

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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PUBLIC MEETING

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TUESDAY

JUNE 4, 2002

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

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

GEOFFREY H. GRIFFIS	Chairperson
ANNE MOHNKERN RENSHAW	Vice Chairperson
DAVID ZAIDAIN	Board Member
CURTIS ETHERLY, JR.	Board Member

ZONING COMMISSION MEMBER PRESENT:

JAMES HANNAHAM
PETER MAY

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

9:50 A.M.

CHAIRPERSON GRIFFIS: Gentlemen, I will call to order the June 4, 2002 public meeting.

Let me just briefly introduce the Board. My name is Geoffrey H. Griffis. I'm the Chairman. With me today is Ms. Anne Renshaw, Vice Chair; Mr. Curtis Etherly, also a Board Member. Representing the National Capital Planning Commission on my left is Mr. David Zaidain our newest Member; and Mr. Hannaham representing the Zoning Commission and we will have, of course, rotating Zoning Commission people in this morning as they are the ones that heard the cases as we deliberate in our public meeting this morning.

Also with us, staff this morning on my very far right, Ms. Bailey, Mr. Miaku and Ms. Pruitt, representing the Office of Zoning today.

With that, I think we can jump right in.

MS. PRUITT: Good morning, Mr. Chair. First item on the agenda is public hearing minutes.

The public hearing minutes were May 7th. The Board Members participating are David Levy, Anne Renshaw, Mr. Griffis, Mr. Etherly and Mr. Hannaham.

CHAIRPERSON GRIFFIS: Board Members, any comments on May 7, 2002?

(Pause.)

1 Good, then I would move approval of May 7, 2002
2 minutes.

3 MS. PRUITT: Second it.

4 CHAIRPERSON GRIFFIS: All in favor.

5 (Ayes.)

6 Opposed?

7 Let's move on to May 14, 2002.

8 MS. PRUITT: Board Members participating in that
9 was Mr. Levy, Ms. Renshaw, Mr. Griffis, Mr. Etherly and Carol
10 Mitten.

11 VICE CHAIR RENSHAW: Mr. Chairman, on the May 14th
12 minutes page 3, Case No. 16868, I believe that under the WMATA we
13 have it down that David Levy indicated he was a Member of the
14 Board of Directors of this Washington Regional Network for
15 Liveable Communities, but was this the case also that Ms. Mitten
16 spoke about her connection with WMATA?

17 CHAIRPERSON GRIFFIS: No, I don't believe that she
18 was -- oh, she was.

19 VICE CHAIR RENSHAW: She had one of these cases.

20 MS. BAILEY: La Clinica del Pueblo.

21 CHAIRPERSON GRIFFIS: Yes, La Clinica del Pueblo.
22 She did the appraisal of the building. Is that what you were
23 remembering?

24 VICE CHAIR RENSHAW: I have a note that she
25 appraised the site and WMATA was a client, but she had no

1 financial interest in the project and I thought that this was the
2 case, but I was not sure.

3 CHAIRPERSON GRIFFIS: Indeed, we did have one case
4 that she indicated that, although I seem to remember -- why don't
5 we just mark that for --

6 VICE CHAIR RENSHAW: If the staff could check.

7 CHAIRPERSON GRIFFIS: Yes, just a quick review.
8 I'll talk to Ms. Mitten on that and get clarification this
9 afternoon. So we'll leave that with the potential as amended to
10 reflect that. Anything else on the 14th?

11 MS. PRUITT: Mr. Chair, Application 16868 and 27 --

12 CHAIRPERSON GRIFFIS: You might want to turn on
13 your mike.

14 MS. PRUITT: I'm sorry, Application 16868,
15 Application of WMATA for a parking requirement of 31 spaces in a
16 central area, U Street. That's the one she had disclosed she had
17 done some appraisal for.

18 VICE CHAIR RENSHAW: That's what I thought, but it
19 should be included in the minutes.

20 CHAIRPERSON GRIFFIS: So indicate that in the
21 minutes with also a disclosure by Mr. Levy for the Regional
22 Network.

23 Anything else?

24 Let's move approval as amended, May 14.

25 VICE CHAIR RENSHAW: Second.

1 CHAIRPERSON GRIFFIS: All in favor.

2 (Ayes.)

3 Opposed? Let's move on to May 21st.

4 VICE CHAIR RENSHAW: Yes, there is something for
5 the 21st.

6 MS. PRUITT: May 21st, Board Members participating
7 include David Levy, Anne Renshaw, excuse me, Mr. Griffis, Mr.
8 Etherly and Carol Mitten.

9 VICE CHAIR RENSHAW: Mr. Chairman, May 21st on page
10 2 --

11 CHAIRPERSON GRIFFIS: I'm sorry, I don't know if
12 you indicated Mr. Hood also.

13 MS. PRUITT: No sir, I didn't.

14 CHAIRPERSON GRIFFIS: There it is. Ms. Renshaw.

15 VICE CHAIR RENSHAW: Case No. 16831, page 2, third
16 paragraph. Is there a word missing?

17 CHAIRPERSON GRIFFIS: There is.

18 VICE CHAIR RENSHAW: In the bold?

19 CHAIRPERSON GRIFFIS: "It."

20 VICE CHAIR RENSHAW: Very good. "After approving
21 application, the Board ascertained that the application was
22 advertised correctly for the area variance because" and we will
23 add an "it" there.

24 VICE CHAIR RENSHAW: And I think just a grammatical
25 thing to write out now have a contraction in the sentence.

1 CHAIRPERSON GRIFFIS: Good. Other items? Let us
2 move for approval, as amended, the May 21, 2002 minutes.

3 MEMBER ZAIDAIN: Seconded.

4 CHAIRPERSON GRIFFIS: Thank you very much. All in
5 favor?

6 (Ayes.)

7 Any opposed?

8 MS. PRUITT: For the record, we did not get a proxy
9 from Ms. Mitten or Mr. Hood in reference to the minutes.

10 CHAIRPERSON GRIFFIS: Okay.

11 MEMBER ZAIDAIN: Mr. Chair?

12 CHAIRPERSON GRIFFIS: Yes.

13 MEMBER ZAIDAIN: Staff can note that I am not
14 voting to approve those minutes as I was not participating on the
15 Board at that time.

16 CHAIRPERSON GRIFFIS: A good notation. Mr. Zaidain
17 is indicating that he did not vote on any of the minutes because
18 he was not participating in any of those sessions.

19 MEMBER ZAIDAIN: The May 7th, 14th, 21st and 29th.

20 CHAIRPERSON GRIFFIS: Right. Do we have the 29th?

21 MS. PRUITT: Actually, we do have the 29th and this
22 is the first one you participated in. We have the minutes of the
23 29th in which -- please help me with your name again so I don't
24 mispronounce it.

25 MEMBER ZAIDAIN: It's Zaidain.

1 MS. PRUITT: Zaidain.

2 MEMBER ZAIDAIN: Right.

3 MS. PRUITT: David Zaidain, Anne Renshaw, Mr.
4 Griffis and Curtis Etherly.

5 MS. BAILEY: Correction, Mr. Etherly was not here
6 on the 29th.

7 CHAIRPERSON GRIFFIS: Very well. Any issues on the
8 29th, 2002? Okay, if not, I would move approval of May 29, 2002
9 minutes.

10 VICE CHAIR RENSHAW: Second.

11 CHAIRPERSON GRIFFIS: All in favor?

12 (Ayes.)

13 Opposed. Note that we have the three members
14 voting on those. With that dispensed of, we can move on.

15 MS. PRUITT: Next item on your agenda, Mr. Chair,
16 of our motions. Application 16831, application of Jose R.
17 Sanchez, pursuant to 11 DCMR 3103.2 for a variance from the lot
18 occupancy requirements under Section 403, a variance from the
19 minimum width of an open court requirements under Section 406,
20 and a variance from the rear yard depth requirements under
21 Section 404 to allow a deck addition to a single family row
22 dwelling in an R-3 District at 5022 7th Street, N.W., Square
23 3148, Lot 131.

24 The hearing dates were February 26 and May 21.
25 There was a bench decision to approve a Special Exception under

1 Section 223 was given on May 21st. This is before you for
2 reconsideration on the Board's own motion.

3 CHAIRPERSON GRIFFIS: Perhaps.

4 MS. PRUITT: Perhaps.

5 CHAIRPERSON GRIFFIS: Okay, Board Members, you all
6 are familiar with this. It is under our consideration if we
7 would so like.

8 MEMBER ZAIDAIN: Mr Chair?

9 CHAIRPERSON GRIFFIS: Yes sir.

10 MEMBER ZAIDAIN: I would like to state for the
11 record that I have read all of the transcripts and reports on the
12 case and I do feel qualified to sit on the issue and I would like
13 to make a motion to reconsider the granting of the special
14 exception of the deck addition as the lot occupancy calculations
15 were calculated erroneously.

16 CHAIRPERSON GRIFFIS: I would second the motion.
17 Any discussion?

18 VICE CHAIR RENSHAW: Just to note, Mr. Zaidain
19 didn't vote, did you on the first go round?

20 MEMBER ZAIDAIN: No, no, but I have read the
21 transcripts.

22 VICE CHAIR RENSHAW: On a motion for
23 reconsideration it has to be made by one of those who has
24 approved.

25 CHAIRPERSON GRIFFIS: I'm glad that someone read

1 the regulations, in which case let us have someone incorporate
2 that motion which was so well spoken. Anybody like to?

3 MEMBER ETHERLY: Mr. Chair, I'd be happy to make
4 that motion as stated by Mr. Zaidain.

5 CHAIRPERSON GRIFFIS: Good and I would second that.
6 Further discussion on the motion for reconsideration? Then all
7 those in favor, signify by saying aye?

8 (Ayes.)

9 Opposed?

10 VICE CHAIR RENSHAW: Opposed.

11 MS. PRUITT: Staff would record the vote as 4 to 1
12 to reconsider the motion. The motion made by Mr. Etherly,
13 seconded by Mr. Griffis, Ms. Renshaw in opposition.

14 CHAIRPERSON GRIFFIS: Good. With the motion for
15 reconsideration, I think we can pick it up right now.

16 As you recall, Board Members, when we were doing
17 this, we had some difficulty in understanding the full
18 application. We did, as we often do, sometimes we let people
19 know and other times we don't, our own calculations on the dais
20 and one just to substantiate what's being submitted, but also, I
21 think to give a -- get our own clarification and the
22 understanding is the calculations -- clearly, the Board is not
23 too proud not to be able to admit when a mistake may have been
24 made and I think this is one of the cases where we actually
25 miscalculated and therefore made a somewhat erroneous decision on

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1 changing the advertised relief required. The application, I
2 think, was correctly put in as we have come to understand that it
3 is for a variance, not a special exception as we had actually
4 changed it and our motion was made on that.

