questions  
25 or clarifications at this time?

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1 MR. DONOHUE: No sir, thank you for your  
2 time.

3 CHAIRPERSON GRIFFIS: Excellent, thank you  
4 very much. We do appreciate a very interesting  
5 discussing at today's hearing.

6 Ms. Bailey, is there any other business  
7 for the morning session for the Board's attention?

8 MS. BAILEY: No, Mr. Chairman.

9 CHAIRPERSON GRIFFIS: Excellent. Thank  
10 you very much. Then let's adjourn our morning session  
11 and for those of you who are here for the afternoon  
12 session that should have started 17 minutes ago, we  
13 are going to break for a brief lunch and I would  
14 anticipate that we would be back by 2:10.

15 Is there any questions of people here  
16 present regarding any of the applications for this  
17 afternoon that I can answer?

18 Very well, if not, we will see you roughly  
19 in an hour. Thank you.

20 (Whereupon, at 1:10 p.m., the public  
21 hearing was recessed, to reconvene at 2:37 p.m.)  
22  
23  
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A F T E R N O O N     S E S S I O N

2:37 P.M.

CHAIRPERSON GRIFFIS: A very good afternoon to everyone. Let me call to order our afternoon public hearing. This is the Board of Zoning Adjustments to the District of Columbia. My name is Geoff Griffis, Chairperson.

Joining me today is the Vice-Chair, Ms. Miller and her other Board Member, Mr. Etherly. We are pleased to have representing the National Capital Planning Commission with us Mr. Mann; and representing the Zoning Commission with us this afternoon, we are also pleased to have Ms. Mitten.

That being said, I'm going to run through this opening statement very quickly, so we can make up some time. We appreciate everyone's patience with us this afternoon. Our morning session went a little bit over, but we're going to get right to the afternoon scheduled cases.

First of all, let me ask that everyone turn off their cell phones and beepers at this time, so we don't have a disruption of the proceedings, noting all our proceedings are recorded. And they are often recorded and broadcast, but I won't go through

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1 the specificity today. But it should just be known  
2 that of course the court reporter, sitting on the  
3 floor to my right, is creating the official transcript  
4 for each case.

5 To that, I ask that people fill out two  
6 witness cards. Witness cards are available at the  
7 table where you entered into the hearing room.  
8 They're also available at the table in front where you  
9 will provide testimony. Those two cards go to the  
10 court reporter prior to coming forward to address the  
11 Board. When coming forward and you are ready to  
12 provide testimony for the Board, I would ask that you  
13 state your name and address for the record. You only  
14 need to do this once and then you can proceed with  
15 your testimony.

16 The order of procedure this afternoon for  
17 special exceptions and variances is as follows.  
18 First, we hear from the Applicant, the case  
19 presentation and any of their witnesses. Then we hear  
20 from any government agencies reporting to the  
21 application, such as the Office of Planning. Third,  
22 we will hear from the Advisory Neighborhood Commission  
23 and their report and analysis. Fourth, we will hear  
24 persons or parties in support of the application.  
25 Fifth, we will hear persons or parties in opposition

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1 to the application. And sixth, finally, we will  
2 return to the Applicant for any rebuttal testimony  
3 and/or closing remarks or summations.

4 Cross examination of witnesses is  
5 permitted by the Applicant and parties in the case.  
6 We will have to establish parties in each case, so you  
7 know if you are a party or who is a party in the case.  
8 The ANC within which the property is located is  
9 automatically a party in the case and therefore will  
10 be a full participant and will be able to conduct  
11 cross examination.

12 The record on each case will be closed at  
13 the conclusion of the hearings today, except for any  
14 material that the Board specifically requests and we  
15 will be very specific on what material, additional  
16 material should be submitted into the record and when  
17 that material should be submitted into the record.  
18 After that material is received, it should be known  
19 and it should be very clear to everybody that the  
20 record is closed and no other information would be  
21 accepted into the record.

22 It's very important to understand this  
23 because the Board will make its decision solely based  
24 on that record which is created before us today.

25 And in creation of that record, the

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1 Sunshine Act requires that we hold all our hearings in  
2 the open and before the public. This Board does enter  
3 into Executive Sessions both during or after hearings  
4 on a case, mostly at lunch, when we work diligently  
5 reviewing the records on cases and/or deliberating on  
6 cases.

7 This is our Executive Session, use of  
8 Executive Sessions is in accordance with our rules,  
9 regulations, procedures and it also is in accordance  
10 with the Sunshine Act.

11 The decision of this Board in contested  
12 cases must be based, as I've said, exclusively on the  
13 record that is created before us today. So we ask  
14 people present this afternoon not engage Board Members  
15 in private conversations while the hearing is  
16 proceeding or while we're here today, so that we don't  
17 give the appearance of receiving material or  
18 information outside of the record.

19 Let me say a very good afternoon to Ms.  
20 Bailey, on my very far left; Mr. Moy, closer to the  
21 dais, also with the Office of Zoning; Ms. Bailey with  
22 the Office of Zoning. Ms. Rose in the very nice red  
23 suit, also with the Office of Zoning and Office of  
24 Attorney General, Ms. Glazer is represented with us  
25 today.

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1 I'm going to ask for all those persons  
2 planning to provide testimony before the Board, if you  
3 would please stand, give your attention to Ms. Bailey.  
4 She's going to swear you in.

5 MS. BAILEY: Please raise your right hand.  
6 Do you solemnly swear or affirm that the testimony  
7 that you will be giving today will be the truth, the  
8 whole truth and nothing but the truth?

9 (The witnesses were sworn.)

10 CHAIRPERSON GRIFFIS: Excellent. Thank  
11 you very much. And at this time then the Board will  
12 consider any preliminary matters and hear any  
13 preliminary matters attendant to any case this  
14 afternoon on our schedule. Preliminary matters are  
15 those which relate to whether a case will or should be  
16 heard today, requests for postponements, withdrawals,  
17 whether proper and adequate notice has been provided.  
18 These are elements of preliminary matter for the  
19 Board's attention.

20 If you have a preliminary matter, I would  
21 ask you to come forward and have a seat at the table  
22 in front of us as an indication of such. I'll ask Ms.  
23 Bailey, if you're aware of any preliminary matters for  
24 the Board's attention at this time?

25 MS. BAILEY: Mr. Chairman and to everyone,

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1 good afternoon. It has to do with the -- the first  
2 preliminary matter has to do with Application No.  
3 17392. That application was withdrawn, Mr. Chairman.

4 CHAIRPERSON GRIFFIS: Excellent. So no  
5 action by the Board is required. Is that correct?

6 MS. BAILEY: That's right.

7 CHAIRPERSON GRIFFIS: Very good. Any  
8 other preliminary matters that you are aware of?

9 MS. BAILEY: Will you be hearing the cases  
10 as they are listed on the agenda this afternoon, Mr.  
11 Chairman?

12 CHAIRPERSON GRIFFIS: I think it's called  
13 out as it's listed on the schedule.

14 MS. BAILEY: That's all the preliminary  
15 matters that Staff has, Mr. Chairman.

16 CHAIRPERSON GRIFFIS: Very well, not  
17 seeing an indication of others with preliminary  
18 matters, let's call the first case.

19 MS. BAILEY: Application No. 17417 of 1425  
20 Belmont Street, N.W., LLC, pursuant to 11 DCMR 3104.1,  
21 for a special exception to allow a group of dwellings  
22 all having front entrances abutting a side yard, and  
23 to allow a group of eight single-family dwellings to  
24 be erected as a single building under subsection  
25 410.13. The property is zoned R-5-B and it's located

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1 at 1425 Belmont Street, N.W., Square 2661, Lot 50.

2 (Pause.)

3 CHAIRPERSON GRIFFIS: A very good  
4 afternoon to you. If you wouldn't mind introducing  
5 yourself for the record? If you just touch the base  
6 of that, you'll turn the microphone on. Perfect.

7 MR. ASHER: My name is Blaine Asher. I'm  
8 the owner of the property and I'm proposing to build  
9 an eight-unit apartment building and we're asking for  
10 a special exception to allow some of the front doors  
11 to face the side yard of the property.

12 CHAIRPERSON GRIFFIS: Excellent.

13 MR. MORRIS: My name is F. William Morris.  
14 I'm the architect with Morris Architects, 60 Market  
15 Street, No. 204, Gaithersburg, Maryland 20878.

16 Good afternoon, Mr. Chairperson and  
17 Members of the Board. We are the architects working  
18 on this application on the design.

19 As Mr. Asher said, this is a request for  
20 a special exception for a proposed group of dwellings  
21 that planned to be constructed at 1425 Belmont Street,  
22 N.W., Square 2661, Lot 50.

23 This is a zoning district R-5-B.

24 The special exception is requested because  
25 of the eight dwelling units proposed, six have their

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1 front entrances facing a side yard. Two of the eight  
2 units are facing Belmont Street and I should say the  
3 existing use of the property right now is a vacant  
4 lot, so this is making use of a property that's under  
5 developed right now.

6 The lot is 50-feet wide by 150-feet deep.  
7 The proposed project is a group of eight single-family  
8 dwelling units with division walls from the ground up.  
9 Four parking spaces on grade are provided at the rear  
10 of the lot at a ratio of one parking space per two  
11 dwelling units as required by the zoning regulations,  
12 Chapter 21.

13 Each unit has a basement level and three  
14 stories above grade and an attic, not in FAR.

15 The proposed project is consistent with  
16 the general intent and purpose of the zoning  
17 regulations because the proposed use of multiple  
18 dwellings is a matter of right use and the height,  
19 density, lot coverage and setbacks meet all  
20 requirements to the regulations. Multiple-family  
21 dwellings is a predominant use in the neighborhood  
22 including the abutting squares to the north and south.

23 The project will not adversely affect use  
24 of the neighboring property. The use of the property  
25 adjacent to the subject lot is also multiple dwellings

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1 that happen to be apartment houses which Mr. Asher  
2 happens to own.

3 The structure abutting the east side of  
4 this lot has a blank wall on the lot line, therefore  
5 there will be no direct visual impact from this  
6 project on the subject neighboring property to the  
7 east.

8 The property to the west is also an  
9 apartment building with its entrance that happens to  
10 be facing the side yard of its property facing our  
11 subject property.

12 The 8-foot side yard on which the front  
13 entrances of six of the units face is combined with an  
14 existing 10-foot side yard from the west to combine,  
15 in effect, an 18-foot wide green space between the two  
16 buildings which will be the proposed front entrance  
17 courtyard of the property.

18 The proposed parking spaces are accessed  
19 from the existing public alley, so no traffic will be  
20 entering from Belmont Street. No light poles on the  
21 property are planned, but rather exterior lighting  
22 will be mounted on the building to provide adequate  
23 site lighting at the rear at the alley and along the  
24 side yards.

25 The subject property is a vacant lot. The

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1 proposed development not only provides housing in a  
2 neighborhood undergoing revitalization, but it also  
3 provides badly needed rental housing. This is not a  
4 condominium project.

5 As more and more existing housing stock is  
6 converted to condominium units for sale, especially in  
7 this neighborhood, and ANC, rental housing options are  
8 becoming more limited. Additionally, this rental  
9 housing provides larger than average size rental units  
10 with the four-bedroom units proposed are I would say  
11 larger than average and provide a beneficial unit for  
12 neighborhoods of the city.

13 As rental housing for families with  
14 children is becoming more scarce, this project  
15 provides an option for these types of working  
16 households.

17 The relief sought by this application for  
18 a special exception is specifically for the locations  
19 of the entrances to six of the eight dwelling units.  
20 These six entrances face, as I said, the 18-foot wide  
21 green space between the buildings and the shape of the  
22 lot does not allow for the proposed units to face  
23 towards the front or to create a front court for such  
24 entrances, although two of the units do face the  
25 front.

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1           The entrances from the multiple dwelling  
2 units or buildings to either side, the two apartment  
3 buildings have entrances from their respective side  
4 yards. Multiple dwelling buildings at 1354 Euclid  
5 Street, N.W. and 1309 Clifton Street, N.W. in the very  
6 same neighborhood also have entrances from the side  
7 yard.

8           I completed a project at 1776 Linear  
9 Place, N.W. featuring two groups of rowhouse type  
10 housing that has entrances from the side, not directly  
11 facing the street.

12           Input from the community has been  
13 appreciated and helpful. We met with the Meridian  
14 Heights Neighborhood Association and ANC-1B and had  
15 several meaningful discourses about this project. We  
16 perceived three main areas of concern from the  
17 neighborhood regarding this application. One was the  
18 relationship of the building to the street that  
19 originally in the application there were no entrances  
20 facing the street and it was too closed too.

21           Two, the appearance of the project was not  
22 in context with other buildings on the street and that  
23 we had cement board siding facing the street. And  
24 three, the community is requesting more off-street  
25 parking.

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1                   We revised the drawings over the holidays  
2 and addressed two of the main three areas of concern.  
3 One was that two of these units were rotated and are  
4 now facing Belmont Street to have an open relationship  
5 with the street and not the side yard.

6                   Two, the front elevations, as well as all  
7 the facades were changed to brick, to be more in  
8 context with the predominant use of building materials  
9 on Belmont Street and the neighborhood and we feel  
10 like this has been a very positive development in the  
11 design. In fact, the developer will spend about  
12 \$140,000 more to convert the material to brick from  
13 the cement board siding overall.

14                   The third area, parking, was studied for  
15 almost a year by our team. We looked at many  
16 different options in developing this ultimate design,  
17 but with the lot being only 50-feet wide, more spaces  
18 can't be provided. For example, if the parking spaces  
19 were just rotated and single loaded along the  
20 north/south axis, you would actually lose one dwelling  
21 in it just to provide the same four spaces that we  
22 h a v e       i n       o u r       p r o j e c t .

23                   Several other schemes were considered, but  
24 really none can provide more parking.

25                   In summary, the parking provided does meet

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1 the requirements of Chapter 21 of the zoning  
2 regulations and that one space for each of two  
3 dwelling units is provided.

4 We feel that the meetings with the  
5 neighborhood have resulted in a project that is of  
6 higher quality of design and the developer has really  
7 appreciated the effort and likes this project more  
8 than what we started with.

9 A couple more points and then I'll be  
10 finished. Site safety. Providing entrances to the  
11 dwelling units from the side yard, in our view, only  
12 enhances the safety and security of the project, of  
13 the residents and neighbors. Having activity drawn  
14 into the middle part of the site, we feel is more  
15 secure than having areas where little pedestrian  
16 activity is expected. Ample exterior lighting will be  
17 provided, along both sides of the building in front  
18 and along the alley.

19 There also will be no isolated, unlit  
20 nooks and crannies where somebody could lurk.

21 There are direct, well-lit paths from the street  
22 through to the alley and into the entrance of each  
23 unit.

24 The developer is committed to making  
25 substantial site improvements also along the Belmont

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1 Street frontage, if not only to the subject property,  
2 but also the two adjoining properties. The existing  
3 stone retaining walls and the public right-of-way are  
4 showing signs of age and are planned to be repaired or  
5 replaced by the owner, subject to District of Columbia  
6 approval at his expense.

7 Of course, sidewalk and curb and gutter  
8 work will be done in conjunction with the site  
9 utilities of the project, but also new landscaping  
10 will be implemented all along these south fronts of  
11 the building, along the embankment, sloping down to  
12 Belmont Street.

13 New concrete steps, walks and railings  
14 will be built for the two adjoining properties, as  
15 well as this property which will be integrated into  
16 the new landscaping and retaining walls on Belmont  
17 Street.

18 Finally, the owner requests this special  
19 exception be considered in order to provide new  
20 quality housing for the neighborhood. This housing  
21 will benefit not only the immediate blocks by  
22 improving their currently vacant lot, but also create  
23 a place to live for families. This will benefit the  
24 neighborhood and community at large.

25 Thank you.

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1 CHAIRPERSON GRIFFIS: Thank you very much.  
2 Did you have that submitted into the record at all?

3 MR. MORRIS: No.

4 CHAIRPERSON GRIFFIS: Did you have any  
5 prehearing preliminary statement in the record that  
6 you're aware of?

7 MR. MORRIS: Yes. In our original  
8 application, the main points of this were submitted,  
9 but I've just expanded on some of those in this which  
10 I can prepare to submit.

11 CHAIRPERSON GRIFFIS: On your letterhead,  
12 is that correct?

13 MR. MORRIS: That's correct.

14 CHAIRPERSON GRIFFIS: Okay.

15 MR. MORRIS: I can submit that at this  
16 time.

17 CHAIRPERSON GRIFFIS: That would be good  
18 to do.

19 Mr. Asher, which apartment building do you  
20 own?

21 MR. ASHER: The building to the east and  
22 the west. It's the only two abutting properties.

23 CHAIRPERSON GRIFFIS: That's interesting.  
24 Okay. And there's a clarification letter of some sort  
25 that you're not involved in the Smith Group, but you

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1 are the president of something? Are you the  
2 Applicant?

3 MR. ASHER: The mistake was the Smith  
4 Company is my -- is the management company for the two  
5 apartment buildings and the vacant lot and they're not  
6 the ones proposing to do the building. They're just  
7 the management company and that was the mistake that  
8 we wanted clarified.

9 They are the registered agent, the mailing  
10 address, the business office, the phone number is all  
11 Smith Company, but they don't actually own the  
12 property.

13 CHAIRPERSON GRIFFIS: Okay, good.  
14 Hopefully they don't charge you much for managing the  
15 empty lot, but so you own each of these the three  
16 lots.

17 How many other buildings are free-standing  
18 or have side yards on that block, are you aware?

19 Across the street, is that the condition  
20 that's across the street?

21 MR. ASHER: Well, I think going to the  
22 east, the next building which is vacant right now, I  
23 think that's the same, has a side yard, about the same  
24 size.

25 CHAIRPERSON GRIFFIS: When were they

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1 built?

2 MR. ASHER: I think these were built in  
3 the early 1960s.

4 CHAIRPERSON GRIFFIS: Looks it.

5 MR. ASHER: And then also the building  
6 going to the west is very similar.

7 CHAIRPERSON GRIFFIS: Right, the two you  
8 own?

9 MR. ASHER: No, going one more building to  
10 the west is also very similar, has a little side yard  
11 and so forth.

12 CHAIRPERSON GRIFFIS: And looking south,  
13 are any of those detached?

14 MR. ASHER: Not that I can --

15 CHAIRPERSON GRIFFIS: You submitted the  
16 photograph. To the south, they are not. They are all  
17 attached. Looks like that entire block is property  
18 line to property line.

19 MR. ASHER: Yes.

20 CHAIRPERSON GRIFFIS: Okay, so let's get  
21 to it because now we've had an awful lot of testimony.  
22 Of course, we're under 1410.13 which is the  
23 requirement which kicks you into 1410.14. I'm sorry,  
24 410, adding a digit, no extra cost.

25 So 410.15 and 16 that we get into.

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1           It's an interesting section of the  
2 residential regulations and it seems to be fairly  
3 prescriptive of things that they want and don't want  
4 and some reasoning for it.

5           And now you're coming in and the testimony  
6 that I've heard you say today is that look, this is a  
7 valuable asset. You ended by saying this is going to  
8 be a betterment to the community and to the families  
9 and it's all laudable. What got you to this design?  
10 Why not do a typical attached apartment building like  
11 I see across the street, in your own record and  
12 submission, that has a single entrance off of Belmont  
13 Street, with a corridor that feeds the units into the  
14 back?

15           MR. MORRIS: Well, speaking on that of the  
16 developer, we looked at various options for the  
17 project that would be, in fact, what you're saying, an  
18 apartment building with a single entrance with a  
19 common corridor in the middle and so forth. Mr. Asher  
20 felt that it was, in his view, more beneficial to have  
21 families with their own separate entrance to be able  
22 to have their own front door as opposed to --

23           CHAIRPERSON GRIFFIS: What's the benefit?

24           MR. ASHER: The benefit to having the  
25 front -- well, I thought it was beneficial to not have

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1 the hallways inside the building, but to have a front  
2 and a back door to the unit where you could go out  
3 into a small yard off of the back door and have your  
4 own entrance at the front door. It seemed like a more  
5 efficient design to me and allowed more space in the  
6 apartment.

7 CHAIRPERSON GRIFFIS: I don't disagree,  
8 perhaps, in a vacuum, and normally I don't go too far  
9 into this except that when I read 1416, it says the  
10 erection of a group of buildings shall not affect  
11 adversely the present character and it goes on.

12 So now I have to establish well, what's  
13 the present character and does this adversely affect  
14 it? Is it within the present character and I'm  
15 looking at your photographs and I'm wondering and then  
16 I'm looking at this and I've seen a few residential  
17 applications come through the Board and I've never  
18 seen anything like this. So I'm wondering, wow,  
19 there's something unique about this. Why is it good?  
20 Because it doesn't really relate to anything outside,  
21 as I see it, on this block.

22 MR. ASHER: When you speak of the  
23 character, do you mean the party wall as you were  
24 asking about across the street, that they're all  
25 touching? I think on this side of the street they're

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1 all like this for like I say for one, two, the  
2 proposed one, three, four, five buildings in a row.  
3 They're all one like this with a little side yard  
4 setback and --

5 CHAIRPERSON GRIFFIS: That's not a very  
6 pretty face, is it?

7 MR. ASHER: Pardon me?

8 CHAIRPERSON GRIFFIS: You're looking at  
9 the side of a building on Belmont. I'm not sure  
10 that's something to be emulated as the character.

11 MR. ASHER: Well, we did orient it with  
12 front doors on these two --

13 CHAIRPERSON GRIFFIS: I'm talking about  
14 the existing building. If you're looking at those two  
15 as context, I'm saying boy, that might be the wrong  
16 direction to look at context. But I like your  
17 photograph of view toward front of lot looking south.  
18 Those look like substantial buildings across the way.

