

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

+ + + + +

PUBLIC HEARING

+ + + + +

TUESDAY

FEBRUARY 6, 2007

+ + + + +

The Public Hearing convened in Room 220 South, 441 4th Street, N.W., Washington, D.C., 20001, pursuant to notice at 2:30 p.m., Geoffrey H. Griffis, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

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

OFFICE OF ZONING STAFF PRESENT:

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

D.C. OFFICE OF THE ATTORNEY GENERAL:

LORI MONROE, ESQ.

OFFICE OF PLANNING STAFF PRESENT:

TRAVIS PARKER
JENNIFER STEINGASSER
ARTHUR JACKSON
JOEL LAWSON
STEVE COCHRAN
KAREN THOMAS

This transcript constitutes the minutes
from the public hearing held on February 6,
2007.

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

2 2:44 p.m.

3 CHAIRPERSON GRIFFIS: Good
4 afternoon, ladies and gentlemen. I'm going to
5 call to order the afternoon session on the 5th
6 of February 2007. This is the afternoon
7 public hearing of the Board of Zone Adjustment
8 for the District of Columbia. My name is
9 Goeff Griffis, the Chairperson. Joining me
10 today will shortly be the rest of the Board.
11 I think Office of Planning played a practical
12 joke on us and locked us all in the Executive
13 Board Room. However, we've called out
14 reinforcements and we're going to dismantle
15 the entire door and frame. That will never,
16 ever happen again.

17 However, in all seriousness,
18 copies of today's hearing agenda are available
19 for you. We appreciate everyone's patience.
20 We had a long decision-making session this
21 morning, which happens the first Tuesday of
22 every month and it is somewhat always

1 unpredictable how long it will last, but we
2 will make up our time as we get into the
3 afternoon cases. However, we do have several
4 things in opening that are very important to
5 address.

6 First of all, the procedure for
7 this afternoon for variances and special
8 exceptions will be as always. First, we will
9 hear from the Applicant and the presentation
10 of their case. Secondly, we will hear from
11 the Advisory Neighborhood Commission in which
12 the property is located in and all government
13 reports attendant to the application. Fourth,
14 we will hear persons or parties in support of
15 the application. This will be persons or
16 parties in opposition to the application.
17 Sixth, finally, we will bring back the
18 Applicant for any rebuttal witnesses and/or
19 closing remarks and testimony as they see fit.
20 Cross examination of witnesses is allowed by
21 the party Applicant and the ANC within which
22 the property is located is an automatic party

1 in each of the cases.

2 I will give directions and comment
3 on cross examination as needed in each of the
4 individual cases if it is required. It should
5 be known that the Sunshine Act requires that
6 we hold all our hearings and procedures in the
7 open and before the public. Even if agencies
8 of the government want to keep us locked in
9 the Board room, we make it out here to make
10 sure that we get on the record. We do create
11 the record both in written form in
12 establishing what the Applicant and any
13 participants have submitted into the record.

14 We also will hear, obviously,
15 today oral testimony and presentation of
16 cases. We make -- we do enter into executive
17 session sometimes during a case or after a
18 case. This is all in accordance with the
19 Sunshine Act which is also in accordance with
20 our rules, regulations and procedures. It
21 should be known and I would ask that everyone
22 turn off cell phones, beepers. There's a

1 Court Reporter here who is creating the
2 official transcript which will be part of the
3 official record and minutes of our cases and
4 our proceedings. We are also being broadcast
5 live on the Office of Zoning's website.

6 Attendant to all of that, I would
7 ask when you're ready to present for the Board
8 that you come forward, make your self very
9 comfortable. You will have needed to have
10 filled out two witness cards. They are
11 available in front and also when you entered
12 the hearing room. Please provide those to the
13 Court Reporter prior to coming forward. Then
14 you just need to make yourself comfortable,
15 turn on the microphone, state your name and
16 address for the record. You need only do this
17 once and then you can proceed. Obviously, we
18 will be able to get you on the record.

19 I think that's everything I need
20 to say at this point in opening remarks. I
21 will address anything that I have missed as we
22 proceed and I need to address it but I do need

1 to say a very good afternoon to Ms. Bailey, on
2 my far left Ms. Bushman also with us, Ms.
3 Monroe of the Office of Attorney General and
4 Mr. Moy with the Office of Zoning.

5 At this time let me ask all those
6 persons that are anticipating presenting
7 testimony to the Board, if you would please
8 stand and give your attention to Ms. Bailey,
9 she's going to swear you in.

10 MS. BAILEY: Would you please
11 raise your right hand?

12 (Witnesses sworn)

13 MS. BAILEY: Thank you.

14 CHAIRPERSON GRIFFIS: Very well,
15 at this time we are prepared to hear any
16 preliminary matters which led to any of the
17 cases that are on the schedule for this
18 afternoon. Preliminary matters are those
19 which relate to whether a case will or should
20 be heard today. Requests for postponements,
21 withdrawals with a proper and adequate notice
22 has been provided. These are elements of

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1 preliminary matter or preliminary attention
2 for the Board. If you have a preliminary
3 matter, you can forward it. I see none at the
4 table is an indication of a preliminary
5 matter. I'm going to ask Ms. Bailey if she's
6 aware of any preliminary matters for the
7 Board's attention at this time.

8 MS. BAILEY: Mr. Chairman, member
9 of the Board to everyone, good afternoon.
10 Staff does not have any preliminary matters.

11 CHAIRPERSON GRIFFIS: Very well.
12 Not seeing any note from the folks present or
13 yourself, that there's any preliminary
14 matters, let's call the first case of the
15 afternoon.

16 MS. BAILEY: That's application --

17 CHAIRPERSON GRIFFIS: Oh, I'm
18 sorry. I'm sorry, you're just going to have
19 to come forward. I probably said if very
20 quickly if I said it at all, but nothing
21 happens in this room on the record except when
22 it's on a microphone. Make yourself

1 comfortable. Have a seat. You're just going
2 to need to state your name and address for the
3 record. There's a button on the base of the
4 microphone that will turn it on. There you
5 go.

6 MR. MORAN: My name is John Moran
7 and I live at 1815 19th Street NW.

8 CHAIRPERSON GRIFFIS: Yes.

9 MR. MORAN: I'm here in reference
10 to the application regarding that property.
11 I was told as a preliminary matter party
12 status applications.

13 CHAIRPERSON GRIFFIS: Right,
14 that's correct. That's exactly correct and
15 it's one of the preliminary matters that we'll
16 take up, but that has to happen within the
17 case when we call it.

18 MR. MORAN: All right.

19 CHAIRPERSON GRIFFIS: Good, let's
20 move ahead on the agenda then and call the
21 first case.

22 MS. BAILEY: Application Number

1 17563 of Richard F. Little, pursuant to 11
2 DCMR 3104.1 for special exception to allow a
3 rear addition to an existing flat under
4 Section 223, not meeting the lot occupancy
5 requirements. The property is located in
6 Dupont Circle and is also zoned R-5-B at
7 premises 1618 Riggs Place NW, Square 178, Lot
8 26.

9 Mr. Chairman, the Applicant filed
10 documents that were placed in front of the
11 Board members and it's a request for a
12 proponent, request for party status as a
13 proponent.

14 CHAIRPERSON GRIFFIS: Excellent,
15 thank you very much. And is this -- this is
16 from the Applicant also? This is his
17 submission today?

18 MS. BAILEY: That was filed today,
19 yes.

20 CHAIRPERSON GRIFFIS: Okay. Mr.
21 Johnson, is Mr. Johnson present? Yeah,
22 excellent, thank you. Mr. Johnson has

1 requested a party status in this as a
2 proponent for the case. Mr. Johnson, just for
3 clarification, there's obviously two levels of
4 participation in every hearing before the
5 Board. You can come as a person and just
6 provide testimony or you can request party
7 status which needs to be established by the
8 Board. But it means you are on equal footing
9 with the Applicant essentially, so you will be
10 able to present a case, full case. You can
11 cross examine witnesses. If we ask for legal
12 briefings of any nature of the Applicant, we
13 would ask that also of you.

14 Are you wanting to provide
15 testimony or are you actually wanting to
16 participate as a party?

17 MR. JOHNSON: Provide testimony.

18 CHAIRPERSON GRIFFIS: Testimony?

19 MR. JOHNSON: Yes.

20 CHAIRPERSON GRIFFIS: Excellent.

21 I appreciate that and I think that's a good
22 clarification. We'll take this already as a

1 written submission and we'll call you up to
2 provide testimony at the appropriate time when
3 we request for persons in support. That being
4 said, let's turn it over to the Applicant for
5 introductions and then I have another quick
6 note.

7 MR. GRANDIS: Good afternoon. My
8 name is Edward Grandis. I'm at attorney in
9 the Historic Dupont Circle neighborhood. I'm
10 that attorney for the Applicant in this matter
11 who is Dr. Richard Little, who is sitting to
12 my right and with me also today is the
13 Architect for this application David Knudson
14 and we're all here to present our case today.

15 CHAIRPERSON GRIFFIS: Excellent.
16 Let me just make a brief note and I'll have
17 addressed for a minute. The Board members may
18 feel differently but I think the record on
19 this is entire full. In fact, it's more than
20 full now, as you've handed me a huge document
21 that I've never seen before. But the point
22 is, is that we could stand on the record if

1 you'd like and just highlight a couple of
2 elements and one of the first highlights I
3 would suggest is tell me what you just gave
4 us.

5 MR. GRANDIS: Yes, Mr. Chairman, I
6 did not try to overwhelm the Board. I
7 apologize if it does. This record I gave you
8 is basically a binded set of materials that
9 have already been submitted for the record.
10 I was basically trying to help myself in
11 preparation for the hearing today, just put
12 everything in order. There is a table of
13 contents at the beginning that sort of
14 references every document that you probably
15 are familiar with. So there's nothing --
16 We're not providing any new legal basis today.

17 We're resting basically on the
18 record and the submissions.

19 CHAIRPERSON GRIFFIS: Okay. Was
20 the history of 1618 Riggs Place in the record?

21 MR. GRANDIS: I believe we had a
22 synopsis. I believe we had a synopsis of --

1 CHAIRPERSON GRIFFIS: And what is
2 this, what is --

3 MR. GRANDIS: What is the history?
4 May I ask Dr. Little to share that for a
5 moment with you, with the Board so he can
6 explain what it is? He's the one who
7 commissioned it, the owner.

8 CHAIRPERSON GRIFFIS: Okay.

9 DR. LITTLE: Hi. So what we did
10 is we commissioned a local historian to
11 research the history of the property as to
12 when the original building permits were
13 obtained, when the construction was done, who
14 -- what the costs, original costs were, who
15 the residences have been over the course of
16 existence of the property as well as nearby
17 residences in the neighborhood and other
18 properties that the architect had done in
19 Washington as well as other cities where he
20 had done architectural work including Chicago
21 and some other cities.

22 So it was partly out of personal

1 interest just to sort of be knowledgeable
2 about the history of Riggs Place in general
3 and my house in particular.

4 CHAIRPERSON GRIFFIS: Excellent,
5 there's a lot of information in there. It's
6 a nice little piece. Hopefully you bound it
7 and put it on the shelf. Okay, any other
8 question, any other highlights you want to run
9 through in the 223. It's a fascinating
10 actually project and it's obviously in the
11 Dupont Circle overlay but also in R-5 Zone.
12 Okay, anything else?

13 MR. GRANDIS: At this point we
14 just basically wanted the Board to recognize
15 that the record we believe is complete. We
16 would like very much to waive our opportunity
17 of doing our initial presentation so that the
18 Board could hear from the Office of Planning,
19 their recommendations and from the ANC because
20 as the Board has stated, this is a rather
21 complete and I hope very clear and
22 straightforward presentation. Why should we

1 burden the Board after a long morning with
2 repeating things that are already in the
3 record? So if you all take that as
4 consideration, we'd be happy to have the
5 Office of Planning and ANC's reports be made
6 part of the record and brought to your
7 attention.

8 CHAIRMAN GRIFFIS: Good, I have no
9 concern for burden on this Board. Let me ask
10 if there's any questions of the members at
11 this time. If there aren't any questions, I
12 think we should go to the Office of Planning
13 and ask for an explanation of why the door was
14 locked also for -- (laughter)

15 MS. THOMAS: Members of the Board,
16 Mr. Chairman, we have nothing to add beyond
17 what's in the record.

18 CHAIRPERSON GRIFFIS: Silent,
19 taking the Fifth. Submit your report and I
20 appreciate it. It's Exhibit Number 24 in our
21 record and I think it goes without saying, the
22 223 is an excellent example of well-written

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1 sections in our zoning regulations and it is
2 obviously, for specific instances just like
3 this, and that is for the accommodation of
4 additions of non-conforming structures,
5 structures that were actually rendered non-
6 conforming when our regulations came into
7 place. They were in existence prior to 1958
8 and here we have them and found that they are
9 not able to accommodate small additions and
10 this one, obviously, fits that bill.

11 There are certain requirements and
12 the Office of Planning does a great analysis
13 and running through whether this would unduly
14 impair the privacy use and enjoyment, air,
15 light to the adjacent neighborhoods. Use of
16 graphics that you've provided also, in the
17 Office of Planning, I think it's easily
18 understood as one of the, in fact,
19 requirements of the 223 is to submit adequate
20 documentation for the Board's understanding of
21 what is being proposed in this small addition
22 out back is obviously well understood at this

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1 point.

2 It's interesting -- well, this
3 extends not more than eight feet off of the
4 rear. Let's move ahead then, if there are not
5 any questions or clarifications for the Office
6 of Planning from the Board or any cross from
7 the Applicant of the Office of Planning? Not
8 noting any indication, thank you very much,
9 let's go to other government reports then to
10 this application. You've already been through
11 HPRB; is that correct?

12 MR. GRANDIS: Yes.

13 CHAIRPERSON GRIFFIS: Right and
14 then ANC-2B, is ANC present, ANC-2B present?
15 I'll note in Exhibit Number 22 that the ANC
16 had averred in support of the application.
17 That report was timely filed and I believe in
18 my review, it meets the requirements to be
19 granted great weight. I'll let others review
20 that as I make that statement and we can move
21 on. I don't have any other government
22 attendant or agency analysis in the

1 application, unless the Applicant is aware of
2 any other submissions, I'm not. Very well, it
3 will be appropriate for us to move ahead then
4 and ask Mr. Johnson to come forward as a
5 person in support of the application to
6 provide testimony. Is there any other person
7 present in Application 17563 which would like
8 to provide testimony, persons in support and
9 opposition?

10 MR. JOHNSON: I live at 1620 Riggs
11 which is right next to Dr. Little. In fact,
12 I've been there for many years. I was born in
13 that house. I've seen a lot of changes in the
14 neighborhood over the years, all of which have
15 been very, very positive.

16 CHAIRPERSON GRIFFIS: Excellent.

17 MR. JOHNSON: And I fully support
18 his application.

19 CHAIRPERSON GRIFFIS: Very good.
20 Thank you very much. It's good to have people
21 come down and positive. You know, often times
22 we fill this room with folks that have non-

1 positive things to say. Nonetheless, any
2 questions from the Board? I noted that, you
3 know, in your request for party status, you
4 were very succinct in what you put in there
5 and one was you felt that it would be a
6 positive impact on your property, one of value
7 and I think one might say, of course, the
8 dollar value, but also as I hear you
9 succinctly talking about the changes that are
10 good in the neighborhood, there is other
11 values to be brought to your property as
12 people add on to and accommodate and
13 revitalize and stay in their properties.
14 Would that be true?

15 MR. JOHNSON: That's very true.

16 CHAIRPERSON GRIFFIS: Excellent.
17 Very well, any other questions from the Board?
18 Any other cross from the Applicant? Thank
19 you very much, Mr. Johnson for your patience
20 and for staying. We appreciate hearing from
21 you. Let's go then, if there are no other
22 persons present to provide testimony in this

1 application either in opposition or in
2 support, we can turn it over to you for any
3 closing remarks that you might have.

4 MR. GRANDIS: We have a summation,
5 courtesy of the Board, when you're prepared
6 for that.

7 CHAIRPERSON GRIFFIS: Let's do it
8 now.

9 MR. GRANDIS: Okay. As we have
10 noted, we think the record is complete. We
11 believe that it has been thoroughly
12 investigated by the Applicant. Also we want
13 to compliment the Office of Planning. We
14 thought that it was a very thorough and very
15 positive, not just positive for us but we
16 thought it was a very positive type of report
17 from the Office of Planning, even on something
18 that may not be very complex. It was very
19 clear and I think it's good guidance for all
20 parties in the future. So we want to thank
21 the Office of Planning for the good work that
22 they did.

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1 We also are grateful to the ANC in
2 recognizing that this modest addition is going
3 to allow a homeowner to stay in the home,
4 which we want to try to encourage people to
5 try to stay in our own neighborhood. We could
6 go through each of the elements that I've
7 stated in 223 but I'd like just to sum up that
8 we believe we have met all the elements of
9 223. And if it is the pleasure of the Board,
10 we'd like very much to say that we believe the
11 Board could perhaps, through Section 3100.5
12 waive the requirement of Section 3125.3 for
13 findings of facts and conclusions of law and
14 issue today a bench decision to help us get
15 the relief we've been seeking. And with that,
16 we'd like to say thank you very much for the
17 opportunity to make a presentation today. We
18 tried to be short and succinct and not burden
19 the Board with more information than was
20 necessary. Thank you very much.

21 CHAIRPERSON GRIFFIS: Excellent.
22 Thank you very much. We appreciate it and I

1 don't see any reason why we wouldn't move
2 ahead and make a motion. I would so move for
3 approval of Application of 17563, Mr. Richard
4 Little for a special exception under Section
5 223 as this property does not meet the lot
6 occupancy requirements under Section 403 at
7 its premises at 1618 Riggs Place NW. Do we
8 have a second?

9 VICE-CHAIR MILLER: Second.

10 CHAIRPERSON GRIFFIS: Thank you
11 very much, Ms. Miller. I think as we've said
12 now too many times, the record is entirely
13 full on this and in fact, we have great
14 reliance on the Office of Planning's analysis.
15 I think we can move forward and assert the
16 fact that the light and air available in the
17 neighborhood probably should not be unduly
18 effected by this single story rear addition
19 that was approximately 7.67 feet extending out
20 from the rear and actually there's a roof
21 overhang that is similar in the distance to
22 the rear of the property and there has been on

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1 evidence at all, certainly not persuasive that
2 this would somehow impact the privacy, use or
3 enjoyment of the adjacent properties. And for
4 the rates and review, of course, we can rely
5 on their great review and the fact that this
6 would, in addition, would be in character as
7 seen from the public way and the graphic
8 representation has been presented. It meets
9 the full requirements of Section 223 and for
10 the special exception also, and I think we
11 could move ahead with this.

12 That's all I need to say on the
13 motion. Is there any other comments? There
14 is no need for any other comments from the
15 Board members, there is much before us and
16 it's been seconded, all those in favor state
17 by saying "Aye".

18 (Aye)

19 CHAIRPERSON GRIFFIS: Opposed?

20 (No response.)

21 CHAIRPERSON GRIFFIS: Abstaining?

22 Very well, why don't we record the vote.

1 MS. BAILEY: Mr. Chairman, the
2 vote is recorded as 4-0-1 to approve the
3 application. Mr. Griffis made the motion.
4 Ms. Miller second, Mr. Mann, Mr. Etherly
5 support the motion and the Zoning Commission
6 member is not present at this time.