5 So I would at this time as it is before us, move to
6 approve the application 16831 of Mr. Sanchez for the variance for
7 the lot occupancy requirements under Section 403, the variance
8 for the minimum width of the open court requirements under
9 Section 406 and the rear yard depth requirements 404 to allow the
10 deck addition for the one family row dwelling in the R-3 district
11 and the premises is located at 5022 7th Street, N.W. and would
12 seek a second on that.

13 MEMBER ETHERLY: Seconded.

14 CHAIRPERSON GRIFFIS: Thank you, Mr. Etherly. I
15 think if we do recall the case that was made for us was fairly
16 clear that this was a somewhat unique lot in size. The Applicant
17 had an existing deck that was rebuilt by himself and did not have
18 the understanding that permits were required or that there might
19 be some zoning relief. Clearly, he pursued this and acted in
20 good faith. There was certainly not a showing of bad faith or
21 any sort of issue in that respect and he was moving to provide
22 for the comfort and enjoyment of his family and I think that the
23 record shows, the testimony shows that there was no adverse
24 impact noted. We saw the photographs and the openness of the
25 background for the light and air.

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1 Let me also just note and hopefully we will not
2 have to -- let me add to the motion that of course we'll need a
3 variance from 2001.3 for the addition to the nonconforming
4 structure and I would assume that Board Members are comfortable
5 with that and I don't often read the entire order, but if there's
6 clarification needed on that it would obviously be included.

7 Any other discussion, comments on this?

8 (Pause.)

9 VICE CHAIR RENSHAW: Mr. Chairman, I'm somewhat
10 troubled by this in that the Applicant was before not addressing
11 the burden of proof for the variance and I am wondering whether
12 it would be necessary to have the Applicant back to speak to
13 these issues with his counsel?

14 CHAIRPERSON GRIFFIS: Okay, and I think that's a
15 good point. If you recall, it was actually advertised and they
16 did come in as a variance.

17 VICE CHAIR RENSHAW: It was, yes.

18 CHAIRPERSON GRIFFIS: And the Board actually
19 changed it midstream on them into a special exception, and so I
20 think the preparation of the testimony that we did receive was
21 towards the variance test.

22 VICE CHAIR RENSHAW: I didn't think so.

23 CHAIRPERSON GRIFFIS: Okay. Others?

24 (Pause.)

25 Well then, let's see how it rolls. I would ask for

1 all those in favor of the motion and I can restate it if need be,
2 but I would ask for all those in favor of the motion signify by
3 saying aye.

4 (Ayes.)

5 And opposed. And abstaining?

6 VICE CHAIR RENSHAW: Abstaining.

7 CHAIRPERSON GRIFFIS: Thank you. Why don't we
8 record the vote on that?

9 MS. PRUITT: Mr. Chairman, the vote, I actually
10 need to correct this, the previous vote too, but 3 to approve, 1
11 to abstain; Mr. Hood, not present, not voting. And so the
12 previous motion to reconsider would also include Mr. Hood, not
13 present, not voting.

14 Motion to approve the variances passed.

15 CHAIRPERSON GRIFFIS: Excellent. Thank you. And
16 let us move on.

17 MS. PRUITT: Next on the agenda, Appeal No. 16839,
18 Appeal of ANC 4A, pursuant to 11 DCMR 3100 and 3101 from the
19 decision of the Zoning Administrator for the issuance of a
20 certificate of occupancy (No. 18366, dated August 31, 2001) for
21 an elderly development center serving 30 persons, ages 22 to 85
22 years old and 7 staff in a C-2-A District at 5511 14th Street,
23 N.W., Square 2800, Lot 9.

24 Hearing date was March 26.

25 Participating Members were Mr. Levy, Ms. Renshaw,

1 Mr. Griffis and Mr. Parsons.

2 We have received from the Appellant a request for
3 an enlargement of time in order to submit the findings of fact
4 that the Board requested. The Appellant has also been in touch
5 with DCRA. The representatives of DCRA who have no problem with
6 extending the time, as long as it does not exceed 30 days.

7 CHAIRPERSON GRIFFIS: Good, thank you very much.
8 And as time is elastic, I think we can enlarge it -- well, we
9 don't have to go into that.

10 MS. PRUITT: Yes.

11 CHAIRPERSON GRIFFIS: So Board Members, we do have
12 a submission as staff has indicated, submission titled consent
13 motion for enlargement of time. The communication has been to
14 all parties, if I'm not mistaken and that there is agreement and
15 the parties, I think, is there any questions or discussion on
16 that?

17 MEMBER ZAIDAIN: Mr. Chair, I would like to state
18 for the record that I have read the transcripts and relevant
19 reports on this case and I will be participating.

20 CHAIRPERSON GRIFFIS: Good, thank you very much.

21 MEMBER ZAIDAIN: That's just for the record.

22 CHAIRPERSON GRIFFIS: Do you have any questions or
23 comments on the motion or the submission, the submitted motion?

24 Then I would move that we do continue 16839 appeal
25 of the ANC 4A.

1 VICE CHAIR RENSHAW: Second.

2 CHAIRPERSON GRIFFIS: And all in favor?

3 (Ayes.)

4 And opposed?

5 MS. PRUITT: Staff would record the vote as 3 to 0
6 to 1 to approve motion made by Mr. Griffis, seconded by Ms.
7 Renshaw. Mr. Zaidain in support. Mr. Parsons not present, not
8 voting.

9 The other question is, Mr. Chair, would you like to
10 set time frames for which --

11 CHAIRPERSON GRIFFIS: Yes, let's clarify the vote
12 first. Mr. Etherly did not vote on that.

13 MS. PRUITT: Right.

14 CHAIRPERSON GRIFFIS: Okay. So that said, yes,
15 let's set a date for this.

16 MS. PRUITT: In reference to the 30-day calendar
17 that would then put us for the July meeting, July 2nd. I would
18 suggest that findings of fact be due June 17th for ANC 4A.

19 CHAIRPERSON GRIFFIS: I would agree. So we'll set
20 for that decision on July 2nd.

21 MS. PRUITT: Again, July 2nd was findings of fact
22 due on June 17th. July 2nd meeting.

23 Next case on your agenda is --

24 CHAIRPERSON GRIFFIS: Let me just make a quick
25 comment. We will contact the parties in this case to notify them

1 of the date?

2 MS. PRUITT: Yes.

3 CHAIRPERSON GRIFFIS: Good. Okay. Let's go to the
4 next.

5 MS. PRUITT: Next case in your agenda is
6 Application 16808 of Abigail Parker, pursuant to 11 DCMR 3104.1
7 for a special exception to allow a child development center, 40
8 children ages 6 months to 3 years, with a before and after school
9 program, 25 children ages 4 to 12 years, and staff of 12 under
10 section 205 in the R-2 District at 2907 7th Street, S.E., Square
11 5951, Lot 808.

12 Hearing dates were December 18, 2001 and February
13 12, 2002.

14 Decision dates were April 2, 2002 and then deferred
15 to June 4, today.

16 The record was closed at the end of the February
17 meeting and the Board requested additional information including
18 a site plan illustrating the play area, parking, trash location,
19 drop off and pick up location. The Board asked the Office of
20 Planning also to consult with other government agencies before
21 deferring the decision to June 4th.

22 This case is now before you.

23 CHAIRPERSON GRIFFIS: Thank you very much.

24 MEMBER ZAIDAIN: Mr. Chair?

25 CHAIRPERSON GRIFFIS: Yes sir.

1 MEMBER ZAIDAIN: I once again would like to state
2 that I have read the record and I will be participating in this
3 case.

4 CHAIRPERSON GRIFFIS: Good, thank you, Mr. Zaidain.

5 MEMBER ZAIDAIN: Now you know what I've been doing
6 with my free time.

7 CHAIRPERSON GRIFFIS: Indeed. Well, as staff has
8 indicated and Board, I'm sure we all recall, the hearing dates
9 that we had on this and also the postponement of the decision, I
10 think we have given ample time and very clear direction on what
11 is required for us to do a full deliberation on this. I note,
12 however, that I do not believe that the submissions that we
13 required are complete to date and have difficulty -- and have had
14 difficulty trying to do a full deliberative process on this.

15 Clearly, this application has great support. It
16 clearly is providing a service. I don't think the Board would
17 question or does question any of that. However, there are basic
18 requirements that we have in order to render our decision and I
19 would like to hear from others, but I believe that we need to --
20 well, let's hear from others and comments on that.

21 I think some of the things -- let me just reiterate
22 some of the specifics. Clearly, we were looking for several
23 things, one of which was total population, a pick up and drop off
24 plan. There was some note to it and there's always been speaking
25 to it, but as this Board knows very well, we have many cases that

1 require very heavy burden in putting together those plans. I
2 don't think we were overly burdensome in this case, but I think
3 we needed something more than what was submitted and as stated
4 all the issues that we actually wrote out and delivered to the
5 Applicant, specify what we needed. I still don't see an awful
6 lot of it.

7 Others?

8 VICE CHAIR RENSHAW: Mr. Chairman?

9 CHAIRPERSON GRIFFIS: Yes.

10 VICE CHAIR RENSHAW: This case has been with us
11 since last December. We have had a number of opportunities to
12 inquire of the Applicant and request of the Applicant various
13 important pieces of information that would help the Board make
14 its decision concerning this application, but as I reviewed the
15 file and it came up short regarding the parking plan, the route
16 of the van. Again, as you said, the total population at the
17 facility, the schedule, the trash removal, the CFO that we had
18 requested and I am disappointed that lo these many months later
19 that we still do not have what we asked for. We have a
20 submission of the plans, a new set of plans or a revised set of
21 plans. However, it gives an indication on the basement floor
22 plan of 28 kids, as it states maximum, yet on the first floor I
23 have no understanding from the drawing of how many would be in
24 the classroom areas and also in the nurse's area, whether that is
25 set aside as a nursery for small, very small children, so that I

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1 am troubled that I really can't go ahead on this because of the
2 lack of information. And I would recommend or I would move at
3 this time that we dismiss this case because of insufficient
4 information.

5 CHAIRPERSON GRIFFIS: Is there a second?

6 MEMBER ZAIDAIN: Second.

7 CHAIRPERSON GRIFFIS: Further discussion?

8 MEMBER ZAIDAIN: Mr. Chair, I think it's very well
9 said and in fact, in our dated material, March 13th which spelled
10 out 15 items, you've touched upon, I think quite a bit of it and
11 I don't know, maybe I missed it, but obviously, one of the things
12 we also look at is times of operation. Simple things, if you're
13 putting together the program, I did not think that it was overly
14 burdensome, nor did I think this Board was looking to control
15 those, but clearly we had two structures that were also separated
16 by an alley which goes to a lot of how much shared program would
17 be between the two buildings and how that might impact that
18 public alley, also the parking as you indicated and hours of
19 operation, play area itself.