19 Anyway, I think we may get further into  
20 it. Other questions from the Board?

21 Ms. Mitten?

22 COMMISSIONER MITTEN: I just wanted to  
23 clarify something because I think I understood Mr.  
24 Morris to say that the reason that you're here is  
25 specifically for a special exception to have the side

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1 entrances to the six units, when actually the special  
2 exception is required to build the group of buildings  
3 and then there's all of the different subsections in  
4 410 and by not meeting the requirements of 410.3, it's  
5 actually a variance. I don't know if the rest of the  
6 Board views it that way.

7 But I haven't heard the Applicant speak to  
8 the burden of proof for the variance from 410.3.

9 CHAIRPERSON GRIFFIS: Okay, let's explore  
10 that very quickly because we will need, that would  
11 actually change fundamentally the application, of  
12 course, before us as it's been advertised as a special  
13 exception.

14 All front entrances of a group shall abut  
15 a street, front yard or front court, 410.3, under 410  
16 provision. Mr. Morris, it was, correct?

17 MR. MORRIS: Yes.

18 CHAIRPERSON GRIFFIS: Did you want to  
19 address that?

20 MR. MORRIS: Actually, yes. We did have  
21 a preliminary design review meeting at the DCRA at  
22 which the Zoning Administrator Bellow met with us and  
23 advised us that we would need a special exception for  
24 exactly what we're representing here and so on that  
25 basis and as advice, we went forward and have also --

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1 Mr. Asher has engaged Gladys Hicks who also concurred  
2 with that assessment, that it would be a special -- it  
3 would be a variance, and not a special exception.

4 CHAIRPERSON GRIFFIS: The Zoning  
5 Administrator in the preliminary review, did he -- did  
6 you bring up 410.3 for his attention and analysis?

7 MR. MORRIS: He actually brought that up  
8 to us. And said --

9 CHAIRPERSON GRIFFIS: It was a special  
10 exception?

11 MR. MORRIS: Based on this, his opinion  
12 was it would be special exception relief for what we  
13 were proposing and also Faye -- I can't remember her  
14 last name, Faye was there as well.

15 CHAIRPERSON GRIFFIS: Ms. Ogenay?

16 MR. MORRIS: Yes.

17 VICE-CHAIRPERSON MILLER: Mr. Chairman?

18 CHAIRPERSON GRIFFIS: Your reading of  
19 410.1, Ms. Miller?

20 VICE-CHAIRPERSON MILLER: I think the  
21 Office of Planning somewhat addressed this and I think  
22 there's a provision in 410.14 that says that if all  
23 the provisions of 410.13 aren't complied with, they  
24 could still get a special exception under this  
25 provision, subject to the conditions specified in

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1 410.15 and 410.16.

2 CHAIRPERSON GRIFFIS: Correct.

3 VICE-CHAIRPERSON MILLER: So therefore a  
4 variance would not be required.

5 CHAIRPERSON GRIFFIS: Perhaps. Ms.  
6 Mitten?

7 COMMISSIONER MITTEN: I've got to get  
8 410.14.

9 CHAIRPERSON GRIFFIS: Here. It does  
10 indeed. And I'm sorry. I jumped right to that in my  
11 questioning and that's where I went to 410, the  
12 provision of 410.16 or 16, the ejection of a group of  
13 buildings shall not affect adversely the present  
14 character. So obviously, a provision that needs to be  
15 complied with for this application, but we'll let Mr.  
16 Morris read that for a moment.

17 VICE-CHAIRPERSON MILLER: I also want to  
18 say that it doesn't reference 410.3 which Ms. Mitten,  
19 I think was referring to, but it looks like that  
20 provision in 410.3 is repeated in 410.13, all front  
21 entrances of the group shall abut a street, front yard  
22 or front court.

23 CHAIRPERSON GRIFFIS: 410.13(5)(B), that's  
24 correct.

25 So 410.1 through 6 -- actually through 10

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1 are general; 12, 13 and 14 are specific to other  
2 districts in the R-5.

3 COMMISSIONER MITTEN: Well, I guess it's  
4 a legal matter whether 410.13 and 410.3 would be  
5 considered swept up in the same exemption of 410.14.

6 VICE-CHAIRPERSON MILLER: I think if I  
7 heard the Chair correctly, he was saying that 410.13's  
8 provisions apply and just in the R-5-B, perhaps that's  
9 the difference.

10 COMMISSIONER MITTEN: Oh, I see.

11 VICE-CHAIRPERSON MILLER: This is R-5-B.

12 COMMISSIONER MITTEN: Okay.

13 CHAIRPERSON GRIFFIS: Right, that's where  
14 it goes. It seems to --410.13, seems to be trying to  
15 lay out more specificity for the R-5-B Districts,  
16 although I don't see it really being that specific or  
17 different than they are in 410.

18 COMMISSIONER MITTEN: Well, then maybe to  
19 the Chair's point, not only in terms of understanding  
20 the broader character of the neighborhood, as required  
21 by 410.16, but it's difficult to evaluate the issue  
22 raised in 410.15 without input from the Fire  
23 Department, in particular. And I don't know if  
24 there's anything in the record. I know there's been  
25 references made to I guess queries that have been made

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1 to the Fire Department, but that's where we would get  
2 guidance about whether or not the vehicular access is  
3 adequate.

4 CHAIRPERSON GRIFFIS: Good, I think we can  
5 bring that up in terms of addressing the rest of the  
6 requirements in 14 and 15.

7 Further questions, clarifications, so that  
8 we're all in concurrence to proceed as a special  
9 exception? Not that we're being definitive, but we  
10 would be needing to change the application. Or, is  
11 there a concern?

12 COMMISSIONER MITTEN: I just have sort of  
13 a miscellaneous question.

14 CHAIRPERSON GRIFFIS: Excellent. But are  
15 we set on that?

16 COMMISSIONER MITTEN: I'm done with that  
17 other point.

18 CHAIRPERSON GRIFFIS: Let's proceed. Next  
19 question.

20 COMMISSIONER MITTEN: In the -- Mr.  
21 Morris, I think you said that the attic wouldn't count  
22 towards the FAR?

23 MR. MORRIS: Yes.

24 COMMISSIONER MITTEN: But if I understand  
25 the drawings right, there's a height of the attic and

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1 I don't know how far it goes, that's 6.5 feet?

2 MR. MORRIS: Yes. If it's below 6.5 feet,  
3 then it does not count as FAR and we have the  
4 structural members at 6 feet 5 inches, as I recall and  
5 the intent is not for habitable attic at all.

6 COMMISSIONER MITTEN: Okay. On the  
7 revised drawing for the two units that are on the --  
8 that abut Belmont, the drawing A11 and I guess drawing  
9 A11 which is supposed to reflect the second and third  
10 floor, shows a single bath on each of those levels and  
11 the prior set of drawings showed every -- showed four  
12 baths, I guess, in the whole dwelling. Is that  
13 correct then, in those two?

14 MR. MORRIS: That is correct. And in  
15 part, that was done in response to some of the ANC  
16 commentary that all the bedrooms were the same size  
17 and we were certainly not intending to make that a  
18 sticking point and so in changing the two units to the  
19 front, the second bathroom was deleted in order to  
20 make a clearer first bedroom and second bedroom  
21 hierarchy. That was a programmatic change in an  
22 attempt to address the neighborhood concern that they  
23 were all the same size bedrooms, the bedrooms were all  
24 the same size.

25 COMMISSIONER MITTEN: But you didn't feel

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1 compelled to make any changes on the other six units?

2 MR. MORRIS: We would be prepared to take  
3 the second bathroom out and again in relation to that  
4 comment and in an effort to make one bedroom larger  
5 than the other, the developer has offered that he  
6 would do that if that would be a preferable,  
7 programmatic change.

8 COMMISSIONER MITTEN: I guess I'd be  
9 interested in hearing from the ANC on this subject,  
10 but one of the things that I know they have an issue  
11 about parking and one of the things that struck me is  
12 when you have that many bedrooms and that many  
13 bathrooms and it's all kind of exclusive, it really  
14 encourages equally a traditional family which is  
15 permitted under the ordinance or in the definition of  
16 one family you could have as many as six unrelated  
17 people and that configuration just seemed to encourage  
18 equally having unrelated people living together which,  
19 if they're all adults, then that can exacerbate the  
20 parking problem. And I thought those things kind of  
21 dominoed.

22 MR. MORRIS: And in fact, that was our  
23 interpretation of the ANC commentary and that was the  
24 reason Mr. Asher has said well, we'll just take the  
25 second bathroom out and just make, as you said, the

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1 bedrooms more of a hierarchial arrangement.

2 COMMISSIONER MITTEN: Okay, thank you.

3 CHAIRPERSON GRIFFIS: Other questions?

4 Let's walk through the site plan just to make sure all  
5 the Board Members are actually following what's  
6 happening here and myself, more importantly.

7 Looking at A2, as you -- this will be  
8 loaded off of what is on the sheet side on the right  
9 side which I'm assuming is the east side. Is that  
10 correct?

11 MR. MORRIS: Yes, north is up.

12 CHAIRPERSON GRIFFIS: So all the doors are  
13 there. So actually, although we're looking at a roof  
14 plan that shows two dormers and a ridge line straight  
15 down the middle, each of the two dormers is attendant  
16 to a single unit.

17 MR. MORRIS: That's correct.

18 CHAIRPERSON GRIFFIS: So the units are on  
19 that level, not counting the two in the front. They  
20 are three levels, plus an attic?

21 MR. MORRIS: Correct.

22 CHAIRPERSON GRIFFIS: Do they have a  
23 basement?

24 MR. MORRIS: Yes, there's a full basement  
25 under each unit. To summarize, there's one basement,

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1 three levels above grade, and an unfinished attic for  
2 each unit.

3 CHAIRPERSON GRIFFIS: It is a cellar then  
4 in the back side?

5 MR. MORRIS: Correct.

6 CHAIRPERSON GRIFFIS: Cellar, three levels  
7 and an attic. Wow. Okay. Any other questions,  
8 clarifications? For a total of eight units?

9 MR. MORRIS: Yes.

10 CHAIRPERSON GRIFFIS: Okay, anything else?  
11 Questions? Clarifications? Very well, we'll proceed  
12 ahead and hear from the Office of Planning.

13 MS. THOMAS: Good afternoon, Mr. Chairman,  
14 Members of the Board. I'm Karen Thomas with the  
15 Office of Planning and in the matter before us the  
16 Applicant is requesting special exception relief under  
17 Section 1410 for consideration of a series of row  
18 dwellings to be deemed a single building.

19 OP reviewed the proposal according to  
20 requirements listed throughout Section 410, as stated  
21 in our report and we believe that it met the majority  
22 of the requirements, except Section 410.3 and 410.13  
23 which both stated that all front entrances of the  
24 group shall abut a street, front yard or front court.  
25 This is not a case due to the lot's orientation

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1       whereby only 50 feet of the lot has street frontage,  
2       while the length does not. They have six of the eight  
3       units have front and rear entrances which would abut  
4       the side yards of the lot, except in units 1 and 2.

5               Section 410.14 allows the Board to approve  
6       the development as one building if the group of units  
7       do not comply with all the provisions of Section  
8       410.13, subject to the conditions of 410.15 and 16  
9       which speaks to vehicular access and the present and  
10      future character of the neighborhood.

11              OP believes that vehicular access to the  
12      single building is adequate as it is no different to  
13      an apartment building in the R-5 zoned district.  
14      Vehicular access is available to the building from the  
15      front along Belmont Street and from the rear of the  
16      20-foot wide alley system which would provide access  
17      at a proposed parking area at the rear for the units.

18              In addition, the proposal would not affect  
19      the present and future character of the neighborhood,  
20      since the proposal of a multi-family residential  
21      building conforms to the neighborhood's present  
22      character of moderate density residential which is  
23      typical of R-5-A and R-5-B zoned districts.

24              We are satisfied that the Applicant  
25      considered light and air access to the units and this

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1 site plan includes windows to allow residents the  
2 benefit of sufficient light and air to the residences.  
3 We suggested that the building's Belmont Street facade  
4 be brick face in conformance with existing residential  
5 structures.

6 DDOT expressed no concerns to us regarding  
7 any adverse impacts for the eight-unit building. The  
8 site plan indicates that the Applicant intends to meet  
9 its required one to two parking for residential units  
10 in the R-5-B zoned district to the provision of four  
11 on site parking spaces.

12 The application is consistent with Ward  
13 One's objective for housing as stated in the  
14 Comprehensive Plan and again, we submit other proposed  
15 development would not adversely affect the use of  
16 neighboring properties within the context of the zoned  
17 regulations and map.

18 The submitted plans depict a development  
19 that is compatible in scale and mass with other  
20 residential structures and, as such, would enhance the  
21 present residential character of the neighborhood. We  
22 are supportive of the units as rental housing for  
23 families and therefore this proposal to construct  
24 eight residential units is in conformance with the  
25 requirements of Section 410 as presented on its

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1 amended plats showing two south end units with  
2 frontage along Belmont Street.

3 Thank you.

4 I just have two corrections to make to our  
5 report which was pointed out by the Applicant. On  
6 page 3, in the table which said 40 percent, it should  
7 have said 60 percent is required for the R-5 zone.  
8 And on page six, at the bottom, second to last line,  
9 it should say one to two parking ratio instead of one  
10 to one. Thank you.

11 CHAIRPERSON GRIFFIS: Sixty percent to the  
12 lot occupancy and the one to two ratio for the  
13 parking.

14 MS. THOMAS: Thank you.

15 CHAIRPERSON GRIFFIS: Excellent. Very  
16 good. Thank you very much. Any questions from the  
17 Board for the Office of Planning?

18 VICE-CHAIRPERSON MILLER: I have a  
19 question. You also stated, Ms. Thomas, on page six of  
20 your report that the Applicant has informed OP that  
21 the plans will be reviewed by the D.C. Fire Marshall  
22 for fire and safety concerns prior to the Board  
23 hearing. Do you have any information whether that's  
24 been done?

25 MS. THOMAS: No. I did speak to the

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1 Applicant and he said they would be meeting with the  
2 Fire and they did not get any feedback as yet from  
3 them with respect to -- but they do have to meet code  
4 requirements with respect to sprinklers in the  
5 building and such like that. But I understand your  
6 question with respect to access. We have not had any  
7 word from them as yet.

8 VICE-CHAIRPERSON MILLER: Thank you.

9 CHAIRPERSON GRIFFIS: Ms. Mitten?

10 COMMISSIONER MITTEN: It was the same  
11 question.

12 CHAIRPERSON GRIFFIS: Same question, okay.  
13 Very well. Does the Applicant have any cross  
14 examination of the Office of Planning, any questions?

15 Does the ANC have any cross of Office of  
16 Planning?

17 MR. SPAULDING: Good afternoon, Chairman  
18 Griffis, Phil Spaulding, representing ANC-1B. I live  
19 at 1929 13th Street.

20 MR. STEPHENS: Tim Stephens, representing  
21 ANC-B06, 1415 Chapin Street, No. 506.

22 CHAIRPERSON GRIFFIS: Welcome.

23 MR. STEPHENS: My question is on what  
24 basis did you come to the conclusion that the proposal  
25 wouldn't affect the present and future character of

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1 the neighborhood?

2 MS. THOMAS: It is multi-family and the R-  
3 5-A presumes from matter of right multi-family units.  
4 It is a multi-family unit building. And on that  
5 basis.

6 MR. STEPHENS: It's actually eight  
7 separate buildings, although it will be constructed as  
8 one, eight separate entrances, eight separate  
9 structures that could be bought or sold at some point  
10 as well, is it not?

11 MS. THOMAS: I don't know if it could be  
12 bought or sold. Section 410 allows multiple units to  
13 come under one structure as a single building.

14 CHAIRPERSON GRIFFIS: So if I understand  
15 your answer to the question correctly, you're saying  
16 your analysis of present and future character was  
17 based on the requirements of the zoning regulations  
18 and you found that it wouldn't change from the zoning  
19 regulations to endpoint R-5-B.

20 MS. THOMAS: 5-B.

21 CHAIRPERSON GRIFFIS: Present or future  
22 character of a neighborhood. Okay.

23 MR. STEPHENS: I also have a question  
24 about the side yard.

25 CHAIRPERSON GRIFFIS: Can I have a follow-

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1 up question?

2 MR. STEPHENS: Sure.

3 CHAIRPERSON GRIFFIS: Is it your  
4 undrestnading then that that is exactly what is  
5 prescribed in 410? I'm not questioning that you are  
6 incorrect in that analysis, but couldn't you read  
7 410.16 to go beyond just a zoning character? I mean  
8 couldn't it be the urban or architectural character of  
9 the neighborhood just like 223 access to -- from views  
10 from the street to provide the visual character or  
11 even 411 talks about visual character?

12 MS. THOMAS: Yes. To the extent Section  
13 410 and I don't have that. I'll refer to the Zoning  
14 Commission order number 19 which I'm looking at for  
15 another case in the R-5-A. It talks about character  
16 to the extent that Section 410 was amended to  
17 introduce different types of buildings in to the R-5  
18 zone which would not just -- what was happening  
19 before, you were just getting apartment buildings that  
20 were going up vertically. Section 410 allowed them to  
21 introduce structures that resembled row dwellings as  
22 well, but it must meet certain requirements.

23 So it allowed for different types of  
24 buildings which had different character from a typical  
25 apartment building which just went up in the air and

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1 had the units inside. So it allowed for units to be  
2 -- go horizontal as well in the row structure  
3 character as opposed to always going up.

4 CHAIRPERSON GRIFFIS: Based on the fact  
5 that it met the prescriptions of 410 which were --

6 MS. THOMAS: Right.

7 CHAIRPERSON GRIFFIS: Front doors on the  
8 street. Okay. I don't want to get too deeply into  
9 the theoretical perhaps, but that's an interesting  
10 point of view.

11 Did I buy you enough time?

12 MR. STEPHENS: Thank you, yes, I  
13 appreciate that. Well, obviously not. The question  
14 on the other examples in front of the ANC, we haven't  
15 heard of other places that had been identified. We  
16 now have somewhere on the linear on Euclid. To the  
17 extent that there are no other buildings of this  
18 character of the row type that you are talking about  
19 with interior yards, are there other -- the rest of  
20 the buildings have one single entrance on the site.  
21 Are there other examples that are comparable to this,  
22 that would fit with the nature of this neighborhood?

23 MS. THOMAS: In this neighborhood exactly  
24 or parts of the District?

25 MR. STEPHENS: I couldn't find anywhere in

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1 the District within the all bit of where I walk  
2 around.

3 MS. THOMAS: And you mean row structures  
4 on the side? Is that -- I wanted to say off of 12th  
5 Street, 12th and M, but I'm not exactly sure. I know  
6 they had some back entrances that looked like a side  
7 yard, if you were driving up hearing north on 12th  
8 Street because that goes one way. And it's an  
9 apartment building. It looks like an apartment and I  
10 think it was M, but 12th, when you look at the rear or  
11 the side yard, what is the side yard seems to be the  
12 side yard. It has sort of -- I'm not sure, back  
13 entrances. But I'm not quite sure where that zone is  
14 or --

15 MR. STEPHENS: We have an eight-foot  
16 entrance on these -- between the front door and the  
17 end of the property line. Is that sufficient? Is  
18 there any type of specification of what that space  
19 should be in front of a dwelling of this type?

20 MS. THOMAS: We don't have a front yard --  
21 the District Code doesn't have a front yard setback  
22 that's part of requirements. Some areas have a  
23 building restriction line, but we don't require a  
24 front yard setback as such.

25 MR. STEPHENS: I think my last concern is

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1 related to the safety issue that the community brought  
2 up and there are no other buildings on Belmont Street  
3 that give you access through them to the alley without  
4 managing the entrance through the building.

5 To the extent that -- in that  
6 neighborhood, we're still part of a hot spot, a very  
7 active, at times, drug markets still happens on the  
8 bottom end of Belmont Street. Part of the concern of  
9 the community was still, you know, opening up the  
10 street between the alley way along the front of this.  
11 And as we represented, there is a safety concern in  
12 the community, as well as the overwhelming --

13 CHAIRPERSON GRIFFIS: Do you have a  
14 question for the Office of Planning?

15 MR. STEPHENS: Does the -- was that a  
16 consideration in terms of the change of allowing  
17 public access from one end of -- from the street to  
18 the alley way?

19 MS. THOMAS: I can't honestly say that we  
20 gave that particular situation any consideration. To  
21 the extent that the Applicant said it was going to be  
22 lit and you know, all the way through, but with  
23 respect to your question, that exact question, no.

24 MR. STEPHENS: Thank you.

25 MS. THOMAS: I think the Board could still

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1 require -- I think part of the regulations would allow  
2 the Board to require additional screening or issues  
3 for security measures. They can take that up.

4 CHAIRPERSON GRIFFIS: Anything else? The  
5 ANC here present, do you have any cross examination of  
6 the Applicant and witnesses?

7 MR. STEPHENS: The question, prior to this  
8 we haven't heard that there were other examples that  
9 you were referencing for this property, so maybe -- I  
10 didn't have speed to take those down, but if we could  
11 get those that will be useful to us.

12 MR. MORRIS: Those addresses have been  
13 submitted for the record to the Board and we'd be  
14 happy to locate those for you.

15 CHAIRPERSON GRIFFIS: When were they  
16 submitted?

17 MR. MORRIS: From my testimony, I  
18 submitted -- the outline of my testimony to the Board  
19 just now.

20 CHAIRPERSON GRIFFIS: Do you have an extra  
21 copy to give to the ANC right now?

22 MR. MORRIS: Not right this second, no.

23 MR. STEPHENS: Maybe we can just ask the  
24 question and are there the same number of units or a  
25 larger number of units that have access off of the

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1 street to those sites?

2 MR. MORRIS: I believe there are a  
3 comparable number of units. The first two examples,  
4 the one on Euclid Street and the one at Clifton Street  
5 are actually of apartment houses and I believe they  
6 have at least as many as eight units.