7 CHAIRPERSON GRIFFIS: And noting
8 the citing of our regulations, I think we
9 could waive our rules and regulations and
10 issue a summary order if it's in accordance
11 with the Board. Obviously, no rejection to
12 the Applicant. Very well, let's do so, Ms.
13 Bailey.

14 MS. BAILEY: Thank you, sir.

15 CHAIRPERSON GRIFFIS: Thank you
16 very much. Thank you all very much. Good
17 luck, have fun.

18 MR. GRANDIS: Thank you very much.

19 CHAIRPERSON GRIFFIS: Let's move
20 onto the next case.

21 MS. BAILEY: Application Number
22 17559, of GIBG YL Partners, LLC, pursuant to

1 11 DCMR 3104.1 for a special exception from
2 the uniform height requirements of the roof
3 structure provisions under Subsection 411.5 to
4 allow the rehabilitation and expansion of an
5 existing commercial building that's the Yale
6 Steam Laundry into a residential condominium
7 building. The property is located in the
8 DD/C-2-C District at premises 425 through 437
9 New York Avenue NW Square 514, Lot 87.

10 MR. UTZ: Good afternoon, member
11 of the Board of Zoning Adjustment. My name is
12 Jeff Utz. I live at 2141 P Street NW,
13 Apartment 301 in Washington. I work for
14 Pillsbury, Winthrop, Shaw Pittman and we are
15 the attorney of record for GIBG YL Partners,
16 the Applicant in BZA Case 17559.

17 GIBG is developing this
18 condominium project at 437 New York Avenue NW.
19 That's Lot 87 Square 514 and it's also known
20 as the eastern portion of the Yale Laundry
21 historic site. GIBG is also the developer of
22 443 New York Avenue, which is the western

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1 portion of the Yale Historic site but that is
2 not a part of this BZA application.

3 The application before you is a
4 special exception application for -- under
5 Section 411.11 of the zoning regulations, so
6 that a roof structure of varying heights can
7 be constructed on the existing portion of the
8 historic building, as you can see on the
9 visual that we brought with us today.

10 Currently, the building is
11 actually the subject of a building permit and
12 it has under those -- the building permit
13 plans it actually has a uniform roof structure
14 of 12 feet two inches, but under this
15 application, the Applicant has requested
16 basically two heights to the roof structure,
17 one of 14 feet six inches and then one of
18 eight feet 10 inches which would require a
19 special exception under 411.11 from 411.5.

20 A key aspect of this property is
21 that it is a historic site, so it is subject
22 to Historic Preservation Review Board

1 approvals. So GIBG has obtained those
2 approvals for both the permitted scheme and
3 the scheme shown as part of the BZA
4 application here.

5 GIBG has also obtained an Office
6 of Planning report in support of the
7 application recommending approval and GIBG has
8 also engaged in a fair degree of community
9 meetings and obtained the support of ANC-2C,
10 6C and 6C's Planning and Zoning Committee and
11 the Mount Vernon Square Neighborhood
12 Association. We just submitted the minutes of
13 AN-C2C which show that they voted in support
14 of the application since we don't believe that
15 that ANC submitted the letter of support for
16 the application but ANC-6C and the Mount
17 Vernon Square Neighborhood Association did
18 submit letters of support.

19 So with that I would like to turn
20 the mike over to Scott Fuller representative
21 of GIBG. Thanks.

22 MR. FULLER: Thank you, Jeffrey.

1 My name is Scott Fuller. I live in Waterford,
2 Virginia. As indicated -- in fact, let me
3 refer you, please to the exhibit on your far
4 left showing an elevation of both the new 12-
5 story residential structure and you can see
6 that it's married to the historic Yale Steam
7 Laundry. Early on in the process of combining
8 these two buildings into a single condominium
9 community, the architects had recommended that
10 in order for all of the residents to be able
11 to enjoy the architectural benefits of the
12 historic building, it would make sense to
13 locate some of the key public functions in
14 that building, namely the lobby. We were
15 planning on having a fitness center, so they
16 suggested that that go in that building and
17 another amenity that we had planned on having
18 because of the size of the community was a
19 swimming pool and a roof deck.

20 And it was recommended that the
21 swimming pool and the deck go on the roof of
22 the historic building and that the main lobby

1 and the fitness center go inside of that
2 structure so that everyone would pass through
3 the historic building on a daily basis and
4 have that opportunity to enjoy it rather than
5 just making those say expensive lofts that
6 only the residents could enjoy. So we like
7 the idea and we then worked closely with the
8 HPRB staff member Steve Calcott on the design.
9 Steve was supportive of the idea of having the
10 swimming pool on the roof. He urged that we
11 try to keep any structures on the roof,
12 penthouse structures, as small as possible in
13 terms of bulk and height.

14 So we came up with a design which
15 you can see on this board to my right, your
16 left, I'm sorry it's a little bit small but
17 you can see in section view there, in
18 elevation view, I should say the discontinuous
19 roof line where the elevator portion of the
20 access to the penthouse is raised up above the
21 rest of the penthouse. Yeah, why don't we
22 show that. Here's a rendering of that same

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1 portion of the building and you can see the
2 discontinuous roof line. And Steve Calcott of
3 HPRB had urged that we absolutely keep the
4 structure to a minimum, keep the mass to a
5 minimum. So this is the design that we came
6 up with which he approved.

7 In going through the building
8 process, when we got to Zoning, Zoning said,
9 "Well, this is in violation of a regulation
10 that requires a continuous roof line". So
11 ultimately what we had to do, we didn't want
12 to hold up the entire project to go through a
13 variance, so we redesigned the roof line so it
14 was continuous and proceeded to go through the
15 building permit process. But in order to
16 achieve a continuous roof line, we had to
17 basically take the elevator and just sort to
18 cram it down into the building, which results
19 in a landing that is not at the roof top
20 level.

21 So if you're going up to the roof
22 top, whether you're in a wheelchair or not,

1 the door opens and you're not on the roof.
2 You have to go up another two and half feet up
3 a long circuitous ramp to get to the roof in
4 order to get that continuous roof line. And
5 so the reason we brought the case before the
6 Board today is we think that this is not an
7 ideal design situation. It's inconvenient,
8 it's unsightly and so we are proposing the
9 variance that we'd discussing today.

10 CHAIRPERSON GRIFFIS: Excellent.
11 I think it's straightforward, 411 is an
12 interesting section in the regulations and
13 we're very familiar with it. In one it starts
14 off saying you know, in order to keep good
15 design and have this blend in with the skyline
16 and the building, we're going to require
17 certain things. And then it says, it's all
18 going to be one level, one height, one
19 enclosure. It kind of works for a commercial
20 office building but not often a residential
21 and certainly not for what you're proposing on
22 the historic or existing structures since

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1 they're being reanimated and readdressed.

2 Another aspect of 411 which is
3 fascinating gives us full precarious design
4 control. So we might as well get right into
5 the elevations and start redoing those now or
6 not. Nonetheless, I think it's very
7 straightforward in terms of 411 what we're
8 looking at and in fact, we found more often
9 than not when we get relief from 411 on this
10 specific provision in terms of varying heights
11 in the penthouse structures that it falls more
12 in line with the exact intent, but moves
13 itself away from the letter of the
14 regulations.

15 It's kind of a strange conflict
16 that you get into with this. Maybe at some
17 point we'll rewrite it but nonetheless, we're
18 here today with what we have. I don't think
19 there's anything really more than you need to
20 provide the Board in my understanding. I
21 think frankly, the elevation put it straight.
22 I mean, and you also are well below the 18, 6

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1 which is allowable in the regulations to try
2 and diminish that massing to begin with. I
3 don't think it's not understood from the Board
4 that there's a certain overrun for elevators
5 that are obviously of a differing height. You
6 could make it in compliance, as you said, that
7 pull it all the way up and make it even. It
8 flies a little bit into trouble with the HPRB
9 provision of minimizing but I think not just
10 in historic, I think in something of that
11 feature it's not necessarily something that
12 you're trying to really show from the street.
13 That being said, are there any other questions
14 from the Board?

15 Very well, anything else we need
16 to address at this point?

17 MR. UTZ: If it would please the
18 Board, we would like to request a bench
19 decision and a summary order.

20 CHAIRPERSON GRIFFIS: We'll do
21 that at the end. Who knows what wrench that
22 Office of Planning might put into this whole

1 scheme as we move forward. But let's go to
2 the Office of Planning now and see.

3 MR. COCHRAN: Good afternoon, for
4 the record my name is Steven Cochran, not the
5 Shadow. And the Office of Planning would like
6 to stand on the record.

7 CHAIRPERSON GRIFFIS: Excellent.
8 Are there any questions from the Board to the
9 Office of Planning? Does the Applicant have
10 any cross of the Office of Planning?

11 MR. UTZ: No, we don't.

12 CHAIRMAN GRIFFIS: Excellent.
13 Again, an excellent analysis and I think it's
14 appropriate to state on the record it is very
15 succinct and straightforward in terms of the
16 requirements and the analysis for the special
17 exception and for the differing heights.

18 Let's move ahead then and take up,
19 we have indicated in the discussion also in
20 the written submissions the historic review.
21 I would note it's -- rather I would ask, is
22 ANC-6C present, a member of ANC-6C? Okay, we

1 do have Exhibit 26 which was the letter in
2 support which was, as noted, the appointing
3 ANC and you have now submitted the minutes of
4 2C which is the ANC within which this is
5 located.

6 MR. UTZ: Correct.

7 CHAIRPERSON GRIFFIS: Okay, and
8 that would show, obviously, it won't be able
9 to be granted the great weight of an official
10 letter of action from the ANC but obviously it
11 shows the intent of what was done there. Let
12 me ask if there are any persons present here
13 in this application that would like to provide
14 testimony, Application 17559 in support or in
15 opposition? Is there anyone here to provide
16 testimony? Let me make note there are two --
17 I think there may be more than that but I only
18 have record of two letters in the record,
19 Exhibit 27 and Exhibit 31. One is in
20 opposition and one is in support.

21 The Mount Vernon Square
22 Neighborhood Association is in support.

1 Perhaps I just have to look at the one. I
2 would make note of the letter in opposition
3 that's -- thanks us for the notification and
4 that they are the owner of a property located
5 at 450 M Street which would be directly and
6 adversely impacted by the special exception
7 from the uniform height requirements. They're
8 adamantly opposed to this as they would --
9 "unobstructed view from our windows would be
10 permanently blocked. Granting the developer's
11 wishes would result in reduction of the value
12 of the property and the requested relief, if
13 granted -- GIBG YL Partners, LLC requested
14 that we grant the use of air space and their
15 request was denied because they were unwilling
16 to offer fair compensation to offset any
17 anticipated diminished value to our property.
18 For the reasons above, we respectfully ask
19 that you deny the Petitioner's request".

20 Okay, comments, questions on that?
21 Very well. If there's no further agency
22 reports or testimony provided, we'll turn it

1 over to you for any summations.

2 MR. UTZ: We would like to just
3 stand on the record from here out and request
4 the bench decision and the summary order,
5 thanks.

6 CHAIRPERSON GRIFFIS: Thank you
7 very much. I don't see any reason why unless
8 there are any questions, I think we are ready
9 to proceed with this and I would move to
10 approve Application 17559 of GIBG YL Partners,
11 LLC. This is for special exception relief
12 under the 411 provision, 411.5 actually for
13 the Yale Steam Laundry project which is
14 located at the 425-437 New York Avenue, NW.
15 And I would ask for a second.

16 MEMBER ETHERLY: Second, Mr.
17 Chair.

18 CHAIRPERSON GRIFFIS: Thank you,
19 very much. Actually, this hasn't been before
20 us for any relief; is that right? It's kind
21 of stunning. You know, I would divulge this
22 on the record, I think we're all familiar with

1 this project. I mean, it's been kind of a
2 very -- it's a fascinating piece of
3 architecture and the one that's added onto it,
4 the historic one. I was kind of shocked that
5 we didn't see any kind of special exceptions
6 or variances from it but we won't get into
7 that. Nonetheless, we've here under 411.5, for
8 differing heights, it seems very
9 straightforward in fact, as I indicated, I
10 think it's the best address of the special
11 exceptions is that fact that one can follow
12 the intent of this section and move
13 precariously away from the actual letter of
14 the regulation. And it seems like we have
15 that in this instant case.

16 I don't need to say anything more
17 on that unless others have any other comments
18 or deliberations on th special exception. Very
19 well, we have a motion before us. All those
20 in favor signify by saying "Aye".

21 (Aye)

22 CHAIRPERSON GRIFFIS: And opposed.

1 Record the vote.

2 MS. BAILEY: Mr. Chairman, the
3 vote is recorded as four-zero-one to approve
4 the application. Mr. Griffis made the motion.
5 Mr. Etherly second. Ms. Miller and Mr. Mann
6 support the motion and Zoning Commission
7 member is not present.

8 I don't see any reason why we
9 wouldn't waiver rules and regulations and
10 Applicant obviously, was not objecting to it,
11 the Board members were not objecting to it.
12 Thank you very much. Thank you all very much.
13 We appreciate it and we do appreciate it also
14 -- as a last note we appreciate all the
15 information that was put into the record prior
16 which obviously makes it very easy to move
17 forward and appreciate the availability of the
18 illustrations if we had additional questions.
19 Have fun and have a good afternoon.

20 MR. UTZ: Thank you very much.

21 CHAIRPERSON GRIFFIS: Let's move
22 onto the next case then.

1 MS. BAILEY: The last case of
2 today, Mr. Chairman is Application Number
3 17564 of 1815 19th Street LLC pursuant to 11
4 DCMR 3103.2 for a variance from the floor area
5 ratio requirements under Section 402 and a
6 variance from the non-conforming structure
7 provisions under Subsection 2001.3 to allow
8 the renovation and expansion of an existing
9 seven-unit apartment building. The property
10 is zoned R-5-B and it's located at 1815 19th
11 Street NW. It's also known as Square 132, Lot
12 211.

13 Mr. Chairman, there are two
14 requests for party status in this case.

15 CHAIRPERSON GRIFFIS: Is Mr. Moran
16 here?

17 MR. MORAN: Yes.

18 CHAIRPERSON GRIFFIS: You're Mr.
19 Moran. Okay, have a seat. You don't need to
20 stand up. And Mr. Wilhelm? You're Mr.
21 Wilhelm, okay. Mr. Wilhelm, you're located at
22 1817 19th Street NW; is that correct?

1 MR. WILHELM: Yes, sir.

2 CHAIRPERSON GRIFFIS: And you're
3 the President of that -- that's a condo?

4 MR. WILHELM: Yes.

5 CHAIRPERSON GRIFFIS: Okay, do you
6 mind turning your mike on? You just need to
7 touch the --

8 MR. WILHELM: I am the President
9 of the 1817 19th Street Corporation, yes, sir.

10 CHAIRPERSON GRIFFIS: Okay, and so
11 are you representing -- you're requesting
12 party status for the condo association or for
13 yourself?

14 MR. WILHELM: For all of us and
15 I'm prepared to I think facilitate the
16 testimony here by serving as sort of master of
17 ceremonies of the other --

18 CHAIRPERSON GRIFFIS: Excellent.
19 So you are asking to be granted party status
20 as the President of the condo association.

21 MR. WILHELM: Yes.

22 CHAIRPERSON GRIFFIS: Excellent.

1 Okay, I don't have any other questions. Do
2 any of the other Board have questions?

3 MEMBER ETHERLY: Just very, very
4 quickly but just as a matter of detail, did
5 the condo association take action and
6 authorize you to act on its behalf?

7 MR. WILHELM: They did.

8 MEMBER ETHERLY: As President you
9 probably have that ability but just for the
10 record.

11 MR. WILHELM: Mr. Etherly, they
12 did and there's a letter in the record to that
13 effect.

14 MEMBER ETHERLY: Excellent, thank
15 you.

16 CHAIRPERSON GRIFFIS: Perfect, and
17 of course, granting of party status elevates
18 one beyond just a person to provide testimony
19 and so the base threshold for us to establish
20 that is to understand that there is something
21 of significant or distinct aspect to your
22 position as opposed to that of the general

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1 public. I think, Mr. Wilhelm, based on just
2 the adjacency as well as other aspects but
3 just based on adjacency, it would rise to a
4 level of being granted party status.

5 Let me hear from the Applicant, if
6 they would introduce themselves and they can
7 also put in a position on this.

8 MS. DUMAS: Good afternoon, Kinley
9 Dumas with Robbins, Kaplan, Miller & Ciresi
10 for the Applicant 1815 19th Street LLC. At
11 this time are we just addressing Mr. Wilhelm
12 and the adjacent property owner's request? We
13 would stand in opposition to Mr. Wilhelm's
14 request as an individual property owner but we
15 see no objection at this time as an
16 association President assuming he's duly
17 authorized to represent the Association.

18 CHAIRPERSON GRIFFIS: Excellent.
19 Appreciate that. Anything else then? Any
20 other questions? If there's no objection --
21 yes, Ms. Miller.

22 VICE-CHAIR MILLER: Mr. Wilhelm,

1 good afternoon. I just noticed for the first
2 time this letter dated February 4th, 2007. Is
3 that -- are you representing just the
4 individuals that are listed on page 2 of that
5 letter?

6 MR. WILHELM: The letter that was
7 February 4th --

8 VICE-CHAIR MILLER: February 4th,
9 2007.

10 MR. WILHELM: Yes, those are the
11 residents of the condominium association.

12 VICE-CHAIR MILLER: That's all the
13 residents and you're representing all of them
14 or is this some of the residents?

15 MR. WILHELM: It is all of the
16 residents.

17 VICE-CHAIR MILLER: It's all of
18 the residents?

19 MR. WILHELM: Yes.

20 VICE-CHAIR MILLER: Okay, thank
21 you.

22 CHAIRPERSON GRIFFIS: Excellent.

1 Any other questions? Right, is ANC present,
2 ANC-2B, anyone representing the ANC? I'm
3 noting no representative of the ANC present.
4 I think that we can move ahead then and grant
5 Mr. Wilhelm party status in this case. Let's
6 move on, Mr. Moran, correct?

7 MR. MORAN: Yes.

8 CHAIRPERSON GRIFFIS: I guess I
9 don't understand the circumstances, so maybe
10 you can briefly -- you actually reside in the
11 building that is here before us for relief.

12 MR. MORAN: Correct, and the Chair
13 has a copy of the application.

14 MR. MORAN: Yeah. Those are the
15 basis that I would move for party status and
16 I -- as far as the impact of these plans on my
17 situation, I don't know how closer I could be
18 in terms of proximity than anyone else --

19 CHAIRPERSON GRIFFIS: Okay.

20 MR. MORAN: -- and the effect of
21 these plans which would be essentially to guy
22 my apartment unit when at this point, the

1 house is still an apartment house, subject to
2 the Federal Housing Act and Federal Housing
3 and Conversion Act.

4 CHAIRPERSON GRIFFIS: I guess -- I
5 don't disagree with you there. I guess what
6 I'm trying to understand is for our purposes,
7 I guess one might say, we look at permanent
8 situations, right. So we have right now a
9 current piece of real estate with its
10 problems. And then we look at what's being
11 proposed and we're the link in between getting
12 from here to there. What I see your status
13 is, concern over one, as you say, you might be
14 removed from the property because of
15 construction but has there been any provisions
16 of which you would be able to return to it or
17 is there provisions that you've talked about
18 having to live through construction or -- see,
19 I guess I don't understand how --

20 MR. MORAN: Those haven't been
21 addressed, quite frankly. This application
22 was filed without my knowledge. It was filed

1 last January. The other issue that I -- that
2 my presence, I think, would contribute to is
3 that the grounds for uniqueness as far as I
4 read the application is based on the existence
5 of housing code violations.