20 CHAIRPERSON GRIFFIS: Others, discussion,
21 questions? If not, I would ask --

22 MEMBER ZAIDAIN: Mr. Chair, just in clarification,
23 I mean looking through the transcripts and the plans and
24 everything, I mean I think there's no question that there was a
25 lot of merits to the project, but you're kind of trying to

1 balance having a good quality project in something that's good
2 for the neighborhood and then trying to make sure that something
3 is safe and secure, especially when you're dealing with children.

4 If this motion does pass, where does that leave the
5 Applicant? Or is that a question for staff?

6 CHAIRPERSON GRIFFIS: Corporation counsel can talk
7 to it or staff can talk to it, but they have a time period at
8 which they can refile. Do folks want to add to that? It's 90
9 days.

10 MS. PRUITT: It's a 90-day.

11 MEMBER ZAIDAIN: It's 90 days to refile?

12 CHAIRPERSON GRIFFIS: Correct.

13 MEMBER ZAIDAIN: Okay. So this does not, in
14 effect, kill the project, but it does leave the door open for it
15 to come back in a better form and then maybe the Applicant can
16 work with staff in order to get things in order to bring it back
17 before the Board?

18 CHAIRPERSON GRIFFIS: Yes, however, with a
19 dismissal, if I'm not mistaken, there would be a refiling fee.

20 MEMBER ZAIDAIN: Right, right.

21 VICE CHAIR RENSHAW: But the direction is in the
22 file with the memo that was faxed to the Applicant, laying out
23 definitely what the Board needed and so it's very clear and I
24 think with haste the Applicant could refile and should refile.

25 CHAIRPERSON GRIFFIS: Indeed, I would concur and I

1 think in addition to that in one respect we could continue this
2 again and I think that is a bad situation for this Board, one,
3 based on our scheduled, but two, based on the process that we
4 have tried to uphold and if we do that, I think we can't afford
5 to give every Applicant three or four times, two hearings, three
6 or four decision making times. We wouldn't get anything done.
7 So this hopefully will move things along and I think as Ms.
8 Renshaw has said, I think we would look forward to seeing the
9 Applicant back before us again with complete documentation. So
10 if there's not further comments, discussion, then I would ask for
11 all those in favor of the motion to dismiss, signify by saying
12 aye.

13 (Ayes.)

14 Opposed?

15 MS. PRUITT: Staff would record the vote as 5 to 0
16 to dismiss; motion made by Ms. Renshaw, seconded by Mr. Hannaham;
17 Mr. Zaidain, Griffis and Etherly in support of the motion to
18 dismiss.

19 CHAIRPERSON GRIFFIS: Good and you know, I should
20 also say that behind the scenes, we obviously don't get involved
21 with it, but it was clearly stated to the Board that staff had
22 also made quite a bit of contact and communication and also
23 referral to try and pull all this information together and again,
24 I would just underscore the fact that I do not believe that were
25 being overly burdensome on the Applicant for this. So with that,

1 let us move on to the next.

2 MS. PRUITT: Next case on your agenda is Appeal No.
3 16811 of David and Janet Pritchard, pursuant to 11 DCMR 3100 and
4 3101, from the administrative decision of Michael D. Johnson,
5 Zoning Administrator, for the issuance of a Building Permit No.
6 B431591 allowing the construction of an addition to a single-
7 family dwelling allegedly not complying with the side yard
8 requirements under section 405 in an R-4 District at premises
9 1018 Constitution Avenue, N.E., Square 964, Lot 46.

10 Hearings for this particular case were January 2nd
11 of this year, February 26th and March 5th.

12 We tentatively had a decision date for April 2nd
13 and have deferred it now to the 4th.

14 At the second meeting, the April 2nd meeting, the
15 Board reopened the record to accept the report from BZA staff on
16 side yard interpretations only. The intent was -- the question
17 was more generic and explanatory since it did relate directly to
18 the BZA appeal, the Board determined that it was only equitable
19 to allow parties to respond to the staff's report.

20 Staff developed a memo dated May 6th. That was
21 then sent to Board Members and cc'd to all parties.

22 The memo also established a time frame for
23 submission and all responses from parties were due May 19th for a
24 decision today.

25 I will say that we received one response from

1 Pritchard and it is late, so you would have to waive that if you
2 would to accept it into the record.

3 CHAIRPERSON GRIFFIS: Okay, thank you. And we also
4 thank Mr. Hannaham for his service this morning and welcome, Mr.
5 May on this case.

6 Board Members, is there a consensus to waive in the
7 report?

8 MEMBER ZAIDAIN: I just need to state once again
9 for the record that I have read the lengthy case file on this and
10 I also was present at the April 2, 2002 meeting as a nonmember in
11 the crowd, so I will participating in this case.

12 CHAIRPERSON GRIFFIS: Good, any objections of the
13 Board? Any comments? Okay. Any opposition to waiving in the
14 submission by the Pritchard party? Not seeing any, we can waive
15 in.

16 MS. PRUITT: Are you doing that by consensus, sir?

17 CHAIRPERSON GRIFFIS: Indeed. In which case, we
18 have it all before us. This has not been the clearest case by
19 any means, I think. I think we've all had ample things to
20 deliberate on and I would like just to open the floor to the
21 Board to begin deliberative discussion on this.

22 And there it is.

23 MR. MAY: Mr. Chairman, should I jump right in?

24 CHAIRPERSON GRIFFIS: Should you? Absolutely.

25 MR. MAY: Okay. This -- the entire case is very

1 complicated and difficult. If the language weren't complicated
2 enough, the mere fact that of the -- the time line and the
3 circumstances make it even more difficult to sort out,
4 understanding those circumstances.

5 In the end, I have come to the conclusion, more or
6 less, that the way the regulations read, specifically 405.3 and
7 the language regarding side yards, I believe have to be regarded
8 as requiring a side yard at the end of a row and that in this
9 circumstance, in this particular building, that there was an
10 existing side yard. It's actually something of an anomaly
11 because this is a relatively recent requirement and many of the
12 houses in that neighborhood precede the requirement for a side
13 yard and many row dwellings are built right up to the back yards
14 of other row dwellings.

15 But in this circumstance, there happened to be a
16 side yard and I believe that the way we should read Section
17 405.3, particularly with the language that says that a resulting
18 pre-side must have a side yard, I think it's pretty clear. To
19 read it any other way, as has been done by the Zoning
20 Administrator, leads one into a very convoluted, logical path.
21 For example, reading -- if we read the regulation to say that any
22 time there is a single wall that is shared, any time we have a
23 party line wall that exempts one from side yard requirements on
24 all the other sides which is essentially the Zoning
25 Administrator's reading on this, that somehow if that's not the

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1 case, I mean if you don't have a party wall, then therefore you
2 have to have side yards on all sides in effect. So in other
3 words, it requires that you have either a row dwelling or a
4 fully-detached house in effect.

5 CHAIRPERSON GRIFFIS: You're saying that's what the
6 Zoning Administrator has stated?

7 MR. MAY: Well, the logic of his argument would
8 lead one down that course.

9 CHAIRPERSON GRIFFIS: Okay.

10 MR. MAY: Because he's saying that as soon as you
11 have a party wall, then you don't have to have sidewalls. Well,
12 what if you don't have a party wall? If you don't have a party
13 wall, then you need to have a side yard on every resulting free
14 standing side, every resulting free standing side means all four
15 walls, both sides of the building.

16 Now he makes the clarification that free standing
17 wall should not be interpreted as it is in the dictionary, but
18 that a free standing wall would be anything that's not a face on
19 line wall or a party wall.

20 CHAIRPERSON GRIFFIS: Correct. So if you had a
21 wall construction on the property line --

22 MR. MAY: Right.

23 CHAIRPERSON GRIFFIS: Would constitute what you
24 were saying?

25 MR. MAY: That would qualify in his mind.

1 CHAIRPERSON GRIFFIS: Right.

2 MR. MAY: But that's a construction that fits the
3 argument that he's made, whereas if you try to take the simpler
4 rationale that any time when you're dealing with attached -- semi
5 -- or
6 semi-detached dwellings that any time you don't have an attached
7 wall that you have to have a side yard. I mean it's a much
8 simpler reading of the regulations and it goes to protect one of
9 the most important things in the zoning regulations which is
10 light and air.

11 Otherwise, you know, you wind up having to come up
12 with these convoluted interpretations that would allow buildings
13 to be built with their property, right up to the property line
14 even though they're adjacent to who knows what. It's much more
15 complicated than it needs to be in the way the Zoning
16 Administrator has constructed it.

17 I would also say that the Zoning Administrator has
18 raised the issue of the impact of this on subdivisions in current
19 practice, in other words that any time you build a row of houses
20 that this essentially states that you'd have to have a side yard
21 at the end of a row, if you interpret 405.3, the way the
22 Appellant has. And I say that is correct. In fact, that is the
23 practice, at least that's the practice that I have seen in PUD
24 applications that have come before the Zoning Commission where
25 any time there was a row of houses when you come to a row, there

1 was a wider lot and there is a side yard that has been the case.

2 And I don't know what other -- I mean PUDs are only a small
3 portion of subdivisions that are approved by the District for
4 construction, so maybe there are a lot more and maybe in the
5 Zoning Administrator's Office they're not applying that same
6 standard, but it's a relatively simple planning concept to grasp
7 that -- and this is, in fact, suggested in the memo, the staff
8 memo where Corporation Counsel has suggested that at the end of a
9 row you simply have to have a wider lot so that you can
10 accommodate the yard.

11 No one is suggesting that you have an
12 18-foot wide lot at the end of a row and then you have to take
13 off 8 feet for a side yard. I mean that's ridiculous.

14 Anyway, that's my reading of the case. I think
15 that the other -- the other provisions in the Code that surround
16 405.3 support that position generally. 405.5 which make the
17 exception for a row where the side yard is not required because
18 it borders on a right of way, either a street or an alley and
19 that makes perfect sense. You want the building to go right up
20 to the corner, so therefore there's an exception for that. That
21 supports the logic of the Appellant's view of 405.3. And even
22 further, there's 405.8 which allows for existing buildings with
23 side yards that are nonconforming to be added to provided the
24 side yard is not decreased.

25 CHAIRPERSON GRIFFIS: Or has a minimum of 5 feet.

1 MR. MAY: Or has a minimum of 5 feet. Well, yeah.

2 And that, that again supports the view that there
3 should be a side yard when you come to the end of a row.

4 CHAIRPERSON GRIFFIS: So if I'm understanding you
5 correctly, you would say that based on the fact that this lot is
6 at the end, that it abuts the rear yards, it precludes the
7 property owner from conversion to row dwelling, although row
8 dwelling is an allowable structure use in this zone.