7 The third example on Linear Place, N.W. is  
8 actually two groups of I believe eight row houses each  
9 with their side entrances facing a court yard in the  
10 middle. So that was a group of 16 row houses.

11 MR. STEPHENS: Just for clarity, are there  
12 units on Euclid and on Clifton a single entrance to  
13 eight units or eight entrances to eight units?

14 MR. MORRIS: Those two are a single  
15 entrance, a single common entrance to each of those  
16 properties.

17 MR. STEPHENS: Which would be comparable  
18 to the two buildings you have on your illustration?

19 MR. MORRIS: Correct.

20 MR. STEPHENS: During the representation  
21 on them here, there was discussion that these units  
22 would be for rental and Ms. Mitten brought up the  
23 point that those rentals may include up to six  
24 unrelated adults which fed into the parking concern in  
25 the neighborhood.

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1           Can you clarify for me and for the Board  
2 whether or not the buildings are a single building or  
3 are they eight separate buildings that could be sold  
4 separately or even their uses could be significantly  
5 different? There was some discussion about them being  
6 for families, but they could equally be for anyone who  
7 can afford your rents.

8           MR. MORRIS: Well, as to the question of  
9 whether it's one building or several buildings, it's  
10 my opinion that it's a single building comprised of  
11 eight dwelling units, each of which could be rented to  
12 whoever the market may bring. I think as Mr. Asher  
13 has mentioned to the ANC and so forth before, he would  
14 love to rent to families, but of course, there are  
15 good laws in place for -- fair housing laws and so  
16 forth. It's his hope that families would come in and  
17 rent these units.

18           MR. STEPHENS: Can you just clarify for  
19 the Board, it was indeed an ANC concern that the four  
20 bedrooms each of them being the same size suggests  
21 they might not be used for families to the extent that  
22 traditional family structures have a larger room for  
23 the responsible adults in them. But it wasn't the ANC  
24 suggestion that you remove bathrooms to accommodate  
25 those changes.

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1 CHAIRPERSON GRIFFIS: Is that a question?

2 MR. STEPHENS: A clarification maybe.

3 CHAIRPERSON GRIFFIS: Okay. Any other  
4 cross examination questions, hard hitting things to  
5 the Applicant witnesses? Otherwise, we're ready for  
6 you to present your case.

7 MR. STEPHENS: Okay. Hard hitting,  
8 probably not, but thank you.

9 CHAIRPERSON GRIFFIS: Okay. Any further  
10 clarification from the Board?

11 Go ahead.

12 MR. STEPHENS: We certainly appreciate all  
13 the time that Messrs. Asher and Morris took to come in  
14 front of the ANC and the changes indeed they've taken  
15 from the community. I think with them this is a lot  
16 that we would like to see some construction on and we  
17 agree with them that it's under developed at this  
18 time.

19 I think the presentation and this  
20 particular design still has concerns from the  
21 community, particularly the safety and parking  
22 concerns we laid out in our letter to you. The safety  
23 concerns relate to having a building that does not  
24 have a street facing and doesn't allow the rest of the  
25 neighborhood to see the comings and goings within --

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1 just in terms of the sense of us all looking after  
2 each other.

3 The additional parking concerns relate to  
4 the number, the few number of units here compared to  
5 the size of the lot and the rest of the nature of the  
6 neighborhood where comparable size buildings or  
7 building structures, if you like, if we accept this is  
8 one building, I think that's maybe something we should  
9 request for some clarification, somehow.

10 The two buildings on either side of that  
11 which have the same sort of mass, have somewhere  
12 between 18 and 24 units in them. This is described as  
13 an eight-unit building, but an eight-unit building as  
14 you've already clarified that might have somewhere  
15 between if I do my math right, 48 adults in them  
16 adding a significant burden to the community in terms  
17 of the usage of this area.

18 So my representation is that while the  
19 Applicant has indeed addressed some of the concerns in  
20 the neighborhood, the two that he pointed out were  
21 street facing with two of the units and in addition,  
22 it is making improvements to the neighborhood with the  
23 landscaping and the improvements due to his ownership  
24 of other buildings along the street, I don't think  
25 that that fully addresses all of the safety and

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1 parking concerns that were brought out both in the  
2 meetings with the Applicant and in the hearing that  
3 the ANC had.

4 CHAIRPERSON GRIFFIS: Nothing else?  
5 Excellent. Thank you very much.

6 Questions from the Board?

7 VICE-CHAIRPERSON MILLER: I wonder if you  
8 can elaborate on your safety concerns that arise out  
9 of the apartment not being street facing, with that  
10 many units not being street facing?

11 MR. STEPHENS: I think the side entrances  
12 allow other activity to be not apparent from the  
13 street. We don't feel that we have an overabundance  
14 of police patrols in the neighborhood anyway to  
15 discourage anything. As I pointed out, there are  
16 known drug markets at the bottom of that street which  
17 lead a sense of -- the sense of we're taking things  
18 out of the public eye by allowing -- by pushing  
19 entrances off of the street.

20 CHAIRPERSON GRIFFIS: So you're saying  
21 because the front doors are in essentially the side  
22 yard area, that there's no public patrol. You used  
23 "eyes on the street" to see what kind of activity and  
24 it would be difficult to restrict activity from going  
25 back there because that's people's front door. Is

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1 this correct?

2 MR. STEPHENS: It's both people's front  
3 door which are of concern for them as well, but it's  
4 also an alley there, a public alley, unless we -- as  
5 was pointed out by Office of Planning, there's some  
6 other restriction on how you get into that space,  
7 cutting you back into the alley and parking lot.

8 CHAIRPERSON GRIFFIS: I see.

9 COMMISSIONER MITTEN: On that subject, did  
10 you make any specific suggestions to the Applicant?  
11 One that I could imagine is that it be gated and then  
12 the people that live there have a key to the gate.

13 CHAIRPERSON GRIFFIS: But then how would  
14 you go visit somebody?

15 COMMISSIONER MITTEN: Well, you have a  
16 buzzer.

17 CHAIRPERSON GRIFFIS: I see.

18 COMMISSIONER MITTEN: It would be no  
19 different than having -- it's the same notion of  
20 having a front door to an apartment building and then  
21 an interior door to your apartment. It's just a  
22 different configuration part, it's outside.

23 Did you talk about that?

24 MR. STEPHENS: No, we didn't. I think  
25 that would be certainly something we could encourage

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1 if this was the final design.

2 MR. SPAULDING: I would also add though  
3 that that may add to the safety concerns if there  
4 needs to be emergency egress from the situation, just  
5 having the residents having keys to that gate could  
6 prevent emergency access except perhaps through the  
7 rear, but if you're going to gate it, then you're  
8 going to probably want to gate the rear as well.  
9 You're caught both ways.

10 COMMISSIONER MITTEN: Yes.

11 VICE-CHAIRPERSON MILLER: Can I follow up  
12 on that? I understand your point clearly about the  
13 public not having eyes on the comings and goings  
14 there. I'm wondering, did you discuss this at all  
15 with the Police Department?

16 MR. STEPHENS: The police were not brought  
17 into a discussion on this as I recall, unless they  
18 were by the Applicants.

19 VICE-CHAIRPERSON MILLER: Okay, another  
20 point, with respect to the parking calculations.  
21 Applicant is relying on our parking schedule which has  
22 ratio and what are your grounds exactly for saying  
23 that there should be more parking than what's required  
24 by the regulations? How is this case so different?

25 MR. STEPHENS: It would not be based on --

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1 one to two -- there are eight units here. If we --  
2 the community saw the type of units that were being  
3 proposed with four bedrooms, the expectation  
4 regardless of -- we couldn't necessarily understand  
5 how four bedrooms were going to not have more than the  
6 number of cars that a two-bedroom unit might have  
7 which would be in the vicinity here. So it was based  
8 upon the assumption that the larger units might have  
9 more cars and the response to that was that would have  
10 an outsize effect from this building than any other  
11 building in the neighborhood.

12 VICE-CHAIRPERSON MILLER: Thank you.

13 CHAIRPERSON GRIFFIS: Anything else? Does  
14 the Applicant have any cross of the ANC?

15 MR. ASHER: Pardon me?

16 CHAIRPERSON GRIFFIS: Do you have any  
17 cross examination, questions of the ANC?

18 MR. ASHER: Well, on the safety issue,  
19 I've spent a lot of time in the neighborhood and I've  
20 worked in a lot of buildings that were partially  
21 occupied and almost vacant and for me --

22 CHAIRPERSON GRIFFIS: This is going to be  
23 a question, right of the ANC?

24 MR. ASHER: Oh, I guess it's sort of a  
25 statement.

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1 CHAIRPERSON GRIFFIS: Okay. Well, save it  
2 for your closings.

3 MR. ASHER: Okay.

4 CHAIRPERSON GRIFFIS: Excellent. Okay,  
5 the ANC had brought up a couple of issues and you  
6 asked for clarifications and perhaps you weren't  
7 asking me, but I'm going to give it to you anyway.  
8 And the issue was the question of whether the units  
9 are separate, could be sold. For our purposes, in  
10 reviewing this under 410, it reads that if approved,  
11 the special exception that we're here for now, a group  
12 of one family dwellings, flats or apartment houses or  
13 a combination of all of those are to be looked at by  
14 the Board in the regulations as one single structure.  
15 And I think if we went further with the Office of  
16 Planning's discussion of R-5 districts and how they're  
17 looked at, one might see that typically or perhaps the  
18 intent in zoning things R-5-A and B was very large  
19 tracts of land, very large lots that were to be  
20 encouraged to have multiple dwellings on them, but  
21 allowed that flexibility to do it.

22 Whether this fits that parameter or not,  
23 theoretically, isn't the concern. It fits it  
24 specifically as part of the R-5-B. So that's where we  
25 are in terms of it is viewed as a single building.

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1 Whether they could subdivide this fee simple I  
2 wouldn't answer that. But we still have the  
3 requirements and the provision that need to be met and  
4 that's all of the special exception requirements and  
5 then the specifics as it's outlined.

6 I think 410.13 gives us the parameters of  
7 which to judge the special exception in terms of  
8 whether it would have any adverse conditions and  
9 clearly it lays out that they need to be done  
10 simultaneously and that's already been testified that  
11 it will. The front entrances are an interesting point  
12 that obviously we're looking at. And then .16, we've  
13 already talked about 410.16. Okay.

14 Anything else then from the Board? The  
15 ANC, any follow-up questions?

16 Very well, thank you both very much. We  
17 do appreciate your being here in session and  
18 presenting an excellent report from the ANC.

19 Let's move ahead then. I don't have any  
20 other attendant governmental reports to this  
21 application. Is the Applicant aware of any that we  
22 haven't brought or taken note of? If not, we can move  
23 ahead and ask for anyone present, persons present for  
24 Application 17417 to provide testimony, persons in  
25 support of the application, testimony from persons in

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1 opposition? Not noting persons here to provide  
2 additional testimony, let's go to the Applicant for  
3 any closing remarks, summations you might have.

4 MR. ASHER: Well, what I was going to say  
5 on the safety issue and I was mentioning partially  
6 occupied properties and so forth, it seems to me that  
7 the benefit of having a new structure there with  
8 people living in it is a deterrent to, as he was  
9 talking about the neighborhood gangs or drug dealers  
10 running through the yard, and I think that benefit --  
11 it's better to have a building there than to have a  
12 vacant lot. That was my --

13 CHAIRPERSON GRIFFIS: I don't think anyone  
14 would disagree with you there. It's the type of  
15 building we're actually discussing now. So we're  
16 assuming that the development is good to have there.  
17 Now it's how that development and what that  
18 development is. And how it fits into the character,  
19 the present character and whether any adverse  
20 conditions are met by not meeting the front entrance  
21 requirements under 410, but I appreciate that comment.

22 Ms. Miller?

23 VICE-CHAIRPERSON MILLER: I would just  
24 like to address too the question that I asked Office  
25 of Planning about whether the plans had been reviewed

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1 by the D.C. Fire Marshall because they say that Office  
2 of Planning says that the Applicant has informed  
3 Office of Planning that the plans will be reviewed by  
4 the D.C. Fire Marshall for fire and safety concerns  
5 prior to the Board hearing. So we're at the Board  
6 hearing and so my question is have they been reviewed  
7 by the D.C. Fire Marshall? Where does that stand?

8 MR. ASHER: I'm going to give that to  
9 Bill.

10 MR. MORRIS: We did have a chance to meet  
11 with the Fire and Life Safety Review personnel, Mr.  
12 Arnold Carroll of DCRA before this Board hearing who  
13 informed us that he wanted to see a change of address  
14 before he'd commit to --

15 CHAIRPERSON GRIFFIS: Let's be clear.  
16 You're talking about somebody down at DCRA that  
17 reviews permit submissions for compliance with the  
18 fire and safety code?

19 MR. MORRIS: Correct.

20 CHAIRPERSON GRIFFIS: I think Ms. Miller  
21 was talking more of talking to the Fire Marshall that  
22 would talk about access to a building in case of a  
23 fire.

24 MR. MORRIS: Correct.

25 CHAIRPERSON GRIFFIS: Not whether your

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1 sprinkler is set up correctly and your egress works.

2 MR. MORRIS: True. We were not able to  
3 meet with D.C. Fire Chief before this hearing to  
4 review vehicular access to answer your question  
5 directly.

6 CHAIRPERSON GRIFFIS: How much time would  
7 you need to do that?

8 MR. MORRIS: We just need a time from them  
9 when they can review the plans. We have had in the  
10 past just a bit of a time just getting a good, common  
11 time to meet with them because their schedule  
12 frequently changes. On other projects, it's taken us  
13 normally a month to meet with them to review projects  
14 because of schedule conflicts.

15 CHAIRPERSON GRIFFIS: Who are we talking  
16 about now?

17 MR. MORRIS: At the D.C. Fire Department,  
18 we've met with in the past Chief Edder and so forth.

19 CHAIRPERSON GRIFFIS: Okay, so it is the  
20 Fire -- that's understood.

21 MR. MORRIS: Just getting together is a  
22 problem on short notice. We have not done that.

23 CHAIRPERSON GRIFFIS: They may be out at  
24 a fire, which they should be. Okay.

25 VICE-CHAIRPERSON MILLER: Why is it short

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1 notice? I don't understand.

2 MR. MORRIS: Well, we didn't receive word  
3 from Office of Planning until just recently that I  
4 think about a week and a half ago that they wanted us  
5 to actually pursue talking with the Fire Chief and we  
6 haven't had time in that short period of time.

7 If we had had two months to know about  
8 that, then we certainly would have done that, gladly.  
9 Not to cast aspersions on Office of Planning, we  
10 didn't have a chance to do that.

11 CHAIRPERSON GRIFFIS: Okay, anything else?  
12 Anything else from the Applicant?

13 I guess one final question then because  
14 I'm still kind of perplexed -- well, you've heard some  
15 testimony from the ANC about the size of these units  
16 and they do seem large. There's nothing wrong with  
17 that. Certainly allowable. It is lending itself to  
18 the side yard access to facilitate this.

19 Can you help me understand a little bit  
20 about -- I guess what's the -- what's pushing you to  
21 build such large units that would need that access off  
22 the side or is there not another way to remove that so  
23 you wouldn't need to have this special exception? Is  
24 there a matter of rights scheme that does the same for  
25 your program and your development scenario?

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1 MR. ASHER: Well, you lose a lot of the  
2 core space of the building to hallways. And we had a  
3 design that had just a hallway on one floor and we  
4 were told that we could not do that, that we had to  
5 have hallways on all of the floors of the building and  
6 that just did not seem as efficient or as a good of a  
7 design.

8 CHAIRPERSON GRIFFIS: I don't understand.  
9 I'm sorry. I may be slow this afternoon. Who told  
10 you that you couldn't have a -- when you say "they"?

11 MR. MORRIS: At our preliminary design  
12 review meeting at DCRA, we had a scheme similar to  
13 this with townhouses, but in one of the schemes we had  
14 a common basement linking all the units and they said  
15 that we could not do that. They were not divided from  
16 the ground up. And so to be considered an R-2 in  
17 terms of the code, we can't --

18 CHAIRPERSON GRIFFIS: It's a separation  
19 issue in construction which precluded you from doing  
20 that.

21 MR. MORRIS: It was a code issue, yes.

22 CHAIRPERSON GRIFFIS: But you've even said  
23 it was the same type. You were set off eight feet on  
24 each side, is that correct?

25 MR. MORRIS: That is correct.

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1                   CHAIRPERSON GRIFFIS:    So you've never  
2                   looked at a property line to property line, a T-shape  
3                   apartment building or anything of that nature that  
4                   might facilitate it?

5                   MR. MORRIS:  Actually, we have.  It wasn't  
6                   reviewed by DCRA, but we have developed I'd say 20  
7                   schemes of various types including apartment houses  
8                   which had entrances on the front, on the side, but all  
9                   had about approximately the same height, bulk and  
10                  setbacks that you see here in the same program.  There  
11                  were large apartments that were linked with the common  
12                  corridor in the middle.

13                  Mr. Asher felt that after reviewing that,  
14                  that he would prefer to have a unit that was -- that  
15                  the person with their unit had complete control inside  
16                  the unit.  They come to the front door, they're inside  
17                  their unit, rather than a common hallway.  It's a  
18                  programmatic issue and a development issue, I believe  
19                  at that point to go to a townhouse type versus an  
20                  apartment type.

21                  CHAIRPERSON GRIFFIS:  So what makes the  
22                  decision?

23                  MR. ASHER:  The decision to face the front  
24                  doors to the side, I thought made more attractive  
25                  units and it gives the person control of all the space

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1 in the unit and I think it's a better design.

2 CHAIRPERSON GRIFFIS: I see. Okay. What  
3 else, anything else?

4 COMMISSIONER MITTEN: Well, I would just  
5 like to -- there's a couple of things that I think we  
6 could use some more information. One is I really  
7 think that the report, some input from the Fire  
8 Marshall is necessary for us to be able to evaluate  
9 the vehicular access issues and just the public safety  
10 issues.

11 I also think a consultation with the  
12 Police Department wouldn't be out of order here  
13 because it is an unusual sort of configuration, one  
14 we're not -- there may be other instances, but it  
15 certainly is not common. So I think their input would  
16 also be helpful in evaluating that.

17 I also believe that there's some  
18 flexibility on the part of the Applicant to address  
19 maybe not the way I suggested, but to address the  
20 concerns of the ANC to at least mitigate through  
21 design the chances that you'll have these dwelling  
22 units occupied by four or five or six adults as  
23 opposed to a family that has children that can't  
24 drive. So I think there's some design flexibility and  
25 I don't want to go through that here, but I think that

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1 if they had some additional time they could sort  
2 through that and come to some accommodation that was  
3 acceptable on both sides.

4 So I think some additional time to get  
5 input from the Fire Marshall, MPD and then to work  
6 through the design issues with the ANC would be in  
7 order.

8 CHAIRPERSON GRIFFIS: Okay. I don't  
9 disagree with the first two. I want to bring some  
10 clarification and I would add in terms of additional  
11 time required, the Board would keep the record open to  
12 address the requirements under 410.16 in terms of  
13 addressing the present character of the neighborhood.

14 I'm a little concerned about wanting to  
15 reconfigure the interior units; one, substantively,  
16 I'm not sure -- well, no. Jurisdictionally, I'm not  
17 sure we have control over that, in terms of what we  
18 look at as the number of -- the count of units and  
19 quite frankly, I don't think we're not prescribing,  
20 certainly not the view of this Board prescribing who  
21 should live there or how they live there. I know Ms.  
22 Mitten knows it well. She wrote the regulations of  
23 definitions of families and what is allowed and not  
24 allowed. But addressing all the other ANC concerns is  
25 legitimate. Our specific ones, I think, go to

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1 character.

2 Other comments, questions?

3 COMMISSIONER MITTEN: I guess all I was  
4 asking is that given that there is flexibility, I'm  
5 not attempting to dictate by the Board, but there is  
6 flexibility expressed. There was a concern expressed  
7 by the ANC. I think if we allowed for them to work  
8 together and they could come to a meeting of the minds  
9 about it, it would be to the good. That's all I was  
10 trying to suggest.

11 CHAIRPERSON GRIFFIS: Exactly. I  
12 absolutely agree.

13 Other comments? Questions?  
14 Clarifications?

15 Mr. Morris, last question. All this  
16 preliminary design review meetings that you've had  
17 with DCRA officials, was there feedback on the fire  
18 rating of the exterior with an eight-foot separation  
19 from the property line?

20 MR. MORRIS: Yes.

21 CHAIRPERSON GRIFFIS: And you're rating  
22 that wall?

23 MR. MORRIS: That wall being rated one  
24 hour and then we're limited to I believe it's 30  
25 percent glazing area between 5 and 10 feet from the

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1 lot line, so that complies with the code requirements.

2 CHAIRPERSON GRIFFIS: Okay, excellent.  
3 Anything else then from the Board's perspective.

4 VICE-CHAIRPERSON MILLER: I just want to  
5 clarify because I think I'm with the rest of my Board  
6 Members on this. I mean it looks like 410.15 and  
7 410.16 are key here and we really don't have  
8 sufficient evidence in the record right now. So those  
9 two could be addressed further.

10 CHAIRPERSON GRIFFIS: Correct. 410.15,  
11 vehicular access to all or part of the group shall be  
12 provided with the Board deems the access is necessary  
13 in the interest of the public convenience and safety.

14 And .16, of course, we talked about it  
15 should not affect adversely the present character of  
16 future development in the neighborhood. Okay.  
17 Anything else? Questions, clarifications?

18 I'm going to set this for a decision  
19 making. What I'd like to do, you've heard the Board's  
20 comments. And assess your schedule, we could set this  
21 -- of course, we make decisions on the first Tuesday  
22 of every month in our public meetings. That would be  
23 the 7th of February. Is it possible for you to  
24 provide the information that the Board has requested  
25 by the 31st of January by 3 o'clock?

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1 MR. MORRIS: Yes.