6 CHAIRPERSON GRIFFIS: Right.

7 MR. MORAN: They don't say
8 anything else.

9 CHAIRPERSON GRIFFIS: Yeah, don't
10 get into the substance. I mean, I'm not --
11 granting of a party status doesn't have
12 anything to do with the merit of the case
13 presentation that you might present, but
14 rather just trying to understand what elements
15 of distinction or uniqueness would you be
16 impacted.

17 Saying it another way, it's really
18 -- well, I don't need to say it another way.
19 That's that it is. All right, any other
20 questions?

21 VICE-CHAIR MILLER: Mr. Moran, did
22 you say that you don't know how you're going

1 to be impacted in long run after this is done?

2 MR. MORAN: Well, my -- because
3 they haven't addressed it with me, and my
4 understanding of the plan is to basically gut
5 the house, so the unit would be destroyed.
6 They're not quite happy with the current -- or
7 the status quo which is apartment house and
8 the unit that I've lived in. So as far as
9 their obligations under the -- under the law,
10 you know, I don't know what -- frankly, what
11 will transpire down the road as far as those
12 particular rights. I don't know if that
13 should effect my ability to address the
14 problems that the Board addresses which is
15 uniqueness, practical difficulty and hardship.

16 VICE-CHAIR MILLER: Well, I think
17 the test is here is how you are effected
18 differently from the general public just for
19 party status which I understand what you're
20 saying.

21 MR. MORAN: I don't know how I
22 could be any clearer. I mean, if my -- if

1 somebody else's property is obstructed by the
2 construction or additions that are being
3 proposed, they seem to qualify on that basis
4 just speaking theoretically; whereas, someone
5 who lives in the house whose unit is destroyed
6 by the construction, does not. I mean, I'm
7 just arguing what appears to be somewhat, what
8 you're indicating.

9 VICE-CHAIR MILLER: Well, we don't
10 mean to even be arguing with you. We're just
11 trying to get the information to --

12 MR. MORAN: Why am I more
13 aggrieved than any other individual? Because
14 I live there and because the plans do propose
15 to destroy the unit. And I would also, I
16 think financially speaking, they are proposing
17 to sell these units at market rate which
18 currently is significantly more than what my
19 cost of rent it so I would be, in that respect
20 more than anyone else. If I do have the right
21 to purchase one of these units, it would be at
22 a price -- at market rate price.

1 VICE-CHAIR MILLER: And are you
2 differently situated than the other tenants --
3 are there other tenants in the building?

4 MR. MORAN: There's another --
5 there's a Spanish speaking tenant who also is
6 not privy to this proceeding. She doesn't
7 speak any English, so they did not involve
8 her. The other tenants are part of the LLC.
9 They are -- have been ruled to be former
10 tenants by the housing -- by the Rent
11 Administrator, so it's essentially me and the
12 other tenant, the other Spanish speaking woman
13 at this point who are representing the
14 interest of the tenants.

15 CHAIRPERSON GRIFFIS: Does the
16 Advocate have a position?

17 MS. DUMAS: Absolutely. And we
18 object to Mr. Moran coming in as a party in
19 opposition. We think his position is more
20 appropriate as a person in opposition,
21 certainly as the concerns about the status of
22 his unit in the long term but really before

1 the BZA today we're looking at the proposed
2 improvements, not looking at other issues and
3 the BZA doesn't have jurisdiction to look at
4 other issues including the conversion of the
5 units to condominiums. Right now, the status
6 of the building is that it's subject to the
7 rental housing requirements in the District of
8 Columbia and Mr. Moran's unit will be dealt
9 with appropriately in accordance with those
10 obligations of the property owners and just to
11 point out, the organization, 1815 19th Street,
12 LLC actually is an entity that was formed for
13 financial protection but it stemmed from the
14 tenant organization which Mr. Moran had an
15 opportunity to join upon the sale of the
16 building by the previous owner --

17 MR. MORAN: Which --

18 CHAIRPERSON GRIFFIS: Okay.

19 MS. DUMAS: And regardless of
20 whether or not he did join, the principals of
21 1815 19th Street LLC are the members of 1815
22 19th Street Tenants Organization and they are

1 tenant owners of the building. They're no
2 differently situated than Mr. Moran.

3 MR. MORAN: Jut on that point,
4 it's very important because down the road,
5 this issue of whether I acquiesced or not in
6 the sale or had the opportunity could be a
7 very important issue and I don't want my
8 silence to what was just stated be --

9 CHAIRPERSON GRIFFIS: That's fine.
10 And you somewhat get ahead of that because
11 right now I don't see how it would be of any
12 importance to this Board either position,
13 except for the fact that the ownership is here
14 presented and able to bring an application.
15 I mean, we would have no jurisdiction over the
16 formation of the ownership or the organization
17 of the tenant's association. You've indicated
18 in your party status application that you
19 question the vote and whether things were done
20 outside of the law and all of that goes well
21 beyond, one, our authority, our jurisdiction
22 and frankly, I have not seen how it relates to

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1 the zoning regulations.

2 This is where we're going, Mr.
3 Moran. Adjacency is a primary aspect of one
4 as they set up for party status and certainly
5 in how one might be uniquely or distinctly
6 impacted. However, the nexus of that
7 adjacency or location is always evidenced in
8 something of zoning, something that is
9 managed, regulated or addressed by our
10 regulations. But, to date, I haven't heard
11 you really say anything that is within the
12 purview of this Board.

13 There's no zoning element here
14 that you're basing your establishment of
15 having unique or distinct impact if this was
16 approved.

17 MR. MORAN: I didn't find anything
18 -- as a matter of practicality the fact that
19 I live there and that my apartment unit would
20 be destroyed to -- I mean, it would seem to be
21 a rather obvious effect of the granting of a
22 variance under the plans that are being

1 proposed. I didn't find anything case law-
2 wise. I'm also a lawyer but I understand
3 what's being communicated. I would certainly
4 note my objection to being denied party status
5 and I assume that would preserve my right to
6 appeal that if that were the case down the
7 road.

8 CHAIRPERSON GRIFFIS: Sure.

9 MR. MORAN: The only issue I would
10 -- party status bestows the right of --
11 certain rights, which my understanding is
12 includes the submission of evidence and one of
13 the pieces of evidence that I wanted -- that
14 I hoped the Board will take a look at because
15 it relates to the C of O, that may or may not
16 be relevant to the determination of the Board
17 with respect to the four area ratio that's
18 being argued. And the C of O, I wanted to
19 make that point and I'm the only one here it
20 appears hasn't necessarily been focused on but
21 it's my position that the C of O submitted by
22 the Applicant is an invalid one since I've

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1 learned about it. It's not been posted at the
2 premises and since I've learned about it, I've
3 raised it with the zoning administrator, who's
4 looking into it.

5 But the basement area has never
6 been zoned, quote, unquote, for occupancy and
7 I don't know without -- whether the floor
8 alletia (phonetic) that's being computed and
9 looked at would, without that inclusion of the
10 basement, under the plans be much, much
11 greater and the increase in that floor alletia
12 be much, much greater given that. So I don't
13 know if the evidence -- I would hope that at
14 least if I'm --

15 CHAIRPERSON GRIFFIS: So you're
16 saying that based on the fact that you live
17 there and you know how this is used and you
18 know some of the dimensions of the existing
19 property that you have a unique position of
20 analysis but also therefore, would be somehow
21 unique there distinctly, in effect in
22 character and kind if the proposed zoning

1 action was granted.

2 MEMBER ETHERLY: If I could jump
3 in, Mr. Chair, I would perhaps, tend to agree
4 with the Applicant's counsel in this
5 particular case. I think the -- I mean, there
6 are a couple of different things that have
7 been raised by Mr. Moran and I agree that in
8 the ultimate outcome of this particular case,
9 it clearly is an impact, there's no doubt
10 about that.

11 I think the Chairman's point,
12 however, about our purview being a very narrow
13 and focused one, i.e., zoning related issues
14 as opposed to what may be more properly a
15 rental accommodate issue, under those sets of
16 laws here in the District of Columbia for you,
17 I am perhaps still somewhat inclined to think
18 that at best, I'd welcome your testimony as a
19 person in opposition and would, perhaps, you
20 know, provide a little bit of latitude but I
21 think in terms of party status, I would agree
22 with the Chair at this point, that I'm not

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1 hearing the zoning specific rationale that I
2 would need for the establishment of party
3 status at this particular point, Mr. Chair.

4 CHAIRMAN GRIFFIS: Good. Others?

5 VICE-CHAIR MILLER: I would tend
6 to agree, that Mr. Moran seems to be impacted
7 by the conversion and that's really not the
8 issue that's before us but also with respect
9 to any evidence that you would want to put in,
10 you can still put it in under these rules as
11 a person testifying. So I think that -- I
12 don't think that you would be prejudiced in
13 any way by participating as a person and I
14 don't think that you'd fall within the
15 parameters of what's intended by party status
16 in the zoning case.

17 MR. MORAN: Thank you all. I'll
18 excuse myself. I would just note my exception
19 to the ruling.

20 CHAIRPERSON GRIFFIS: Excellent.
21 Thank you very much, Mr. Moran. Very well,
22 let's proceed then with the one party

1 established. You can also have a seat. We'll
2 call you up after the presentation of the case
3 for cross examination. Why don't we turn it
4 over to the Applicant.

5 MR. WILHELM: Thank you, Mr.
6 Chairman.

7 MS. DUMAS: Thank you, Mr. Chair.
8 Again, Kinley Dumas with Robbins, Kaplan,
9 Miller and Ciresi. With me today, to my
10 immediate right is Marc Eisenberg a principal
11 with 1815 19th Street LLC and to Marc's right
12 is Kendall Dorman, a project architect. Also
13 with us today are Jeff Nelson and Matt Greer,
14 who are the remaining principals. They are
15 sitting behind me to my right.

16 Just in discussing the party
17 status application, so you've got a little bit
18 of history of this building, it's a seven-unit
19 apartment building on 19th Street. It's a
20 building in the Historic District, Dupont
21 Circle Historic District. Again, a bit of
22 history that Mr. Eisenberg will discuss in his

1 testimony is that the building was attempted
2 -- the previous owner attempted to sell the
3 building without notice and an offer of sale,
4 as required by the Tenant Opportunity to
5 Purchase Act, approximately four years ago.
6 The tenant's organization stepped in and
7 fought a battle for approximately two years in
8 the Superior Court in order to exercise the
9 right of first refusal as provided under the
10 statute.

11 So two years ago or nearly two years
12 ago, they purchased the property and have been
13 carrying it for two years and trying to plan
14 a renovation. And the primary purpose for
15 doing so was really to save their homes and
16 take control of their own destiny as the
17 Tenant Opportunity to Purchase Act really is
18 aimed at allowing tenants to do.

19 As I mentioned, they purchased the
20 building approximately two years ago and as a
21 condition of financing, they are required to
22 obey all existing Housing Code violations of

1 which at one time there were 15 pages and to
2 completely replace the mechanical and
3 electrical, plumbing systems in the building
4 to make it habitable.

5 The building does have seven units
6 but many of the tenants have vacated due to
7 the existing conditions in the building which
8 included poor electrical to the point of
9 dangerous electrical situation, vermin and
10 unbearably leaking ceilings in certain units.

11 We're here today requesting a
12 variance from the requirements for non-
13 conforming structures because the building, as
14 it exists today, are -- is over the maximum
15 permitted lot occupancy and over the floor
16 area ratio. The proposed development includes
17 an expansion of floor area ratio in an amount
18 of about 350 square feet of gross floor area.
19 We actually have taken a very close look at
20 our numbers and over the past week and have
21 noticed that there was apparently a typo in
22 the calculation and we've got a revised self-

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1 certification form to submit which actually
2 will show it's an approximately six percent
3 deviation over existing conditions that we are
4 requesting relief for, oh, seven, I'm sorry,
5 seven percent but it is less than the eight
6 percent than was pointed out in the
7 application.

8 Our Statement of Reasons shows --
9 I'm sorry, our Statement of Reasons actually
10 shows -- there's a typo on that that shows 11
11 percent at one point but the self-
12 certification form shows they requested eight
13 percent deviation over existing conditions
14 which would bring us to about 35 percent above
15 the maximum permissible FAR in the R-5B
16 District.

17 The Office of Planning Report which
18 I would like to address in rebuttal, is
19 curious. With all due respect to the work
20 that the office of planning does, we are
21 confused by the report mainly because the
22 first paragraph notes that there's a request

1 for variance from the height requirement which
2 there is not in this case, so I just wanted to
3 clarify that.

4 The -- also, no change is being made
5 to the building footprint. No change is being
6 made to the rear yard. Because this is a
7 contributing building in a historic district,
8 any reduction in lot occupancy or reduction --
9 or addition to the rear yard to try to get the
10 building to conform with requires gentle
11 demolition in violation of the Preservation
12 Law.

13 So just to reiterate, this is a
14 request for variance from non-conforming
15 structures because it is existing non-
16 conforming as to plat occupancy and rear yard
17 and FAR. With that, I'd like to turn the
18 floor over to Marc Eisenberg who will
19 introduce himself and then I'll walk him
20 through his testimony.

21 MR. EISENBERG: Hi, I'm Marc
22 Eisenberg. I've lived in the District for

1 more than 16 years and I've been a tenant at
2 1815 19th Street for almost seven years. I'm
3 a member of the Tenant Association. The other
4 members of the Tenant Association have also
5 lived in the building -- have lived in DC for
6 between 15 and 20 years each and they've been
7 tenants at 1815 19th Street for around 11 or
8 12 years each. Am I starting with this
9 history of --

10 MS. DUMAS: Why don't you tell us
11 about why the tenant organization was formed?

12 MR. EISENBERG: Certainly. George
13 Travillis (phonetic) was the owner of our
14 building and what will be four years ago in
15 May he attempted to sell the building to
16 Sherry Orwitz (phonetic) another DC real
17 estate person. Upon learning this, giving us
18 notification, we exercised our -- we formed a
19 tenant's association, exercised our right of
20 first refusal and when we did so, he withdrew
21 the contract, which you're not allowed to do
22 and we sued -- a very long story short, after

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1 a little more than two years of litigation, we
2 won. We won by summary judgment. He even had
3 to pay some of our lawyer's fees. So that's
4 how we -- we formed an LLC strictly for
5 financial purposes at that time of the -- at
6 the time the building was attempted to be
7 purchased, we asked all the tenants in the
8 building to join the tenant's association and
9 the three of us are what's left from that
10 group.

11 MS. DUMAS: What was the condition
12 of the building at the time that you exercised
13 your right under the Tenant Opportunity to
14 Purchase Act?

15 MR. EISENBERG: At the time it was
16 pretty bad. We didn't really have -- we knew
17 it was bad. We didn't really have a sense
18 until we became owners of just how bad it was.
19 To give just kind of a stroke of how bad it
20 was, we're kind of not talking about not
21 liking the color of the paint. The electric
22 in the building is really a mess. There's

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1 fuses -- fuse boxing in each apartment, the
2 fuses blow pretty regularly. The real danger
3 beyond that is in the basement. The
4 electrical is literally in spots held together
5 by there's like not a rubber band but like a
6 paper clip keeping one of the boxes closed.
7 Every person that's -- we've had a lot of
8 different people investigating the property.
9 Everyone has told us that the electrical in
10 particular is really dangerous.

11 We have significant plumbing issues.
12 At least two of us have, you know, spent money
13 out of pocket to replace our toilets. The
14 toilets don't always work like they're
15 supposed to. One of the tenants doesn't have,
16 I believe it's a sink in the kitchen, a
17 working sink in the kitchen. There are real
18 plumbing issues.

19 Another pretty serious frustration
20 with the building is the condition of the
21 roofs and ceilings. For instance, Jeff Nelson
22 is a tenant in the first floor rear of the

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1 building and as a result of the kind of shanty
2 that's on the top of the -- that's at the rear
3 of the second floor, the leak is so bad over
4 his bedroom that he -- I think that he went
5 more than a year without sleeping in the
6 bedroom. Even the slightest bit of rain is
7 over the bed. There's also leaks in the third
8 floor front. It has to be a significantly
9 stronger rain but there's leaks there. I'm in
10 the second floor front and there are also
11 leaks. I could go on. There are serious
12 problems with the leakage as well as in the
13 basement.

14 MS. DUMAS: How many units were in
15 the building when you exercised your right to
16 purchase?

17 MR. EISENBERG: There were eight
18 units in the building. There's a Certificate
19 of Occupancy for seven units. The basement
20 front, which is not habitable space by any
21 means, there was, you know, a tenant in there,
22 a guy we actually knew, we felt pretty sorry

1 for him. We were able to help him out as
2 quickly as we could. As soon as we became
3 owners we gave him some money and helped him.
4 We didn't help him find another place, but he
5 found another place to live. So there are
6 still seven folks that live there.

7 MS. DUMAS: Okay, and you mentioned
8 before you purchased the building, you had an
9 idea of the repairs that needed to be made,
10 but was that situation -- did you find
11 yourself in a different situation when you
12 took control?

13 MR. EISENBERG: Yeah, there was kind
14 of -- you know, we were a little bit
15 surprised. I mean our depth of knowledge of
16 just how bad the -- just how little care the
17 previous owner had taken, it really wasn't
18 apparent. When the hot water heater -- for
19 instance, when the hot water heater in the
20 building failed and was taken out, I didn't
21 see this but I was told that there was some
22 markings on it that said it was from the late

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1 `40s. It was from like 1947 or something and
2 we've every reason to believe that other folks
3 that have looked at the building that really
4 no significant repairs have been made to the
5 building since then. The owner really refused
6 to even -- if our refrigerators broke, for
7 instance, he refused to kind of, you know, fix
8 the refrigerator, so there were those level of
9 issues.

10 There were also rats. We weren't
11 really being the best neighbors. Our garbage
12 area was pretty disgusting. We didn't have
13 garbage pickup for awhile. We --

14 CHAIRPERSON GRIFFIS: I think we get
15 the picture.

16 MR. EISENBERG: Sorry.

17 CHAIRPERSON GRIFFIS: Get to the
18 zoning issue.

19 MR. EISENBERG: Gotcha.

20 MS. DUMAS: Okay, so what do you --

21 VICE-CHAIR MILLER: I'm sorry, I
22 just want to interrupt for one second because

1 I know that you went on and on a lot about the
2 conditions but I just wanted to get clear. It
3 sounds like on the one hand you weren't aware
4 of it but on the other hand, you lived in the
5 apartment so you knew things were bad, so I'm
6 just not sure --

7 MR. EISENBERG: Right, the places
8 where I failed to realize just what we had
9 purchased were definitely in relation to the
10 electric and the plumbing and it's not so much
11 that I didn't know we had leaky roofs, I
12 didn't realize just how significant the
13 repairs would have to be in order to resolve
14 the issues. Sorry for not making that more
15 clearer.

16 VICE-CHAIR MILLER: Thank you.

17 MR. EISENBERG: So I don't have any
18 type of background -- I'm sure this is obvious
19 to you -- I don't have background as a
20 developer, so you know, I'm just kind of
21 seeing the apartment through different eyes as
22 an owner.

1 MS. DUMAS: In fact, none of your
2 principals are real estate professionals; is
3 that right?

4 MR. EISENBERG: Correct, that's
5 correct.

6 MS. DUMAS: Okay, so what are you
7 proposing to do with the building at this
8 point and why are we hear today with variance
9 requests?