9 MR. MAY: Yes, I believe that it precludes that and
10 I believe that if you tried to build that development today that
11 you should not according to the codes be able to build right up
12 to that lot line and that property.

13 CHAIRPERSON GRIFFIS: I see. And if I'm hearing
14 you correctly, a midblock lot is a different situation than this
15 specific situation?

16 MR. MAY: Yes, in the midblock lot, it really would
17 come down to a question of how much lot width there is and how
18 the builder would choose to build that property, but it doesn't -
19 - there's no -- you can build face on line to face on line as the
20 row dwelling is defined.

21 CHAIRPERSON GRIFFIS: But would you have a problem
22 -- well, I think I understand.

23 There was quite a bit of discussion which is kind
24 of why I want to air some of these issues and I think you've
25 addressed my next point, but just to reiterate the fact that if

1 this building was raised or destroyed, say it somehow
2 disappeared, you would indicate that you could not build it back
3 as a row dwelling, that it would have to maintain the side yard?

4 MR. MAY: That's the way I read 405.3, yes.

5 CHAIRPERSON GRIFFIS: I think you've touched on an
6 important point too that perhaps should be reiterated and may
7 bring some fodder to other discussion, but the intent, some
8 intent of the zoning regulations is to provide for adequate light
9 and air, it seems in this circumstance that it becomes even more
10 magnified, one might say as this lot abuts the rear yard of other
11 lots.

12 Others have comments, different directions, strong
13 opinions in matters on this case?

14 VICE CHAIR RENSHAW: Just to say, Mr. Chairman,
15 that I concur with my colleague, Mr. May, on this application.
16 First of all, I just want to have an aside that it was -- this
17 case made for a fascinating reading at the end as we juggled with
18 the various points brought in by the Applicant and the Intervenor
19 and the Zoning Administrator. It's almost like dancing on the
20 head of a pin as we try to decipher 405.3 and which way it goes,
21 but I would fall off the pin on the side of Mr. May's comments
22 and state that this property under scrutiny is a
23 semi-detached house and it requires a side yard in my opinion.

24 MR. ZAIDAIN: Mr. Chair, I don't want to rehash
25 everything that Mr. May and Ms. Renshaw have said, but I would

1 agree with Mr. May's opinion. It seems that you've pointed out
2 an inherent conflict in the zoning regulations that leaves --
3 well, confuses or can confuse residents and the Zoning
4 Administrator on how to go about doing developments and as Mr.
5 May, our Zoning Commission representative, I would encourage the
6 Zoning Commission to look into correcting some of this confusion
7 so that the zoning regulations can be as clear as possible. But
8 I do agree with his position.

9 CHAIRPERSON GRIFFIS: Good, well, Mr. May was very
10 well spoken on this issue and I think he did indicate, but
11 specifically I think this -- the added difficulty of this case
12 which doesn't go directly to the appeal, but clearly it's always
13 difficult when something is in construction or through
14 construction for us to deliberate on it as if it's within a
15 vacuum, but that is what we're charged with and I think -- I
16 state that just to note that we do have an understanding of all
17 of the issues, but specifically are holding directly to the
18 zoning regulations that we are charged with reviewing.

19 I do want to give everyone ample time to speak on
20 this if they are so inclined.

21 MR. MAY: Mr. Chair?

22 CHAIRPERSON GRIFFIS: Yes.

23 MR. MAY: I had a couple points. I think I should
24 state that I am very aware and I'm sure the rest of the Board is
25 very aware that the interpretation that I am proposing that we

1 take of 405.3 is contrary to the way the Zoning Administrator,
2 according to their own statements have been applying this
3 regulation for some extended period. And that is unfortunate,
4 but it's very difficult to support the logic of the argument that
5 the Zoning Administrator makes and we are charged with
6 interpreting the regulation not endorsing the precedent of their
7 past practices. It does -- it's one of those things that makes
8 it much more difficult, but we are aware that this is not the way
9 it's been done and that we may be endorsing a view of 405.3
10 that's contrary to what's been in practice up to this point.

11 MR. ZAIDAIN: It seems to me that's a symptom of
12 the ambiguity of the zoning regulations or the conflict of the
13 zoning regulations and I would again --

14 MR. MAY: So it's our fault.

15 MR. ZAIDAIN: No, you know, as time goes on and
16 these situations come up the writing is on the way that things
17 need to be cleared up in the zoning regulations and again, I
18 would encourage staff and the Zoning Commission to correct that.

19 CHAIRPERSON GRIFFIS: I don't have any problem
20 blaming the Zoning Commission.

21 (Laughter.)

22 MR. ZAIDAIN: Well, since I'm new on the Board I
23 wasn't sure if I should start doing that.

24 CHAIRPERSON GRIFFIS: Oh, you're being delicate.

25 MR. MAY: Please, go ahead.

1 CHAIRPERSON GRIFFIS: I think we've set on this in
2 405.3 there is -- we're in the issue because there's ambiguity
3 and I think it is very clear and I think we will, with great
4 deliberation refer this to Zoning Commission which brings up the
5 larger global regulations.

6 Mr. May, let me have you reiterate some of what
7 you've said again, just to give a level of comfort and if we look
8 at 405.3, it reads that in the R-2 to R-5 Districts when one
9 family dwelling, flat or multiple dwelling is erected, that does
10 not share a common division wall and I note that that's singular
11 with an existing building or building being constructed together
12 with the new building, then it shall have a side yard on each of
13 the resulting free standing side.

14 In this case with one -- well, in fact, with two of
15 the walls, one clearly an attached wall, walk me through your
16 argument that says that one does not then remove itself from the
17 side yard requirement.

18 MR. MAY: The Zoning Administrator would argue that
19 the -- simply having one attached wall exempts the property
20 entirely from 405.3. Yet, the language, the way it's stated says
21 that when there is -- well, you repeated the exact language, but
22 the way I interpret it and the way the Appellant interpreted it
23 is that when there's not an attached wall, the resulting free
24 side must have a side yard and it is that word "resulting" which
25 really makes the case for this -- for it applying in this case.

1 If you don't look at the word "resulting" and if
2 you consider the alternative to this -- well, actually keep in
3 mind "resulting" and if you consider the case where you have a
4 property that is not attached to the neighboring property and
5 each resulting free-standing wall must have a side yard, what
6 you're saying is that you either have a row dwelling or you have
7 a fully detached dwelling because every resulting wall is a free
8 standing wall. And I believe that we have to interpret free
9 standing the way it's defined in the dictionary and not the way
10 the Zoning Administrator interprets it because that's what we're
11 supposed to do when it's not defined in the regulations, we're
12 supposed to look in the dictionary.

13 CHAIRPERSON GRIFFIS: But two points, a quick one
14 on that exact point, then an unfinished row of row houses would
15 have at its unfinished side a free standing wall in your
16 definition, even though it was built to the property line?

17 MR. MAY: And that's one of those things that would
18 have to be corrected in the regulations.

19 CHAIRPERSON GRIFFIS: I'm not --

20 MR. MAY: I don't think -- unlike some zoning
21 regulations, I don't know there's a specific code that allows the
22 zero lot line wall as opposed to a row dwelling. Row dwellings
23 are a long standing principle. Zero lot line. I mean is
24 specifically the case where instead of everybody having two
25 little

1 8-foot side yards on their fully detached property that everybody
2 builds on the property line and gets the 16-foot wide yard that's
3 all theirs. We don't have an explicit code that I think that
4 spells out that as a desired development type. There are other
5 instances where that is the case. And -- but what we have are
6 row dwellings. It's not likely that somebody is going to go up
7 and build one row dwelling with a side yard. It's just -- if
8 you're going to build a row dwelling, you're going to build a row
9 of them.

10 Apparently, there was some problem in the past with
11 people building half of a semi-detached house. This was the
12 solution, supposedly.

13 CHAIRPERSON GRIFFIS: Okay. I do believe that part
14 of the confusion for me in reading 405.3 is that connection that
15 we're making now. The statement, the part of the regulation that
16 reads "that does not share a common division wall" being singular
17 and then "resulting" and then how does one -- does a single
18 attached exempt you or are they talking about each single, each
19 attached side? It is not 100 percent clear to me.

20 MR. MAY: I think you're absolutely correct. It's
21 not 100 percent clear, but the simple reading of it in my mind is
22 that it's -- when a wall is not attached, you have to have a side
23 yard as opposed to you're 100 percent exempt as soon as you
24 attach.

25 Going back to the original point that you had made,

1 there is a difference, I'd have to look at this more thoroughly,
2 but there is a difference between common division wall, I guess,
3 and free-standing wall and how we would interpret this if you
4 built only one house at the end of a row. So I'd have to
5 consider that one again. I don't know that that -- it doesn't
6 change my view on anything, but there is a difference in the
7 definition whether you would consider that common division wall,
8 even if it's not
9 -- even if the building is not going to be built at the same
10 time, does that constitute a free-standing wall.

11 CHAIRPERSON GRIFFIS: So you're saying half of a
12 row of lots that were obviously configured to fit row houses.

13 MR. MAY: Uh-huh.

14 CHAIRPERSON GRIFFIS: I see. Others?

15 (Pause.)

16 Well, it seems to me that you're argument is also
17 supported in looking at the original structure of this and its
18 siting on the particular lot. And that is if in the submission
19 that we have, a site plan that indicates that there is an
20 existing 7-foot setback, from the existing structure and it is an
21 indication and I know we all talked about and had submissions of
22 the deck and the patio, but it seems to strengthen your argument
23 that you then -- it was anticipated in the original construction
24 of this that it would have that setback from that common property
25 line that abuts the rear properties of the adjacent sites. And

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1 therefore would not be a matter of right to come and convert to a
2 defined row dwelling.

3 MR. ZAIDAIN: Mr. Chairman, I'm prepared to make a
4 motion.

5 CHAIRPERSON GRIFFIS: Okay, by me.

6 MR. MAY: I move that the appeal of -- let's see,
7 I've got to get all my language correct here, in BZA case 16811,
8 the appeal of David and Janet Pritchard pursuant to 11 DCMR 3100
9 and 3101 from the administrative decision of Michael D. Johnson,
10 Zoning Administrator, for the issuance of Building Permit No.
11 B431591 allowing the construction of an addition to a single-
12 family dwelling allegedly not complying with the side yard
13 requirements, section 405) in an R-4 District at premises 1018
14 Constitution Avenue, N.E., Square 964, Lot 46, be approved.

15 VICE CHAIR RENSHAW: Second.

16 CHAIRPERSON GRIFFIS: Do you want to speak to the
17 motion, not that you need to, Mr. May.

18 MR. MAY: No, I think that motion was a mouthful.
19 Did I get it right?

20 CHAIRPERSON GRIFFIS: That's fine. We would grant
21 the appeal. I would -- Ms. Renshaw, did you want an opportunity?

22 VICE CHAIR RENSHAW: No.

23 MR. ZAIDAIN: Mr. Chair?

24 CHAIRPERSON GRIFFIS: Yes sir.

25 MR. ZAIDAIN: It's my understanding from the

1 regulations and from Corporation Counsel that if we do grant this
2 appeal, there are still some other avenues for the property owner
3 in terms of variances or special exception released from 223, if
4 I'm correct in that?