2 CHAIRPERSON GRIFFIS: That's two weeks.  
3 Okay. In which case, let's do that then, unless there  
4 are any other questions or clarifications, we would  
5 set this for a decision making on the 7th. To  
6 reiterate, by the 31st, 3 o'clock in the Office of  
7 Zoning, would also be served on the ANC. Of course,  
8 you will be talking to them prior to that and coming  
9 up to the 31st.

10 We are looking for your report or analysis  
11 and report from the Fire Marshall, also from the local  
12 Metropolitan Police District. We're also keeping the  
13 record open for any other elements that come up with  
14 a conversation with the ANC and specifically how the  
15 application comes into more conformance with 410.16  
16 and that's talking about the present character and  
17 development of the neighborhood.

18 Am I missing anything else or --

19 COMMISSIONER MITTEN: I did have one  
20 additional request.

21 CHAIRPERSON GRIFFIS: Indeed.

22 COMMISSIONER MITTEN: In the second page  
23 of the Applicant's statement that was handed in today  
24 and Mr. Morris had mentioned these other properties on  
25 Euclid Street, Clifton Street and Linear Place, it

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1 would be of interest to me to know if they are  
2 entering from the side yard, what's the width of the  
3 side yard, so we have some notion of comparability and  
4 is there any control on access to those areas, just if  
5 we're holding these up as examples, let's understand  
6 them as best we can.

7 MR. MORRIS: I think that's a fair  
8 question and that, along with photographs, I think  
9 will be helpful to the Board of those examples.

10 COMMISSIONER MITTEN: Great.

11 MR. MORRIS: Which we'll provide.

12 CHAIRPERSON GRIFFIS: Excellent.

13 VICE-CHAIRPERSON MILLER: I have a couple  
14 of questions, comments. What Ms. Mitten just said  
15 though, those addresses, although they might be  
16 helpful, they're not in the neighborhood are they? I  
17 mean when we're looking at the character of the  
18 neighborhood, are they in the neighborhood?

19 MR. MORRIS: Two of them are in and one is  
20 in Mount Pleasant.

21 VICE-CHAIRPERSON MILLER: Okay.

22 MR. MORRIS: Two of the three definitely  
23 are.

24 VICE-CHAIRPERSON MILLER: And my question  
25 is you talked about not having enough time to get an

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1 appointment with the Fire Marshall. Are you sure that  
2 you're going to be able to do this by the 31st?

3 MR. MORRIS: Since we've already had some  
4 time for that clock to start ticking, I feel confident  
5 that we can in the next two weeks develop a rapport  
6 with the Fire Department and the Police Department,  
7 since we've already, in a sense, already started to  
8 make calls on those issues.

9 My answer is yes.

10 VICE-CHAIRPERSON MILLER: Also, Mr.  
11 Chairman, is the record being left open for the ANC to  
12 also submit on these issues?

13 CHAIRPERSON GRIFFIS: No, way. Oh wait,  
14 I'm on record, aren't I?

15 (Laughter.)

16 Yes, absolutely. The ANC is going to have  
17 an opportunity by the 31st, of course, by 3 o'clock.  
18 I'm assuming that these conversations are happening,  
19 so they might be joined, but certainly we'll keep the  
20 record open for any ANC -- additional ANC resolutions  
21 or what have you in terms of reports and that for the  
22 Board's deliberation.

23 Okay, anything else?

24 VICE-CHAIRPERSON MILLER: One final  
25 thought is just who is going to be talking to the

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1 Police Department? Is it the Applicant, the ANC, the  
2 Office of Planning?

3 CHAIRPERSON GRIFFIS: I think we put the  
4 burden on the Applicant. I think the Office of  
5 Planning can possibly be burdened to help facilitate  
6 that if you run into problems, as would normally be,  
7 as coming forward and present. Right now, you've got  
8 a little time, so I suggest you go down there. I have  
9 no idea, but I would hope that they'd be available and  
10 open to assessment.

11 And even -- well, there it is. However  
12 you want to get that in and analyzed, so be it.  
13 They're well capable of doing that and very quickly if  
14 they are available.

15 Anything else? Anything else? Excellent,  
16 in which case we'll look for that, all the submissions  
17 by the 31st. We'll set it for the decision on the  
18 7th.

19 I'm going to give a couple more important  
20 directions here. Of course, at that meeting, we don't  
21 have additional oral testimony. We'll be deliberating  
22 on that which is in the record at that point. I want  
23 to underscore a little bit. I've noted from the  
24 Board's questions and I know this Board very well, and  
25 from my own -- I don't think this special exception

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1 has been persuasive to this point. We're really  
2 looking for this additional information. We don't  
3 send people out to make work and to put you off and  
4 just because it's fun to see you all again and we want  
5 to re-read all of this again.

6 It is very important for us and we're  
7 going to look very strongly at that and we feel and  
8 the reason why we're asking for additional information  
9 is that it is not sufficient at this point for  
10 approval. So I really want to underscore that and the  
11 importance of that and how much deliberation from my  
12 own perspective, I think I've been fairly clear.

13 I have some trouble in seeing how this  
14 doesn't create an adverse condition for -- and  
15 therefore, I don't find it persuasive in terms of  
16 approving a special exception at this time. Based on  
17 some of the elements that have been brought up, based  
18 on the intent of 410, in allowing that flexibility of  
19 being characterized as a single building, multiple  
20 units as a single building, the intent of that I can  
21 move beyond, but not too far because then it gets into  
22 the specificity of but it still has to hold with the  
23 rest of the area and it can't create any sort of a --  
24 it's not creating it, it's the potential of creating  
25 and we can't for a special exception, we can condition

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1 the heck out of it. We can put 30 conditions on this.

2 We have the legal jurisdiction to tell you  
3 what kind of light fixtures and where to put those  
4 light fixtures, what kind of lockset and the color of  
5 your gate. I don't think we're at that level. I  
6 don't think we need to get to that level. You are  
7 perfectly capable of doing it. There's a fundamental  
8 bigger move here that I think needs to be addressed  
9 before we even get into that, that level of  
10 specificity.

11 That's all I have to say. If there are  
12 questions of process or clarifications, of course, the  
13 Office of Zoning has excellent staff and they're able  
14 to answer all of your questions. We'll look for the  
15 additional submissions by the 31st and we will  
16 reconvene for a meeting on this for decisions on the  
17 7th.

18 I'll take any last questions if you have  
19 them? None. Very well. Thank you very much, both of  
20 you. We appreciate the presentations that we've heard  
21 today and we look forward to seeing the additional  
22 submissions.

23 MR. MORRIS: Thank you.

24 CHAIRPERSON GRIFFIS: Thank you. All  
25 right, let's move ahead then and call our next case of

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1 the afternoon, please?

2 MS. BAILEY: Application No. 17424 of  
3 Prospect Associates, LLC, pursuant to 11 DCMR 3103.2,  
4 for a variance from the use provisions under  
5 subsection 320.3, to convert a former public school  
6 building, that's the Wormley School, into a multi-  
7 family dwelling, having nine condominium units is  
8 advertised. I believe the Applicant has changed that  
9 to eight. The property is zoned R-3 and it's located  
10 at 3331 Prospect Street, N.W., Square 1220, Lot 860.

11 CHAIRPERSON GRIFFIS: Excellent, thank you  
12 very much. A very good afternoon. Are you ready to  
13 roll?

14 MR. NETTLER: We're ready to roll.

15 CHAIRPERSON GRIFFIS: Good. Let's go. Do  
16 you need a minute to set up?

17 MR. NETTLER: No, I think we're fine in  
18 terms of going forward. I usually have a couple words  
19 to say which will probably give them time to set up as  
20 well.

21 CHAIRPERSON GRIFFIS: Ample time. It's  
22 required in the regulations.

23 MR. NETTLER: Richard Nettler for the  
24 Applicant. With me Kimberly Dumas, D-U-M-A-S, behind  
25 me, law firm of Robbins, Kaplan, Miller & Ciresi.

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1 I would just note as a preliminary matter  
2 that there was one individual, Ms. Patricia Reynolds,  
3 who had sought party status possibly in opposition.  
4 Ms. Reynolds is here. I believe she submitted a letter  
5 withdrawing that request and a letter in support, as  
6 well, which I believe you have as part of the record.

7 There was another individual who sought  
8 party status, it was in support. Didn't explain much  
9 more than that. He's not here.

10 CHAIRPERSON GRIFFIS: I had to have it  
11 looked up.

12 (Laughter.)

13 MR. NETTLER: He's not here and I'm happy  
14 to say that I don't think anyone who is here is in  
15 opposition to this application.

16 CHAIRPERSON GRIFFIS: Okay. Let me just  
17 clarify, of course, we do and have been given,  
18 provided Ms. Reynolds' letter, Exhibit 25 from Knopp  
19 & Brown and then we were delivered today Ms. Reynolds'  
20 letter indicating that she supported. Okay. And then  
21 also in receipt was from James Robertson.

22 MR. NETTLER: That's Judge Robertson.

23 CHAIRPERSON GRIFFIS: Indeed. Okay. Very  
24 well.

25 MR. NETTLER: I do have a couple of

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1 preliminary words that I'd like to make with regard to  
2 the application. As Ms. Bailey noted, this is for a  
3 use variance from the Department of 11 DCMR 323 to  
4 convert a vacant former District of Columbia public  
5 school into a -- in an R-3 zone, into multiple  
6 dwellings. It is essentially a building that for the  
7 last I guess maybe 10 years or more is in want of a  
8 user.

9 This is a building that was used and  
10 you'll hear testimony regard the history of this  
11 building from other witnesses and in fact, the  
12 testimony as well regarding Georgetown University's  
13 attempts to utilize this building and its ultimate  
14 sale of this building as well from other witnesses.

15 But this is a contributing building to the  
16 Old Georgetown Historic District. It was built in the  
17 19th century. It was utilized for school purposes up  
18 until the middle of the 20th century when it was then  
19 converted into a variety of different uses over time,  
20 one as the Americanization School and then as a  
21 learning center and then ultimately it was closed in  
22 1994, given the conditions of the school building and  
23 as well as the changes in requirements, as you'll  
24 hear, for the use for school purposes in the city.

25 It was sold as surplus property in 1997 to

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1 Georgetown University and at the time actually there  
2 was a fair amount of discussion among the community,  
3 both the ANC and the neighbors as to what potential  
4 purchaser of this site, including Georgetown  
5 University, could use it and certain conditions that  
6 were understood by Georgetown University, ultimately  
7 in what it could use the building for, which was a  
8 very low density use, supportive of the campus and  
9 preclusion of certain other uses on what was a vacant  
10 open space next to the school.

11 That use that was recognized as an  
12 appropriate one at the time that Georgetown University  
13 purchased the school would have required relief from  
14 the Zoning Commission to have been able to go forward  
15 with that use because it would have required an  
16 amendment to the campus plan and a number of other  
17 changes in terms of what zoning would permit as a  
18 matter of right, and so that initial use for which the  
19 District sold the property actually would have  
20 required zoning relief in itself.

21 After a number of years, it became  
22 apparent, given the condition of the school which had  
23 continued to worsen and the limitations on what  
24 Georgetown University could do with the site, that it  
25 was sold off by Georgetown University.

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1           And you'll hear testimony from Ms. Mary  
2 Bowen who is representing Georgetown University over  
3 the type of process that was utilized for the sale of  
4 the school, an open process, seeking any bid without  
5 any conditions put on any particular use and the type  
6 of bids that were received, which all, in fact, were  
7 for multi-family residential use. And became even  
8 more apparent after the Applicant was successful in  
9 purchasing the property that the condition of the  
10 school was even worse than what had been anticipated  
11 and requires an enormous amount of work simply to make  
12 it a viable building for any type of use, whether it's  
13 -- would have been a single family home or whether it  
14 would have been a duplex, whether it would have been  
15 any other use that would have been permitted as a  
16 matter of right. The costs are essentially  
17 prohibitive for that type of use and you will hear  
18 testimony regarding that.

19           And you'll also hear testimony regarding  
20 the fact that the -- after analyzing the variety of  
21 uses that were available to the school, both that  
22 would have required zoning relief or non-zoning  
23 relief, that the only one that would have created any  
24 type of return, a fair and reasonable return as the  
25 regulations provide, or as the \* (4:04:11) Court has

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1 recognized that the regulations provide for is one  
2 that is multi-family.

3 And this case is actually not that  
4 different from a similar situation that this Board  
5 considered a number of years ago involving a similar  
6 school that was surplus by the City, originally, and  
7 then taken over by the Washington National School in  
8 another part of Georgetown when it granted a use  
9 variance for a conversion to a multi-family use for  
10 that school.

11 In fact, however, the conditions in this  
12 school are significantly worse than what was existing  
13 at the time of that case. And while we understand, as  
14 we've heard you say, that each case stands on its own  
15 facts and merits, certainly the manner in which this  
16 Board has applied the use of variance provisions with  
17 regard to former D.C. public schools and in  
18 particular, former D.C. public schools that have the  
19 facts that we are being presented to you today, would  
20 warrant a use variance.

21 As you've seen or will see from the  
22 submissions that have been made to the record and that  
23 have been -- and you'll hear testimony about, we have  
24 met with the community on a number of occasions. I  
25 actually have a list here of all of the numerous

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1 meetings that have been held both with those who were  
2 primarily involved with the initial sale of the  
3 building to the Georgetown University and with other  
4 neighbors.

5 And we have unanimous support for the  
6 proposal that we are presenting to you today because  
7 it responds to, we believe, all of the issues that the  
8 community has had with regard to the future use of  
9 this school and recognizing the need to make this a  
10 building that is a viable use for the future.

11 And so I believe in the testimony that you  
12 will hear today, both from Mr. Kirstein who is part of  
13 Encore, the purchasers of the school; from the  
14 architects, from Mary Oerlein, who is a historic  
15 preservation architect who was with all of us when we  
16 went into the school, when it was finally opened up,  
17 to see the conditions; from Mary Bowen, who was part  
18 of the Georgetown University team in selling the  
19 building, that we meet the three conditions that are  
20 necessary for the grant of a use variance.

21 The building has already been reviewed by  
22 the Commission on Fine Arts and the Old Georgetown  
23 Board for conceptual design review with regard to some  
24 minor changes that need to be made to the school to  
25 make it useful as well. The Office of Planning has

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1 submitted a report and you'll hear form the Office of  
2 Planning and as I think you've seen from the ANC,  
3 sufficient as well, I think again, the support for  
4 this proposal is unanimous.

5 And with that, I'd like to call our first  
6 witness which is Mr. Gary Kirstein.

7 CHAIRPERSON GRIFFIS: Excellent. Thank  
8 you very much, and a good opening. However, let's get  
9 some quick questions in terms of clarifying.

10 First of all, how many units are being  
11 proposed at this point?

12 MR. NETTLER: Eight.

13 CHAIRPERSON GRIFFIS: So we'll walk  
14 through and try and find those, as I could not.

15 The second is, I think on your submission,  
16 page 3, Ms. Mitten had a question about the limited  
17 use and whether when the District sold it to the  
18 University, how it was limited and how it's not  
19 limited now. I think unless you want me to phrase it,  
20 I'll turn it over to you, Ms. Mitten. Do you want me  
21 to do it?

22 COMMISSIONER MITTEN: You just did it.

23 CHAIRPERSON GRIFFIS: Indeed. As you  
24 talked about, Mr. Nettler, and you stated here that  
25 the District limited the use in its transference to

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1 the University, the University probably had its own  
2 limits, as you talked about, campus plans.

3 Are there deed restricted uses that were  
4 released at the new sale to Encore, or are they still  
5 running?

6 MR. NETTLER: They were not deed  
7 restrictions. They were restrictions that were part  
8 of an agreement that -- not part of the deed, but part  
9 of an agreement that the City had with, as I  
10 understood, the University and the community. The  
11 understanding was that the use -- this was not going  
12 to be a classroom use. This was going to be used for  
13 a low-level use by Georgetown University.

14 CHAIRPERSON GRIFFIS: How was the  
15 University then able to sell it? If the District had  
16 sold it for the purposes of educational use, how was  
17 the University able to sell it, just for clarification  
18 to a private developer to do what they will?

19 MR. NETTLER: As Ms. Bowen will testify,  
20 those restrictions on Georgetown University did not --  
21 were not -- restrictions that are -- that travel with  
22 the property. They evaporated when Georgetown  
23 University gave up its plans to use the building and  
24 sold the property. And so any subsequent purchaser of  
25 the property would not have had those restrictions of

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1 use.

2 CHAIRPERSON GRIFFIS: Good. And it's  
3 interesting. I think it's excellent to see an  
4 application before us that starts to re-animate an old  
5 public school that's been boarded up and obviously is  
6 falling apart. Let's see if it meets the test. But  
7 I would certainly encourage that other buildings  
8 around the City also that may be sitting dormant or  
9 under utilized or falling apart from the inside and  
10 out. However, we don't dwell too far --

11 MR. NETTLER: There's aren't that many  
12 buildings that meet all of -- have all of the similar  
13 facts that this one does. They're not all in the same  
14 condition. They're not all in historic districts.

15 (Laughter.)

16 I think the present Office of Property  
17 Management is probably making better use of some of  
18 those, but --

19 CHAIRPERSON GRIFFIS: Okay, let's move  
20 ahead.

21 MR. NETTLER: I would like to submit -- we  
22 have compiled a list of community and ANC meetings and  
23 we'll provide that to the staff and with copies to the  
24 Board as well,

25 Beginning in May, actually before, there

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1 was a purchase of the building, even before any of the  
2 bids we've accepted -- my client, the Applicant, had  
3 started discussions with the community to understand  
4 what the issues were and those continued on a monthly  
5 basis up until the present.

6 CHAIRPERSON GRIFFIS: Excellent. And I  
7 think this is absolutely appreciated. As you know,  
8 the Board looks seriously at the communication and  
9 dialogue with the community and the ANC, obviously for  
10 the substance of those which will come out. It's  
11 pretty clear this is a very strong application that's  
12 before us.

13 I think we can move ahead with your long  
14 witness list and have them highlight certain aspects.  
15 I know the Board has extensively read and re-read all  
16 of the submissions that are in and I think we have  
17 some specific questions that we'll get into, but other  
18 than that, I do think we can kind of summarize a  
19 substantial part of the presentation.

20 With that, I'll let you continue.

21 MR. NETTLER: Our first witness is Mr.  
22 Kirstein, if he could introduce himself and give his  
23 address as well.

24 MR. KIRSTEIN: My name is Gary Kirstein.  
25 4814 Del Ray Avenue, Bethesda, Maryland.

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1           Steve Kaye and I are partners in Encore  
2 Development Corporation. Both graduated with Bachelor  
3 of Science in Civil Engineering and have worked  
4 together in development and construction in the  
5 Washington Metropolitan Area our entire careers,  
6 nearly 30 years. We established Encore Development  
7 Corp. in 1995. Prior to 1995, Steve and I worked with  
8 our fathers in Richmarr Construction they founded in  
9 the 1950s. We are both native Washingtonians and have  
10 spent lots of time in Georgetown.

11           We have extensive experience in  
12 renovations, including historic renovations, custom  
13 homes, land development, tract home construction,  
14 office construction, high rise residential, both as  
15 developers and construction managers.

16           Several of our past projects that have  
17 provided us key experience for the Wormley School  
18 restoration are Southern Building, providing  
19 construction management services for the restoration  
20 and renovation of this beaux arts masterpiece, built  
21 in 1910, from the design of Daniel Burnham. The  
22 building consists of 190,000 square feet of office  
23 space and 15,000 square feet of retail space.

24           Car Barn restoration/renovation of the  
25 1896 car barn trolley storage building, located on

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1 Capitol Hill, this site was turned into 196 rental  
2 apartments. A large portion of the financial  
3 justification for taking on this project was the  
4 receipt of historic tax credits.

5 3339 N Street, N.W., we provided  
6 construction management service for historic  
7 renovation and restoration of 11,000 square foot  
8 Georgetown home on the National Register of Historic  
9 Places, less than one block from the Wormley School.

10 The residences at Alban Row, development,  
11 construction and sale of 14 duplex homes and one  
12 single-family home on top of a parking structure as  
13 part of the restoration of the Alban Towers near  
14 Massachusetts and Wisconsin Avenues, N.W.

15 We were first contacted in January of 2005  
16 by the Randall Hagner Company, the real estate agent  
17 hired by Georgetown University to handle the sale of  
18 the Wormley School. Since then we have done an  
19 enormous amount of due diligence, participated in a  
20 competitive bid process and were finally awarded the  
21 contract to purchase the Wormley School site in March  
22 of 2005.

23 Prior to submitting our bid for this  
24 project, we contacted neighbors of the school to  
25 determine what would and would not be acceptable to

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1       them and also heard many accounts of the history of  
2       Georgetown University's proposed uses for the school  
3       and how these proposed uses had all been defeated.

4               On the other hand, the neighbors, the ANC  
5       and CAG, all agreed that the school structure and  
6       site, as it existed in its dilapidated and condemned  
7       condition was a blight on Prospect Street. We knew  
8       that the consensus was that something needed to be  
9       done and it had to be in keeping with this lovely  
10       residential Georgetown neighborhood.

11              With this in mind, we put together a team  
12       of consultants, Richard Nettler of Robbins, Kaplan,  
13       Miller and Ciresi is the zoning attorney.

14              CHAIRPERSON GRIFFIS:   Excellent.   I'll  
15       have you skip through that. We obviously have that in  
16       front of us and I think we're very familiar with your  
17       team, very high quality. So we'll continue on.

18              MR. KIRSTEIN:   The school being in the  
19       Georgetown Historic District and being a contributing  
20       structure, we knew we could not tear it down. The  
21       only option available was to save the exterior walls  
22       while gutting the interior and replacing the room.  
23       This is a lengthy and expensive process. We knew that  
24       we could build rowhouses by right on the eastern  
25       portion of the property, former parking lot and

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1 playground.