10 MR. EISENBERG: We're looking to,
11 you know, improve the situation of our homes
12 and make it a significantly more livable
13 space. When we -- because we're not real
14 estate folks, we really talked to a lot of
15 different people. We spoke to a number of
16 architects before we hired Kendall. We spoke
17 to developers when we thought, you know, maybe
18 we would have someone help us with this
19 project. We've had a variety of different
20 general contractor type folks in and out of
21 the building.

22 And the developers -- and so we

1 learned the following, or what was suggested
2 was that we build out the building as much as
3 possible. We had a variety of different
4 suggestions over how many units to turn the
5 building into but the objective was to build
6 out the second and third floor all the way to
7 the back as much as possible and create a very
8 large third floor deck, a deck on the roof of
9 the building. And given all the issues that
10 we had with the building for the condo
11 conversion and dealing with our tenants, et
12 cetera, we decided that we didn't really want
13 to go that route. We really just wanted to
14 make -- you know, improve what we have.

15 And that end, you know, we hired an
16 architect and started to kind of define our
17 project. We didn't really have a good
18 vocabulary in terms of what level of finish
19 and build-out and all that. So when we spoke
20 to Kendall, we said that we don't want to
21 build a Porsche, because we know cars a little
22 bit. We want to build a Volkswagen. You

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1 know, we want something sturdy that we can all
2 live in for a long time and so we've kind of
3 -- you know, that's kind of our shorthand for
4 the level of, you know, how sweet we want --

5 MS. DUMAS: Are you proposing to
6 build out the entire second and third floor?

7 MR. EISENBERG: We're absolutely
8 not, no. So that was what initially --
9 actually, a little bit of history, when we
10 started this project and we're going back
11 away, we kind of came up with some
12 preliminary drawings and presented them --
13 stop me if I make an error here. I think we
14 presented them first to the Historic
15 Preservation Review Board to Steven Calcott
16 (phonetic) and Jennifer Steingasser, kind of
17 -- I think as kind of an informal process and
18 we said, "Hey, we want to build out the
19 second, built out the third and make this big
20 thing on the roof", and they looked at it and
21 they said, "Well, you may be able to do this
22 but it would be consistent with your neighbors

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1 if you used -- they referred to it as a
2 wedding cake approach, so that the second
3 floor -- you know, so that each floor doesn't
4 go back all the way to the end. And we said,
5 "If that will get us past BZA, then that's
6 what we'll build, that's what we'll do. And
7 that's what we've put before you. So we did
8 kind of -- right off the bat, we just wanted
9 -- we really are -- I won't waste your time
10 with it but we're really having some very
11 serious difficulties with the other parts of
12 this project and this -- what I call the
13 architectural design part, we really wanted to
14 go as quickly and smoothly as possible. So
15 no, to answer to your question, we are not
16 building out the second and third.

17 MS. DUMAS: Have you met with your
18 neighbors or any other organizations?

19 MR. EISENBERG: We have. After
20 meeting with HPRB, the next person -- the next
21 group of people we spoke with were the Dupont
22 Historical -- Dupont Conservancy, Dupont

1 Conservancy, and they were downright
2 enthusiastic about our project. Kendell and
3 I presented to them and went through in great
4 detail and they were -- they had a lot of
5 questions for us and they were -- they not
6 only said, "Yes, you can do this", they were
7 really excited to see that tenants were doing
8 this project.

9 MS. DUMAS: And you met with that
10 ANC.

11 MR. EISENBERG: Yeah, the next folks
12 we met with after that is individually I met
13 with Curtis I think Fuller, Farrar, (phonetic)
14 Curtis Farrar, who is our new ANC rep and I
15 walked him through our plans very
16 specifically. He like them. He thought they
17 were cool. We got on the agenda. We
18 presented them to ANC and ANC also endorsed
19 us. I would imagine you have a copy of their
20 decision in hand today, endorsed the project
21 and I think they said they gave them a no --
22 no decision, right? Yeah, no decision on the

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1 third floor. And we also shared it with our
2 neighbors, those at 1813 and at 1817.

3 MS. DUMAS: Okay, so you mentioned
4 that you had extreme difficulty with other
5 portions of this project and I just want to
6 walk through with you so that you can explain
7 to the Board what some of your costs have been
8 in going through this because there's -- as
9 you maybe briefly explained, several
10 components to purchase the --

11 MR. EISENBERG: Okay, so you want to
12 talk -- you want me to tell you about the cost
13 of -- we paid \$600,000.00 for the building.

14 CHAIRPERSON GRIFFIS: Wait. What
15 relevancy does cost have to do with this?

16 MS. DUMAS: Well, part of the
17 practical difficulty is predicated on the
18 significant economic hardship that the
19 properties have gone through and that really
20 is the extraordinary situation on this
21 property because these owners have endured a
22 four-year battle to get to this point, which

1 include fighting for their right to purchase
2 the building under DC law.

3 VICE-CHAIR MILLER: I thought part
4 of it was also the expense of making all the
5 repairs that they were unaware of.

6 MS. DUMAS: Absolutely. I'm sure
7 we'll get to that. But the --

8 CHAIRMAN GRIFFIS: I don't see how
9 that's unique to any purchase, renovation and
10 conversion.

11 MS. DUMAS: Well, perhaps Mr.
12 Eisenberg could walk through just the
13 litigation costs alone.

14 CHAIRMAN GRIFFIS: Nothing to walk
15 through, what are the litigation costs?

16 MR. EISENBERG: The litigation costs
17 up to the time of when we actually won -- when
18 we actually owned the building, I think we're
19 about \$65,000.00 for that for which the owner
20 had to --

21 CHAIRMAN GRIFFIS: How about 70?
22 That's 10,00 a unit. You paid 600,000 for it?

1 So that's 110,000 a unit. You're telling me
2 that's why above market for Dupont Circle to
3 buy a building for conversion for condos?
4 Now, I don't know the business but is that
5 what you're asserting?

6 MR. DANIELS: Absolutely not. We're
7 asserting that the cost of the improvements
8 and the cost of obtaining the building create
9 an extraordinary situation that warrant
10 flexibility and a greater variance from FAR
11 and for a non-conforming building. It's a
12 confluence of factors argument, as I'm sure
13 you saw from our Statement of Reasons, which
14 address costs, time.

15 CHAIRPERSON GRIFFIS: Right. I
16 guess what I don't want to get too far into,
17 you know, I'll rely on my other Board members,
18 but I don't want to get too far into arguing
19 the significance of what is granted from
20 zoning relief in terms of the costs that are
21 incurred in going after this project, meaning
22 where is the baseline zero? Where do we start

1 to understand that this is way above or way
2 below? How do we establish just the burden of
3 it? That's what -- I don't really think that
4 -- I haven't been totally persuaded that
5 that's fundamental to this. I don't disagree
6 that it may be part of numerous factors that
7 go into this but I think we're probably better
8 off just understanding that that's an aspect
9 and relying on what has been submitted in the
10 writing unless there is additional information
11 that we need.

12 MEMBER ETHERLY: Well, I chuckle
13 because I'm sure my colleagues feel deja vu in
14 that we've had a not too unfamiliar discussion
15 earlier today in decision but one case is one
16 case and it's separate and distinct from
17 another case. I do, however, share the
18 Chairman's trepidation a little bit and
19 perhaps a bit anxious to get a little more
20 focus on our conversation. I definitely
21 believe from the written materials and from
22 the direction in which all testimony is going

1 that I understand the argument that is being
2 proffered here but I think, perhaps, where the
3 Chairman is heading is a need for a little
4 more focus on it. It is, indeed, one that is
5 contemplated in some of the juris prudence
6 that this Board has relied upon before, as you
7 probably are aware, whether it's Gilmartin or
8 other cases, but is indeed -- but it can at
9 times be a tough bar to reach.

10 So, I believe, again, I share the
11 Chair's sense of, okay, it cost you some money
12 to get the property, to fight through that
13 battle. I'm not saying it to minimize that.
14 You have a very good sense of how much pain
15 and suffering you went through to get to this
16 point. That being understood, there is now
17 this added piece regarding the simple -- the
18 severe cost of bringing the property up to
19 standard, up to code in many areas as you've
20 identified in your written submittal.

21 I would hazard a guess that -- let
22 me just say from my standpoint, I would

1 probably want to see or hear more about that
2 to help buttress the economic aspect of the
3 argument, but still the payday here is going
4 to be how does that all connect to doing what
5 you are attempting to do. That's where the
6 Office of Planning's report comes in and I
7 think that's still kind of the missing link,
8 you know, 20 minutes into the presentation.

9 And again, that's not to minimize
10 your presentation or the history that you're
11 sharing but the linkage, the nexus has to be
12 with all of these financial considerations,
13 here's why we have to build what we're
14 proposing to build. So it's that linkage
15 that's going to be extraordinarily critical.
16 If at the end of the day the argument is we
17 need it in order to seek a rental income
18 return or the condo return on income, in order
19 to make it all work, then the numbers are
20 going to be real, real critical then. I'm
21 sure I'll have other colleagues who will speak
22 to a need for some clarity there.

1 So I'll just stop right there but I
2 think that's kind of where I'm heading, Mr.
3 Chair.

4 CHAIRMAN GRIFFIS: Good. Well
5 said.

6 MS. DUMAS: I think just to point
7 out that we offer the information on
8 litigation costs and the time in litigation
9 not only to prove the requirement -- our
10 burden with regard to practical difficulties
11 but also for the unique -- the uniqueness of
12 this property because the uniqueness of this
13 property does extend, I think, to the
14 ownership as a tenant group that is actually
15 renovating their own building because that is
16 a rarity in the District of Columbia.

17 MR. EISENBERG: I had no idea how
18 rare we were until very recently. Councilman
19 Jim Graham who, as you know, oversees DCRA,
20 met with us and told us that as far as he
21 knows, we're the only tenants in DC that have
22 exercised TOPA and chose to oversee a project

1 ourselves. And to that end, in addition to
2 the cost, in addition to the money, it's also
3 been two years of bringing in, you know, very,
4 very little money in rent because of the
5 condition of the building. We are talking
6 about, you know, approximately \$1129.00 a
7 month is the most that can come in, in rent,
8 which is, you know, less than a fifth of our
9 interest payments on our loan without even
10 talking about any construction related issues,
11 just to give some sense of what we're talking
12 about.

13 CHAIRPERSON GRIFFIS: Right, no,
14 this is -- the Board could talk about what
15 you're about to endeavor and what you've been
16 through, you'd hear a great support. I mean,
17 it is fascinating but we're caught, again,
18 here with the fact that part of the variance
19 test that you're now embarking on proving for
20 us, the first test is a uniqueness test. It
21 is something that someone can't go down the
22 block and show up tomorrow with us and say,

1 "Look, you've got to give me one because you
2 gave them one", right. So that's why the
3 economic argument is very -- it's hard on one
4 side because in many respects, anyone could
5 say, "Gosh, it's just going to cost me more
6 than I can afford, you have to give me this
7 additional floor", or whatever it is they ask
8 for. And I'm not trying to minimize. I'm
9 trying to make it simple for understanding.

10 We totally understand and there's
11 some assertion and it's fairly clear in the
12 written submission that there's the condition
13 of the building. So we have that. We have
14 cost. We have an association that's being
15 bounded that doesn't -- isn't a professional
16 developer or constructor. Okay, so we
17 understand that.

18 Now, let's get into the building.
19 Now, let's really figure out, okay, so those
20 aspects, how do they relate directly to the
21 relief that's being sought and maybe it will
22 help us if we just move on a little bit.

1 MR. EISENBERG: Okay.

2 MS. DUMAS: Okay, we would like to
3 call Kendall Dorman with Weivenson (phonetic)
4 Dorman, Architects. Kendall, can you
5 introduce yourself for the record?

6 MR. DORMAN: I'm Kendall Dorman.
7 I'm the principal at Weivenson Dorman,
8 Connecticut Avenue, Washington D.C.

9 MS. DUMAS: And have you previously
10 appeared before the BZA as an expert in
11 architecture?

12 MR. DORMAN: Yes.

13 MS. DUMAS: Okay. Tell me how you
14 became to be involved with this project.

15 MR. DORMAN: Marc was in the
16 neighborhood where my firm is and actually
17 Marc knew some of the sons of my partner John
18 Weivenson.

19 MS. DUMAS: Okay, and why don't you
20 walk us through the physical description, as
21 briefly as possible the physical description
22 of the building?

1 MR. DORMAN: Sure. It's a three-
2 story plus basement, Victorian row house of
3 about 4500 square feet, I believe, and it has
4 -- the current condition when I first saw it,
5 it has two units in the basement, two units on
6 the first floor, two units on the second floor
7 and two units on the third floor and it's in
8 -- it's a typical row house that we see a lot
9 of in houses around the City where it's just
10 been in disrepair or neglected repair for a
11 long time.

12 MS. DUMAS: And you would echo Mr.
13 Eisenberg's description of the repairs needed
14 or do you have anything to add to that?

15 MR. DORMAN: Sure, and I don't have
16 any more to add. It's in pretty bad shape and
17 most of the systems and the electric should
18 all be ripped out and replaced, modernized.

19 MS. DUMAS: Okay. So why don't you
20 walk us through what is actually being done on
21 each floor and where the additional space that
22 really for the variance case is coming in?

1 MR. DORMAN: Okay. When we first
2 started out the project with Marc they were
3 just kind of concerned about how to get the
4 most out of this house that they could. So we
5 went through a lot of different options, as we
6 typically do with most projects.

7 What ended up happening after some
8 discussions with historic was that we decided
9 -- the basement and the first floor footprint
10 remained basically unchanged. We're just
11 going to take out some walls and install in
12 every unit modern appliance, normal sized
13 kitchens and FHA sized bathrooms.

14 On the second floor there is a wood-
15 framed, kind of what they call a shanty. I
16 call it a Robinson Caruso kind of thing that
17 is in disrepair and we want to take that down
18 and replace it with something a little bit
19 stronger and then also build out over the
20 footprint of the remaining area there. So
21 there's an addition on the second floor.

22 And then on the third floor, we

1 wanted to -- well, let me tell you, the
2 addition is about 167 square feet on the
3 second floor. And then on the third floor,
4 the two units will be converted into one unit
5 so we'll have seven units. And there is an
6 addition of about 138 square feet which kind
7 of sits on top of what was the old shanty.

8 And then we have a penthouse that
9 leads up to a roof deck accessible from the
10 third floor unit.

11 MS. DUMAS: Well each unit have its
12 own mechanical equipment?

13 MR. DORMAN: Right, right.

14 MS. DUMAS: A self-contained unit.

15 MR. DORMAN: A self -- everything is
16 self-contained, kind of what's typically done
17 in typical development today.

18 MS. DUMAS: And that replaces a
19 common system in the basement of the building?

20 MR. DORMAN: Right, there was a big
21 old boiler in the basement and I think one big
22 water heater.

1 MS. DUMAS: And approximately how
2 much square footage is attributable to these
3 new mechanical systems in each unit?

4 MR. DORMAN: Yeah, I figure there's
5 probably maybe 15 or 20, 25 feet for laundry,
6 you know, washer/dryers and an air handler and
7 a water heater.

8 MS. DUMAS: Okay. So between 15 and
9 25 square feet per unit.

10 MR. DORMAN: Per unit, right.

11 MS. DUMAS: And on the aggregate,
12 what does that add up to throughout the
13 building?

14 MR. DORMAN: About 150 square feet.

15 MR. DORMAN: 150 square feet, okay.
16 What's the impetus for the additions on the
17 rear, I mean, in terms of the floor plan?

18 MR. DORMAN: Right, just kind of
19 laying out this space, I mean, right now some
20 of these units are very small and very
21 inefficient so we were just trying to make the
22 living units a little bit more livable and a

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1 little bit more normal and kind of get in tune
2 with kind of what the -- what's marketable.

3 MS. DUMAS: Are you relocating any
4 of the stairwells in the building?

5 MR. DORMAN: We're reconstructing
6 the stair. It's actually kind of leaning, so
7 we need to --

8 MS. DUMAS: But are you
9 reconstructing it in the same place?

10 MR. DORMAN: Basically, it's about
11 in the same place.

12 MS. DUMAS: Okay, and are you losing
13 any additional square footage there?

14 MR. DORMAN: Losing? No, we're not.

15 MS. DUMAS: Okay. Are you
16 relocating the areas in which the mechanical
17 systems occupy, other than the closets for the
18 self-contained units? Will the air
19 conditioning run in the same air shaft?

20 MR. DORMAN: Well, yeah, there
21 wasn't actually -- there was no air
22 conditioning in this building so there were no

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1 air shafts. There was a light shaft in there
2 that we're kind of taking over but where the
3 mechanical room was in the basement is being
4 turned over to one of the units.

5 MS. DUMAS: Okay. You're familiar
6 with the requirements for obtaining a variance
7 for the District of Columbia.

8 MR. DORMAN: Yes.

9 MS. DUMAS: Okay, and the first part
10 of that is the property has to be unique. Are
11 you familiar with that requirement?

12 MR. DORMAN: Yes.

13 MS. DUMAS: And in your opinion, is
14 this property unique?

15 MR. DORMAN: I think it is, just
16 because of the existing condition of the
17 property and also because of the historic
18 status. It's in a historic neighborhood, so
19 it's deemed a historic building. And then I
20 guess what you already talked about with Marc
21 and the homeowner situation being kind of
22 unique and how long it's been -- how long and

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1 expensive a process it's been.

2 MS. DUMAS: And just going to the
3 requirements of the Historic Preservation Law,
4 is there really anything that could be done to
5 this building in accordance with the Historic
6 Preservation Law without obtaining variance,
7 any addition to square footage?

8 MR. DORMAN: No, not an addition,
9 no. You can make improvements, I think,
10 within the interior structure but I think --
11 I still think I would still get it okayed by
12 the Historic.

13 MS. DUMAS: Sure. What practical
14 difficulties would this homeowner experience
15 if forced to adhere strictly to the zoning
16 requirements?

17 MR. DORMAN: I guess the -- well,
18 they would have to, well, eat up some more
19 space in the units then.

20 MS. DUMAS: How much space? I mean,
21 you mentioned there was about 150 square feet
22 for mechanical.

1 MR. DORMAN: Right.

2 MS. DUMAS: But what other spaces
3 are we talking about? I mean, we're
4 requesting 350 square feet.

5 MR. DORMAN: Right, like I say, I
6 think some of the kitchens, we wanted to make
7 normal sized kitchens and we also wanted to
8 get FHA sized bathrooms which are always a
9 little bit bigger than what was there.

10 MS. DUMAS: Okay, and do you know
11 what the difference in size?

12 MR. DORMAN: No, I don't.

13 MS. DUMAS: Okay.

14 CHAIRPERSON GRIFFIS: Can we just
15 have a -- this whole Federal Housing
16 Administration bathrooms and such --

17 MR. DORMAN: Right.

18 CHAIRPERSON GRIFFIS: -- I mean,
19 explain to us what that means and why --
20 explain what it means.

21 MR. DORMAN: Basically, it's not ADA
22 and it's not what we could put in there as a

1 bathroom that meets code. It's a little bit
2 bigger. It allows for I guess some sort of
3 disabilities, some sort of accessibility but
4 it doesn't go all the way to putting in the
5 ADA bath.

6 CHAIRPERSON GRIFFIS: Are all the
7 units here required to come up to that
8 standard?

9 MR. DORMAN: I don't think it's
10 required, but we've just kind of adopted it in
11 the, you know, practice just because we think
12 it is kind of good practice. So I think more
13 people would be able to use it.