5 CHAIRPERSON GRIFFIS: I'm glad you're bringing that
6 up and it is an important point. I mean clearly on the face of
7 what we have this would be appropriate to come in as a special
8 exception under Section 223 in that if this was granted as a
9 matter of right we would assume that the lot occupancy and all
10 were --

11 MR. ZAIDAIN: Less than 70 percent or whatever?

12 CHAIRPERSON GRIFFIS: Right, indeed. So we would
13 be and I think that's well worth stating.

14 MR. ZAIDAIN: Or a general variance from the
15 provisions than itself. Am I correct?

16 CHAIRPERSON GRIFFIS: I don't know that they would
17 have the latitude of deciding it, no.

18 MR. ZAIDAIN: I'm just wondering what the options
19 are.

20 CHAIRPERSON GRIFFIS: I think on face without going
21 through, we wouldn't make the determination, but I think looking
22 at this it looks to me as if it's a special exception.

23 MR. ZAIDAIN: I agree. I mean a variance test
24 would be much more complicated. Okay.

25 CHAIRPERSON GRIFFIS: Okay, any other comments to

1 the motion?

2 MR. MAY: No, I would note for the record that we
3 will pursue clarifying the language with the Zoning Commission
4 and work with staff to effect that.

5 CHAIRPERSON GRIFFIS: We'll give you a schedule for
6 the report that you can be back to BZA on that and so with this
7 motion then I would ask for all those in favor of granting an
8 appeal signify by saying aye.

9 (Ayes.)

10 Opposed?

11 MS. PRUITT: Staff would record the vote as 5 to 0
12 to approve the appeal. The motion made by Mr. May and seconded
13 by Ms. Renshaw with the recommendation that the Zoning Commission
14 review the regulations to clarify the intent and any
15 contradictions that are in the regs.

16 The next application before you is Application
17 16869 of Kings Creek, pursuant to 11 DCMR 3103.2, for a variance
18 from the floor area ratio requirements under section 402, a
19 variance from the lot occupancy requirements under section 403,
20 and a variance from the nonconforming structure provisions under
21 section 2001.3 and pursuant to 11 DCMR 3104.1, a special
22 exception to exceed the height provisions, section 1402, of the
23 Reed-Cooke Overlay District under section 1403, to construct an
24 addition to an existing building for a mixed-used, residential
25 and existing retail, development in the RC/R-5-B District at

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1 premises 2329 Champlain Street, N.W., Square 2563, Lot 103.

2 The hearing was April 3rd. Of course, this is
3 before you for a decision today. At the hearing you received
4 some comments from Mr. Darnell Bradford El, Chairman of Reed-
5 Cooke Neighborhood Association, indicating that he believed that
6 the community did not have the opportunity to comment. So the
7 Board actually left the record open for any written comments and
8 report from RAM if they so chose and ask that they follow the
9 format of the ANC. We did not receive any written comments from
10 anyone or from RAM.

11 The Board further asked the Applicant to provide
12 additional information in the form of a report from the ANC if
13 they were able to get one. A briefing paper from the Applicant
14 concerning why the requested relief to exceed the height limit is
15 a special exception and not a variance, a letter from Councilman
16 Jim Graham and photos of the model.

17 The Board established a time frame of May 10th for
18 this information from the Applicant; responses by the 17th and
19 findings of fact due by the 23rd. Everything was submitted
20 timely. All information requested from the Applicant was
21 submitted timely and we do have findings of fact from the
22 Applicant. We have nothing from anyone else.

23 This is now before you for decision.

24 CHAIRPERSON GRIFFIS: Thank you, Ms. Pruitt. Thank
25 you very much.

1 Mr. Zaidain, did you have something to say on this?

2 MR. ZAIDAIN: Yes, I do, actually, Mr. Chair.

3 I have spent time reading the record and all
4 relevant reports and I will be participating in this case.

5 Thank you.

6 CHAIRPERSON GRIFFIS: Good. Did you -- you were
7 given everything involved in this case, then so you've seen
8 everything that we actually heard?

9 MR. ZAIDAIN: Yes, and the transcripts and
10 appreciate the staff keeping me up to date on all that stuff.

11 CHAIRPERSON GRIFFIS: Okay. Well, then it looks
12 like we have a full Board to do this.

13 This was frankly, I thought of an exciting project
14 to be looking at. But well, let me first state that as Board
15 Members recall, staff has reiterated some of the things. This is
16 coming in with great support. Office of Planning is behind it.
17 We do have the submission of the ANC letter of support. We also,
18 as asked for, additional letters that were indicated in the
19 testimony that they were present, but we didn't have them in the
20 record and that is a supportive letter from Council Member Graham
21 which I think is well worth looking at again in terms of talking
22 about the Reed-Cooke Overlay requirements and how this sets it or
23 follows the Reed-Cooke Overlay requirements and provisions.

24 Let me first state I think we were all a little
25 taken aback on paper looking at the fact of the height increased

1 that was requested. And it is one issue that we need to bring up
2 immediately and that is whether we were looking at this as a
3 variance or a special exception and we have a submission to that.

4 Actually, let's take that up and then I'll get into the
5 substance of the height itself.

6 I felt that the submission was very strong in
7 making its case that, in fact, the Reed-Cooke Overlay is the
8 provision of which we should be following and that is because it
9 speaks directly to and I'd note 1403.1A that it clearly spells
10 out the use of the building, the features at the size, intensity,
11 location proposed, my point saying they're outlying all of these
12 in the overlay clearly taking understanding that this should
13 regulate any sort of project that comes through and also lays out
14 the fact that it is a special exception.

15 Based on the fact that this overlay specifically
16 goes to size and states building as if they're talking about the
17 massing of the structure, I don't see any reason and I'm not
18 compelled to move beyond the overlay into the further text of the
19 R-5-B District.

20 And additionally, I should point out also going
21 down to G, the use building, feature, size, intensity, location,
22 looks to how all that fits into and actually the special
23 exception case and there is also provisions within the Overlay
24 that speak directly to height and the regulation of that height.

25 So I would be inclined to continue as advertised

1 that we look at the variance in the height. I should not use
2 that word. The increase in the height to be a special exception.

3 Yes, Mr. May?

4 MR. MAY: Mr. Chairman, I read over the submission
5 from the Applicant and I have to say I did not find their
6 argument as persuasive with regard to the variance versus the
7 special exception and -- but I think that given all of the other
8 tests that are involved, the variances that are requested, the
9 special exception that's requested, that when we evaluate the
10 project as a whole, I don't see that there's any essential
11 difficulty to evaluating the height issue as a special exception.

12 I would interpret the regulations to require it be
13 considered as a variance, but we have other variance tests being
14 applied here, so I don't -- I think that the -- that we are well
15 covered in considering the case as a whole and considering the
16 height issue as a special exception.

17 CHAIRPERSON GRIFFIS: I think we ought to be
18 careful though because, well, we ought to be clear. I think what
19 I can glean from what you've just stated and I would concur with
20 is the fact that the variance tests that are being made for the
21 application could easily be applied to a variance for the height,
22 but in total clarity, I think it is fairly persuasive, the fact
23 that the Reed-Cooke Overlay was to -- and as submitted, it was
24 really to speak to somehow, however we would define it, but good
25 design and how design, massing and use and intensity and

1 buildings would fit into this area and it was specific enough to
2 make its own overlay and I think that the requirements within
3 that overlay are the most restrictive in terms of the larger
4 picture of really what is looking to be accomplished in this
5 specific neighborhood and I think that the special exception goes
6 to that and -- but I don't know that we need to belabor too much
7 more. If there's consensus, we can pursue on special exception,
8 but Mr. May, did you want to say something else?

9 MR. MAY: I think that the -- your sense that the
10 intention of the Reed-Cooke Overlay is I think absolutely on
11 target and I think there is a particular concern with building
12 height and I think, however, that where I part on this is simply
13 that it's what we're considering is whether -- is our ability to
14 make exceptions to that overlay as opposed to the extent by which
15 we abide by it. I just think that we're -- as I said, I'm not
16 uncomfortable with pursuing it as a special exception,
17 particularly considering that what we have to evaluate here in
18 the case of the height in some ways may be the more stringent
19 standard which is no adverse impact.

20 CHAIRPERSON GRIFFIS: Exactly. And that's where --
21 I note your point and maybe this will be the last piece said on
22 it, but the Reed-Cooke Overlay outlines very specifically how one
23 takes exception to the requirements and I think it is more
24 productive for us and I think it perhaps can be more difficult
25 for Applicants, but more productive for us to follow 1403 in its

1 exceptions.

2 So with that, let us talk and we'll come back to
3 the height issue, but let us talk about the variance from the
4 floor-area ration requirements, also the variance from the lot
5 occupancy requirements, the variance from nonconforming structure
6 provisions under 2001.3.

7 And I think we can get through the pretty quickly.

8 Clearly, the variance from lot occupancy requirements is we have
9 an existing building and the case is, I think, has been very
10 clearly made although this is not a historically designated
11 building. This building has great significance, architecturally
12 to the neighborhood and would be, in fact, a detriment if it was
13 demolished for a new structure. As you recall, the photographs
14 submitted, it is a stone structure. It also houses the house
15 that is and was testified to as a very pertinent or unique, but
16 very -- what would we say needed and -- retail use of some of the
17 -- the Brass Knob is what it is and some of us are familiar,
18 perhaps. I think it's clear in terms of lot occupancy, we have
19 that existing building, that is upwards of 99 percent lot
20 coverage. It was clear, a case, that the variance that was made
21 for that that it would absolutely burdensome to be taking that
22 down.

23 Let me start the discussion a little bit and hope
24 others fill in with variance from the
25 floor-area ratio. Of course, I think what is interesting about

1 this application is that it is trying to come into the full
2 intent and purpose of the Reed-Cooke Overlay and part of the
3 Reed-Cooke and part of the community's desires as testified to is
4 to provide housing within the area and also to animate the area
5 in question and the surrounding area away from the industrial
6 manufacturing uses and more towards a kind of lower scale, but
7 urban, liveable environment. I think the case was clearly made
8 that in order to accomplish that one needs to add additional
9 square footage to this which then goes to the FAR. And I think
10 it was a very strong case made and in fact is in the correct
11 direction in fulfilling one of the aspects or one of the pieces
12 to the overall Reed-Cooke Overlay and its whole designation and
13 why one would do that.