2 Cost to restore and renovate the school  
3 would be high. It would have to include resolution of  
4 environmental issues such as lead paint and asbestos  
5 removal; shoring the existing school walls before they  
6 fall or pull down by the failing roof and supporting  
7 them through demolition restoration and new  
8 construction; demolition of all interior spaces;  
9 removal and demolition of the roof, reinstalling a  
10 roof that matches the original to meet historic  
11 guidelines; renovating and restoring all existing  
12 brickwork to meet historic guidelines and to be  
13 structurally sound for new construction; restoring or  
14 replacing all windows and doors in order to meet  
15 historic architectural guidelines; site work to bring  
16 in new utilities, provide for storm water management  
17 and restore brick paver surfaces; underground garage  
18 parking to keep additional traffic from trying to park  
19 on the overcrowded Georgetown streets; a proportionate  
20 share of the acquisition price that the property was  
21 paid to Georgetown University; architectural  
22 engineering consultant costs for demolition, shoring,  
23 environmental issues and construction plans; cost of  
24 new floors, walls, mechanical, electrical and plumbing  
25 within the building; and the cost of financing during

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1 the whole process of review and approval.

2 Our estimate for this scope of work is \$12  
3 million. Since the D.C. government had already  
4 declared this building obsolete when it decided to  
5 dispose of the property and since Georgetown  
6 University was unable to find a use acceptable to the  
7 neighborhood, and allowed the building to deteriorate  
8 to a point of total loss during their negotiations, we  
9 and our consultants concluded that a residential use  
10 was the only use that would support the high cost of  
11 restoration and renovation and be compatible with the  
12 neighborhood. This could either be a rental building  
13 that would offer the advantage of tax credits relative  
14 to historic renovation or a condominium. The  
15 neighbors did not want a rental project and neither  
16 did the ANC or CAG.

17 We have spent from June through December  
18 of 2005 devising a plan that would be mutually  
19 acceptable to the neighbors, the ANC, CAG and the OGB.  
20 We have entered into a neighborhood cooperation  
21 agreement, facilitated by the ANC which was enormously  
22 helpful to us throughout this entire process. The  
23 agreement addresses the design of the project and  
24 construction management issues relating to the  
25 neighbors' ability to continue to enjoy the usage of

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1 their property during and after construction. Our  
2 plan does require a change of use from the BZA, but it  
3 incorporates what each of the aforementioned groups  
4 would like to see occur on the site. This has been a  
5 long and extensive process which started with a  
6 totally different plan on our part, but with the help  
7 of various parties and with compromise occurring on  
8 all sides, we have come up with a project that is  
9 economically viable for us and restores a  
10 deteriorating school building back to its historic  
11 style and grace, and places beautiful residential  
12 townhomes on the adjacent empty lot which is currently  
13 full of trash and other debris.

14 In conclusion, we understand the standards  
15 for granting a use variance and we would not be here  
16 unless we believe that a multiple-unit residential use  
17 is the only reasonably, economic, viable use for the  
18 property and that a variance is necessary to overcome  
19 the undue hardship that any owner would have in  
20 rehabilitating and using this historic building for  
21 one of the buy right uses.

22 Thank you.

23 CHAIRPERSON GRIFFIS: Excellent. Thank  
24 you very much. Quick clarification with your  
25 testimony is excellent and also in the written

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1 submission that's in the record -- the \$12 million  
2 price plus or minus, of course, is that something it's  
3 your testimony that anyone would incur in order to  
4 reoccupy this building?

5 MR. KIRSTEIN: We believe so.

6 CHAIRPERSON GRIFFIS: And looking at that,  
7 I guess I would tend to agree in terms of the  
8 condition of the building and obviously the historic  
9 nature doesn't change dependent on the user. Okay, I  
10 think I'm clear.

11 Any other questions at this time? Ms.  
12 Miller?

13 VICE-CHAIRPERSON MILLER: Basically, you  
14 conclude that because of the cost and the condition of  
15 the building that residential was the only  
16 economically viable use. Did you go through any other  
17 scenarios though that might have been, but didn't pan  
18 out to be such as any other kind of like partnerships  
19 between residential and the school or residential and  
20 something else?

21 MR. KIRSTEIN: We, as I said, we thought  
22 about residential rental, but that was something that  
23 we knew would be fought tooth and nail by the  
24 neighborhood because they really didn't want any more  
25 rental housing necessarily in that neighborhood. So

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1 we sort of made a decision up front to try to put  
2 something in the school that we thought the neighbors  
3 would go along with as opposed to fighting a battle  
4 for the next 10 years. So we were definitely  
5 influenced by what the neighborhood wanted and then  
6 with the high price, there's nothing left really of  
7 this school.

8 We're trying to rush out there basically  
9 to support the walls before the roof that's falling in  
10 and the floors that are falling in, knock the walls  
11 down. It's actually -- I find it more expensive to  
12 restore and renovate than it would be if we were  
13 starting from scratch in doing some sort of new  
14 construction.

15 VICE-CHAIRPERSON MILLER: And did the  
16 neighborhood only want residential?

17 MR. KIRSTEIN: The neighborhood preferred  
18 high end residential neighbors.

19 VICE-CHAIRPERSON MILLER: Thank you.

20 CHAIRPERSON GRIFFIS: Your question is a  
21 good one, but those still wouldn't be uses allowed in  
22 the R-3 zone.

23 VICE-CHAIRPERSON MILLER: No, I mean, for  
24 instance, the Oyster School or something was a  
25 partnership, they had a school and a residential, so

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1 I was just curious when they were doing the analysis  
2 what they looked at.

3 CHAIRPERSON GRIFFIS: Right, I see, in  
4 terms of that. Okay, good. Any other questions,  
5 clarifications? Very well, let's proceed.

6 M S . O E H R L E I N :

7 I'm Mary Oehrlein, principal and owner of  
8 Oehrlein and Associates Architects. I and my firm are  
9 architects that specialize in preservation and have  
10 been working in Washington in that field for about 30  
11 years -- actually more than 30 years.

12 We have both private and federal clients  
13 and experience with D.C. Public Schools, having worked  
14 on the rehabilitation of the Sumner and McGruder  
15 Schools and the exterior restoration of Franklin.

16 Other institutional buildings that we've  
17 worked on: Howard Hall and the Wilson Building. We  
18 hope someday to finish the construction at the  
19 Lafayette Clara Barton residential buildings downtown,  
20 a never-ending project, and we've also recently  
21 completed the Tara Place Residences, also on 7th  
22 Street.

23 This particular building is typical of the  
24 public schools that were built in the late nineteenth,  
25 early twentieth century. It was the policy of the

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1 Board of Education at that point and the District  
2 school system to build small eight-room school  
3 buildings in residential neighborhoods. They were  
4 typically tucked into residential lots within  
5 neighborhoods. And, in fact, when this building was  
6 built, it was on, the lot that it was on was where the  
7 school building is only and the Board of Education  
8 purchased the adjacent properties and the properties  
9 to the rear much later, actually in the 1930s.

10 It's fairly typical of the red school,  
11 red-brick school houses that were built throughout  
12 Washington, both for black and white students. This  
13 was constructed in 1885 and was named for James  
14 Wormley who was a prominent black Washington  
15 businessman. He owned a hotel at 15th and H downtown  
16 and is also famous for being at the bedside of several  
17 people when they died, including Charles Sumner and  
18 President Lincoln. I'm not sure that's something you  
19 want to be famous for, but the building was used as a  
20 school until 1952, and then various educational use,  
21 special ed. and other administrative offices for the  
22 school until 1994. And it has been vacant since then  
23 and sold to Georgetown University in 1997.

24 As you've heard, the building is in -- a  
25 contributing building to the Georgetown Historic

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1 District which is an NHL district, not just a normal  
2 district. And we have been to the Old Georgetown  
3 Board and the Commission of Fine Arts for review and  
4 their preliminary concept approval of this project.

5 You've also heard that this project is in  
6 horrible condition. Most of the floors in the  
7 classrooms, it's a three-story building, has  
8 classrooms on two floors, four classrooms and a center  
9 hall. The floors at the north, first, second floors  
10 and the roof, attic floor have collapsed. And the  
11 roof is on its way down at the north side of the  
12 building. There's substantial water damage at the  
13 floors on the south side of the building as well. The  
14 only thing that really is secure on the inside of the  
15 building are those stair towers and they were replaced  
16 in the 1920s in the building, so they are concrete as  
17 opposed to the wood frame of the rest of the building.

18 There's obviously no operating mechanical,  
19 electrical or plumbing systems in the building and no  
20 water. And the windows are falling out. There's a  
21 large crack in the masonry and all of the building  
22 needs to be pointed and substantial masonry repair.

23 The concern at this point is that the  
24 north wall is not stable because the floors and the  
25 roof are -- the floors have collapsed and the roof is

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1 about to collapse and so we need to move ahead quickly  
2 or potentially lose the building.

3 We are now planning some temporary  
4 stabilization to keep it intact.

5 The building is also -- was full of  
6 asbestos which has been largely removed and there is  
7 lead paint everywhere which is difficult when you  
8 start talking about potential educational use. The  
9 laws now would require that all of the lead paint be  
10 removed.

11 To rehabilitate this building for any use  
12 would require a new roof structure and roofing, repair  
13 of the exterior masonry walls and replacement of the  
14 interior framing and floors and substantial upgrade to  
15 code on the mechanical, electrical and plumbing  
16 systems, new fire suppression system.

17 So regardless of what the use is, there's  
18 a significant amount of work that needs to be done to  
19 the building just to make it habitable for any use.  
20 For school use, it becomes a little -- or educational  
21 use where you have children, it becomes a little bit  
22 more difficult because there are other regulations for  
23 the lead paint and the environment.

24 This was stopped being used for a school  
25 because it didn't have -- it's a fairly small

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1 building. It didn't have all the things that we now  
2 expect in schools like gymnasiums and music rooms and  
3 outdoor play facilities and so forth and so that's a  
4 large part of the reason why it was abandoned as a  
5 school use and the students were moved to large  
6 facilities that did have the amenities that we expect  
7 in our school buildings these days.

8 So I think that's a quick summary of what  
9 I know about the building. And the cost that Gary  
10 laid out are pretty much consistent with the costs  
11 that we've experienced on other rehabilitation  
12 projects in Washington for residential and commercial  
13 use. And I think that's probably all you need to hear  
14 from me. Thanks.

15 MR. NETTLER: Well, there's a little bit  
16 more. I have some questions.

17 You've worked on -- tell me if I'm wrong,  
18 probably hundreds of historic buildings, both here and  
19 around the country, correct?

20 MS. OEHRLEIN: Yes.

21 MR. NETTLER: And I understand that you  
22 testified that the rehabilitation costs that Gary has  
23 alluded to are fairly -- it would be what you would  
24 expect to be for this type of condition for this  
25 building, correct?

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1 MS. OEHRLEIN: Yes.

2 MR. NETTLER: And that doesn't include  
3 those costs that Gary alluded to, don't even include  
4 the purchase price of the property or any carrying  
5 costs. Would you expect that given those  
6 rehabilitation costs, and any attendant purchase price  
7 that a single -- that the building could be possibly  
8 be used for a single-family home?

9 MS. OEHRLEIN: It's small for a school  
10 building, but it's quite large for a single family  
11 residence. It's about 16,000 square feet. It would  
12 be -- I mean I'm not an expert in single-family  
13 residences, but it seems -- it would seem excessive in  
14 terms of size, certainly larger than anything else in  
15 Georgetown with a huge price tag.

16 MR. NETTLER: And if it was to be used,  
17 let's say for a community-based residential facility,  
18 it would require a number of other fire code and  
19 safety upgrades as well, wouldn't it?

20 MS. OEHRLEIN: The building codes for  
21 residential are quite different than they are for  
22 commercial education use, yes.

23 MR. NETTLER: But the upgrades that would  
24 be required for community-based residential facility,  
25 let's say eight or less occupants would be no

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1 different than if it was for a multi-family housing,  
2 correct?

3 MS. OEHRLEIN: It would be quite similar.

4 MR. NETTLER: I don't have any other  
5 questions for Mary Oehrlein.

6 CHAIRPERSON GRIFFIS: Excellent. Thank  
7 you very much. I think probably also had something to  
8 do with some of the attachments into the submission in  
9 terms of the history which was very informative and  
10 fascinating.

11 Let me ask you though in terms of  
12 following up on that cost and obviously we're talking  
13 about estimates and all, but it's your understanding  
14 as the historic architect that the materiality at the  
15 exterior will be specifically reviewed, meaning -- are  
16 all of the windows needing to be replaced? Are there  
17 any salvageable aspects and I guess directly that's  
18 increasing the scope of work and the cost to this  
19 project?

20 MS. OEHRLEIN: The really big cost is  
21 dealing with the structural frame and the failure of  
22 the frame and the roof and stabilizing the exterior  
23 masonry.

24 The windows, there are some of the -- we  
25 are obligated under the Historic Preservation Design

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1 Guidelines to retain and restore as many of these  
2 historic windows as we can and so we will do that.  
3 Those -- some of them have already fallen out of the  
4 openings and a fair number of the windows were  
5 replaced in the past. So they will be new windows, but  
6 they will be replicated to match the original windows.  
7 So there is more cost associated with that than if you  
8 were building new residential.

9 CHAIRPERSON GRIFFIS: I see. Okay.  
10 Anything else?

11 VICE-CHAIRPERSON MILLER: Just to  
12 understand the history, in 1997, when the property was  
13 sold as surplus property, was it already in a state of  
14 such deteriorated condition that no other use would  
15 have been able to be made of it such as a school or a  
16 community-based facility or something, that that would  
17 have been beyond their means to repair at that point?

18 MS. OEHRLEIN: I did not see the building  
19 in 1997, so I can only talk about the condition that  
20 it's in now.

21 VICE-CHAIRPERSON MILLER: Okay.

22 MR. NETTLER: I think Ms. Bowen may be  
23 able to answer your question.

24 VICE-CHAIRPERSON MILLER: Okay.

25 MR. NETTLER: Another Mary.

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1 VICE-CHAIRPERSON MILLER: Right.

2 MS. BOWEN: Would you ask your question  
3 again?

4 MR. NETTLER: Not yet.

5 (Laughter.)

6 CHAIRPERSON GRIFFIS: Okay, anything else?  
7 Okay, let's proceed.

8 MR. NETTLER: Our next witness is Mary  
9 Bowen. And if you could give your address, name,  
10 address and background as well.

11 MS. BOWEN: My name is Mary Bowen. And my  
12 address is 1321 Connecticut Avenue, N.W., Washington,  
13 D.C.

14 I am a vice president of the Randall  
15 Hagner Company. I've been with the firm for 20 years.  
16 We're the oldest full-service real estate company in  
17 the Metropolitan area. We're celebrating our 102nd  
18 year this year.

19 I am presently in the residential sales  
20 department. I have a concentration in upper bracket  
21 residential real estate sales for the past 15 years.  
22 Previously, I concentrated in commercial sales and  
23 leasing at Randall Hagner.

24 MR. NETTLER: Excuse me, just one moment.  
25 I have passed up a copy of her testimony and her

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1       résumé as well.

2                       Go ahead, I'm sorry.

3                       MS. BOWEN: That's okay. Previously, I  
4       concentrated in commercial sales and leasing at  
5       Randall Hagner, having come to Randall Hagner in 1986  
6       with a very commercial real estate background, which  
7       I'll detail in a moment.

8                       At Randall Hagner, in my residential  
9       practice, I regularly handled more complicated  
10      property sales, including sales that could be limited  
11      by way of historic designation, proximity to park  
12      land, conservation or other easements or restrictions,  
13      or in some cases, residential properties which offered  
14      opportunities for non-residential use such as  
15      properties of a certain size or properties in the  
16      diplomatic overlay zone.

17                      These types of transactions required a  
18      more detailed analysis of the property than a  
19      straight-forward residential sale determining how best  
20      to market the property for our client. And I've often  
21      been the person in my office over the past 20 years to  
22      handle these types of properties. Some notable  
23      transactions that I've had include the sale of the  
24      Wormley School property for Georgetown University, the  
25      sale of the Bowie \* (4:32:35) estate in Georgetown,

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1 now the largest privately-owned mansion in the city,  
2 but previously used for institutional purposes as a  
3 nursing home when it was owned by the Episcopal  
4 Church. Again, the sale of the Bowie \* (4:32:46)  
5 estate for Tudor Place Foundation to its current  
6 owner, the sale of the Kirby Mansion on Chevy Chase  
7 Circle;, the sale of Hayes Manor, a historic pre-  
8 Revolutionary house in Chevy Chase on nine acres and  
9 many other historic houses in Historic Districts,  
10 including Georgetown and Chevy Chase.

11 In the commercial department, pertinent  
12 sales included Alice Longworth's former residence on  
13 Embassy Row, rezoned SB use and sold as an office  
14 building to a foundation; and the sale of 2301 Calvert  
15 Street to Syracuse University.

16 Although I'm no longer in the commercial  
17 department, I work regularly with our commercial  
18 department. As our offices have been at Dupont Circle  
19 for over 100 years, we as a company have handled many  
20 residential properties in the area, large enough to  
21 qualify for special exceptions for nonresidential use,  
22 as well as many SP-zoned buildings.

23 Before coming to Randall Hagner, I worked  
24 on the financial and development side of two major  
25 commercial firms, \* (4:33:42) properties, a local

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1 Dutch equity investment company; and then Western  
2 Development, where I gained a broad range of  
3 experiences including acquisition analysis of  
4 commercial property and involvement in major new  
5 commercial developments from their inception to  
6 disposition, including Georgetown Park and Washington  
7 Harbor.

8 Additionally, I've served as a consultant  
9 to Western Development Corporation and the Donohoe  
10 Company, among others, over the years. I am a  
11 licensed real estate salesperson in the District of  
12 Columbia, Maryland and Virginia. That's my  
13 background.

14 Now I will describe the history of the  
15 sale of the Wormley School. Randall Hagner was hired  
16 by Georgetown University to evaluate and sell the  
17 Wormley School property approximately one year ago.  
18 Georgetown had purchased the property from the  
19 District in 1997 and for approximately eight years had  
20 been able to do nothing with the property because they  
21 were unsuccessful in securing approval for a number of  
22 uses.

23 It is my understanding that the last  
24 attempt was for a special collections library and even  
25 that was met with significant neighborhood opposition.

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1 With this most recent failure, Georgetown decided to  
2 sell. Upon receiving this assignment, the first thing  
3 that we did was to evaluate the property to see what  
4 we thought was the highest invest use was, who the  
5 likely buyers would be, and what alternative uses  
6 there might be for the property.

7 Our first step in this process was to  
8 inspect and evaluate the site and improvements which  
9 included only the Wormley School structure. We made  
10 a physical inspection of the property, but because of  
11 the condition of the school building, we were only  
12 able to briefly look at the lowest levels since the  
13 building was not safe to go into on the upper floors.  
14 Because of this we reviewed as-built plans of the  
15 school structure, along with engineering studies which  
16 were provided by Georgetown.

17 Based on this analysis, we made our  
18 recommendations to Georgetown and proceeded to put the  
19 property on the market in the following manner. The  
20 offering was sent out to approximately 800 prospective  
21 purchasers. The property was offered in as is  
22 condition. Sealed bids were solicited from March 1,  
23 2005 and a settlement date of no later than May 31st  
24 was requested.

25 The property was placed on the open market

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1 unpriced. No representations were made as to possible  
2 uses for the property. No interior inspections of the  
3 school structure were permitted by prospective  
4 purchasers during the marketing period.

5 On March 1, we received 15 offers to  
6 purchase the property which were narrowed down to six  
7 for a second round of negotiations. The award was  
8 made to Encore Development. Georgetown University  
9 chose Encore because Georgetown had confidence that  
10 Encore had the capabilities to preserve and enhance  
11 the site for the community which was very important to  
12 Georgetown, although Georgetown would no longer own  
13 the property, the University was most concerned, as a  
14 neighbor, as to what would ultimately happen to the  
15 site.

16 We received no bona fide nonresidential  
17 use offers. I believe there are several reasons for  
18 this. The strength of the residential market at the  
19 time, especially in Georgetown, naturally attracted  
20 residential developers who could, based on strong  
21 market conditions, and the fact that the majority of  
22 the land was vacant and suitable for a matter of right  
23 residential development, offer relatively high prices  
24 for the site. The significant costs involved in  
25 saving the school building could be handled by a

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1 residential developer because of the strong market,  
2 but would likely be too much for a nonresidential user  
3 who would have other options around the city.

4 The history of Georgetown's failures in  
5 being able to develop this site for a variety of  
6 nonresidential uses was well known and there was an  
7 expectation of significant opposition by the  
8 neighborhood to higher intensity uses for the site.  
9 The lack of Metro would limit nonresidential users,  
10 either permitted or the type that might qualify for a  
11 special exception for nonresidential use.

12 And last, the neighborhood is residential  
13 in character and prior to the building of the Wormley  
14 School, the site was residential.

15 Also, because the Phillips school property  
16 being so close by, being almost identical in size and  
17 configuration to Wormley and being such a successful  
18 renovation of an historic school property, into an  
19 appropriate residential development, the market had a  
20 great model to look to.

21 In marketing the property, we looked at  
22 the feasibility of development as a permitted use in  
23 the R-3 zone. Given the significant frontage on  
24 Prospect Street, a vacant R-3 land, row dwellings  
25 which are the preferred use in the zone seemed very

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1 appropriate, given the neighboring blocks, filled with  
2 similar structures and the strong market for new  
3 residential construction in prime locations.

4 Further, we had seen old plats indicating  
5 that row dwellings previously existed on the land  
6 before the school was built.

7 We considered whether a single-family home  
8 user might buy the site, but there were several major  
9 obstacles to that use. The school structure was an  
10 architectural unlikely candidate for a single-family  
11 home. It is too large, too vertical and the cost to  
12 renovate for that use prohibitive. Other options  
13 would be available to a buyer who wanted a major  
14 estate.