14 CHAIRPERSON GRIFFIS: Rather than
15 converting a small closet to a bathroom, you
16 want to put it back into a rational size --

17 MR. DORMAN: Right.

18 CHAIRPERSON GRIFFIS: -- which is
19 analogous to the Federal Housing
20 Administration requirements.

21 MR. DORMAN: Right.

22 CHAIRPERSON GRIFFIS: I see, okay.

1 MR. DORMAN: I'm not familiar with
2 all the requirements there. I just know that
3 it's kind of a good idea because more people
4 will be able to use it.

5 CHAIRPERSON GRIFFIS: Okay.

6 MS. DUMAS: And that would
7 potentially open up the prospective tenants
8 and prospective purchasers to those using FHA
9 financing.

10 MR. DORMAN: Right, yes. I think it
11 also protects the people who own the building
12 from potential lawsuits because they wouldn't
13 have it.

14 MR. EISENBERG: Then my grandmother
15 can visit my apartment.

16 MS. DUMAS: Right. And you're
17 familiar with the zone plan, the Comprehensive
18 Plan recommendations and the surrounding area.

19 MR. DORMAN: Right.

20 MS. DUMAS: An in your opinion,
21 would the proposed improvements have any
22 adverse impact on either the zone plan or the

1 surrounding neighborhood?

2 MR. DORMAN: No, it's an R-5 zone
3 which is high density residential and we're
4 basically keeping it high density residential
5 and we're not changing the number of units to
6 the building. And I think that the amount
7 that we're adding is pretty minimal, just for
8 two units to make them somehow normal size.

9 If you -- well, I think an
10 efficiency unit is kind of hard to -- a lot
11 more difficult to kind of like deal with
12 rather than a one-bedroom unit. So we tried
13 to make them all one-bedroom units.

14 MS. DUMAS: What's the size range
15 across the units?

16 MR. DORMAN: I think the smallest
17 one is 530 square foot and the largest one is
18 771 square foot and those would be the one-
19 bedrooms and the two bedroom on top is about
20 1200 square feet.

21 MS. DUMAS: Okay. Some of the
22 neighbors have opposed the application and

1 submitted in their testimony that they're
2 concerned about the light and air, the impact
3 on light and air in the rear of the property.

4 MR. DORMAN: Right.

5 MS. DUMAS: Have you looked into
6 that at all? And if so, can you explain?

7 MR. DORMAN: Yeah, we did some
8 shadow studies and light studies on the winter
9 solstice and the summer solstice at 9:00, noon
10 and 3:00 in the afternoon. And I don't know
11 if the Board needs to see those or -- I think
12 that about the only time we found that it
13 impacted on the neighboring property was in
14 the wintertime.

15 MS. DUMAS: Why don't we submit
16 those for the Board's --

17 CHAIRPERSON GRIFFIS: Why don't we
18 start with the dates. The building faces
19 which direction, west?

20 MR. DORMAN: The front of the
21 building actually faces west, correct.

22 CHAIRPERSON GRIFFIS: So the back is

1 east. Okay.

2 MR. DORMAN: I don't really know the
3 best way to show these but this is the east
4 elevation coming from the alley, so this was
5 kind of the existing conditions. This is what
6 they call the shanty here and this is the high
7 wall. There is a shadow that casts on in the
8 morning and you'll see that there's a little
9 bit more right in this area here with the
10 addition of the building.

11 And then at noon, there's a little
12 triangle here that was shown, you know, that
13 is not there any more with the addition. And
14 I can over the plans, too, but the plans
15 really don't show very much. Then of course,
16 3:00 o'clock, it's all kind of in shade shadow
17 for both conditions.

18 CHAIRPERSON GRIFFIS: Okay.

19 MR. DORMAN: And then in the summer
20 time, at 9:00 -- yeah, at 9:00 in the morning,
21 there's virtually no change to the shadows.
22 And I think there's a railing that's shown on

1 the new plan at noon. And then at 3:00
2 o'clock, it's the same condition because the
3 sun has cast over on the other side anyway.

4 MS. DUMAS: After looking at these
5 shadow studies or from these shadow studies,
6 did you come to an opinion as to whether or
7 not there would be an adverse impact?

8 MR. DORMAN: It's a minimal impact.

9 MS. DUMAS: Okay. Unless the Board
10 members have any questions about the shadow
11 studies, I'd like to move on. One last issue
12 that's been raised by the party in opposition,
13 it was suggested that parking be required for
14 this building. Are you familiar with parking
15 requirements in the District?

16 MR. DORMAN: Yes.

17 MS. DUMAS: And is any parking
18 required for this building?

19 MR. DORMAN: This is a historic
20 building in a historic neighborhood and
21 therefore, parking -- and existing structure
22 and therefore, parking is not required.

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1 MS. DUMAS: Okay.

2 MR. DORMAN: Although to the
3 admiration of the client, they have installed
4 a Zipcar in the little tiny spot that they can
5 park back there. It's not a full-sized one
6 but they --

7 MS. DUMAS: Okay.

8 MR. DORMAN: -- which is available
9 to all the tenants.

10 MS. DUMAS: And with that, I'd like
11 to reserve the rest of our time for rebuttal.

12 CHAIRPERSON GRIFFIS: Sure,
13 excellent, questions? Ms. Miller?

14 VICE-CHAIR MILLER: Mr. Dorman,
15 would you say that the project that we're
16 seeing in the application is the minimum
17 addition to accomplish the goals of updating
18 the mechanical and plumbing and electrical
19 equipment and providing the FHA bathrooms and
20 modern kitchens, anything else that you did to
21 make them more livable?

22 MR. DORMAN: Well, we made them all

1 one-bedrooms, too, except for the top floor
2 which is two bedrooms, but yeah, I think it's
3 -- it's fairly minimum sure.

4 VICE-CHAIR MILLER: If you made it
5 smaller, you would have to -- you would lose
6 some of those goals; is that right?

7 MR. DORMAN: You'd lose a sitting
8 area or dining area. I mean, it depends on
9 how you arrange your furniture but we started
10 out with, you know, tables with six people and
11 kind of pared a couple of them down to tables
12 with four people.

13 VICE-CHAIR MILLER: Also, I
14 understand from what you're saying that the
15 expansion is to accomplish those goals but on
16 the other hand, I also thought I heard that
17 the expansion is to cover the cost. Was that
18 a factor as well? Maybe that's not the
19 question for you.

20 MR. DORMAN: Well, I think those
21 things have to kind of reach a balance.

22 MR. EISENBERG: Can I attempt to

1 answer that? If this were a function of
2 making money, we would have a very different
3 presentation for you. And our project would
4 be extremely different than this. We would
5 have followed the advice of the developers we
6 met with. That's not what's before you. This
7 is a drastic compromise from that. Kendall
8 can determine whether or not it is, in fact,
9 you know, could we squeak out two less or 10
10 less square feet, or what the number is. We
11 spent an awful lot of time and money and he's
12 very patient with me going through and yeah,
13 how little can we do.

14 So from where I sit, it is indeed, a
15 balance but it also isn't -- you know, this
16 isn't a financial decision. That's not why
17 we're sitting in front of you. We want to
18 expedite this process and return to the issue
19 of converting the building to condo and our
20 other issues.

21 CHAIRMAN GRIFFIS: Does the second
22 level footprint follow the first level?

1 MR. DORMAN: Yes.

2 CHAIRMAN GRIFFIS: Okay, so lot
3 occupancy isn't changing; is that correct?

4 MR. DORMAN: It does not.

5 CHAIRMAN GRIFFIS: And so the third
6 level is only different because part of that
7 is a walk-out which is the roof on top of the
8 second level.

9 MR. DORMAN: Can you repeat that?

10 CHAIRMAN GRIFFIS: The third doesn't
11 follow the exact same footprint as the first
12 and the second.

13 MR. DORMAN: Well, it does actually,
14 but it -- the --

15 CHAIRMAN GRIFFIS: Not the enclosed
16 space.

17 MR. DORMAN: Not the -- there's a
18 deck on top, yeah, right, right, but there is
19 a small, 100 some square foot addition on the
20 top of what's described as the shanty.

21 CHAIRMAN GRIFFIS: Okay. Do you
22 have construction costs?

1 MR. EISENBERG: We've been using an
2 estimate of about \$250.00 per square foot,
3 anywhere between 225 and 300 per square foot.
4 We've intentionally not bid this -- we started
5 the bidding process with general contractors
6 but we kind of waited till we're finished with
7 you before we get very specific estimates from
8 them. We've heard 225 to 300 per square foot,
9 the number that you know, I've played with the
10 -- and play is the right word, with the pro
11 forma a number of different ways and \$250.00
12 per square foot is the number I've been using.

13 CHAIRMAN GRIFFIS: Okay. Any other
14 questions? Anything else? Very well, let's
15 move ahead.

16 MR. WILHELM: Mr. Chairman, excuse
17 me, is this the opportunity for cross?

18 CHAIRPERSON GRIFFIS: Yes, exactly.
19 And let me just -- did the ANC join us, ANC-6,
20 anyone representing.

21 MS. DUMAS: ANC-2B.

22 CHAIRPERSON GRIFFIS: Sorry. You

1 know, as I said that, I thought, it can't be
2 part of this application. Very well, how
3 about 2B, have they shown up? All right,
4 let's move ahead.

5 MS. DUMAS: Yeah, Mr. Chair, do you
6 have the ANC's letter in the file?

7 CHAIRMAN GRIFFIS: Yes, we have
8 Exhibit Number 23.

9 MS. DUMAS: Right, okay.

10 MR. EISENBERG: And the letter from
11 the other neighbors that I gave to you?

12 CHAIRPERSON GRIFFIS: We'll get to
13 that at some point.

14 MR. EISENBERG: Okay.

15 CHAIRMAN GRIFFIS: Cross, questions?

16 MR. WILHELM: Thank you, Mr.
17 Chairman, just two brief questions for Marc.
18 Did you represent to the ANC that your
19 neighbors approved of the project?

20 MR. EISENBERG: We represented that
21 the neighbors at 1813 that signed that, that's
22 correct, and that there were not objections

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1 from 1817 and I know where you're going and I
2 -- if my semantics were such that evening,
3 that certainly wasn't the intention and I've
4 spoken to Curtis about that. I don't think
5 that's how he saw it as well. I was not
6 representing that all of the folks in 1817 as
7 well as all of the folks in 1813 were on board
8 and signed. That's not -- I said, no, I have
9 these four signatures from 1813 and there are
10 no other objections from the other neighbors.

11 MR. WILHELM: At that meeting, did
12 the representatives of 1817 take a copy of the
13 drawings and specifically tell you that they
14 were reserving their opinion on it?

15 MR. EISENBERG: Jacque and Sandra
16 and I met with -- when I sat down, they said,
17 "Hey, you know, we're glad that you're doing
18 this. We want to talk to you about some
19 things", which is exactly what we did
20 immediately afterwards and as you know, we've
21 also -- I've also met with Jacque and Sandra
22 and had numerous -- well, not numerous, had

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1 four conversations as well as the conversation
2 that you and I had yesterday in an attempt to
3 seek a compromise.

4 MR. WILHELM: But neither Sandra nor
5 Jacque or anybody else at 1817 said they had
6 no objections to the proposal; is that
7 correct?

8 MS. DUMAS: I'm not sure where this
9 is going.

10 CHAIRMAN GRIFFIS: I think it's
11 done. Any more questions? Anything else?

12 MR. WILHELM: Yes, I mentioned this,
13 I agree about the relevance of it. I mention
14 it only because counsel raised it; the
15 \$65,000.00 involved in the lawsuit with
16 Drevillas (phonetic), you did end up with Mr.
17 Drveillas paying that amount.

18 MR. EISENBERG: He paid 16,000.

19 MR. WILHELM: He paid 16,000 of it,
20 okay. Thank you, and with that, if I may, I'd
21 like to ask a couple of questions of our
22 architect.

1 CHAIRPERSON GRIFFIS: Excellent.

2 MR. WILHELM: First of all, I'd like
3 to go to the shadow site. The first page,
4 left-hand side shadow existing elevation. On
5 the second floor there is a deck shown there,
6 correct?

7 MR. DORMAN: Right.

8 MR. WILHELM: Now, have you seen
9 that deck?

10 MR. DORMAN: Sure.

11 MR. WILHELM: And it is a solid
12 structure?

13 CHAIRPERSON GRIFFIS: We're talking
14 about the subject site, 1815?

15 MR. WILHELM: 1815.

16 CHAIRPERSON GRIFFIS: Okay.

17 MR. DORMAN: The railing?

18 MR. WILHELM: Well, it's depicted
19 here as a --

20 MR. DORMAN: It's wood.

21 MR. WILHELM: -- solid structure.

22 Is it in fact a solid structure?

1 MR. DORMAN: No, it's a railing.
2 It's an open railing. Well, it's planks.
3 Yeah.

4 MR. WILHELM: Does it, in fact, cast
5 a shadow now? And the reason I'm asking, it's
6 depicted here and apparently it was an
7 assumption in your shadow study that that was
8 a solid object there. Correct?

9 MR. DORMAN: Okay.

10 MR. WILHELM: And in fact, isn't
11 that deck composed of ramshackle boards with
12 separation between them and as I recall, some
13 wood strips that were put up there to prevent
14 the cat from escaping?

15 MR. DORMAN: That may be but it's
16 not my -- I don't draw every single piece of
17 wood on that for this -- for purposes of this.

18 MR. WILHELM: All right, but since
19 it's not a solid structure, it's not going to
20 cause the same kind of shadow that this solid
21 -- that you're illustrating here, correct?
22 More light would get through this structure

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1 than would get through a solid structure,
2 correct?

3 MR. DORMAN: I don't really
4 understand where -- what you're referring to
5 then.

6 MR. WILHELM: Okay, I'm sorry, let
7 me try to explain one more time. With
8 reference to that deck you're showing in the
9 drawing as a solid structure and the shadow
10 cast from that solid structure, you assumed
11 that there was no light coming through there,
12 correct?

13 MR. DORMAN: Can you show me what
14 shadow you're talking about?

15 MR. WILHELM: Oh, sure.

16 MR. DORMAN: Okay. Right, right.
17 Yeah, that's the top of the high-walled deck
18 that's casting onto the other wall of the
19 deck.

20 CHAIRPERSON GRIFFIS: Okay.

21 MR. WILHELM: Thank you. In your
22 direct testimony, you mentioned that the

1 townhouse was unique, correct, this row house
2 was unique.

3 MR. DORMAN: Yes.

4 MR. WILHELM: And did you also
5 testify that it was typical of row houses in
6 the city that are in bad condition?

7 MR. DORMAN: I didn't -- well, no, I
8 mean, when we -- a lot of times when we get
9 projects as architects, a lot of these houses,
10 luckily they are in bad condition so can have
11 a job. So that's what I meant by typically
12 when we get projects like -- we worked on
13 houses like his that need to be fixed.

14 MR. WILHELM: So his house is
15 typical of the ones you've worked on.

16 MR. DORMAN: As far as size and some
17 of the house's condition, sure.

18 MR. WILHELM: Size and condition.

19 MR. DORMAN: Sure.

20 MR. WILHELM: In what was it is --
21 strike that.

22 MR. DORMAN: Historic?

1 MR. WILHELM: No, no, I withdraw the
2 question.

3 We will stipulate to the condition
4 of the house. I have been in it. I have
5 repaired parts of it and it isn't a wreck but
6 that isn't the issue we're going to here. So
7 I'm not going to ask any more questions of the
8 condition of the house.

9 If I may, I'd like to go through
10 about four paragraphs in the party status
11 application prepared by Mr. Dorman, and for
12 convenience, I've reproduced many of the
13 documents that have been submitted, most of
14 them are in the record. They are photographs
15 in the back which are not and if I may, I'd
16 like to submit those.

17 CHAIRMAN GRIFFIS: Why don't you
18 wait for your case presentation?

19 MR. WILHELM: I can do it at that
20 time. I was going to do it --

21 CHAIRMAN GRIFFIS: Sure. Do you
22 have any other cross questions?

1 MR. WILHELM: Yes, I do. Page 3 of
2 the application --

3 CHAIRMAN GRIFFIS: What date --

4 MR. WILHELM: Sure, I have one here.

5 CHAIRPERSON GRIFFIS: Page 3.

6 MR. WILHELM: In the interest of
7 time, I have page 3 marked. I'd like to turn
8 to page 4, Mr. Dorman, the statement,
9 "Eventually the building will be converted to
10 condominiums so that the Applicant may recoup
11 its investment in the renovation through sale
12 of the units". When you made that statement,
13 did you have any estimate of the amount of
14 money that those units would sell for?

15 MR. EISENBERG: Yeah, I can talk a
16 little bit about that.

17 MR. WILHELM: I'm sorry, it was
18 directed to Mr. Dorman, Marc, if you don't
19 mind.

20 MR. DORMAN: How much the units
21 would sell for? I'm not a real estate agent
22 but I can only go on what I know about houses

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1 sell for. I mean, that's not really my area
2 of expertise in this matter.

3 MR. WILHELM: But in -- to your
4 knowledge in the Dupont Circle area it's not
5 unusual for a condominium to sell for 500 to
6 \$700,000.00.

7 MR. DORMAN: Nothing's unusual these
8 days.

9 MR. WILHELM: Exactly. You also say
10 as a condition of financing to purchase the
11 building that the Applicant was required to
12 abate all Housing Code violations and you say
13 that that is one of the unique characteristics
14 of this application but isn't it true that any
15 person seeking financing for something like
16 this has to abate Housing Code violations?
17 That's not unique to this Applicant, is it?

18 MR. DORMAN: Well, I think it's
19 unique in general though that you do have to
20 get those passed if you want to get any sort
21 of a building permit, so --

22 MR. WILHELM: Right, so any

1 applicant would face that, correct?

2 MR. DORMAN: If they were going for
3 a building permit.

4 MR. WILHELM: Yeah, if you'd turn to
5 page 5, the discussion of practical
6 difficulty. And I'm not going to go into --
7 I'm sorry, do you need another copy of that?

8 MR. EISENBERG: It's a different
9 one. We're where we need to be, I think.

10 MR. WILHELM: All right, thank you.

11 MR. EISENBERG: it's "Practical
12 Difficulty" at the top of page 5?

13 MR. WILHELM: That's correct.

14 MR. EISENBERG: Okay.

15 MR. WILHELM: And I won't go into
16 all the practical difficulties but it's the
17 bathrooms and the new electrical conduit and
18 so forth. Isn't that a difficultly faced by
19 anybody who's renovating a house in this
20 condition?

21 MR. DORMAN: I guess I'm just
22 thinking through what you're getting at here

1 because, yeah, I would say, sure it is -- you
2 know, anybody has that situation that has a
3 situation like Mr. Eisenberg.

4 MR. WILHELM: Right, anybody faces
5 that practical difficulty. It's not unique to
6 this one. Turning to page 6 of 8, and I just
7 want to make sure that I have that correction
8 noted correctly. In speaking of the
9 deviation, you say, "This is an 11 percent (8
10 percent) deviation", and I believe you've
11 revised that. What have you revised the number
12 to?

13 MR. DORMAN: On the self-
14 certification form it said I believe it's
15 7.49.

16 MR. WILHELM: We'll take that as a
17 working number for now. Were the original
18 calculations of 11 percent and eight percent
19 an error?

20 MR. DORMAN: At that time the eight
21 percent was closer to what the actual number
22 was but we went through during this time

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1 period and tried to tighten up all of our
2 calculations so eight percent was closer than
3 11.