14 Let me to go my deliberations on the height.
15 Again, I state that I was shocked a bit and paper to look at what
16 kind of height was actually coming in. I think there was some
17 question of the model even that was presented and how it related
18 to the surrounding areas and how it might be or might not be a
19 detriment to the adjacent properties.

20 I think the written testimony and the oral
21 testimony was good in terms of describing the street and the
22 existing structures and how this one would fit into it, but where
23 I'm going is it was the section that was submitted and I believe,
24 if I'm not mistaken, was submitted by the Applicant clearly, but
25 it was also attached to the supplemental report by the Office of

1 Planning that I think really, and maybe it is just my eye, but
2 clearly, put in perspective, the importance of the design that we
3 saw and that was a kind of one might say nonsymmetrical setbacks,
4 but created very interesting open courtyards and when you factor
5 all that in in terms of design is actually relating to how it
6 sets back from the street, but doesn't just create this kind of
7 wedding cake effect of just layers, stepping back 10 feet and 10
8 feet and 10 feet, but actually is creating a very energetic
9 setback and design which I might add is a quick digression, fits
10 in the overall appearance of the neighborhood too, as it was
11 described to us, Adams Morgan being a very eclectic, but high
12 energy place.

13 I think what they've done in terms of the design
14 and goes to the overlay requirements in providing the housing
15 they have also mitigated, if not removed any sort of adverse
16 impact that would happen in terms of the light and air or the
17 size. I think the height, as I stated, on paper, dimension
18 looked stunning and was surprised I was that the hearing room was
19 not filled with people in opposition. We did not have that, but
20 clearly I think the design was one that addressed it and is able
21 to hold that kind of height.

22 That's a long winded way to get into some of these things, but
23 others?

24 MR. MAY: I have to agree that the project itself
25 is very interesting, very exciting and it's -- it just looks like

1 a really neat way to address the -- an important building, if not
2 a registered historic building.

3 And I think there are many, many positive things
4 going for it, not the least of which is the significant amount of
5 community support and frankly the -- what seems to be the
6 disappearance of community opposition. I mean as a sidebar, I
7 would note I'm rather disappointed that we haven't heard more
8 from the Reed-Cooke Neighborhood Association having given them
9 the opportunity to speak out on this that we hear nothing, I
10 think is particularly disappointing.

11 Anyway, back to the project. As I said, it's very
12 exciting, very interesting. In reviewing the case, however, I do
13 have to say that the -- what was so shocking on paper which you
14 cited, Mr. Chairman, in terms of the height, I still find
15 uncomfortable and the -- what we're talking about an overlay area
16 where we have a height restriction of 40 feet and we're talking
17 about going 30 feet higher than that and I understand the
18 arguments for the increased density and I think that there are
19 great things in it like having that parking. God knows parking
20 is a huge issue in that neighborhood.

21 But to go from 40 to 70 or 69, 7, whatever it is, I
22 mean is just astounding and I have very difficult time saying
23 that it would not have an adverse impact on the neighborhood,
24 specifically, the neighbors directly next door, the neighboring
25 property, although it may not be fully developed. It's going to

1 have an effect on that property, by having a building that's 30
2 feet taller than the allowable.

3 And I think that there is a risk here that what we
4 are doing to the Reed-Cooke Overlay which states a -- in the
5 Zoning Commission order it stated that one of the goals is to
6 maintain heights and densities at appropriate levels.

7 I think we're pushing it too far and I think that
8 while I can see the argument for the increased density because of
9 the development of the parking and keeping the existing building
10 and all of these other really good things about the project, I
11 think that we've pushed the envelope too high, both in terms of
12 height and to a lesser extent, possibly density because we're
13 going from 1.8 to 3.9. That's also huge, a huge increase.

14 CHAIRPERSON GRIFFIS: I note your point and one
15 concern I have and I think it is the Board's jurisdiction and
16 responsibility to assess detrimental impact even if none has been
17 evidenced by the surrounding property and I would say also even
18 if evidence and obviously we'll judge the merits of each.

19 But to this specific piece, first of all, I go to -
20 - if we go to 1403, how do we get to the fact of whether we can
21 actually approve a special exception and I point to 403.1(a)
22 through (g) and won't read them all through, but clearly, this
23 project meets or exceeds all of those requirements and that is
24 even the vehicular access which has been talked about, the
25 loading, which I think we can talk about if need be.

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1 All of it comes clearly into compliance and so
2 where we are is left with deliberating on the detrimental impact
3 and I would urge you to look at the site model photographs that
4 were submitted and the placement of this because I think really
5 that's where it would go. It will be the placement of this
6 building and its mass on the site and whether and what it might
7 affect.

8 As you note, the setbacks go towards the alley side
9 and that is -- the alley runs north-south. You see across the
10 street there is an existing structure which I believe was --

11 MR. MAY: Don't blame us.

12 CHAIRPERSON GRIFFIS: Yeah, I think it was the PUD,
13 the P.N. Hoffman's site which not making statements on that, but
14 looking at the actual massing of it and then you go further up on
15 the block and as testified, the site slopes -- well, to me in my
16 deliberations the context and the testimony that is given in
17 terms of the relationship of the new development across the
18 Champlain and in fact, although in -- as we've said, the 69 plus
19 or minus feet in relation to the adjacent building, this will not
20 tower over it, but I think, if I'm not mistaken, the testimony
21 was that it will align or be just below it and having setbacks so
22 far, we really only have one small, it comes to really kind of an
23 enclosed terrace piece on the top level, the pavilion level.

24 I didn't see the large detrimental impact. In
25 fact, that area, as you see in the planning submission and the

1 aerial photograph, that area, part of its eclectic nature and I
2 think part of its urban nature also, it has an incredible amount
3 of different scaled single family, but also multi-family houses.

4 If the model is correct, it clearly changes in massing and in
5 heights, some quite massive and I think that is part of the
6 interesting nature of the entire area.

7 And the other thing I go back to is frankly, this
8 Board knows, we have several other cases in this surrounding
9 area. This neighborhood is well versed and aware of what's
10 happening and I will would look to them in many cases to evidence
11 things that we would need to deliberate on and not having that,
12 even giving the opportunity as you stated, Mr. May, giving the
13 additional time and the additional impetus to get -- I mean we
14 left the record open and I think the statement was that you can
15 get any letter from anybody you wanted and submit them. We don't
16 often do that and I do that with great caution. And then to have
17 nothing submitted. It seems to me that two things have happened.

18 Either that this is just the best thing since sliced bread, or
19 the Applicant has testified, did do their community outreach and
20 had open communication and has, in fact, dealt specifically and
21 presented specifically all of these issues to the community and
22 there is no evidence of testimony from the community that there's
23 detrimental impact.

24 Ms. Renshaw?

25 VICE CHAIR RENSHAW: Yes. I want to point out that

1 ANC-1-C did consider this application in April on the 16th of
2 April and it was at a public meeting and the quorum was present
3 and they voted 8 to 0 to support the application in its entirety.

4 So that was the opportunity for the community to present any
5 concerns that it might have to the ANC and have a full
6 deliberation in that public forum.

7 Obviously, whatever was said at this meeting was
8 positive because there was nothing in the letter from the
9 chairman of ANC 1-C to indicate that there was anything but
10 support for the project.

11 But I'd also like to say that I too, am very
12 concerned with this height situation. I believe it is very
13 important to protect an overlay and this is a considerable 29.6
14 feet in height difference over the Reed-Cooke Overlay height
15 limitation. It is an opportunity though to forest or landscape
16 an urban setting, just not on the street level. It is going to
17 be raised from the street, but might, if approved, be an
18 interesting addition to that urban landscape. And again, one
19 point of view in support of a height addition would be the
20 terraced perspectives whereby all of the massing will not have
21 such a great impact from the street.

22 So saying that though I'll have to come back to my
23 statement. I am concerned about the increase in height because
24 it is so substantial.

25 MEMBER ETHERLY: Mr. Chairman, just very briefly.

1 I wanted to piggyback on one of your comments in response to Mr.
2 May's concerns and I guess also my colleague, Ms. Renshaw's
3 concerns about height. Not to belabor the point, I agree with
4 you that given the sloping topography and discussion that we had,
5 substantial I might add, on the issue of site lines from a number
6 of the surrounding thoroughfares and streets, I am comforted that
7 the massing of this project is not going to be as detrimental as
8 perhaps some of my colleagues might see. I am very sensitive to
9 the -- what's the word I'm looking for -- the importance and
10 purposes of the Reed-Cooke Overlay, but I think the Applicant has
11 done an admirable job in trying to address those concerns through
12 some design practices that are going to alleviate, at least in my
13 mind, major concerns about that height issue.

14 I just wanted to echo your comment, Mr. Chairman.

15 Thank you.

16 CHAIRPERSON GRIFFIS: Thank you. Others?

17 MR. ZAIDAIN: Mr. Chairman. just to weigh in
18 briefly and I'm not going to reiterate everything that's been
19 discussed, but it seems to me that all these issues we've talked
20 about are perfectly in line with why the special exception is
21 there. I mean the Reed-Cooke Overlay was instituted by a
22 community movement. We had a gentleman here a couple of weeks
23 ago who was really animated about another project and was so
24 adamant about what the goals of the Reed-Cooke Overlay are and
25 you have certain regulations that allow developments to proceed

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1 as a matter of right, but those regulations, there are certain
2 developments that may forward the goals of that overlay that do
3 not fall within that matter of right and that is exactly what
4 this special exception process is for, is to allow the public to
5 weigh in, the allow other agencies to weigh in and to allow us to
6 assess the impacts and to really put the project to the test of
7 saying does this forward the goals of the overlay and does it
8 improve the surrounding neighborhoods. And reading the
9 testimony, it seems to me that it does.

10 The one question I did have just to -- and this is
11 somewhat as an aside, the one affordable residential unit, w as
12 that as a result of an agreement with the surrounding
13 neighborhood and was there any definition put to that?

14 CHAIRPERSON GRIFFIS: I don't know if there was
15 exhaustive testimony on that. Do others recall?

16 VICE CHAIR RENSHAW: I don't recall that at all.

17 MR. ZAIDAIN: It just seemed kind of odd that there
18 was one unit being set aside as affordable and affordable is not
19 even really defined. I mean obviously affordable means that
20 maybe I could live there, but I don't know about --

21 VICE CHAIR RENSHAW: And it does state in 1402.1
22 determination by the Board that the project will provide for the
23 on-site construction or substantial rehabilitation of low and
24 moderate income household units.

25 CHAIRPERSON GRIFFIS: Well, you're reading from the

1 Zoning Commission that outlines that
2 Reed-Cooke Overlay.

3 VICE CHAIR RENSHAW: Yes.

4 MR. ZAIDAIN: And that's why I bring that up. I
5 think it's important that that aspect is emphasized in our
6 deliberations.