15 Last, the block, unlike other blocks in  
16 Georgetown, did not offer the privacy or amenities  
17 that a single-family user would want for an estate of  
18 this size and ultimate cost.

19 With regard to nonresidential uses, such  
20 as a child development center or community-based  
21 residential facility, parsonage, rectory, vicarage,  
22 church, substance abusers home, we considered these  
23 uses highly unlikely due to cost, configuration of the  
24 structure and the size of the structure and the site.  
25 My personal experience in marketing and selling the

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1       Bowie \* (4:39:19) estate on Q Street some years  
2       earlier was helpful in evaluating the likelihood of  
3       these uses. That property, at the time, included a  
4       53-room, 1950s institutional wing in good condition,  
5       a fabulous house offering more usable space than the  
6       Wormley School and almost two acres of ground. And  
7       even with all that, many of the types of users  
8       described above, who studied the property, ultimately  
9       rejected it because of the restrictive and costly  
10      nature of turning it into a modern facility, even when  
11      the market was significantly lower, making the  
12      acquisition cost dramatically less from much more  
13      substantial property in every way.

14                As to a school, the property is simply too  
15      small. It had already been abandoned by the District,  
16      the structure and grounds being inadequate for today's  
17      schools, whether public or private, and the  
18      pickup/dropoff space did not seem suitable.

19                Nonprofit use and special exception uses  
20      were considered, but limitations of the structure,  
21      cost factors, parking, lack of Metro and quite  
22      important, the time approval of a special exception  
23      use in a case wherein an historic building was at risk  
24      of falling down if not dealt with quickly, made it  
25      seem unlikely.

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1           At Randall Hagner, given our headquarters'  
2           location in the heart of Dupont Circle, home to many  
3           SP-zoned properties and a regular component of our  
4           business over the years, we did not see these users as  
5           likely prospects for the site.

6           College or university use, given the  
7           history of the property with Georgetown University,  
8           the trend of local universities to move components of  
9           their institution to larger satellite locations and  
10          neighborhood opposition, this, we believe was a highly  
11          likely user.

12          Based on the considerations given above  
13          for the variety of nonresidential users, it was our  
14          opinion that residential use would be the best use and  
15          a happy ending for the neighborhood. As said before,  
16          because over half the site could be used for matter of  
17          right residential development, and because the Wormley  
18          School structure seemed so suited for residential  
19          apartments, as modeled by the Phillips School, we  
20          expected our marketing efforts would produce just what  
21          it did, a large number of residential bids and no  
22          other bona fide offers.

23          Based on this, a site with a seriously  
24          damaged structure of historic significance, at risk of  
25          falling down, if not dealt with quickly, the size and

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1 configuration of the structure and the residential  
2 character of the neighborhood, a residential  
3 development was the most logical one for the site, the  
4 one with the lowest impact for the community and the  
5 one that would enhance the neighborhood and would  
6 restore a potentially beautiful, yet structurally  
7 dangerous blight that attracted vagrants and rodents.

8 The use proposed for the site is  
9 compatible with the residential nature of the  
10 neighborhood and larger community, where there are few  
11 opportunities for new residential construction. It  
12 enhances the neighborhood by virtue of it returning  
13 part of the site to its previous use, adding vitality  
14 and beauty to the neighborhood and puts back into use  
15 an important historic structure in the least onerous  
16 way to the community.

17 It's an historic preservation success  
18 story and I encourage approval of the requested zoning  
19 change. Thank you.

20 MR. NETTLER: Just a couple of questions,  
21 Mary. With regard to the bids that you have received,  
22 were any of them, did any of them propose a single-  
23 family use for just the Wormley School?

24 MS. BOWEN: No.

25 MR. NETTLER: Did any of them propose a

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1 duplex for the Wormley School?

2 MS. BOWEN: No.

3 MR. NETTLER: And are you aware of what  
4 the condition of the building was when it was  
5 purchased by Georgetown University in 1997?

6 MS. BOWEN: I am aware -- I didn't study  
7 that to be able to answer your question in detail, but  
8 it was in bad repair at that time. But it  
9 deteriorated over time further because nothing could  
10 be done with it.

11 So when it was first purchased by  
12 Georgetown University, it was not in the condition it  
13 is today?

14 MS. BOWEN: I did not see it in 1997, so  
15 I can't say exactly what condition it was in, but it  
16 was not in the condition -- I know it was not in the  
17 condition it is in today in that floors fell, roof  
18 structures caved in and other things subsequent to the  
19 purchase.

20 MR. NETTLER: I have no other questions.

21 CHAIRPERSON GRIFFIS: Excellent, thank  
22 you. It was an excellent history and background. It  
23 was important. Your follow up to Mr. Nettler's  
24 question. Were any of the offers to purchase matter  
25 of right uses?

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1 MS. BOWEN: Well, we marketed the site as  
2 a whole and we didn't distinguish between the land and  
3 the building. It's all zoned R-3. We marketed the  
4 whole thing, so there was no specific offer that came  
5 in for the Wormley School structure, as far as we  
6 knew, that would have been for any nonresidential  
7 multi-unit use.

8 CHAIRPERSON GRIFFIS: So I can take that  
9 as a yes?

10 MS. BOWEN: Yes.

11 CHAIRPERSON GRIFFIS: Okay, because that's  
12 the reality, that structure is there and it can't go  
13 away easily because it's historic. So if you had  
14 offers, even with a combination of the other site,  
15 they were looking at multi-family in the existing  
16 building, is that what you're saying?

17 MS. BOWEN: Yes.

18 CHAIRPERSON GRIFFIS: Which would not be  
19 matter of right, is that correct?

20 MS. BOWEN: Yes, that's correct.

21 CHAIRPERSON GRIFFIS: Okay, understood.  
22 It's fascinating and actually putting it into this  
23 perspective, it's somewhat written in your hearing  
24 submission, but your testimony specifically and the  
25 history that I guess I could glean that the community

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1 stopped a matter of right use, which is somewhat  
2 daunting or perplexing for my reasoning as we look at  
3 requiring you to make a hardship case because no  
4 matter of right use, but the reasoning that it  
5 couldn't be used is because the community wasn't in  
6 favor of it.

7 I can get beyond it a little bit or I can  
8 get beyond it because actually the university had to  
9 decide to do that and if they decided not to come in  
10 to a battle with the surrounding community, but is  
11 that your understanding, that it was the neighborhood  
12 opposition that stopped the Lincoln Library from being  
13 at the Wormley School hypothetically?

14 MS. BOWEN: Yes, that is my understanding.

15 CHAIRPERSON GRIFFIS: I see.

16 MS. BOWEN: Would you like me to  
17 elaborate?

18 CHAIRPERSON GRIFFIS: No. It's daunting,  
19 I guess, to think that any community could then start  
20 to --

21 MR. NETTLER: That's not a matter of right  
22 use though.

23 CHAIRPERSON GRIFFIS: Pardon me?

24 MR. NETTLER: That would not have been a  
25 matter of right use.

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1 CHAIRPERSON GRIFFIS: What, a university  
2 or educational library?

3 MR. NETTLER: Correct.

4 CHAIRPERSON GRIFFIS: Why wouldn't it be?

5 MR. NETTLER: It would have required a  
6 special exception from the Zoning Commission to expand  
7 the campus plan to have brought that into it.

8 CHAIRPERSON GRIFFIS: Because of its  
9 expansion as it's tied to the university, that would  
10 have to be included in the master plan area?

11 MR. NETTLER: Correct.

12 CHAIRPERSON GRIFFIS: Okay. Okay. Good  
13 enough.

14 MR. NETTLER: If I might just respond,  
15 answer a question that's directly responsive to you?

16 CHAIRPERSON GRIFFIS: Yes.

17 MR. NETTLER: It's interesting in terms of  
18 what Mr. Griffis is asking in terms of your response  
19 that there was -- everyone who had submitted a bid was  
20 looking at what also could be developed on the vacant  
21 property as a matter of right. Do I understand you to  
22 say then that notwithstanding what could be developed  
23 as a matter of right, that in itself, did not offset  
24 this cost that resulted in a bid that would have  
25 allowed the Wormley School to be used as a matter of

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1 right?

2 Do you understand what I'm saying?

3 MS. BOWEN: Not exactly.

4 MR. NETTLER: You said that the --

5 CHAIRPERSON GRIFFIS: If you bought it all  
6 together as Encore did, couldn't you develop the  
7 vacant lot which would offset the cost? Did you get  
8 any proposals that were responsive in that realm?

9 MS. BOWEN: No. The Wormley School  
10 exists. It's a structure of historic significance.  
11 It's going to fall down. So in order to develop on  
12 the land, what are you going to do with this building?  
13 Anybody looking at it to purchase it, has to deal with  
14 that and the value of the units that you would build  
15 on the vacant land would be affected by a dilapidated  
16 structure with homeless, you know, entering it at all  
17 times and rodents and trash and debris. So it's part  
18 and parcel of the whole. It had to be considered for  
19 anybody looking at the rest of the piece of ground.

20 CHAIRPERSON GRIFFIS: Understood. Follow  
21 ups, any questions?

22 VICE-CHAIRPERSON MILLER: I do.

23 CHAIRPERSON GRIFFIS: Yes.

24 VICE-CHAIRPERSON MILLER: I understand the  
25 situation today and that's primarily what's at issue

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1 in the variance request, but I still want to just  
2 understand the history a little bit better with  
3 Georgetown.

4 And I'm not sure who can answer this,  
5 whether Mr. Nettler, you can or you can direct it, but  
6 there's a statement about -- well, I guess I want to  
7 know what use did Georgetown contemplate that would  
8 not have required them to amend their campus plan?

9 MR. NETTLER: Any use that Georgetown  
10 contemplated would have required it and when they  
11 purchased the building from the city, they understood  
12 that they would have had to have come to the Zoning  
13 Commission to have gotten relief to be able to do  
14 that.

15 However --

16 CHAIRPERSON GRIFFIS: In 1997, it would  
17 have been the Board.

18 MR. NETTLER: That's right, it would have  
19 been the Board of Zoning Adjustment. However, the  
20 problem was that the condition that the city put on or  
21 that the community understood to be the condition that  
22 was placed on it, and that use, was not the use that  
23 Georgetown initially, after having purchased it,  
24 decided to explore for the school. They decided to  
25 explore a more intense use for the site, than what

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1 everybody understood there could be the conditions on  
2 their use of that building.

3           Regardless, it still would have required  
4 a Board of Zoning Adjustment or ultimately a Zoning  
5 Commission review, but as that became apparent,  
6 Georgetown University was looking to use this for a  
7 use that went beyond what the conditions were. The  
8 community, of course, made it clear to Georgetown  
9 University -- I represented the community at the time  
10 -- made it clear to the Georgetown University that  
11 they were going to require them to be bound by those  
12 conditions.

13           VICE-CHAIRPERSON MILLER: What was that  
14 use?

15           MR. NETTLER: This is almost 10 years, 9  
16 years ago. It was faculty office, right. It was a  
17 faculty office for that. They could not develop the  
18 open space next to it. So they were restricted to a  
19 faculty office for that building. It involved a  
20 number of different issues to be able to use it for  
21 faculty office, but that's not the direction in which  
22 they went initially. And that just moved things in  
23 two different directions, ultimately resulting in what  
24 happened after unsuccessful attempts to find a viable  
25 use by the university that would still have required

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1 zoning relief.

2 VICE-CHAIRPERSON MILLER: Okay, and Ms.  
3 Bowen, when you said that they were unsuccessful in  
4 securing approval for a number of uses, whose approval  
5 were you referring to?

6 MS. BOWEN: My understanding was that it  
7 was neighborhood approval.

8 VICE-CHAIRPERSON MILLER: Neighborhood  
9 approval.

10 MS. BOWEN: Nothing ever got past that  
11 level and Georgetown being a permanent neighbor had a  
12 lot of regular conversations with the neighborhood on  
13 all sorts of issues, so everything got stopped before  
14 it ever got down the road. However, I don't have the  
15 specific history of each and every thing they --

16 VICE-CHAIRPERSON MILLER: Okay, thank you.

17 CHAIRPERSON GRIFFIS: Very well, if  
18 there's nothing further, let's move ahead.

19 MR. NETTLER: The architects.

20 MR. CUNNINGHAM: Good afternoon, I'm Ralph  
21 Cunningham from Cunningham and Quill Architects. With  
22 me is Chris Morrison, also principal at Cunningham and  
23 Quill. We're very pleased to be before you again  
24 today.

25 We are located in Georgetown. We are

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1 within a very easy walk of the site, so we're very  
2 pleased to be engaged by Encore Development to work on  
3 this very interesting and exciting project.

4 I should say that we have quite a lot of  
5 experience with historic preservation in the District  
6 and specifically in Georgetown at Cayton's Walk and  
7 elsewhere in the District of Columbia.

8 In our approach to this project, our  
9 approach was similar to the way that we approach many  
10 projects that are of rather contentious nature with  
11 the neighbors. We started, effectively, by not  
12 drawing --

13 CHAIRPERSON GRIFFIS: Kindly put, isn't  
14 it?

15 MR. CUNNINGHAM: We started by having  
16 meetings with the neighbors and the Office of Planning  
17 very early in the project. In fact, simply put, as  
18 soon as we got the project, we started meeting with  
19 the neighbors.

20 We had eight meetings in our office and  
21 out of our office with various neighborhood groups,  
22 including the Friends of Wormley School, Single  
23 Members of the ANC, the entire ANC, neighbors on  
24 Prospect Street, Gary Kirstein did quite a lot of  
25 outreach to neighbors to have meetings with us to talk

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1 about the nature of the project.

2           There were a number of rather interesting  
3 and particular neighborhood concerns about this  
4 project and as Mr. Nettler said earlier, clearly there  
5 was a lot of interest in this project and they had a  
6 lot of experience with dealing with the building and  
7 thinking about the building.

8           And the site, as you can see, on I guess  
9 on my right, your left, is in Georgetown on Prospect  
10 Street. It's between Wisconsin Avenue and Georgetown  
11 University, just one block off M Street. Prospect  
12 Street is a relatively heavily traveled pedestrian  
13 route, certainly for Georgetown students which is one  
14 reason why the University continues to be interested  
15 in this project. And also, the University is  
16 interested in this project as a way to improve  
17 Prospect Street as a matter of -- as you heard in the  
18 previous case -- eyes on the street. And crime issues  
19 and that sort of thing.

20           So clearly a rather critical site in the  
21 urban neighborhood of Georgetown. And with that, I'm  
22 going to turn it over to Chris Morrison and I'm going  
23 to flip boards.

24           CHAIRPERSON GRIFFIS: Excellent. Thank  
25 you very much. While you're setting up there, I think

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1 we can jump through this very quick, although is the  
2 most exciting part and I think having Cunningham and  
3 Quill do this is an excellent match and good decision,  
4 as the Board has been familiar with their work in the  
5 past.

6           Dynamic, we have the plans already, the  
7 section is stunning to look at, but none of it really  
8 relates directly to the use variance that we're here  
9 for so we won't belabor the point. But I would like  
10 you to just walk through very quickly because I  
11 couldn't find the unit and maybe I'm just confused in  
12 terms of counting the doors, but how it all lays out.  
13 And then we'll go from there.

14           MR. MORRISON: You're not mistaken. In  
15 the submittal that we gave you, there are actually  
16 seven units configured.

17           CHAIRPERSON GRIFFIS: I was up all night,  
18 let me tell you.

19           MR. MORRISON: The whole purpose of the  
20 original number that we asked, nine, and then it's  
21 reduction to eight, is all based on market flexibility  
22 because we understand it's going to taken 18 months to  
23 24 months to develop this project.

24           Our client was concerned about not having  
25 any flexibility on the size of the units that the

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1 building gets subdivided in.

2 CHAIRPERSON GRIFFIS: Five thousand square  
3 foot unit. I mean that's larger than some of the  
4 townhouses on Prospect Street, isn't it?

5 MR. MORRISON: To give you an example,  
6 this was a key point for -- one of the key points for  
7 the neighbors, was the density within the Board.

8 CHAIRPERSON GRIFFIS: Sure.

9 MR. MORRISON: And I believe when Mr.  
10 Lighthizer first came to our office in May, one of his  
11 first questions was how many units? And our answer at  
12 that point, we didn't know for sure, but we were  
13 looking at a number closer to 12 for the school. We  
14 thought oh, three levels, four units a floor, 12  
15 units. And we were hit with immediate "too many."  
16 And that came out not only from Mr. Lighthizer, but  
17 from the other neighbors that voiced their concerns  
18 from CAG, as well as from the representatives from the  
19 ANC.

20 So it was after a lot of work with them  
21 and a lot of soul searching, I think, on our client's  
22 behalf, as to whether or not he was penning himself in  
23 too tightly to say I'm going to commit to sell nothing  
24 but a 5,000 square foot unit.

25 CHAIRPERSON GRIFFIS: Right. So

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1 conceivably we're looking at for our purposes, two  
2 units on a floor or as one of the floors is showing  
3 three units, so that we'd have the flexibility of  
4 laying out in terms of the program, a maximum of eight  
5 units, but potentially a different number?

6 MR. NETTLER: Yes, maximum of eight, but  
7 flexibility to go below that.

8 CHAIRPERSON GRIFFIS: Sure, okay.

9 MR. MORRISON: So what we're showing right  
10 now is a -- just to walk you through quickly is the  
11 school is to be redeveloped, its three levels as  
12 residential use. The entrance will be not at the  
13 front of the building, but along the side in one of  
14 the original entrances to the school. That was again  
15 two things, Historic Preservation voiced their concern  
16 that the school not be altered and that the relocation  
17 of the entry to the front of the building would be a  
18 character-changing element.

19 So --

20 MR. NETTLER: Could you tell the Board  
21 where the entrances are to this building and how many  
22 there are?

23 MR. MORRISON: There are currently two  
24 entrances, one on the east and one on the west. One  
25 for boys, one for girls.

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1 CHAIRPERSON GRIFFIS: That's fascinating.  
2 Not only racially segregated, but segregated for male  
3 and female. Fun. Or actually it wasn't much fun back  
4 then I should say. Okay. I should not say.

5 MR. NETTLER: And you weren't able to  
6 change those entrances, correct?

7 MR. MORRISON: That's correct.

8 MR. NETTLER: And without being able to  
9 change those entrances, that would have an impact on  
10 your being able to market this property for a duplex,  
11 wouldn't it?

12 MR. MORRISON: That's correct. Yes, that  
13 is correct.

14 MR. NETTLER: And could you explain why  
15 that's correct, with particular reference to the west  
16 entrance?

17 MR. MORRISON: If we were to -- currently  
18 what we've done is is that we have a -- you would have  
19 to have a duplex that was able to be entered both at  
20 that west entrance and so combining two entrances into  
21 a single one -- we have a single entrance into the  
22 building. It has a central lobby and core that  
23 provides access to the multiple units and then we have  
24 egress out the east side of the building through the  
25 other main entrance.

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1 MR. NETTLER: How close is the west  
2 entrance to the edge of the property?

3 MR. MORRISON: The west entrance is about  
4 nine feet away from a retaining wall.

5 MR. NETTLER: And was it your concern, as  
6 well as others, that having that as a principal  
7 entrance for one townhouse, let's say, if this was --  
8 would have been very difficult to market?

9 MR. MORRISON: Yes. I mean our initial  
10 schemes, because of the prominent tower feature on the  
11 south facade of the building which faces Prospect  
12 Street, our initial thoughts were that that was a  
13 likely location for a new entrance to the building and  
14 complex. That was one of the compromises that we made  
15 as the project developed and in that, what we're doing  
16 is we're actually developing more of a garden entrance  
17 that comes along the side of the building, along that  
18 retaining wall and that's open air and then you then  
19 are able to enter the building though the original  
20 entrance on the west.

21 MR. NETTLER: On the east. East and west,  
22 correct? Sorry, excuse me.

23 MR. MORRISON: The ground floor, as we've  
24 shown it is developed as three units. There's one  
25 along the front and two along the back. As part of

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1 the scheme, one of the things that was our goal from  
2 the beginning and I think that the neighborhood was  
3 also quite concerned about was the maintenance of as  
4 much green space and the restoration of as much green  
5 space as possible within the development.

6 That green space is clearly a desire for  
7 the units and our future residents. But what we have  
8 sought to do here is the parking is underneath the  
9 area at a sublevel below the current first floor,  
10 accessed from a single curb cut on Prospect Street  
11 that comes along the east side of the school  
12 underneath.

13 CHAIRPERSON GRIFFIS: What's that used for  
14 now? That's an existing curb cut, isn't it?

15 MR. MORRISON: There is one and we are  
16 proposing to slightly adjust it.

17 CHAIRPERSON GRIFFIS: What was that  
18 originally for?

19 MR. MORRISON: That was the driveway  
20 entrance to the parking lot for the original school.

21 CHAIRPERSON GRIFFIS: So the original  
22 school had a sub-- below grade --

23 MR. MORRISON: No. The current curb cut  
24 is a ramp up.

25 CHAIRPERSON GRIFFIS: Wow.

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1 MR. MORRISON: That slopes up  
2 approximately six feet to an above-grade surface lot  
3 with a playground that is on just a pad towards the  
4 back of the site.

5 CHAIRPERSON GRIFFIS: Okay. Obviously,  
6 you're adjusting that and you're going below grade and  
7 you're terracing across that and creating a green  
8 space, and that's where your addition is also, right?

9 MR. MORRISON: That's correct.

10 CHAIRPERSON GRIFFIS: To fast forward a  
11 little bit, you have the parking at the adjacent, not  
12 under this application, the subdivision.

13 It was my understanding in the written  
14 submission that some of those parking spaces, was it  
15 three or so, would be utilized by the units on this  
16 property? Or would be offered available?

17 MR. NETTLER: They're available. The  
18 problem is is that on the one hand, you don't have any  
19 required parking spaces because the Wormley School is  
20 a historic building and you have a waiver and because  
21 of the last prior use, you wouldn't have to do that.