4 MR. WILHELM: Okay.

5 MR. EISENBERG: Michael, it's 7.46
6 and we did submit that someplace. It's on the
7 bottom of page A105 that I hope you guys are
8 holding.

9 MR. WILHELM: All right, thank you
10 very much.

11 MR. DORMAN: Although I have a
12 suspicion that the 11 percent was the first
13 go-around we went with this building when we
14 were building out the third floor all the way
15 to the back before we pushed it back.

16 MR. WILHELM: Okay, could we go to
17 page 7, please, the top? And this is also
18 under the -- under your discussion of
19 practical difficulty. And you said, "The
20 Applicant will not be able to service the debt
21 as it is incurred to purchase the building if
22 any of the unit are lost". What's the amount

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1 of the debt service? What was the basis of
2 your statement in terms of the debt service?

3 MS. DUMAS: I would object to that
4 question going to Mr. Dorman. As the
5 architect of record, he prepared the
6 application for the Applicant based on the
7 answers to the Applicant. I mean, that's more
8 a more appropriate question to Mr. Eisenberg.

9 CHAIRPERSON GRIFFIS: You're
10 objecting because he can't answer that
11 question?

12 MS. DUMAS: Pardon?

13 CHAIRMAN GRIFFIS: You're objecting
14 because you don't feel that he can answer the
15 question?

16 MS. DUMAS: I don't think he's the
17 appropriate party to answer the question but
18 he can ask Mr. Dorman whether he knows the
19 answer to that question.

20 MR. WILHELM: The document was
21 signed by Kendall Dorman, that's why I'm going
22 into it.

1 CHAIRMAN GRIFFIS: Right. Mr.
2 Dorman, can you answer that question?

3 MR. DORMAN: Yeah, that was actually
4 because of the information that I got from
5 Marc at the time and it was his opinion on
6 that. I didn't go into the actual numbers.
7 I just passed that information along and if
8 you want that information, I'll have to go
9 back to Mr. Eisenberg about that.

10 MR. WILHELM: Okay. And would you
11 agree with Mr. Eisenberg that the roughly
12 \$250.00 a square foot figure he mentioned is
13 not something he was specifically quoted?
14 You're not aware if that figure has been
15 specifically quoted, the square footage of
16 that renovated building.

17 MR. DORMAN: I would think that's a
18 rough estimate.

19 MR. WILHELM: Okay, thank you. Now,
20 you are saying you're not going to be able to
21 service the debt if any of the units are lost.
22 Now, there are seven units proposed. Can you

1 tell me with certainty that if there were six
2 units that it could not support the debt
3 service?

4 MR. DORMAN: It depends on how much
5 he sells them for. So I can't tell you that
6 information until they're actually sold.

7 MR. WILHELM: Right, because we
8 don't know what they're going to sell for,
9 correct?

10 MR. DORMAN: Not yet.

11 MR. WILHELM: All right, and as a
12 matter of fact, based on your knowledge of the
13 financing involved here, you can't tell me
14 that if that building were not extended and
15 were converted to say five condominiums, that
16 it would be financially infeasible or hardship
17 on the Applicant?

18 MR. DORMAN: I don't know that.

19 MR. WILHELM: And yet in your
20 testimony you said that if any of the units
21 are lost, it wouldn't be financial feasible,
22 correct?

1 MR. DORMAN: I would think so.

2 MR. WILHELM: All right, I just have
3 one last question on adverse impact. Your
4 statement is basically that there will be no
5 adverse impact. You're not saying any more
6 there, are you?

7 MR. DORMAN: To what?

8 MR. WILHELM: I mean, you haven't
9 introduced any facts about the application not
10 having an adverse impact, for example, on the
11 character of the neighborhood, on the value of
12 the adjoining residences. You don't have any
13 of those facts, do you?

14 MR. DORMAN: I guess it goes to what
15 you consider a fact because we've reviewed
16 this with Historic and Historic didn't have
17 any problem with any sort of adverse effect on
18 that. So, that's one example of why they
19 don't say that we'll have adverse effect.

20 MR. WILHELM: All right, I think you
21 testified that you were familiar with the
22 three criteria that the Board uses in

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1 analyzing these applications. And the last
2 one went to adverse effect.

3 MR. DORMAN: Uh-huh.

4 MR. WILHELM: And do you recall that
5 the Applicant has the burden of proof of
6 showing no adverse effect; it's not the person
7 who's objecting to it.

8 MR. DORMAN: Okay.

9 MR. WILHELM: I have no further
10 questions, thank you.

11 CHAIRMAN GRIFFIS: Thank you. Any
12 redirect?

13 MS. DUMAS: Just a question, one
14 question. Mr. Dorman, can you -- just looking
15 at the layout of the building, is there
16 anything unique about the layout of this
17 building or the existing structure that would
18 preclude a reduction in units on each floor?
19 Have you looked at other floor layouts and
20 unit distribution?

21 MR. DORMAN: We've looked at other
22 ones, but this was kind of what we decided was

1 the best one to meet all the goals.

2 MS. DUMAS: And those goals being?

3 MR. DORMAN: The owner wanted to
4 keep it seven units and include all of the
5 amenities of a modern living quarter.

6 MS. DUMAS: Okay, thank you.

7 CHAIRPERSON GRIFFIS: Any other
8 questions from the Board?

9 VICE-CHAIR MILLER: Mr. Dorman, I
10 just want to focus again on the two aspects
11 that seem to be driving this variance and see
12 if I can get a grip on them. And I'm looking
13 at page 7 of the -- of Exhibit Number 3 and
14 there's one statement that says, "Without the
15 ability to enclose space in the rear on the
16 second and third floors within the existing
17 footprint of the building, the applicant
18 cannot modernize the building and provide
19 adequate circulation within the units". I
20 guess my question goes to this, to that point.
21 Does that mean you need a variance to do that?

22 MR. DORMAN: It means that that unit

1 will be adversely kind of effected with how
2 small it will be.

3 VICE-CHAIR MILLER: Okay, then the
4 other one is at the top of the page goes to
5 the servicing the debt issue. I guess the
6 question was, if there are -- if there were
7 fewer units then could the building be
8 renovated so as to provide the modern
9 amenities and fix all the electrical and
10 plumbing and mechanical equipment, that there
11 would be fewer units but then there would be
12 -- would there be this problem? Is that then
13 lead to the problem of servicing the debt,
14 then it's an economic question?

15 MR. DORMAN: Yeah, but I think that
16 the less units you have in there, the more
17 likely it is that you're going to recoup your
18 expenses.

19 MR. EISENBERG: Can I try to give a
20 little more flavor on that? So when we spoke
21 to developers initially, they, you know,
22 acknowledging our problems with converting the

1 building to condo, they said, "You know, the
2 way to do this is to make this a single
3 residence or make it for three people. That's
4 the way to make some money, that's the way to
5 get past all this". That's not what we're
6 trying to do. Folks seem to be paying close
7 attention to the small amount that we
8 initially paid for the building. Therefore,
9 well, if you chop it up into, you know, so
10 many other apartment building -- apartments,
11 you know, ergo, you know, you're just doing it
12 to make more money.

13 In the end that's not the case.
14 This is -- you know, I'm not going to be able
15 to afford an 11 or 1200 square foot unit or a
16 3600 square foot or whatever. You know, this
17 is kind of where we can play. I wish that we
18 could make it a lot bigger. It would -- in
19 hindsight, if we had the money, if we were the
20 type of project or if we were developers, it
21 certainly would make a lot more sense to do as
22 other people in our neighborhood have done and

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1 turn it into four units, but unfortunately,
2 that's not where we're at.

3 VICE-CHAIR MILLER: So this is seven
4 units so that you can afford to live in the --

5 MR. EISENBERG: What I have now is
6 about 650 square feet. When this whole process
7 is done, I'm going to have about 650 square
8 feet, so, yes.

9 VICE-CHAIR MILLER: Okay.

10 MR. EISENBERG: About, I think if I
11 stay in my particular unit I might gain as
12 much as 22 square feet.

13 VICE-CHAIR MILLER: Thank you.

14 CHAIRPERSON GRIFFIS: Anything else?
15 We'll go ahead and hear from the Office of
16 Planning.

17 MR. JACKSON: Good afternoon, Mr.
18 Chairman, members of the Board. My name is
19 Arthur Jackson. I'm a development use
20 specialist in the District of Columbia Office
21 of Planning and I will briefly summarize the
22 Office of Planning's report. So I'll get

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1 right to the issue.

2 If you'll turn in the Office of
3 Planning Report to what I hope is the aerial
4 photograph, in the back of the report, Exhibit
5 2, is an aerial of the real property and
6 you'll see that I have circles drawn around
7 the addition and deck on the second floor.
8 What the Applicant wants to do is to remove
9 this addition and deck on the second floor and
10 add a new addition and a third floor and of
11 course, some improvements on the roof. What
12 we are focusing on is the improvements to the
13 rear of the building on the second and third
14 floor.

15 I'd also like to go to the plans for
16 this proposal. If you go to Sheet A102, in
17 the Applicant's plans which is -- well, A101,
18 the Applicant's plans, you'll see the current
19 footprint of the building which is the
20 proposed use and existing use would be units
21 on the first floor, again, on A101. Okay, and
22 you can see the outline of the building.

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1 Now, you go to the second floor and
2 you see again, the existing and proposed.
3 Note that the existing dotted building has
4 interior -- would appear to consist of an
5 anterior floor area that stops and then
6 there's a deck area that covers the footprint
7 of the ground floor. The proposed improvement
8 would be to extend the occupiable floor area
9 to include the entire footprint. The Office
10 of Planning came up with -- determined that
11 that would be a further encroachment in the
12 rear yard setback because they're adding
13 additional FAR in the rear yard setback.
14 That's where the proposition comes in that
15 there will be a further encroachment in the
16 rear yard.

17 Then if you go to the third floor,
18 you'll see that the Applicant is creating a --
19 what appears to be in the existing building,
20 is two apartments on the third floor. But
21 what's being proposed is one apartment that
22 appears to be two bedroom with two baths. In

1 that case the Applicant is actually reducing
2 -- he appears to be reducing the number of
3 units on site so that he is not maintaining
4 the number the currently exists, but again,
5 that's just based on the change that's
6 appearing on the third floor. I also note
7 that the addition itself is not coming -- the
8 interior addition is not coming all the way to
9 the end of the building -- of the current
10 footprint, but if the deck is not 70 feet,
11 then that too would be encroaching in the rear
12 yard, again, increasing the amount of building
13 in the rear yard.

14 I'll now go straight to the
15 analysis. Essentially, there is no unique
16 aspects of this site that impact the
17 Applicant's ability to conform to the building
18 and zoning regulations. The Applicant has
19 indicated in their application that their
20 issue is that they have to meet Building Code
21 requirements and that includes electrical,
22 heating and plumbing systems. On my visit to

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1 the site, I asked where there any unique
2 aspects to the site that effected this and we
3 weren't able to determine any during the site
4 visit and the conversation.

5 In terms of practical difficulty,
6 this proposal would renovate an existing
7 multiple dwelling with a larger footprint and
8 more floor area than is currently allowed so
9 it can be used in accordance with the
10 regulations. The building currently is
11 approximately 860 feet over the allowable FAR
12 in terms of square footage. Based on the
13 original calculations, they're asking to now
14 increase the size to 1200, over 1200 feet over
15 the allowable regulations or more than .6 FAR.

16 If existing -- now, if existing deck
17 and addition on the second floor legally not
18 conforming, then it can be modernized or it
19 could be altered as allowed under the
20 regulations. However, an expansion of the
21 second floor into the deck area and a creation
22 of a third floor is something not allowed

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1 under the regulations.

2 The existing building, multiple
3 building is already larger than allowed under
4 the regulations, the Applicant can currently
5 benefit from additional floor area. And
6 during our meeting on site, we asked for
7 specific examples of where the -- of the
8 cumulative reductions in circulation access
9 and living space associated with the proposed
10 improvements; the maintenance, the plumbing,
11 the heating systems, electrical systems. The
12 examples that were given were the same ones
13 that were given today. "We're going to use
14 space for heating -- water heater, for the
15 heating, for the washer and dryer".

16 This is not a loss of space; this is
17 an allocation of space. If the Applicant
18 decides to go from a central laundry in the
19 basement to provide units -- a washer and
20 dryer in each unit, that's more than
21 acceptable, but that's not a loss of space,
22 interior space. While desirable, such

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1 improvements are not necessary to meet the
2 current building occupancy codes. And I would
3 -- it would appear that they could make all
4 the changes required under the regulations and
5 not make any significant changes to the floor
6 area of the building based on the information
7 that was available to the Office of Planning.
8 The link was not established between the
9 referenced code violations and the need for
10 additional floor area. Therefore, the new
11 owner has not sufficiently explained how not
12 being allowed to further over-build the site
13 creates a practical difficulty.

14 Now, the proposed exterior addition
15 will not appear to impact the neighboring
16 properties and we would concur that the HPO,
17 Historic Preservation Office, met with the
18 Applicant, reviewed the proposal and had no
19 real concerns. However, we think the
20 variances that are required to further
21 encroach in the rear yard and further increase
22 the floor area of the building really is not

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1 consistent with the intended zoning
2 regulations and would impair the intent,
3 purpose and integrity of the zone map as
4 currently exists.

5 That's essentially is what the
6 Office of Planning's position is. Now, we do
7 think that the Applicant has been very
8 forthright in the discussions with the Office
9 of Planning and has really taken on a major
10 project and we congratulate their efforts to
11 date to get this far. However, we think they
12 should work within the allowable FAR, the
13 allowable floor area of the building or the
14 zoning regulations, which allow them to
15 renovate the existing non-conforming building
16 to meet zoning and building requirements.

17 That concludes the Office of
18 Planning's summary of their report and we're
19 available to answer questions.

20 CHAIRPERSON GRIFFIS: Excellent,
21 thank you. Did you do an analysis of what
22 this project would entail if it just enclosed

1 the existing structure on the second floor?

2 MR. JACKSON: Are you talking about
3 the deck?

4 CHAIRPERSON GRIFFIS: Yeah, I mean,
5 there's an area up there that's covered. I
6 guess they call it the shanty or whatever it's
7 called.

8 MR. JACKSON: The -- based on the
9 information that we were given, I don't think
10 the deck is included in the current FAR
11 calculation. So I don't think they can
12 enclose the deck. I think they have to go
13 with the existing building, assuming that the
14 addition that's there is legally non-
15 conforming. Again, we were not -- as is
16 stated in the report, we tried to find whether
17 there were building permits issued for the
18 addition and when the addition was built. We
19 couldn't find that. We were able to find when
20 the first CO that was issued for an apartment
21 building which was back in '58.

22 CHAIRPERSON GRIFFIS: Right.

1 MR. JACKSON: So, assuming if the
2 addition was constructed for an apartment
3 building, and the apartment building code
4 exists, and I believe the orientation is such
5 that the current addition on the second floor
6 is actually the bedroom for that apartment.
7 Assuming that this -- and the CO was for six
8 separate units, so since there's no other
9 information to the contrary, it would appear
10 that the -- well, actually, it just says,
11 first, second or third floor, it doesn't say
12 how many units. It's plausible that the
13 addition was constructed before 1958 which
14 means it would predate the Zoning Regulations,
15 but again, we haven't been able to document
16 that.

17 CHAIRPERSON GRIFFIS: Right.

18 MR. JACKSON: So, with that said,
19 what they would be allowed to do is renovate
20 the addition and to bring it up to code but
21 they would not be allowed to expand the
22 addition to include the deck. They could also

1 renovate the deck but that would be the extent
2 of what would currently be allowed and we
3 think that's consistent with what the intent
4 of the regulations are, is, was.

5 CHAIRPERSON GRIFFIS: Some of your
6 concerns, part of your analysis indicates an
7 expansion of a non-conforming aspect. If they
8 had enclosed that, that would not expand that
9 but rather it would just renovate that
10 portion.

11 MR. JACKSON: A continuation, and
12 they can again, structural renovation would be
13 allowed.

14 CHAIRPERSON GRIFFIS: Right, okay,
15 interesting point. All right, any other
16 questions from the Board?

17 VICE-CHAIR MILLER: I just want to
18 make sure I understand your testimony right
19 and my question is, were you saying that -- I
20 get the impression that you don't know for
21 sure that they could renovate the property,
22 you know, with replacing all the mechanical,

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1 electrical, plumbing et cetera, and bring it
2 up to code without variance relief, but it's
3 their burden to show that they can't and they
4 haven't done that yet.

5 MR. JACKSON: No, okay --

6 VICE-CHAIR MILLER: Do you
7 understand my question?

8 MR. JACKSON: Yes, it was a very
9 good one, too, I must say. The -- putting
10 this in perspective, I think they have not
11 shown that they can't do any -- the required
12 improvements to meet the zoning -- the Zoning
13 and Building Code, I'm sorry, the Building
14 Codes without the additional floor area.
15 There's been no -- in our discussions which
16 were brief, there was no indication that there
17 was any of the Building Code Requirements
18 generated the need for more area. So I would
19 have to say based on the information that was
20 available to the Office of Planning, is the
21 case that they could -- that all the Building
22 Code requirements could be met without the

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1 additional square floor area.

2 VICE-CHAIR MILLER: Thank you.

3 MEMBER ETHERLY: Mr. Jackson, very
4 briefly, perhaps let me touch upon an area
5 that I think has been shall we say touched
6 upon briefly by the Applicant. You reference
7 it kind of in passing in your report and it's
8 trying to get a sense for the surrounding
9 properties. As you indicated on page 1 of
10 your report, "Surrounding development consists
11 of single family row dwellings and apartment
12 (condominium conversions) of similar scale."
13 Would it be the Office of Planning's position
14 that the subject property as it is currently
15 I don't want to use the word "configured" but
16 for lack of a better term at this point, as
17 it's currently configured, it's not out of
18 scale with the surrounding properties?

19 MR. JACKSON: Well, if you go back
20 to that Exhibit 2, the aerial, the footprint
21 of the building irrespective of the message
22 balloon there, you can see that this addition

1 is somewhat atypical for at least the three
2 buildings from the corner. And you go down a
3 couple of buildings, there are obstructions
4 like that on the second floor. The buildings
5 usually come back to a point and then they
6 have this addition in the rear. So that rear
7 element is somewhat out of character with
8 what's immediately around it. However, the
9 most significant aspect of the building, of
10 course, is at least from our perspective would
11 be what Historic Preservation would say and
12 they're not concerned about that because it is
13 in the rear. There's no impact on the front
14 of the building or the part that's most
15 visible from the street.

16 MEMBER ETHERLY: Okay.

17 MR. JACKSON: And so now, I will say
18 that further down there are several additions
19 that do have decks on the roof but I don't
20 recall seeing one that had a room addition on
21 the second floor level but I wasn't really
22 focusing on that at the time.

1 MEMBER ETHERLY: Okay, and presuming
2 that the Office of Planning probably did not
3 as a matter of course do any type of survey in
4 terms of surrounding property, this might, to
5 an extent, be inviting just a little bit of an
6 educated guess or opinion on your part but
7 that's okay from my standpoint it is. Does
8 the Office of Planning have a sense for how in
9 character or out of character the existing
10 subject property is in terms of room size and
11 number of units as compared to other
12 properties around it?

13 MR. JACKSON: No, and of course,
14 this was a building that was converted from a
15 residence, but it was converted before 1958.
16 The assumption is that the -- this was not
17 something that was an organized effort by one
18 developer doing a lot of different buildings.
19 It seemed to be each unit was --

20 MEMBER ETHERLY: Kind of piecemeal
21 if you will.

22 MR. JACKSON: Right, so whether this

1 -- the character of this building, its
2 interior, how they managed their circulation
3 and what they do with the various floors was
4 the same as the other buildings would be
5 totally conjecture on that. I couldn't -- at
6 this point, I haven't visited enough of them
7 to know.