7 CHAIRPERSON GRIFFIS: Good and the
8 Reed-Cooke Overlay actually gives provisions for relief from
9 certain requirements that it has if there's affordable components
10 to it, depending on the zone that it's in.

11 So clearly, and I think it's a good point that it
12 is a component of what is trying to be accomplished in the
13 overall scheme of the Reed-Cooke Overlay and that goes, if I'm
14 not mistaken, you're saying that it actually goes to reinforce
15 the fact that this is coming into compliance with the intent and
16 purpose of the regulations.

17 MR. ZAIDAIN: And that's why I think the
18 regulations are written the way they are.

19 CHAIRPERSON GRIFFIS: Good. Lastly, I think going
20 to the height, if you look at the submitted Exhibit 27, there's a
21 site plan on the cover sheet and I think it goes -- several
22 things, obviously it points out the unique shape of the lot which
23 is in the submission and on the record. But I would point out
24 also and part of my deliberative process was to look at this in
25 context, in terms of the impact or any sort of detrimental impact

1 and when you look at the single family units that are adjacent
2 across the alley and the large rear yard that these lots have,
3 they're very deep lots, clearly, I think we know the history of
4 reading this, that this was an industrial manufacturing area
5 which would have had the deeper blocks and noting that the
6 highest points of this will be smaller and smaller in mass as it
7 goes up.

8 I feel that there is not the level of impact that
9 would move me to decline this application. And I would,
10 therefore, move that we approve Application of Case Creek LLC
11 16869 pursuant for a variance from the floor area ratio
12 requirements under section 402, a variance from the lot occupancy
13 requirements under section 403, and a variance from the
14 nonconforming structure provisions under section 2001.3, and
15 pursuant to 11 DCMR 3104.1, a special exception to exceed the
16 height provisions, section 1402, of the Reed-Cooke Overlay
17 District under section 1403, to construct an addition to an
18 existing building for a mixed-use, residential and existing
19 retail, development in the RC/R-5-B District at premises 2329
20 Champlain Street, N.W.

21 MEMBER ETHERLY: Seconded, Mr. Chairman.

22 CHAIRPERSON GRIFFIS: I do thank you, Mr. Etherly.

23 And I would again, just reiterate to speak to the motion that I
24 think that first of all we spent an awful lot of time when you're
25 hearing trying to pull out all of the information, I think the

1 Board should be complimented on doing that even when we were
2 faced initially. I think some of us, I speak for myself
3 specifically, with what we thought was just an out of proportion
4 project. I think we spent the time to really get into it and
5 understand the detail and the specifics of it and also to go
6 through, of course, all of the tests for all the variances which
7 again were stated and I think clearly the special exception as we
8 have outlined comes in full compliance with the 1403 and I will
9 leave it at that.

10 Others, discussion, questions on the motion?

11 MR. MAY: Mr. Chairman?

12 CHAIRPERSON GRIFFIS: Yes.

13 MR. MAY: I would like to suggest that we vote
14 separately on the height issue because the objection that I have
15 and I still have with this is the special exception for the
16 height.

17 Can we vote separately on the variances versus the
18 special exception?

19 CHAIRPERSON GRIFFIS: I'm inclined not to,
20 actually, because I don't see how we'd take away the height
21 special exception and remove it from the project itself that's in
22 front of us, unless we don't -- to me, that's tantamount to us
23 sending it back to the Applicant and say redesign it and if we
24 need to do that, then I would say the motion would probably fail.

25 I see them all too intertwined and connected to

1 really separate them out and I don't see us and I don't want us,
2 although others can give their opinions, I don't want us to
3 establish a height either, if we start looking at conditions that
4 there can only be a certain amount that's beyond our purview at
5 this point and I don't think that would be the thing to do.

6 MR. MAY: I wouldn't suggest that, but what does
7 concern me is that while I find that I can support the variances
8 for the reasons that are stated in the case, I do not find that I
9 can support the height.

10 CHAIRPERSON GRIFFIS: But the basis of this case is
11 that in order to maintain the existing structure, and actually
12 keep it occupied while it's constructed and provide parking
13 within the existing structure, there has to be an addition on top
14 and that addition on top has to -- is presented before us. So I
15 don't see how we disconnect the two.

16 MR. MAY: It's the height as proposed. There's no
17 doubt that they would need a special exception in order to
18 increase the height, but I mean -- if this were a case where the
19 height being proposed were 50 feet or even 60 feet, it would be
20 much easier to vote in favor, but at nearly 70 feet it's still
21 highly problematic for me.

22 MEMBER ETHERLY: If I understand where you're
23 coming from, Mr. Chairman, I think what you're saying is you
24 can't -- if you don't buy the height, then you can't buy the
25 variances.

1 CHAIRPERSON GRIFFIS: Absolutely. I think I can,
2 but that's what I'm asking. That's what I'm asking you to sell
3 me.

4 MEMBER ETHERLY: I understand what you're talking
5 about Mr. May and to me, my point, it's a different application
6 and I'd rather -- if it fails, then -- I think it was strong in
7 its testimony. You look at the base fact that the existing
8 structure with parapet is over 30 feet high. There's not a lot
9 of height within the limits of 40 feet to add on to this building
10 to actually make it conforming with the intent of the Reed-Cooke
11 in terms of providing the housing or actually which is -- I think
12 what the
13 Reed-Cooke Overlay is looking to do is create these urban
14 structures which are mixed use structures. How do you do that if
15 you really can't in any way add on to this and that's where I
16 think special exception is appropriate at this point and the
17 height also.

18 VICE CHAIR RENSHAW: Mr. Chairman, would you
19 address the point of the precedent that this may be setting for
20 height in the Reed-Cooke Overlay?

21 CHAIRPERSON GRIFFIS: I think the precedent that
22 this sets will be that the height and any variance from the
23 height in the Reed-Cooke Overlay would be a special exception
24 case before this Board.

25 MEMBER ETHERLY: And I would note also through you,

1 Mr. Chairman, to Ms. Renshaw, that one of the things that gave me
2 comfort was the topography that we discussed here and you're not
3 necessarily going to see that with every additional property in
4 this particular area, so I see that as a unique enough
5 circumstance such that the potential for setting a precedent here
6 isn't one that I think is one that's going to be easily followed
7 in subsequent cases.

8 MR. ZAIDAIN: I was going to say. I think the
9 point that you brought up, Mr. Chair, is that the special
10 exception process kind of keeps it from setting a precedent where
11 each individual case that is over and above what is allowed as a
12 matter of right comes to this Board for its assessment of
13 impacts, etcetera, etcetera, so and that being said each
14 individual case is going to have its own different impacts. It's
15 going to be in different locations and it's going to have
16 different development parameters and as they come in at special
17 exceptions, they ought to be evaluated on their own merits in
18 that way.

19 CHAIRPERSON GRIFFIS: I would agree with that.

20 VICE CHAIR RENSHAW: And again, I suppose the
21 comfort in this particular case is that the ANC which is voicing
22 the sentiments of the community is completely in favor of this
23 and the height issue is one of the regulations or exceptions that
24 it did discuss in a public setting. And we take the pulse from
25 the ANC comments and so therefore the community seems to be

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1 backing this application.

2 CHAIRPERSON GRIFFIS: I think that's very well
3 said, Ms. Renshaw.

4 Do others want to speak to the motion?

5 VICE CHAIR RENSHAW: Did Mr. May intend to amend
6 the motion?

7 CHAIRPERSON GRIFFIS: He tried.

8 MR. MAY: I would prefer to amend it, but I'm
9 prepared to vote as it has been stated.

10 CHAIRPERSON GRIFFIS: Okay, last opportunity. Then
11 I would ask after great deliberation on this that all those in
12 favor of the motion, signify by saying aye.

13 (Ayes.)

14 And opposed.

15 MR. MAY: No.

16 CHAIRPERSON GRIFFIS: Any abstaining? Good. Staff
17 will record the vote.

18 MS. PRUITT: Staff would record the vote as 4 to 1;
19 motion made by Mr. Griffis; seconded by Mr. Etherly; Mr. May in
20 opposition.

21 CHAIRPERSON GRIFFIS: And let me also just say, I
22 think it is of great use for us to go through and take the time
23 as we've done in this entire case, but also as to deliberation
24 and Mr. May, I certainly thank you for your great comments and
25 additions to this case and others.

1 So with that, are we done? No, we've got a few
2 more things to do. We'll move on to the next case.

3 MS. PRUITT: The next case on the agenda is
4 Application No. 16553G, pursuant to 11 DCMR 3104.2, for a special
5 exception and approval of the Foggy Bottom Campus Plan for the
6 years 2000 to 2010 under Sections 210 and 507. hearing dates
7 were April 26, 2000; September 13 and 26, 2000; September 17 and
8 21, 2001.

9 Decisions dates were December 12, 2000; February
10 13, 2001; October 9 and 30, 2001; December 11, 2001 and June 4,
11 2002.

12 Participating Board Members were Sheila Cross Reid,
13 Robert Sockwell, Anne Renshaw, Carol Mitten and Mr. Griffis.

14 This is before you -- on May 9th, G.W. submitted
15 and serviced on all parties its revised campus plan for comments
16 pursuant to Condition 18 of the BZA Order 16553 issued on March
17 29, 2001. Condition 18 allows for review and comment by parties
18 and requires that the Board certify the plan. This is before you
19 now. We have received several, in fact, quite a few requests
20 from parties for an extension of time to review it because it is
21 a fairly lengthy document.

22 CHAIRPERSON GRIFFIS: So what's before us, if I'm
23 correct is an extension of time for review before we --

24 MS. PRUITT: If you'd like to incorporate the
25 parties' comments, yes.

1 MR. ZAIDAIN: Mr. Chair?

2 CHAIRPERSON GRIFFIS: Yes sir.

3 MR. ZAIDAIN: I have read the case file that has
4 the relevant information for the continuance today. And so I'm
5 prepared to vote on that. And I will be sitting on this case as
6 it continues, as painful as it may be.

7 CHAIRPERSON GRIFFIS: Indeed. You can borrow my
8 boxes of documents.

9 MR. ZAIDAIN: Okay, thank you.

10 CHAIRPERSON GRIFFIS: Well, with that, let's have
11 comments and I know Ms. Mitten, if I'm not mistaken, has sent in
12 a proxy on this so -- but let us bring up the fact of just the
13 extension of time on this for review which initially gives me
14 some great, some concern in that I don't like to delay things,
15 but a balance for the fact that I do like to have substantive
16 information for us to deliberate on.

17 I do not see the overwhelming negative impact in
18 giving additional time.

19 MS. PRUITT: Staff has some recommendations of time
20 based on your current schedule, if you'd like to --

21 CHAIRPERSON GRIFFIS: Right. Well, let me throw it
22 out there. I don't think we'd see this until September, so if
23 that helps folks deliberate on the issue of extending the time on
24 this, so be it.