22 CHAIRPERSON GRIFFIS: Sure.

23 MR. NETTLER: But of course, to market  
24 this building you have to provide parking, so we have  
25 the garage underneath that provides what would have

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1       been actually more than required parking underneath  
2       the school site and then has additional parking on the  
3       adjacent lot.

4                   CHAIRPERSON GRIFFIS:   Right, I mean it's  
5       a substantial amount of parking. I mean if you think  
6       about it in Georgetown. I mean I'm assuming that not  
7       all of those are going to the Wormley School. I'm  
8       assuming that there's potential development on the  
9       adjacent site.

10                  MR. NETTLER:   Well, the adjacent site  
11       development has its own parking. They have their own  
12       garages in that larger garage.

13                  CHAIRPERSON GRIFFIS:   Their own spaces in  
14       that larger garage.

15                  MR. NETTLER:   No, they have their garages  
16       underneath the houses.

17                  MR. MORRISON:   Three of the units have  
18       actual garages attached to their basements that are  
19       accessed through the common garage.

20                  CHAIRPERSON GRIFFIS:   I wish we had more  
21       time, we'd get into all that. I guess I should be  
22       even more direct.

23                         How do you get from the adjacent property  
24       to the underground parking? It seems to me that  
25       there's a demising wall there. Do you have to go out?

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1 I mean obviously you've thought about it, right?

2 MR. MORRISON: That's why we've proposed  
3 a sub-basement to being excavated under the center  
4 portion of the school that would be accessed from the  
5 garage so that residents would be able to go directly  
6 from the garage --

7 CHAIRPERSON GRIFFIS: Does it show it  
8 anywhere here that I can see?

9 MR. MORRISON: In the parking level plan.

10 MR. NETTLER: It should be there.

11 CHAIRPERSON GRIFFIS: The parking level  
12 plan in your submission?

13 MR. MORRISON: Yes, it's called parking  
14 level plan and what you see is level P-1 --

15 CHAIRPERSON GRIFFIS: I don't want to  
16 belabor this. I don't think it has anything to do  
17 with --

18 MR. MORRISON: You basically enter into  
19 that lobby area and there's an elevator and a stair.

20 CHAIRPERSON GRIFFIS: Right. But if you  
21 go down the ramp where you have labeled level P-1,  
22 right?

23 MR. MORRISON: Yes.

24 CHAIRPERSON GRIFFIS: And cruising  
25 straight down, I'm going to take a left to hit the

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1 high end parking, but the low rent district for  
2 parking to the right, isn't it? It's all high end  
3 over there.

4 (Laughter.)

5 Am I reading this correctly? Am I reading  
6 your application correctly? Those parking spaces on  
7 the area on the right between that large wall, are  
8 available for the Wormley School?

9 MR. MORRISON: Yes, what we've shown is,  
10 right. The wall that is shown in the plan was meant  
11 for the purpose to distinguish the project that's  
12 under review by you for the use, versus all the rest.

13 CHAIRPERSON GRIFFIS: I'm not going to get  
14 you in any trouble.

15 (Laughter.)

16 MR. CUNNINGHAM: The short answer is there  
17 will be multiple easements to allow the row houses and  
18 the school building to allow -- to use the parking.

19 CHAIRPERSON GRIFFIS: I'm obviously not  
20 being clear. That's -- there's a physical connection  
21 right there.

22 MR. CUNNINGHAM: That's correct.

23 CHAIRPERSON GRIFFIS: So that wall will  
24 have an arched way or an opening?

25 MR. CUNNINGHAM: That's correct. There

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1 will be easements that will allow that to be a single  
2 garage.

3 CHAIRPERSON GRIFFIS: That's fine.

4 MR. NETTLER: Could you explain why you're  
5 coming off of Prospect instead of the alley in the  
6 back?

7 MR. CUNNINGHAM: Yes, thank you, Mr.  
8 Nettler, that is a good question. There is a public  
9 alley behind this site and in fact, that was the  
10 subject of the majority of the beginning of  
11 conversation with the neighbors directly behind who  
12 live on N Street. That alley is at places only seven  
13 feet wide and it is -- they park in that alley  
14 parallel to it. So you can imagine that they might be  
15 concerned about two-way traffic through their alley  
16 which could not be widened at the side street. What's  
17 that street -- 33rd Street -- because of houses  
18 adjacent on both sides.

19 So that was an initial request from the  
20 neighbors was not to enter parking off of the alley.

21 MR. NETTLER: And is there a brick wall  
22 also at the rear of the lot that affects the ability  
23 to use that --

24 MR. CUNNINGHAM: There is an original  
25 boundary wall of Georgetown at the back or it's not

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1 the original wall, but it is a replica of the wall.

2 MR. NETTLER: When you say original  
3 boundary wall of Georgetown, could you explain that a  
4 little bit?

5 MR. CUNNINGHAM: Mr. Oehrlein, would you  
6 like to explain that?

7 MR. NETTLER: That's all right. Go ahead  
8 with describing the situation with the wall.

9 MR. CUNNINGHAM: There is a large  
10 retaining wall. Some of it is older than other parts,  
11 however, there is a retaining wall at the back of the  
12 site which separates the grade of the playground from  
13 the grade of the alley. And so that was another  
14 restraint.

15 CHAIRPERSON GRIFFIS: Excellent.

16 MR. NETTLER: And were there additional  
17 constraints related to the excavation that could be  
18 done on the site as well that you had to confront?

19 MR. MORRISON: Yes, the stone wall at some  
20 earlier point was reinforced with a concrete backup  
21 wall to that and what we are anticipating doing in our  
22 renovation is to actually leave all of that in place,  
23 along the alley, and underpin and support it in order  
24 to minimize any disturbance or interruption to the use  
25 of the alley by the neighbors.

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1                   MR. NETTLER:     And was that a concern  
2                   because of the possibility of rock underneath the site  
3                   or the possibility of rock, by some of the neighbors,  
4                   or the conditions of excavation?

5                   MR. MORRISON:    I think that from the  
6                   neighbors' standpoint, they were concerned about  
7                   having any limits put on to their enjoyment of the  
8                   alley and use of the alley. From our standpoint, the  
9                   concerns are and for our client is the unknown  
10                  condition of what's below all of the fill that we've  
11                  since come to understand is setting up. There's a  
12                  grade change of about 10 feet between the level of the  
13                  alley and the grade adjacent to the playground behind  
14                  the school as the section points out. And so we are  
15                  maintaining all of that as part of this proposal, so  
16                  that all of the privacy and buffer and view that the  
17                  neighbors currently enjoy will be left intact or  
18                  improved and also to have visual and acoustical  
19                  barriers from the proposed use.

20                  MR. NETTLER:    Given those conditions that  
21                  you've just alluded to, would you say there are unique  
22                  circumstances that are affecting the site?

23                  MR. MORRISON:    Absolutely.

24                  MR. NETTLER:    And what are some of the  
25                  other unique circumstances.

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1 MR. MORRISON: I think that some of the  
2 other unique circumstances are that we've got a  
3 historic property that is in horrible disrepair and  
4 near collapse at this point, that requires immediate  
5 action and a proposal that will facilitate that  
6 rehabilitation.

7 MR. CUNNINGHAM: One of the things that  
8 has been mentioned in previous testimony is the lack  
9 of suitability of this building for other uses such as  
10 a single-family house, a duplex, a school at this  
11 point. However, one of the things that we haven't  
12 said is it actually idea for this sort of development  
13 which is a multi -- a small, multi-family building  
14 because it's a relatively square building with a lot  
15 of perimeter glass and so I think you can see from the  
16 plans it really lays out quite nicely as a small  
17 building with three -- two to three units per floor.

18 And so it wasn't born for this use, but in  
19 today's market, it seems to be a nice fit.

20 MR. NETTLER: And would you say those  
21 unique circumstances that you've alluded to and you've  
22 heard others testify to create the undue hardships in  
23 complying with the strict application of the zoning  
24 regulations?

25 MR. CUNNINGHAM: Yes, I think that's

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1 correct. Ms. Bowen testified to the market's  
2 acceptance of a single-family house on this site, and  
3 one of the -- to answer Chairman Griffis' question  
4 more directly from earlier about that -- I understand  
5 from Ms. Bowen that no one proposed to develop row  
6 houses on one part of the site and then use this  
7 building as a single-family house.

8 MR. NETTLER: In light of, as well, the  
9 testimony that you've just given and the testimony  
10 that you heard from the other witnesses, is it your  
11 opinion that the granting of the variance will not  
12 impair the intent of the zoned plan or adversely  
13 affect the surrounding neighborhood and if that's  
14 correct, could you explain?

15 MR. CUNNINGHAM: Yes, I believe that is  
16 correct, Mr. Nettler.

17 I think that you will see and you've  
18 already seen in the statements given to you by the  
19 ANC, in terms of compatibility with the neighborhood,  
20 this is a project that is supported by the  
21 neighborhood and indeed it was unanimously approved by  
22 the neighborhood at their last ANC meeting. So I  
23 think in terms of compatibility we certainly pass that  
24 test.

25 MR. NETTLER: I have no other questions

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1 for this witness and I open it up for additional  
2 questions from the Board.

3 CHAIRPERSON GRIFFIS: Excellent. Is that  
4 your witnesses?

5 MR. NETTLER: That is my witnesses. I do  
6 have one other thing to state, if you have no other  
7 questions for the witnesses.

8 CHAIRPERSON GRIFFIS: You want to leave it  
9 for conclusions?

10 MR. NETTLER: I did want to make it clear  
11 that the Board understands in all the time we have in  
12 making -- in coming to where we are today, we  
13 obviously have worked out a number of arrangements  
14 with the neighborhood. I think we have provided --  
15 we've already put forward the cooperative agreement  
16 that we have with the neighborhood. We've agreed to  
17 proffer that to you with conditions that we -- it's up  
18 to you, obviously, as to whether you want to add them,  
19 but we have agreed that we would proffer to be added  
20 to the order, but that is part of the record and we  
21 just wanted you to understand that that is before you.

22 CHAIRPERSON GRIFFIS: Does this have to do  
23 with the use variance?

24 MR. NETTLER: It has to do with the -- I  
25 understand what the law is with regard to what

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1 conditions you can and cannot put on a property with  
2 regard to the granting of a use variance, but this is  
3 part of our agreement with the neighbors.

4 CHAIRPERSON GRIFFIS: I appreciate it.  
5 It's a substantial amount of reading.

6 MR. NETTLER: It's just one page, if you  
7 see, it's just one page --

8 CHAIRPERSON GRIFFIS: It goes into the  
9 construction, deals with the adjacent site.

10 MR. NETTLER: No, the one -- there should  
11 be a one-page cover that only deals with the Wormley  
12 School.

13 CHAIRPERSON GRIFFIS: It goes with the  
14 leasing availability of the units?

15 MR. NETTLER: I know, but I'm only talking  
16 about the -- paragraph 32, if you want to --

17 CHAIRPERSON GRIFFIS: Okay.

18 MR. NETTLER: Which is the one page --

19 VICE-CHAIRPERSON MILLER: Page 12?

20 CHAIRPERSON GRIFFIS: Page 11, paragraph  
21 32, prospect shall proffer before the BZA, they will  
22 submit to the following conditions of approval to be  
23 included at BZA's sole discretion of the final order  
24 issued by the BZA Case No. 17124. And (a) is air  
25 conditioning units; (b) is rear common area; (c) is

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1 trash; (d) is no construction; (e) is no access --  
2 obviously, I'm not finishing the sentences, right.  
3 And (f) upon completion of construction or conveyance.  
4 I guess we'll take this under consideration.

5 Let me -- we have a little bit more to get  
6 through on this, totally, but let me ask, is the ANC  
7 present? Is an ANC member present?

8 Are there any other neighborhood  
9 associations or representatives of the groups? Yes  
10 sir. And you're representing?

11 MR. LIGHTHIZER: My name is Robert  
12 Lighthizer. I live at 3316 N Street. And I'm the  
13 president of the Wormley Neighbors Association.

14 CHAIRPERSON GRIFFIS: Excellent.

15 MR. LIGHTHIZER: I bought my house in 1996  
16 and since then I have spent more time than I want to  
17 account for worrying about what was going to happen at  
18 the Wormley School.

19 CHAIRPERSON GRIFFIS: Understood.

20 MR. LIGHTHIZER: I'll be happy to talk  
21 about the Georgetown negotiation, if you like. Let me  
22 assure you though that Georgetown came to us with one  
23 proposal that we did not like which was a 24/7 school  
24 for about 400 kids between 4 and 7 every night. And  
25 we objected to that.

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1           Then they came to us with the rare book  
2           idea and we said fine. The next thing we heard from  
3           Georgetown is they were selling the school. So I  
4           don't want there to be any misunderstanding there. We  
5           did not object to everything that Georgetown came up  
6           with. They came up with one idea which we think any  
7           reasonable person would have objected to. And then on  
8           the next time, we agreed and they ended up for their  
9           own reason, decided they wanted to sell the school.

10           Having said that, this property obviously  
11           is very important to us. Our association represents  
12           the people that live right up against it. I'm just on  
13           the other side of that alley, 7 feet away from this  
14           development. It's going to be one of the biggest  
15           developments in Georgetown and it matters both to our  
16           quality of life and to the value of our properties.  
17           So I don't want anybody to think that the Wormley  
18           neighbors are sort of sitting here picking at little  
19           things. We're not.

20           This is the biggest investment we have and  
21           we want to protect it. Just so we understand each  
22           other.

23           Now when we ended up -- when Georgetown  
24           decided to sell it and they sold it to Encore, Encore  
25           approached us and talked to us. And it's because of

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1 those negotiations and good-faith dealings with Encore  
2 Development which I can't say too much about, we have  
3 come to an agreement. We've tried to work out all the  
4 problems, both for the association and for any other  
5 neighbor who cares. I think we have that all worked  
6 out and as a result, we support this project.

7 The only two things that I can look at  
8 that I have anything to say about are one, it seems to  
9 me the uniqueness of the property and I can offer my  
10 opinion on that, which is second to those of the real  
11 experts, obviously, we think it's a unique property.  
12 And secondly, the adverse impact. We do not believe  
13 that there will be an adverse impact to the  
14 neighborhood if this agreement is lived up to and if  
15 the development goes forward the way it is projected.

16 So I don't know what else I can talk  
17 about, any number of things that have come up in this  
18 hearing, I'm happy to do it, but I think those are the  
19 only things that I can say. I speak for the  
20 neighbors. We accept the development. We support it  
21 and I guess I would ask you to put paragraph 32 in  
22 your order, if in your judgment -- I'm not a zoning  
23 expert -- in your judgment you think is appropriate.  
24 And we would ask that the agreement be made a part of  
25 the record because it's conceivable that at some point

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1 someone will want to go back and see it at some point.

2 But we support this. We do not think  
3 there will be an adverse impact.

4 CHAIRPERSON GRIFFIS: Excellent. Thank  
5 you very much. We do appreciate you being here and  
6 being patient and are able to come and address the  
7 Board.

8 First of all, just for quick  
9 clarification, the neighborhood cooperative agreement,  
10 conditions of operation that was submitted into the  
11 record, you're one of the witnesses or signatories on  
12 this agreement?

13 MR. LIGHTHIZER: I'm one of the  
14 negotiators and a signatory.

15 CHAIRPERSON GRIFFIS: Okay, excellent.  
16 And you're asking us to look at Condition 32 which  
17 goes to, in your testimony, mitigating any potential  
18 adverse impacts that might arise and that's the  
19 placement of the air conditioning units, being a  
20 residential size on the roof; the rear common area on  
21 the site not rented for private parties. Okay.

22 MR. LIGHTHIZER: Yes, Mr. Chairman.

23 CHAIRPERSON GRIFFIS: Good and then I  
24 won't list the rest of them. Any other questions from  
25 the Board?

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1                   VICE-CHAIRPERSON MILLER: I think as the  
2 Chairman was saying that we can adopt conditions if  
3 we're convinced that those conditions will be for the  
4 purpose of mitigating adverse impacts related to the  
5 relief that's being granted.

6                   Is there anything you want to speak to  
7 with respect to the conditions in No. 32? I guess  
8 it's (a) through (f) as to how they will mitigate  
9 adverse impacts that would be associated with the  
10 project?

11                   MR. LIGHTHIZER: Sure, I'll be happy to do  
12 that. I can run through them if you like.

13                   One of the things we were concerned about  
14 is that in a unit -- in a building with this many  
15 units is you'd have one huge industrial air  
16 conditioning unit. That was never the intention of  
17 the developer, so we asked to have it written down.  
18 That's one thing because that turning on and off, it's  
19 hard to exaggerate how close this is to our houses and  
20 to our bedrooms and to our backyards. So that would  
21 be a problem. That's the reason we wanted that one.

22                   No private parties. I mean this is  
23 literally -- I'm from here to there, to those -- I  
24 don't mean the wall, I mean right here to these  
25 charts. That's how close it is to all these

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1 neighbors. If they could take this public space and  
2 rent it to private parties that would be -- that would  
3 clearly infringe on our right to use our property and  
4 it was never the intention of the developers and I  
5 think if -- I think some of these things are actually  
6 going to help them sell units.

7           The trash was always intended to be  
8 collected through Prospect Street out through the  
9 garage, not through the alley. The alley, once again  
10 I should restate. This is a one-way alley. This a  
11 drive-in, back out alley that's about 7-feet wide.  
12 It's all land that our homeowners a 100 years ago  
13 ceded to the city for some purpose or another, so we  
14 could have access, I guess, to the back of our houses.  
15 So it's not like a normal public alley. This is a  
16 tiny little alley with building on one side and stone  
17 wall on the other. So several of these go to that.  
18 We didn't want any construction staging through there.  
19 Number one, we would lose our -- it would be very  
20 noisy, but also we would lose our parking space  
21 because this is where all of us park. We have a  
22 parallel spot right behind our houses.

23           And the final one, I guess, upon  
24 completion of construction and conveyance of the  
25 units, the parking will be limited to the owners, the

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1 residents, visitors, in other words, that it won't be  
2 a public parking garage or run out of that.

3 Once again, none of these things on which  
4 I believe we got any pushback from the developer, but  
5 we thought we owed it just as an obligation to the  
6 other neighbors to take care of the problems that they  
7 had raised, so we put them down here and we would hope  
8 that you would incorporate them.

9 CHAIRPERSON GRIFFIS: Certainly. It seems  
10 to me, and correct me if I'm incorrect in  
11 understanding your testimony, that all of these relate  
12 to that use change in terms of the density of the  
13 multi-family in the R-3 zone.

14 MR. LIGHTHIZER: That's exactly right, Mr.  
15 Chairman.

16 CHAIRPERSON GRIFFIS: Okay.

17 MR. LIGHTHIZER: We have a number of other  
18 requirements in here, but none of which we thought  
19 were appropriate to be included, so we did not ask to  
20 have them be included.

21 CHAIRPERSON GRIFFIS: Good. Any other  
22 questions. And just to address one of the other  
23 aspects in terms of having in the record for someone  
24 to find, there will be two aspects to the final  
25 record. One would be an order, whether approval or

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1 denial; the second will be the entire file. This is  
2 now part of the official record and then there are  
3 aspects of which, obviously you were talking about,  
4 that may be incorporated into any final order.

5 MR. LIGHTHIZER: I appreciate that. Thank  
6 you.

7 CHAIRPERSON GRIFFIS: Okay, good. Mr.  
8 Nettler, cross?

9 MR. NETTLER: No cross.

10 CHAIRPERSON GRIFFIS: Very well, thank you  
11 very much. We do appreciate it.

12 We'll jump back into our order.  
13 Community, civic associations that want to provide  
14 testimony, individuals to provide testimony? Very  
15 well. We'll go back to the Office of Planning and I  
16 appreciate your being patient.

17 MS. BROWN-ROBERTS: Good afternoon, Mr.  
18 Chairman and Members of the Board. I am Maxine Brown-  
19 Roberts from the Office of Planning. The Applicant  
20 proposes to subdivide the existing lot, A16 into seven  
21 parcels and create a separate lot of record for each.  
22 The school building will be redesigned internally to  
23 accommodate eight condominium units. An addition to  
24 the rear of the building would provide space for a  
25 terrace on both the ground floor and the first floor

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1 and on-site parking is also provided.

2 The existing building meets all the  
3 setback requirements of the R-3 District on the newly  
4 created lot. The proposal meets the standards by  
5 which the BZA should approve a use variance as  
6 follows: the subject lot is unique because of an  
7 exceptional situation as the existing building is a  
8 large, brick structure that housed a former public  
9 school that was permitted by right in the R-3  
10 District. It's a contributing building within the  
11 Georgetown Historic District. It's dilapidated,  
12 obsolete and as submitted by the Applicant is too  
13 small to accommodate a modern educational institution.

14 The building is classified as a  
15 contributing building to the Georgetown Historic  
16 District and therefore it cannot be demolished and  
17 replaced with a new building. Therefore, the second  
18 option is to convert the building to accommodate a use  
19 permitted in the zoned district. However, due to its  
20 size, it cannot be easily converted to a by right use  
21 such as a single family house. The Applicant has  
22 analyzed the possibility of using the building for  
23 other permitted uses that are more intense use such as  
24 a private school and annex to the Georgetown  
25 University or other community-based nonprofit use, but

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1 these have all been rejected by the community because  
2 of the potential to bring traffic, noise or intensity  
3 of use into the area.

4           Additionally, due to the cost associated  
5 with the environmental cleanup of the building,  
6 rehabilitation and general upgrading, the building to  
7 many of the institutional and nonprofit entities could  
8 not occupy the building by right or by special  
9 exception because they could not afford such an  
10 investment.

11           OP recognizes that the multi-family  
12 residential use are not inconsistent with intent of  
13 the R-3 zoned district. However, the proposal will  
14 have approximately 1,775 square feet per condominium  
15 which is a greater land area per unit than many of the  
16 lots within Square 1220.