8 MEMBER ETHERLY: Okay. Final
9 question and this is, perhaps, a restatement
10 if not an outright repeat of a question that
11 I believe Ms. Miller asked you but I think
12 it's important enough again, just to reiterate
13 it. Based on what you've heard at this
14 particular point, you have -- the Office of
15 Planning does not have sufficient data to
16 justify or accept the argument that in order
17 to bring this particular property up to both
18 occupational and building code standard, if
19 you will, you don't have enough information to
20 support that this current iteration of the
21 project is necessary to do that.

22 MR. JACKSON: The Applicant was

1 requesting for a specific increase in the
2 floor area of the building. The floor area is
3 directly related to the additions that they're
4 proposing to put on. Those additions -- in
5 our discussion with the Applicant, there was
6 no clear indication, no nexus drawn between
7 adding electrical and plumbing and adding
8 enough square footage to where they were 34
9 percent -- 35 percent over the allowable FAR.

10 MEMBER ETHERLY: Okay. Thank you.
11 Thank you, Mr. Chair.

12 CHAIRMAN GRIFFIS: Thank you. Any
13 other questions?

14 VICE-CHAIR MILLER: I just have one
15 more and I hope Mr. Etherly didn't already
16 ask this while I was looking at your report,
17 but it goes to your finding with respect to
18 the intent, purpose and integrity of the Zone
19 Plan and public good.

20 MEMBER ETHERLY: I asked that one.

21 VICE-CHAIR MILLER: Did you ask that
22 one?

1 MEMBER ETHERLY: Yeah.

2 VICE-CHAIR MILLER: Oh, okay, where
3 you come to the conclusion that the addition
4 would adversely impact neighboring properties,
5 but you find that it would impair the intent,
6 purpose and integrity of the zone map as
7 embodied in the Zoning Regulations and map and
8 you seem to be coming to that conclusion on
9 the basis that -- just on the basis that it
10 would increase the existing non-conforming
11 FAR. Is that the only basis that you reached
12 that conclusion?

13 MR. JACKSON: The application
14 doesn't meet the tests in terms of
15 extraordinary practical -- extraordinary or
16 exceptional conditions or practical
17 difficulty. So they don't meet the test in
18 proving this would be consistent with the Zone
19 Plan and improving the integrity of it. So as
20 we stated --

21 VICE-CHAIR MILLER: You're saying
22 because they don't meet the first two tests,

1 it's --

2 MR. JACKSON: Right.

3 VICE-CHAIR MILLER: That's the only
4 basis for not meeting the third test.

5 MR. JACKSON: Well, they have to
6 meet the first -- they have to get to the
7 first two tests before they can get to the
8 third test.

9 VICE-CHAIR MILLER: No, I'm not
10 arguing with you but sometimes there's a
11 separate reason that it might be -- what's the
12 word -- would impair the intent, purpose and
13 integrity of the zone map and plan, but
14 there's some other reason. But your reason is
15 that if it doesn't meet the first two tests.

16 MR. JACKSON: Then it shouldn't be
17 granted.

18 VICE-CHAIR MILLER: Okay. Thank
19 you.

20 CHAIRMAN GRIFFIS: Cross from the
21 Applicant?

22 MS. DUMAS: Yes. I'll try and be

1 brief. Mr. Jackson, can you -- looking at
2 page 1 of your report, the first sentence
3 under applications, you note that 1815 19th
4 Street, LLC, the Applicant requests variance
5 from the height limit, under Section 402. Is
6 that simply a typo?

7 MR. JACKSON: Correct, it should be
8 the floor area limit, floor limitation under
9 1402.4.

10 MS. DUMAS: Okay, so you acknowledge
11 there's no change to the building height other
12 than the addition of a roof structure being
13 proposed.

14 MR. JACKSON: Right.

15 MS. DUMAS: Okay. Page 2 of your
16 report, the third line down, actually
17 beginning on the second line, you said, "The
18 Applicant is a tenant organization that
19 recently acquired the property in order to
20 undertake an overall building renovation". Is
21 that what was represented to you by the tenant
22 organization that owns the property?

1 MR. JACKSON: That they acquired it
2 to make the renovation, yes.

3 MS. DUMAS: That the purpose of the
4 acquisition was to make renovations to their
5 building?

6 MR. JACKSON: Right, because it was
7 substandard and they wanted to acquire it to
8 make the improvements.

9 MS. DUMAS: Are you familiar with
10 the Tenant Opportunity to Purchase Act?

11 MR. JACKSON: No.

12 MS. DUMAS: On page 2 of your report
13 also under the project explanation, the last
14 line, you note, "Neither the overall height --
15 overall building height nor the building
16 footprint would change as a result of proposed
17 construction."

18 MR. JACKSON: Yes.

19 MS. DUMAS: That's your
20 understanding of what's being proposed?

21 MR. JACKSON: Yes, based on the
22 plans, there's no change in the -- there's no

1 proposal to change the building height or to
2 change the existing building footprint so that
3 use and non-conformance would continue except
4 what I eluded to in terms of the additional
5 zoning relief and the fact there would be more
6 FAR within the rear yard setback, ergo there's
7 increasing non-conformity in the rear yard.

8 MS. DUMAS: Are you familiar with
9 the definition of yard, rear yard in the
10 zoning regulations?

11 MR. JACKSON: Yes.

12 MS. DUMAS: And can you explain to
13 me where a rear yard is located on a lot? At
14 which point it starts and at which point it
15 ends, a required rear yard?

16 MR. JACKSON: It starts at the rear
17 property line and extends into -- from that
18 point in to the yard -- into the rear
19 property.

20 MS. DUMAS: Okay.

21 MR. JACKSON: The required rear yard
22 in this case is 20 feet.

1 MS. DUMAS: Are you sure about that?

2 MR. JACKSON: I'm sorry. Not less
3 than 15 feet.

4 MS. DUMAS: Right, okay.

5 MR. JACKSON: And unfortunately this
6 is -- the building itself is 13 feet.

7 MS. DUMAS: And the existing --
8 right, the existing building is a little over
9 13 feet from the rear property line; is that
10 correct?

11 MR. JACKSON: Correct.

12 MS. DUMAS: And no change is being
13 made to the footprint on the first floor of
14 the building.

15 MR. JACKSON: No, but the second
16 floor is being extended into that -- to the
17 end of the existing building; therefore,
18 there's more FAR within the required rear
19 yard. There's a foot and a half difference
20 there and as such, you need relief.

21 MS. DUMAS: From the FAR
22 requirements.

1 MR. JACKSON: Rear yard requirement.
2 You have a 50-foot rear yard and you're really
3 putting more building into the rear yard.

4 MS. DUMAS: Is the building
5 extending beyond the existing footprint of the
6 building in the proposed construction on the
7 first floor?

8 MR. JACKSON: I think you understand
9 my point, so I don't see why we're going back
10 and forth.

11 MS. DUMAS: You're not -- the
12 Applicants aren't proposing any cantilever,
13 other overhang beyond the rear plane of the
14 building; is that correct?

15 MR. JACKSON: But the rear plane of
16 the building is encroaching in the rear yard.

17 CHAIRMAN GRIFFIS: Of the addition?

18 MR. JACKSON: Yes. Well, the rear
19 plane of the building currently encroaches in
20 the rear yard which should be 15 feet.

21 MS. DUMAS: The original structure
22 of the building.

1 MR. JACKSON: And the addition that
2 they're proposing for the second floor will
3 also go to the end of the existing building
4 and encroach in the rear yard, ergo they
5 require relief for the second floor --

6 CHAIRPERSON GRIFFIS: Saying it
7 another way, the second level encroaches into
8 the rear yard similarly as the first floor
9 does.

10 MR. JACKSON: Yes.

11 CHAIRMAN GRIFFIS: Okay.

12 MS. DUMAS: Mr. Jackson, in your
13 experience as a development review specialist
14 in reviewing proposed developments for the
15 District of Columbia, is it your opinion that
16 self-contained mechanical, electric and
17 plumbing systems in apartment houses is an
18 uncommon occurrence?

19 MR. JACKSON: Uncommon? It's common
20 in new construction.

21 MS. DUMAS: Okay, it's typical to
22 provide self-contained units --

1 MR. JACKSON: Sure.

2 MS. DUMAS: -- in today's market.
3 And I have no further questions for the Office
4 of Planning.

5 CHAIRPERSON GRIFFIS: Excellent. I
6 think you need to turn your mike on.

7 MR. WILHELM: Mr. Jackson, do you
8 recall Mr. Dorman's testimony that there was
9 a big old boiler in the building?

10 MR. JACKSON: Yes, as a matter of
11 fact, I think I saw it.

12 MR. WILHELM: Yeah, and it was in
13 the boiler room, correct?

14 MR. JACKSON: It was in a room in
15 the basement.

16 MR. WILHELM: Right. And it's hot
17 water heat, they had radiators in the
18 building, correct?

19 MR. JACKSON: I don't know. I
20 wasn't paying that much attention to what
21 their current system was.

22 MR. WILHELM: All right. In forming

1 a judgment about the adequacy of the room for
2 these self-contained units, did you take into
3 account -- take into account the fact that the
4 radiators would be gone and the boiler would
5 be gone, and therefore, there was adequate
6 room for these additional systems?

7 MR. JACKSON: The -- that's not the
8 type of analysis I was actually conducting.
9 In essence, I was discussing with the
10 Applicant and the architect -- well, let me
11 give you an example. If there was a case
12 where they were losing floor area because they
13 had to run additional ducts up and down
14 through the building, that might be a
15 condition where we'd see there would be a
16 change that was being required by the required
17 improvements that was -- detracted from the
18 floor area, but the discussion really was more
19 about not a loss of floor area, but how the
20 floor area was allocated.

21 If they decide to allocate certain
22 portions of the floor for a washer and dryer

1 and for a hot water heater and heating units,
2 that's their choice, but that doesn't, in
3 itself, represent a loss of floor area as a
4 result of making the required improvements
5 that the -- that they stated are needed under
6 the building regulations. So there wasn't any
7 assessment of what would happen if they lost
8 one radiator or got another. It doesn't
9 appear that there would be any significant
10 difference in the available floor area
11 irrespective of a radiator if they went from
12 a system that required be linked to the hot
13 water heater or one that was locally room-by-
14 room.

15 MR. WILHELM: Yes, thank you very
16 much for clearing that up for me.

17 MR. JACKSON: Okay.

18 MR. WILHELM: No further questions,
19 thank you.

20 VICE-CHAIR MILLER: I just have one
21 more question. I don't know if you want to
22 answer this or not but let's say they needed

1 more floor area in order to provide FHA
2 standard bathrooms, what would Office of
3 Planning's position be on that, if it's not
4 required by the regulations?

5 MR. JACKSON: The Applicant, at this
6 point, has based their argument primarily on
7 the need for -- to meet the Building Code
8 regulations, which is reasonable in that the
9 Building Code regulations would be something
10 that a financier would need to see addressed
11 and also to get a CO to occupy the building,
12 you'd have to meet all those regulations. So
13 whether some of those FHA standards or Premier
14 standards or would be the top of the line, was
15 not really part of the discussion. So at this
16 point, I really can't assess the relevancy of
17 FHA standards to this application.

18 VICE-CHAIR MILLER: Thank you.

19 CHAIRPERSON GRIFFIS: Excellent.
20 Let's move on then. I do take note several
21 times now that ANC-2B has taken no position
22 but we do have Exhibit 23 and any other

1 comments from anyone else? I note that they
2 general address the application and approving
3 the increase -- the expansion of the third
4 floor, the ANC takes no position. Okay.
5 Anything else on that? Very well, let's move
6 ahead and I think it would be timely to hear
7 the party in opposition's case presentation.

8 MR. WILHELM: Thank you very much,
9 Mr. Chairman. I apologize but it's going to
10 be non-positive.

11 CHAIRPERSON GRIFFIS: That's what
12 opposition means.

13 MR. WILHELM: Our case is pretty
14 well made in the exhibits we included, the
15 party status, the letters from the owners of
16 1817 19th Street and our neighbors and the
17 record we've developed to date, but with your
18 indulgence and with the promise I won't occupy
19 more than 15 minutes, I'd like to call some
20 witnesses who are immediately adjacent to the
21 building.

22 CHAIRPERSON GRIFFIS: Sure.

1 MR. WILHELM: I'd like to call
2 Sandra Harrington, please. Ms. Harrington,
3 would you state your full name and address,
4 please?

5 MS. HARRINGTON: I'm Sandra
6 Harrington. I live at 1817 19th Street, Unit
7 1.

8 MR. WILHELM: And Unit 1 is on what
9 level of the building?

10 MS. HARRINGTON: First floor.

11 MR. WILHELM: Would you address a
12 comment for me, please, what effects you
13 perceive if this application is application is
14 granted.

15 MS. HARRINGTON: Yes, I've lived in
16 the house for a very, very long time and our
17 house is -- in fact, this is actually a little
18 aside, we were tenants that bought it from our
19 landlord back in the dark ages, but anyway.
20 My porch is a little bit set back. I think we
21 have some photos of that from the existing
22 footprint of 1815. They have an extra room

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1 that comes out along side of my porch. Our
2 building and the one next door to us are one
3 of the few on the whole block that are
4 probably not built on more than 100 percent of
5 our property. Oh, here.

6 Your building comes out like that
7 and my porch is back here. So I'm already a
8 little compromised with light. And what they
9 propose to do is enclose an existing porch
10 which is there, and go up even further. So
11 what I would have is a solid wall to my north
12 which would mean self-light would be a
13 problem.

14 Now, I -- the shadows that he shows
15 no change in what my -- how I might be
16 effected, but every little bit makes a
17 difference in terms of light back there. And
18 there's ambient light, there's sunlight,
19 there's this or that, and I know for sure that
20 I will be effected because I was living there
21 before the existing porch was built. And as
22 soon as that porch went on, which is non-

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1 conforming and went on overnight, I went out
2 on my porch the next day, sat down, and I
3 said, what is different. And I didn't know
4 and I looked up and I saw it was the porch and
5 it really -- I mean, I could tell just from
6 sitting there.

7 And aside from the absence of light,
8 which may not be all the great but it makes a
9 huge difference, and I actually used to follow
10 the sun around little rays of sun, and there
11 are points in time when the sun is -- you can
12 sit there and sunbath for two hours. But I
13 don't think that would happen now.

14 We didn't do a shadow study for that
15 area, but anyway, I'm sorry, I shouldn't get
16 off point. But sorry, the porch that was
17 built overnight that is non-conforming that's
18 there has subsequently gotten worse and worse
19 as the years pass because every tenant who
20 lived there put more boards up. And as you
21 can see in the picture, it's not really a very
22 pretty porch and people, in fact, have built

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1 an eight-inch board wall that's up there. So
2 the effect of a shadow study using the board
3 walls may not, in fact, have much -- look very
4 different from what it would be if they built
5 a solid wall but there would be a huge
6 difference. If you had a normal conforming
7 porch on there, I would have space and
8 probably a lot more light. And I think the
9 shadow study would be really effective if it
10 was done with a normal porch on there rather
11 than a non-conforming porch that has an eight-
12 foot wall.

13 MR. WILHELM: Do you have any
14 opinion on any impairment of the site lines
15 from your property as a result of the grant of
16 the application?

17 MS. HARRINGTON: Well, for me
18 personally, I would look up to a brick wall
19 rather than to air, sky, clouds, the moon.

20 MR. WILHELM: Thank you very much.

21 MS. HARRINGTON: Is that it?

22 MR. WILHELM: Any questions?

1 VICE-CHAIR MILLER: Yeah, first of
2 all, is this photograph that you've been
3 referring to in the record?

4 MR. WILHELM: I haven't introduced
5 it yet. I was just having her take a look at
6 it but I'd be happy to --

7 VICE-CHAIR MILLER: Sure, if we
8 could because I think the Board would like to
9 give a little look at it because I have a
10 question about the photograph.

11 MR. WILHELM: Sure.

12 VICE-CHAIR MILLER: Ms. Harrington,
13 I just want to ask you while we're waiting,
14 what do you look out on the other side? I
15 mean, you're talking about here you might have
16 a brick wall coming up. I'm just curious to
17 get the context.

18 MS. HARRINGTON: Open space.

19 VICE-CHAIR MILLER: On the other
20 side is open space?

21 MS. HARRINGTON: Uh-huh.

22 VICE-CHAIR MILLER: Okay, thanks.

1 MS. HARRINGTON: Because the other
2 building beside us is also set back, so it's
3 not --

4 MS. DUMAS: Ms. Harrington, I have a
5 couple of questions. First, you said that you
6 live on the first floor. Looking at this
7 picture, would you -- just so the record
8 reflects, I'm actually pointing to the area of
9 the first floor if you could perceive around
10 this building corner. Is that where your unit
11 is located?

12 MS. HARRINGTON: Yes.

13 MS. DUMAS: Okay, and directly above
14 your unit, are there not two balconies
15 attached to your building?

16 MS. HARRINGTON: Yes, uh-huh.

17 MS. DUMAS: Okay.

18 MS. HARRINGTON: No, wait a minute,
19 they're not above me, no.

20 MS. DUMAS: They're not above you.

21 MS. HARRINGTON: These -- those
22 balconies are on the building next door and

1 these are examples of conforming porches that
2 would be fine to have next door. That's the
3 next building, that's not us. We're really
4 tucked back here.

5 MS. DUMAS: Have you measured what
6 the distance between the building plane and
7 the edge of these decks are as compared to the
8 existing building at 1815 19th Street?

9 MS. HARRINGTON: Of course not.

10 MS. DUMAS: Okay, but you would
11 agree that there's something looming over you
12 from the other side and those are the
13 balconies.

14 MS. HARRINGTON: No, no, they're not
15 because they're back. This picture does not
16 show that. They're definitely not looming
17 over me.

18 MS. DUMAS: Okay, you said that you
19 were a tenant in the building at the time that
20 the -- what's noted on the photograph as a
21 shack was constructed. I think you referred
22 to it as a porch.

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1 MS. HARRINGTON: No, I wasn't -- it
2 was always there.

3 MS. DUMAS: Okay.

4 MS. HARRINGTON: I haven't been
5 there since '58.

6 MS. DUMAS: Okay, when you said that
7 you were there when a porch was constructed,
8 what were you referring to?

9 MS. HARRINGTON: The porch, that's
10 all.

11 MS. DUMAS: Okay, the deck on the
12 rear of the building then. And I just want to
13 clarify what area you were talking about.

14 MS. HARRINGTON: Right.

15 MS. DUMAS: Okay, so the deck, and
16 you said you experienced a lack of light from
17 the construction of the deck at that time.

18 MS. HARRINGTON: A very non-
19 conforming. It hangs over and it's, yes.

20 MS. DUMAS: Okay, but you said also
21 you didn't conduct any shadow studies at that
22 time.

1 MS. HARRINGTON: No, no.

2 MS. DUMAS: Okay, and you don't know
3 that any existed at that time.

4 MS. HARRINGTON: No, but I had my
5 own eyes.

6 MS. DUMAS: Okay. Has that deck
7 changed?

8 MS. HARRINGTON: Yes.

9 MS. DUMAS: And how so?

10 MS. HARRINGTON: Worse, people have
11 built walls around it.

12 MS. DUMAS: Walls meaning --

13 MS. HARRINGTON: Putting boards up
14 for privacy.

15 MS. DUMAS: Okay, is there also a
16 privacy wall -- perhaps if I could refer to
17 the shadow study, do you have a copy? Just
18 referring to sheet one in the shadow studies
19 that we submitted into the record today, on
20 the shadow existing elevation, this vertical
21 line on 1817's property, can you describe what
22 that is?