25 Any comments?

1 VICE CHAIR RENSHAW: Mr. Chairman, I think that we
2 should extend the time on this case to September since that seems
3 to be the opening, available opening on the schedule and just
4 note for the record that we've received requests on the extension
5 of time from ANC 2A; the Foggy Bottom Association; James McCloud,
6 a party; Dorothy Miller and Eleanor Becker.

7 CHAIRPERSON GRIFFIS: Indeed, and forgive me if I
8 missed also from the Office of Zoning Staff --

9 VICE CHAIR RENSHAW: That is to be included also.

10 CHAIRPERSON GRIFFIS: Okay. And that issue is so
11 that the Corporation Counsel had adequate time also to review the
12 recently submitted documents in relation to the submitted plan.

13 Is there anything that we're missing in terms of --

14 MS. PRUITT: I would suggest that we also establish
15 a -- if you're going to do it for the September 2nd meeting --

16 CHAIRPERSON GRIFFIS: Well, we haven't decided.

17 MS. PRUITT: Okay.

18 CHAIRPERSON GRIFFIS: We'll get dates and make sure
19 everyone is adequately aware of that. However, let me just throw
20 it out there. Are we missing and should we talk about anything?

21 Is this going to be -- if we pursue today, is it difficult for
22 the community and parties in this if we continue in September, do
23 we have undue difficulties put on the University? Does anyone
24 have a notion or a discussion in that direction?

25 What's the impact is really what I just want us to

1 be aware of if there is any that we don't know within our own
2 common sense.

3 We should note that all these exhibits that are
4 just -- that have been submitted to us, we are assuming were
5 correctly served on all the parties in the case and therefore --

6 MR. ZAIDAIN: Mr. Chairman, I don't mean to
7 interrupt you. That was the point I was going to bring up. It's
8 my understanding from Ms. Sansone that all of the requests for
9 continuances were served on the University and there was no
10 response from the University and I can only assume that the
11 University would understand about the continuance because of the
12 complex issues and the contentious issues dealing with this.

13 In terms of rescheduling to September, please
14 correct me if it is out of my purview to recommend, is there any
15 way we can slate an afternoon devoted to this or is that too much
16 to ask?

17 CHAIRPERSON GRIFFIS: Do we need an afternoon for
18 this?

19 MR. ZAIDAIN: I don't know.

20 CHAIRPERSON GRIFFIS: I think we need ample time.
21 I'm not sure --

22 MR. ZAIDAIN: I just want to make sure we have
23 plenty of time and there's no -- because as you know, as --

24 CHAIRPERSON GRIFFIS: That would be setting it for
25 a special public meeting which may make some sense in terms of

1 what we have on September's schedule.

2 VICE CHAIR RENSHAW: I just want to point out that
3 it was stated that we would -- might consider that at the first
4 meeting in September, however, that would be the day after Labor
5 Day and again, on Memorial Day we did not meet the day after
6 Memorial Weekend.

7 MR. ZAIDAIN: What's our schedule?

8 MS. PRUITT: Well, we have --

9 VICE CHAIR RENSHAW: Are you moving it to the 4th
10 of September?

11 MS. PRUITT: Right now, Ms. Kress has scheduled a
12 September 4th. She does have a Wednesday, so we could move it to
13 the Wednesday like we did for Memorial Day.

14 MR. ZAIDAIN: What's the rest of the schedule that
15 day look like?

16 MS. PRUITT: Well, right now first hearing and
17 meeting is always a meeting in the morning and hearings in the
18 afternoon.

19 MR. ZAIDAIN: Okay.

20 MS. PRUITT: And it's fairly kind of hard to tell
21 because you're really cleaning up cases that you don't make bench
22 decisions on.

23 MR. ZAIDAIN: Okay.

24 MS. PRUITT: So right now there's nothing on the
25 agenda, but I'm sure between now and --

1 MR. ZAIDAIN: But if we were to schedule it that
2 way, then we can schedule things around it, I guess.

3 MS. PRUITT: Right, we can set to schedule things
4 for October. If you put G.W. on for September, you'd either
5 schedule only one or two small projects after that or --

6 MR. ZAIDAIN: It's actually up to the chair. I
7 just wanted to throw the consideration out there that we need to
8 make sure we have ample time to hear this.

9 CHAIRPERSON GRIFFIS: Okay, is there a consensus
10 then to accept -- let's put it into a motion, I guess, that we
11 would -- I would move that we postpone our decision making on
12 this application 16553G to a date to be decided and we'll get to
13 that if this motion passes.

14 VICE CHAIR RENSHAW: Second.

15 CHAIRPERSON GRIFFIS: Thank you. Any further
16 discussion on this?

17 All those in favor?

18 (Ayes.)

19 Opposed?

20 MS. PRUITT: Staff would record the vote as 3 to 0
21 to postpone with a date to be decided and memos sent out to the
22 University and parties indicating submission times.

23 CHAIRPERSON GRIFFIS: And I believe we have four
24 votes on that, if I'm not mistaken.

25 MS. PRUITT: I have not received a proxy from Ms.

1 Mitten and Beverly, I believe you just checked?

2 MS. BAILEY: I believe we have a proxy from Ms.
3 Mitten.

4 MS. PRUITT: So that would be 4 to 0 then.

5 CHAIRPERSON GRIFFIS: Okay, and we can verify that
6 and I believe she will be in person here. Then we'll correct
7 that administratively if that is incorrect. But it would carry
8 with three votes as is.

9 Okay, so it's set for September. I would suggest
10 that we set it for the first Tuesday in September in that we're
11 coming off of August, I'm not sure that we need to --

12 VICE CHAIR RENSHAW: Wednesday.

13 CHAIRPERSON GRIFFIS: Has that already been decided
14 that we're meeting Wednesday?

15 MS. PRUITT: No, actually it has not been decided.
16 If you look at the tentative schedule, there's a question mark.

17 CHAIRPERSON GRIFFIS: I say we start our year fresh
18 in September on the Tuesday, we set this for the first in the
19 morning for a decision making and we will be very vigilant and
20 not packing that decision making in order to give ample time to
21 go through this campus plan.

22 MS. PRUITT: So if we're going to set it for
23 decision making on September 2nd, I would suggest that
24 submissions from parties be due August 5th with responses from
25 the Applicant or University by August 12th for the September 2nd

1 meeting. That allows Corp. Counsel and our office to review and
2 get everything together for you.

3 MS. BAILEY: Ms. Pruitt, you indicate September
4 2nd. Is that September the 4th?

5 VICE CHAIR RENSHAW: It's Wednesday, the 4th;
6 Tuesday, the 3rd.

7 MS. PRUITT: September 4th is that Tuesday which I
8 believe Mr. Chairman, you said was --

9 VICE CHAIR RENSHAW: Tuesday is September 3rd;
10 Wednesday is September 4th.

11 MS. PRUITT: Okay.

12 CHAIRPERSON GRIFFIS: All right. Well, I'll be
13 meeting then. Let's do it on the 4th. It's already on our
14 schedule that will be an issue.

15 MS. PRUITT: So it only changes the meeting date,
16 but the submissions are to remain the same.

17 CHAIRPERSON GRIFFIS: Right. I'll notify my
18 employer that I get that entire week --

19 MS. PRUITT: I'll reiterate.

20 CHAIRPERSON GRIFFIS: Submissions are due August
21 5th and the hearing will be September 4, the decision making will
22 be September 4th.

23 MS. PRUITT: Correct and responses from the
24 Applicant -- from the University will be due August 12th.

25 CHAIRPERSON GRIFFIS: Okay, if we haven't made that

1 unclear, we can certainly continue.

2 The big important piece is that it will be a
3 Wednesday, the first Wednesday in September.

4 MS. PRUITT: Correct.

5 CHAIRPERSON GRIFFIS: Which is different than
6 others.

7 Okay, what else?

8 MS. PRUITT: Last case of the morning agenda.

9 CHAIRPERSON GRIFFIS: Indeed.

10 MS. PRUITT: Application 15163 of Saint James
11 Washington Limited Partnership, pursuant to 11 DCMR 3108.1, now
12 3103.1, and 3107.2, now 3104.1, for a special exception under
13 subsection 411.11, to allow a roof structure that does not meet
14 the normal setback requirements, a variance from the allowable
15 lot occupancy requirements under subsection 403.2, a variance
16 from the floor area ratio under subsection 402.4, a variance from
17 the maximum height requirements under subsection 400.1, a
18 variance from the open court requirements under subsection 406, a
19 variance from the rear yard requirement under subsection 404.1, a
20 variance from the roof structure setback under subsection
21 400.8(b) for the proposed construction of an apartment building
22 addition and conversion of two existing structures into an
23 apartment house in an
24 R-5-B District at 2521 and 2523 K Street, N.W., Square 15, Lots
25 802 and 803.

1 Hearing for this particular case was October 25,
2 1989. Decision date was November 1989.

3 This application involves a D.C. Court of Appeals
4 remand to the Board, a decision back in 1992. The Court vacated
5 the Board's decision granting several special exceptions and
6 variances from FAR and lot occupancy and other requirements. The
7 Court vacated the Board's decision finding that the Board's
8 reliance upon the Applicant's principal argument of an economic
9 infeasibility was not enough to support the burden of proof for
10 the variance and that further
11 non-economic justifications were needed to support the variance
12 test. The Board Members who sat on the case originally are no
13 longer sitting.

14 Staff recommends that the Board dismiss this case
15 due to the failure of the owner to prosecute or rather to proceed
16 with the case.

17 In addition, we have learned that after some time
18 the original owner is no longer -- the owner at that site has
19 been developed as a matter of right.

20 CHAIRPERSON GRIFFIS: Okay, all that being said
21 this application that went through wasn't pursued to its fullest
22 extent. The building owner has changed and there is on this site
23 a matter of right construction rendering this entire piece moot.

24 Unless there are other questions by Board Members for
25 clarification on the past history and how we are where we are, I

1 would move that we dismiss Application 15163 of DCCA Case No.
2 1418 as moot.

3 VICE CHAIR RENSHAW: Second.

4 CHAIRPERSON GRIFFIS: Thank you very much. Any
5 further discussion?

6 All those in favor signifying by saying aye?

7 (Ayes.)

8 Opposed?

9 MS. PRUITT: Staff would record the vote as 3 to 0
10 to dismiss. Motion made by Mr. Griffis and seconded by Ms.
11 Renshaw.

12 That is the end of our meeting, sir.

13 CHAIRPERSON GRIFFIS: I do appreciate your time and
14 everyone else's and this will adjourn the public meeting of June
15 4, 2002. Thank you all very much.

16 And noting that we will call a special public
17 meeting at the exact hour of 1 o'clock, we will see you all back
18 then.

19 (Whereupon, at 11:45 a.m., the public meeting was
20 concluded.)