17           The building has been an eyesore in the  
18 community for many years and its renovation will bring  
19 back it back to a productive use. The residential use  
20 will be compatible with residential character of the  
21 area and will be more consistent with the community  
22 than any institutional or other nonresidential uses  
23 permitted in the zoned district.

24           The eight condominium units, with adequate  
25 on-site parking, will not have a negative impact on

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1 the parking situation in Georgetown. The Office of  
2 Planning therefore recommends approval of the  
3 requested use variance.

4 Thank you, Mr. Chairman.

5 CHAIRPERSON GRIFFIS: Excellent. Thank  
6 you very much and that's a very thorough analysis and  
7 we appreciate it and especially enjoy the aerial  
8 photograph. It really shows the uniqueness of this.  
9 Of course, I always get kind of intrigued by this, but  
10 nonetheless, questions from the Board for the Office  
11 of Planning?

12 Is there any cross from the Applicant for  
13 the Office of Planning?

14 MR. NETTLER: No cross.

15 CHAIRPERSON GRIFFIS: Excellent. And I  
16 just make note and you were very flexible on  
17 presenting your analysis and changing the number of  
18 units at the end. It's obviously a clarification from  
19 the Board and the Applicant that we were looking at  
20 the maximum of eight with flexibility to reduce which  
21 makes some sense.

22 Very well, I do not have any other  
23 government agency reports for this application, unless  
24 the Applicant is aware of any.

25 We have called for any other persons to

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1 present testimony either in opposition or in support.  
2 I would ask that anybody else present, currently,  
3 could come forward at this time. Not nothing any  
4 others before us, I believe we can continue.

5 I turn it back over to you, Mr. Nettler  
6 for any closing remarks, conclusions.

7 MR. NETTLER: I have very brief closing  
8 remarks and they're more related to the process that  
9 we've been through. As I think you may be aware, the  
10 hearing on this application, the request of both us  
11 and the Office of Planning and the Advisory  
12 Neighborhood Commission was expedited because of the  
13 condition of the building.

14 We have proceeded on a number of parallel  
15 paths to obtain approvals, all with the goal of trying  
16 to get to a point where this building can be preserved  
17 and rehabilitated, both through the subdivision  
18 process that's been on-going through the Commission of  
19 Fine Arts and the Old Georgetown Board.

20 So in that context, community opposition  
21 to a use, aside from the matter of right uses which I  
22 think we have made a very clear showing, were not  
23 feasible here. Community opposition to a use that  
24 would have required whether a special exception, but  
25 would not have required a use variance would have

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1 probably meant in our view the death of this building,  
2 because the time involved in dealing with an  
3 opposition to a project which would not have allowed  
4 us to expedite -- for you to expedite the review since  
5 the ANC would not agree to it without their being  
6 community support for this, would have meant that we  
7 would have been a lot further along before we ever got  
8 to you on a hearing on this and the building would be  
9 faced with a condition, this winter, that will  
10 probably be -- present some real challenges to being  
11 to preserve this building.

12 And we have always made it clear both to  
13 the Office of Planning, to the community, to Historic  
14 Preservation, that our goal is to be able to save this  
15 building and to reuse it. And so I think we have made  
16 a very good and I think a complete showing that we  
17 meet the requirements for a use variance for this  
18 building, to use it for up to eight units, but by  
19 extension, I'm also hoping that if you agree with me,  
20 that you would be willing to make a decision today and  
21 also to be willing to issue an expedited decision so  
22 that we can proceed further and spend a lot of money  
23 just to shore up this building and put it in a  
24 condition that allows to continue along the path to  
25 reusing it.

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1 CHAIRPERSON GRIFFIS: Any other additional  
2 information or questions from the Board?

3 Very well, Mr. Nettler, I do agree with  
4 you that the record is complete in this fashion and  
5 unless there's any opposition before the Board I think  
6 we have a complete and full record. We can begin a  
7 deliberation this evening.

8 I would just sit back and take a note that  
9 I've skimmed over very quickly Exhibits 21 and 27 from  
10 ANC-2E. They were both submissions in support of the  
11 application and a modification of the -- that the  
12 reports were timely filed. I did call for the ANC.  
13 They were not present, which is an interesting thing.  
14 I was glad to see one of the Wormley Citizen  
15 Association -- I forget what it was actually called --  
16 here present to provide testimony in support of the  
17 application.

18 As we are all very familiar, we can pack  
19 the room with opposition, but it's seldom that we see  
20 people even if in support that they actually come down  
21 and provide testimony, both of which are of equal  
22 value and substance. So it's a good situation to have  
23 that and some who feel so strongly about it, it is  
24 part of the negotiation and obviously is one that is  
25 directly impact and affected.

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1                   There it is. Anything else from Board  
2 Members?

3                   Yes, Mr. Mann?

4                   MEMBER MANN: Just a couple of brief  
5 questions. If we're going to get to the point where  
6 we're going to deliberate on this, this afternoon and  
7 if we decide to consider these proposed conditions,  
8 then I just have a couple of very simple questions  
9 that might help us discuss some of the conditions if  
10 and when we get to them, particularly condition (f),  
11 the second sentence in condition (f) talks about  
12 encouraging people to use the garage and it's  
13 something that if I were seeing this for the first  
14 time and we didn't have a chance to ask you, I might  
15 say well, why would we want a condition that  
16 encourages somebody to do something when we can't  
17 enforce that.

18                  CHAIRPERSON GRIFFIS: I would absolutely  
19 agree.

20                  MEMBER MANN: If that went to someone for  
21 question, perhaps to Mr. Nettler, perhaps he can  
22 address that.

23                  MR. NETTLER: In the process of  
24 negotiating this agreement, we have not been -- we  
25 have been above board in explaining to the neighbors

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1 and those who signed the agreement that there are a  
2 number of conditions here which the Board of Zoning  
3 Adjustment can enforce and some conditions which the  
4 Board of Zoning Adjustment has, in the past few years,  
5 taken the position it can't incorporate into an order.  
6 It's beyond its authority. But we agreed that we  
7 would make it a part of the record and that as Mr.  
8 Lighthizer said, it would be in your discretion as to  
9 which of those conditions you believed were directly  
10 related to the use variance and could be part of an  
11 order.

12 CHAIRPERSON GRIFFIS: But he's going more  
13 direct than that. He's asking you directly. I will  
14 rephrase it, but what -- well, how can we say we're  
15 going to require encouragement of guests to park? Is  
16 there guest parking being provided? Or are these all  
17 owned by the units?

18 MR. KIRSTEIN: There will be some extra  
19 parking spaces.

20 CHAIRPERSON GRIFFIS: So there are  
21 actually visitor parking spaces.

22 MR. KIRSTEIN: Correct.

23 CHAIRPERSON GRIFFIS: So obviously that  
24 would be programmed for us. If we could just change  
25 the wording, Mr. Mann, I think if I'm following your

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1 direction --

2 MR. NETTLER: I mean actually what we're  
3 doing to ensure that these things are lived up to is  
4 we are creating a covenant in a homeowner's  
5 association for the site for the townhouses on the  
6 vacant lot that will have these conditions in it, so  
7 that there not only will be this as part of the  
8 record, there actually will be a document out there  
9 that will provide something that they can see takes it  
10 one step further than just making suggestions and  
11 having somewhat of a wish list. But it goes beyond  
12 that.

13 CHAIRPERSON GRIFFIS: Clear?

14 MEMBER MANN: Well, I think Mr. Nettler's  
15 answer is pretty clear and I think that's perhaps the  
16 sort of information that we need in order to decide  
17 whether or not we're going to include it as a  
18 condition.

19 CHAIRPERSON GRIFFIS: Sure.

20 MEMBER MANN: On proposed condition, (d)  
21 and (e) talks about construction in the alley. Now if  
22 we were to include a condition like that, we heard  
23 earlier that there might be some shoring up of the  
24 walls or something, that's not going to cause any  
25 problems --

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1 MR. NETTLER: None of these conditions  
2 cause a problem with that, absolutely, I'm telling  
3 you. There's going to be no problem with some  
4 construction associated with shoring up the walls.

5 MR. KIRSTEIN: We hope to do that from our  
6 side of the site and the understanding with Bob was  
7 that if we had to go into the alley, if the public  
8 utility companies had to go in for power or something  
9 like that, that that's understood, but what they  
10 didn't really want is us to block the alley for a long  
11 period of time keeping them out. We developed a  
12 fairly decent relationship with them over time.

13 MEMBER MANN: It's easy to interpret that,  
14 just by reading this, but I just wanted to hear you  
15 say it, just so when we deliberate on it, we know what  
16 we're talking about.

17 CHAIRPERSON GRIFFIS: Good point. More  
18 confusion? Question?

19 VICE-CHAIRPERSON MILLER: Yes, I'm sorry,  
20 with respect to (e) are you saying that there are some  
21 exceptions in which there would be access provided to  
22 the site through the alley?

23 MR. KIRSTEIN: No. No, I didn't say that.  
24 Right now, there's some power poles and things that  
25 are in the public alley and if the utility companies

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1 need to go in there to disconnect or take down an old  
2 power pole or something like that -- Bob realizes he  
3 can't really stop them from going into a public alley  
4 to do that. There's no reason where we have to gain  
5 access to our site, realistically, from the alley. We  
6 wouldn't want to do anything -- that first portion of  
7 the wall behind the school is historic. I wouldn't  
8 want anybody to hit that thing or to do any damage to  
9 it.

10 VICE-CHAIRPERSON MILLER: So the words "no  
11 access to the site for construction or otherwise"  
12 doesn't refer to -- you're saying doesn't refer to  
13 other purposes such as by the power company --

14 MR. KIRSTEIN: It refers to us. It really  
15 refers to using the alley to get on to our property.  
16 Now if they have to go into the alley to do work on a  
17 power line or a telephone line that's actually in the  
18 alley and running down the alley, I don't know that  
19 Bob believes that he would ever want to stop them from  
20 doing that.

21 CHAIRPERSON GRIFFIS: But nor would this  
22 cooperative agreement bind Pepco, WASA or the gas  
23 company.

24 MR. KIRSTEIN: Correct.

25 MEMBER MANN: Nor could the Board do so.

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1                   COMMISSIONER MITTEN: I could suggest a  
2 couple of changes that would probably accommodate  
3 that, like in (d) you could say no construction  
4 staging by the Applicant shall occur on the alley, no  
5 access to the site, blah, blah, blah, shall be made  
6 through the alley by the Applicant.

7                   MR. KIRSTEIN: Right.

8                   CHAIRPERSON GRIFFIS: Okay, any other  
9 questions or clarification on those or other aspects  
10 of the application.

11                  VICE-CHAIRPERSON MILLER: I have one more.

12                  CHAIRPERSON GRIFFIS: Indeed.

13                  VICE-CHAIRPERSON MILLER: As Mr. Nettler  
14 knows, we normally say we don't have jurisdiction over  
15 construction activities and so I'm just wondering --  
16 (d) looks like it may fall in that category. And if  
17 (d) were not listed separately, would it, in your  
18 opinion, be covered by (e)?

19                  MR. NETTLER: It could be covered by (e).  
20 That's correct.

21                  VICE-CHAIRPERSON MILLER: Thank you.

22                  CHAIRPERSON GRIFFIS: Anything else?

23                  Very well.

24                  Is there proposed action from the Board?

25                  Ms. Mitten?

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1                   COMMISSIONER MITTEN:    Mr. Chairman, I  
2                   would move approval of Case No. 17424 for the reasons  
3                   that I think are well articulated by the Applicant and  
4                   supported by the Office of Planning in their report  
5                   for granting the use variance.   And I have to say I  
6                   think this is one of the most well developed cases  
7                   that I've seen in a long time in terms of the  
8                   thoroughness of -- they anticipated everything that we  
9                   could have possibly asked them and then some.   So I  
10                  appreciate that.

11                  I would include the conditions of  
12                  operation submitted as part of the neighborhood  
13                  cooperation agreement and I would -- letter a, b, c,  
14                  e, f as submitted.   I would delete (d) in its entirety  
15                  and I would modify (e) to say "no access to the site  
16                  shall be made through the alley by the Applicant, nor  
17                  shall access to the alley by N Street residents or  
18                  guests or invitees be restricted by Prospect" and just  
19                  take out all references to construction.

20                  CHAIRPERSON GRIFFIS:   Excellent, is there  
21                  a second?

22                  MEMBER ETHERLY:    Second, Mr. Chair.

23                  CHAIRPERSON GRIFFIS:    Thank you very  
24                  much.   Further deliberation, Ms. Mitten?   Mr. Etherly?  
25                  Or not.

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1           Let me just get a quick clarification, Ms.  
2 Mitten, on the proposed edits to the proffered  
3 conditions and I'm sorry, you removed (d) and took out  
4 construction in (e). That would remove the temporary  
5 nature of the construction elements, but preclude or  
6 prohibit -- instant during construction or as  
7 developed access from the alley. Is that correct?

8           COMMISSIONER MITTEN: I'm sorry, would you  
9 say that one more time?

10          CHAIRPERSON GRIFFIS: I'm not sure I can  
11 actually. But you removed (d).

12          COMMISSIONER MITTEN: Yes.

13          CHAIRPERSON GRIFFIS: And included -- and  
14 removed the element of construction under (e) and made  
15 it a permanent condition, restricting the access from  
16 the alley, so that would incorporate any of the  
17 immediate conditions of construction.

18          COMMISSIONER MITTEN: Yes.

19          CHAIRPERSON GRIFFIS: But make it  
20 permanent?

21          COMMISSIONER MITTEN: Yes.

22          CHAIRPERSON GRIFFIS: Okay.

23          COMMISSIONER MITTEN: And I also just want  
24 to modify something because Mr. Etherly pointed out,  
25 that the terminology that is used in the neighborhood

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1 cooperation agreement is that Prospect refers to the  
2 Applicant and since that's part of the agreement, we  
3 should just say where it says Prospect, it should just  
4 read "the Applicant" for our purposes.

5 CHAIRPERSON GRIFFIS: Agreed. Okay.  
6 Anything else? I think Ms. Mitten summarized her  
7 comments and I would like to reiterate a few of my own  
8 in looking at this. And I think it is one, an  
9 excellent application and the full amount and breadth  
10 and experience of the witnesses that were provided  
11 today makes a big difference in terms of how quickly  
12 we can get through a use variance. Use variance, of  
13 course, as you all well know preparing for this, I'm  
14 sure is the highest threshold test to be made. It is  
15 not easily received as it is a hardship. It is  
16 literally proving that there is not any other use  
17 that's viable, whether it be -- however it's  
18 structured, but economically or not. It is made on  
19 numerous levels, I think, and the economic can easily  
20 be assessed in terms of the level of reconstruction  
21 and development, redevelopment that is required for  
22 this for any use in terms of the size and also the  
23 unique practical difficulty and hardship of reusing  
24 this old and historic structure, to reanimate it to  
25 something of contemporary viability has been proven to

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1 be difficult, if it isn't utilized and put back into  
2 this multi-family scenario.

3 I think that we are responsible for  
4 looking at whether there is a negative impact, be it  
5 a detriment to the zoned plan map or the public good  
6 and it's such a general, large issue of public good  
7 and what it actually entails and what our measuring  
8 level is. But in this instance, I think it's  
9 fascinating to see applications like this when we  
10 start thinking about the public good and that is city-  
11 wide and then specifically what happens, the design  
12 itself, the layout and the attention to the site  
13 itself and the building and then the interior the  
14 approach, how it will be developed from a pedestrian  
15 on the street level to the passenger vehicles and also  
16 the interior, the circulation, utilizing the existing  
17 entrances and kind of the existing core, breaking it  
18 out into what it was historically in terms of the four  
19 corners or even the two halves, I think is intriguing  
20 and I think helped really make an additionally strong  
21 application.

22 I think when you look at the specifics of  
23 the level of impact which folds into all the tests  
24 that we look at for this, especially in the use, it  
25 was Office of Planning said it in their analysis as to

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1 the Applicant. If you broke it down very  
2 scientifically into the unit size by the site, and you  
3 realized the density, although one might think it's  
4 large, it is small in terms of the size of the site or  
5 in terms of the size of the building which I think it  
6 also lends itself to the supportive nature of the  
7 application.

8 That's all I need to say on this at this  
9 point. I'll open it up to any others.

10 VICE-CHAIRPERSON MILLER: I just want to  
11 say just a couple of things because I think you all  
12 pretty much covered it and Applicant made a very  
13 thorough case, but I would say that here there really  
14 is a case of undue hardship that was made, not only  
15 did the Applicants made the case that this is the only  
16 viable alternative, but that, in fact, the alternative  
17 would be the death of this building. So I think that  
18 that's a pretty strong case. And with respect to  
19 adverse impact that there's no adverse impact given  
20 the conditions the Board would be imposing,  
21 particularly since this is a residential use in a  
22 residential neighborhood, so it's not a drastic use  
23 change.

24 I also wanted to know if the Board might  
25 want to visit condition F which Mr. Mann brought our

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1 attention to. I'm wondering if we ought to delete  
2 that sentence that talks about encouragement. It goes  
3 "owners, tenants, employees, visitors and guests of  
4 the units shall be encouraged to use the garage  
5 whenever possible and to avoid parking on the  
6 surrounding streets" because a condition like that is  
7 not really enforceable and also because Applicant has  
8 represented that that will be in another document that  
9 will be enforceable in a different way.

10 CHAIRPERSON GRIFFIS: It seems to be  
11 redundant and I would tend to agree. If Ms. Mitten  
12 and Mr. Etherly are amenable to accept a modification  
13 -- I mean the last sentence if we include in the  
14 condition of upon completion of construction and/or  
15 conveyance of the units, parking garage shall be  
16 limited to parking residents, owners, tenants,  
17 employees, visitors and guests of the unit. The  
18 second sentence is redundant to the condition that's  
19 provided.

20 Mr. Mann?

21 MEMBER MANN: My preference would be to  
22 delete it.

23 CHAIRPERSON GRIFFIS: Okay.

24 VICE-CHAIRPERSON MILLER: I think it has  
25 a different point and I think it should be deleted.

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1 CHAIRPERSON GRIFFIS: What we would do is  
2 require provision for visitor, tenant, workers,  
3 employees parking, right?

4 VICE-CHAIRPERSON MILLER: Right.

5 CHAIRPERSON GRIFFIS: And so if it's  
6 saying upon the completion they're going to make sure  
7 that that's there without actually requiring a number  
8 count and location, I don't think this application  
9 rose to that level. It is redundant for our purposes.

10 Okay, then we'll take that as is, the  
11 first sentence of that -- delete the second.

12 Anything else?

13 We did have a second. Mr. Etherly  
14 seconded the motion, if I'm not mistaken, with  
15 conditions.

16 So we do have a motion before us. Ms.  
17 Miller made one other point that I wanted to  
18 reiterate. It's fascinating to look at this as a use  
19 variance as one would think of going from a  
20 residential to a recycle-waste compound of some sort  
21 which would be a distinct use variance. And we're  
22 maintaining it within the residential zone, although  
23 it is clearly and correctly here before us as use,  
24 based on the density level. But that is an  
25 interesting aspect of the application that's before

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1 us.

2 Okay, if there's nothing further from any  
3 other Board Members? Very well, we do have a motion  
4 before us. It has been seconded and conditioned. I  
5 would ask all in favor signify by saying aye.

6 (Ayes.)

7 Opposed? Abstaining?

8 (No response.)

9 Very well, before Ms. Bailey records the  
10 vote, let me also just say that I forgot, but we were  
11 just handed another letter of support from Mr. M.  
12 Jeffrey Miller of 3310 Prospect Street, N.W. The  
13 Board did diligently read that in our deliberations,  
14 I am sure, and look to the fact that he is an adjacent  
15 neighbor across the street and is in support of the  
16 application, in fact, urging us to approve it and it  
17 is so noted. He does have up to eight condominium  
18 uses with underground parking noted for clarity and  
19 specificity of the application.

20 Ms. Bailey?

21 MS. BAILEY: Mr. Chairman, the vote is 5-  
22 0-0 to approve the application. Ms. Mitten made the  
23 motion; Mr. Etherly seconded; Ms. Miller, Mr. Mann and  
24 Mr. Griffis have approved the application and are we  
25 doing a summary order, sir?

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1                   CHAIRPERSON GRIFFIS: Comments from the  
2 Board? Any opposition to issuing a summary order on  
3 this?

4                   Very well, Mr. Nettler, any opposition to  
5 a summary order?

6                   (Laughter.)

7                   MR. NETTLER: No opposition.

8                   CHAIRPERSON GRIFFIS: Indeed. Very well,  
9 I think we can waive our rules and regulations and  
10 issue a summary order on that. And Mr. Nettler, I  
11 don't know if you want to provide a summary order.

12                  MR. NETTLER: We'll provide it.

13                  CHAIRPERSON GRIFFIS: Ms. Bailey, you can  
14 coordinate with Mr. Nettler and I can just leave it in  
15 the office and decide on the way out.

16                  (Laughter.)

17                  Very well, if there's nothing further, any  
18 other business for the Board this afternoon, Ms.  
19 Bailey, Mr. Moy?

20                  MS. BAILEY: No, Mr. Chairman.

21                  CHAIRPERSON GRIFFIS: Excellent. Thank  
22 you very much. I thank you all very much and again,  
23 Ms. Mitten said it and I think we all absolutely agree  
24 and thought it an excellent application and  
25 presentation. Incredibly full. It was enjoyable to

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1 read. It was enjoyable to sit through. I hope you  
2 feel the same.

3 If there's nothing further, Mr. Nettler?

4 MR. NETTLER: No.

5 CHAIRPERSON GRIFFIS: Very well, thank you  
6 all very much. We do appreciate it. Have a great  
7 evening and we'll adjourn our afternoon session of the  
8 17th.

9 (Whereupon, at 5:45 p.m., the public  
10 hearing was concluded.)

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