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1 MS. HARRINGTON: Up here?

2 MS. DUMAS: Uh-huh.

3 MS. HARRINGTON: I have no idea.
4 What is it?

5 MS. DUMAS: Is that not a privacy
6 wall constructed on the balcony of 1817 on the
7 upper floor unit?

8 MS. HARRINGTON: Oh, yeah, it is.

9 MS. DUMAS: Okay, and perhaps, just
10 to clarify where -- as we're talking about
11 where your unit is located --

12 MS. HARRINGTON: Let me take that
13 back, it's for a trellis. It's for vines to
14 grow up but I suppose privacy is what you
15 would call it.

16 MS. DUMAS: Okay, just going back
17 to, we were talking about where your unit is
18 located, can you point to it? Okay, so it's
19 back on the first floor --

20 MS. HARRINGTON: Uh-huh.

21 MS. DUMAS: -- but you said it's set
22 back from the rear plane of the building at

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1 1815.

2 MS. HARRINGTON: Uh-huh.

3 MS. DUMAS: Okay. Have you spoken
4 with the tenant owners of at 1815 19th Street
5 about any changes to the plans that might be
6 acceptable and address your concerns about
7 light and air?

8 MS. HARRINGTON: We have spoken to
9 them several times but they -- as far as I
10 know, personally, they haven't made any
11 changes to the plans that met what we have
12 consistently asked for.

13 MS. DUMAS: Which was?

14 MS. HARRINGTON: Not to enclose the
15 deck and not to build out the additional space
16 on the third floor.

17 MS. DUMAS: But did they suggest to
18 you revising the plans in any way?

19 MS. HARRINGTON: No. Maybe --
20 yesterday, Marc may have talked to somebody.
21 It wasn't me. I have no idea about that.

22 MS. DUMAS: Okay, no further

1 questions.

2 MR. WILHELM: I call Charles Dulcey,
3 please. Mr. Dulcey, would you state your
4 name, address?

5 MR. DULCEY: I'm Charles Dulcey. I
6 am the owner of 1817 19th Street Unit Number
7 2. I've been in DC for 20 -- as a resident
8 for 24 years and I've been in this location
9 for about 15.

10 MR. WILHELM: And that's the second
11 floor; is that right?

12 MR. DULCEY: Second floor.

13 MR. WILHELM: Could you comment on
14 your perceived effect if this application is
15 granted?

16 MR. DULCEY: Okay. I believe you
17 have this map and I'll refer to that.
18 Basically, I think as the owner of Unit 2, I
19 will be the person probably most effected.
20 The extension that's being proposed on the
21 second floor extends out quite far. As you
22 can see on the map, already the deck and a

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1 little bit of the last room of Unit 2 extend
2 about -- probably about 12, 15 feet beyond my
3 deck and another additional 10 feet beyond the
4 rear room of the unit, which is a bedroom,
5 basically if this extension is permitted, I
6 will be living in a canyon.

7 That is my southern exposure and as
8 the sun sweeps around in an arc, that is all
9 the sun we get in the morning. And we will be
10 in deep shade. Just this morning, we verified
11 that the sun that's reaching our deck is
12 passing -- at 11:30 in the morning, is passing
13 through the slats of the so-called shanty, and
14 a brick wall there is not going to do any
15 benefits for our light there as well.

16 So I think really what we're going
17 to see is a loss of light. There will be a
18 loss of airflow. There is certainly sight
19 line losses and frankly, with living space
20 being proposed there with windows, there will
21 be a loss of privacy. So the net result in my
22 opinion, is ultimately, a loss of property

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1 value there. To use Marc's analogy, I would
2 propose that there not actually -- they're
3 building neither a Porsche nor a Volkswagen
4 but actually a Ford Taurus with an oversized
5 trunk that's just going to impede our --
6 everything that's nice about our deck and our
7 rear bedroom.

8 MS. DUMAS: I'm sorry to interrupt
9 but could I be provided with a copy of this?

10 MR. WILHELM: Oh, surely. I thought
11 you had one.

12 MS. DUMAS: Yeah, I don't want to
13 take your copy, because this also came into
14 the record along with this picture?

15 MR. WILHELM: Yes, I'm asking about
16 the admitted, Mr. Chairman, and if I may, the
17 architect of that particular exhibit made a
18 mistake in saying the developers want to
19 extend the third and fourth floor as it should
20 be the second floor.

21 MR. DULCEY: Second and third, yeah.

22 MR. WILHELM: Apologize.

1 MR. DULCEY: So, in fact, it really
2 is a build-out. And certainly at the second
3 floor, it's a build-out all the way to the
4 rear of the building and that is something I
5 would prefer not to happen.

6 MR. WILHELM: Counsel?

7 MS. DUMAS: Just one question; have
8 you spoken with or met with Mr. Eisenberg or
9 his business partners?

10 MR. DULCEY: I have not.

11 MS. DUMAS: Okay.

12 MR. WILHELM: Questions from the
13 Board. Thank you. Call Isabelle Jeannette,
14 please. Mr. Chairman, members of the Board,
15 Ms. Jeannette on the second floor and she will
16 testify on the effect that she sees from this
17 addition?

18 MS. JEANNETTE: Yes, I stay on the
19 second floor most of the time in the bedroom
20 which is a back room and I get the light in
21 the morning, especially in wintertime from
22 quarter to 8:00 until 11:30. And that is

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1 without the extension. If there was an
2 extension, that would block my sun in the
3 morning, maybe 10:00 o'clock I would have some
4 light, from 10:00 to 11:00. And especially
5 winter solstice that would -- that warms the
6 bedroom. I don't need the sun in the
7 summertime but wintertime, you know, to warm
8 up the bedroom and that would compromise, you
9 know, the sun in the bedroom.

10 Also the extension is in the plan,
11 they're going to have some windows and the
12 windows are going to impair my privacy and
13 those are the two main points. I'm against
14 this extension, this project.

15 MR. WILHELM: Thank you very much.

16 MS. DUMAS: No questions.

17 MR. WILHELM: Okay, call Pamela
18 Jones, please. Ms. Jones, you live at 1817
19 19th Street in Unit G.

20 MS. JONES: I live in the basement.
21 I actually live with this guy right here is my
22 husband.

1 MR. WILHELM: Do you have any
2 comment on the effect this proposal might have
3 on the building or the character of the
4 neighborhood?

5 MS. JONES: Yeah, this is a great
6 neighborhood and the back of our house is in
7 many ways like the front of our house,
8 particularly for Michael and I living in the
9 basement. We have a little tiny patio and
10 that patio is used for breakfast, lunch,
11 drinks, neighbors drop in through the fence
12 and the outside is really our interaction with
13 the neighbors that live across the alley.
14 Actually, with these guys, we hang out with
15 them in the front. We're old friends.

16 But the feeling is I couldn't show
17 you a shadow study but the shanty interferes
18 with my light down in my little patio, so I
19 know that a wall that goes up is going to
20 interfere with the light and it gives you a
21 sense of -- you don't have -- you can't see
22 the view. You know, we have to fight to find

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1 the moon. We have to go down the alley and
2 fight to see that already. And I feel like
3 we're going to be boxed in and I think really
4 so much of that problem is that the building
5 already extends too far and it's -- if you're
6 sitting in the back of our house and you're
7 looking to the right, that house is already
8 further out. It's like going to the beach,
9 somebody builds a beach house and they make it
10 further out towards the water and it just
11 blocks everything to your right. I think
12 that's what's making it much worse. So we'd
13 like to see them improve the shanty. We
14 certainly would like for them to buy the
15 building. We want to keep all of them for
16 neighbors, but it blocks our enjoyment of, you
17 know, our neighborhood.

18 MR. WILHELM: Ms. Jones, I'd like to
19 show you a photograph that in the upper left-
20 hand corner says 1819 19th Street, no
21 extension of building. It's -- that was this
22 document. Calling your attention to 1819 19th

1 Street, have you ever been in that building?

2 MS. JONES: Yes.

3 MR. WILHELM: And what was the
4 condition of the building when you were in it?

5 MS. JONES: That was basically a
6 rooming house. It was a combination of
7 apartments and a rooming house. I mean, it
8 had -- I don't know how many people lived in
9 there. A lot.

10 MR. WILHELM: And you have been in
11 1815 19th Street, the Applicant's building; is
12 that correct?

13 MS. JONES: Yes.

14 MR. WILHELM: And in your opinion, I
15 know you're not a professional but are the --
16 was the condition of this building essentially
17 the same as the condition of their building?

18 MS. JONES: Yeah, they're both in
19 bad shape.

20 MR. WILHELM: All right, I would ask
21 that notice be taken of the fact that the DC
22 property records show that that building was

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1 converted to three condominiums. That's the
2 building next door to us on the other side,
3 converted to three condominiums, renovated and
4 they sold for in excess of \$1.6 million. So
5 first of all, I think this establishes that
6 the building is not unique because the
7 building two doors down is much the same and
8 I think it undercuts the financial arguments
9 that have been raised by the Applicant.

10 Do you have any questions?

11 MS. DUMAS: I do actually. Do you
12 happen -- Ms. Jones, do you happen to know
13 what the total square footage of 1819 19th
14 Street is?

15 MS. JONES: 1819?

16 MS. DUMAS: Uh-huh.

17 MS. JONES: No.

18 MS. DUMAS: Or the total number of
19 units that were that prior to the conversion?

20 MS. JONES: No, I don't know the
21 total.

22 MS. DUMAS: Okay. And no further

1 questions.

2 MR. EISENBERG: Can I ask a quick
3 question?

4 MR. WILHELM: Yes.

5 MR. EISENBERG: 1819 is the --
6 you're talking about the one on the corner.
7 You're talking about the one on the end,
8 right?

9 MR. WILHELM: Yes.

10 MR. EISENBERG: So which is a
11 significantly larger more square footage, and
12 the 1.6 million you're putting out is what it
13 sold after or that was the number before?

14 MR. WILHELM: No, that was the --
15 that is the number that the DC property
16 records reflect that the owners of those
17 condominiums paid for their units in total is
18 1.7 million.

19 MR. EISENBERG: Okay, so that's not
20 before they were rehabilitated. That's after.

21 MR. WILHELM: No, no, that's after,
22 after they were --

1 MR. EISENBERG: Okay, so it's not
2 exactly apples to apples then, right? That's
3 after they put in let's assume 250 to 350 to
4 300 to \$350.00 per square foot.

5 CHAIRPERSON GRIFFIS: What year did
6 they sell?

7 MR. WILHELM: A couple of years ago.
8 It's changed hands --

9 CHAIRPERSON GRIFFIS: What '86, '72?

10 MS. JONES: No, no, it's been about
11 five years, yeah.

12 CHAIRPERSON GRIFFIS: Okay.

13 MR. WILHELM: Does that building
14 extend as far --

15 CHAIRPERSON GRIFFIS: Anything else
16 sell on the block, any condos?

17 MR. WILHELM: Well, if there have, I
18 don't have the --

19 CHAIRPERSON GRIFFIS: Okay, how many
20 units are in your building?

21 MS. JONES: Four.

22 CHAIRMAN GRIFFIS: All right, I

1 don't have any other questions. Anything
2 else?

3 MS. DUMAS: I'm just curious, I'm
4 sorry, about your buildings --

5 MS. JONES: Yes.

6 MS. DUMAS: The tenants in your
7 building bought it as well. There are four
8 tenants who bought it, is that correct?

9 MS. JONES: Yeah, I'm not part of
10 the original purchase. I married into it.
11 There were three or four single -- Sandra and
12 Michael have been there since the beginning.
13 There were three or four of them that bought
14 in like 1978 and converted them. There were
15 tenants living there and converted it, so it
16 still remains four individual units.

17 MS. DUMAS: And is it comparable in
18 size to 1815?

19 MS. JONES: I think they're
20 comparable is size to your building. Our
21 buildings feel like they're about the same
22 size. We're smaller? Oh, because we don't

1 extend out as far at the back, yeah.

2 MS. DUMAS: So you're smaller.

3 VICE-CHAIR MILLER: And one last
4 question just to the extent it's relevant, I
5 don't know. Was the building in as great
6 disrepair when it was purchased as 1815?

7 MR. WILHELM: No.

8 VICE-CHAIR MILLER: No, okay, thank
9 you.

10 MR. WILHELM: Indulgence, one more
11 witness.

12 CHAIRPERSON GRIFFIS: Sure.

13 MR. WILHELM: Mr. Jack Brady,
14 please. Mr. Brady, would you state your name
15 and address, please?

16 MR. BRADY: My name is Jack Brady
17 and I live at 1830 T Street NW.

18 MR. WILHELM: About how far is that
19 from 1815 19th Street?

20 MR. BRADY: I received a notice so I
21 think I'm within the 200.

22 MR. WILHELM: And how long have you

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1 lived in the neighborhood?

2 MR. BRADY: 1968.

3 MR. WILHELM: And what is your
4 profession?

5 MR. BRADY: I'm an architect.

6 MR. WILHELM: Do you have any
7 opinion on the effect of the proposed
8 extension of that building on the character of
9 the neighborhood, the sight lines or other
10 factors?

11 MR. BRADY: Well, actually, I lived
12 in the building. I lived in Marc's unit in
13 the '70s. Kendall and I share the same office
14 building. It's a very small town. And all of
15 them are -- and George Cavillis, the slum
16 lord, a friend of mine, sold us all these
17 properties. He manages our building so it's
18 a very small world and I'm somewhat
19 uncomfortable presenting against a fellow
20 architect and someone who I respect but I
21 think it's very easy for me to say that as I
22 have a house that is older built, it was done

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1 -- built in 1907, I'm very thankful that I
2 have more square footage than someone who
3 would come today and build on an empty lot.

4 I'm very thankful that I have more
5 square footage than some of the property owner
6 just to the east of me. And I'm very
7 sensitive about asking for more and I wouldn't
8 do it. And so my view of this project is that
9 it goes -- at the expense of everybody, the
10 quality of everybody because if you approve
11 this, then why wouldn't everyone get the same
12 consideration and then what, for us, in the
13 neighborhood is one of the great social
14 spaces, the alleys, and what would happen is
15 that the alleys would change completely.

16 Now, I've lived at 1830 T Street
17 since I moved out of 19th Street in 1975 when
18 I bought and the quality of the neighborhood
19 has changed. There are no more trees. I
20 plant trees. I've got neighbors to try to
21 plant trees. There's no more yards. There is
22 something called global warming that appears

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1 to be effecting us all and so as an architect,
2 I think, this sort of adding mass upon mass
3 into the alleyways -- Historic Preservation
4 pays a lot of attention to the streets and I
5 appreciate that.

6 Personally, I wouldn't take a staff
7 member's comment, because I've done it in the
8 past and it's backfired on me, to say that,
9 "Oh, and by the way, you'll get approval from
10 the Board," because you're the Board and you
11 have staff. So there's always what you get
12 approved, you don't know until you get to the
13 Board. But I do think that having going to
14 HPRB a number of times in the last, well,
15 since I've been practicing, but in the last
16 five or 10 years, there's definitely more
17 conversation now about the quality of what
18 happens behind.

19 Not addressing the architecture of
20 what Kendall wants to do at all, but just
21 addressing the massing of this, I just don't
22 -- I can't for the life of me see why it would

1 be approved. I've just finished a project in
2 the same -- at 1800 block of Swan Street. You
3 can almost see it from the two buildings. It
4 was a vacant lot and a four-unit building that
5 was in much worse condition. It was
6 inhabitable. The developer is a friend of
7 mine. We've done this. We didn't ask for any
8 more square footage. We had a hard enough
9 time getting through the process without
10 throwing ourselves on the mercy of the Court
11 and saying, "Well, we can't make money".

12 They are selling -- they have two of
13 them under contract within 72 hours. They are
14 on the market for 650 to 795. Marketing-wise,
15 I don't know -- personally I wouldn't try to
16 do a lot of small units. The real estate
17 people that we deal with hammered into our
18 heads, "You'd better have two bedrooms, you'd
19 better have two bathrooms. This is what
20 people will pay the top dollar for".

21 So I think there's lots of ways to
22 look at these buildings. I think, you know,

1 the neighbors have shown some examples that
2 are very good examples, that were done in the
3 more traditional three units, four units,
4 successfully. The basement unit on the corner
5 house sold for \$600,000.00. It's a basement
6 unit. So I think that the project could be a
7 great project. I think it could be a --
8 everything I know about it, the building, the
9 construction process, the sales process, the
10 market today, says to me that it could be
11 successful.

12 So I -- you know, in fact I was even
13 -- I even had a conversation with one of the
14 other owners in the last two years about the
15 project and I gave him my song and dance,
16 which is you know, "Don't try to ask for
17 things that you don't need to ask for", and
18 you know, this is a townhouse. Probably,
19 Kendall and I have done 50 or 60 of these. I
20 mean, there's a way to do them. You can do
21 them differently and make them more
22 interesting. You can do all sorts of things,

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1 but it's not rocket science to take this
2 building, I don't think, take the existing
3 square footage and create whatever number of
4 units you want to use and we sell square
5 footage.

6 I think if they said, "We need to
7 have 27 units in this building," we'd all
8 laugh because you would never sell the first
9 unit. I mean, it would be just too small. It
10 would be not desirable. Some of the better
11 units, square foot sales prices come from
12 bigger units. You know, the rich are getting
13 richer and so it's a marketing question. I'm
14 not here to tell you what one should or
15 shouldn't do but I know for example, that the
16 Swan Street projects that are about -- they're
17 small but they're two bedroom, two bath,
18 they're about 1,000 square feet, 1100 square
19 feet.

20 MR. WILHELM: And do you know of any
21 of those in a row house that has seven units?
22 Do you know of any of those townhouses on Swan

1 Street that you spoke of that have seven
2 condominium units in them or more?

3 MR. BRADY: No, no.

4 MR. WILHELM: No further questions.
5 No further witnesses.

6 MS. DUMAS: Mr. Brady, you said that
7 you had moved in this building in the 1970s;
8 is that correct?

9 MR. BRADY: Correct.

10 MS. DUMAS: And so you're familiar
11 with the layout of the building.

12 MR. BRADY: I've been in every unit,
13 yes.

14 MS. DUMAS: Okay. And --

15 MR. BRADY: A long time ago.

16 MS. DUMAS: -- do you recall what
17 the square footage of the unit in the rear of
18 the third floor of the building might be? Do
19 you recall that figure?

20 MR. BRADY: I couldn't recall.

21 MS. DUMAS: And do you recall
22 whether at the time you lived in the building

1 there was a first floor front basement unit
2 leased?

3 MR. BRADY: I think somebody used to
4 hang out there. I don't think it was a real
5 apartment though, at the time. I mean, we
6 were all just trying to get the plumbing to
7 work. Mr. Cavillis runs a fine ship.

8 MS. DUMAS: So you would not --

9 MR. BRADY: I don't recall that that
10 was called an apartment.

11 MS. DUMAS: Okay.

12 MR. BRADY: He had a handy man that,
13 I think, kept tools there and got drunk and
14 slept there on occasion.

15 MS. DUMAS: Okay. You mentioned the
16 case on Swan Street where you had a vacant
17 lot. What was the square footage of that lot?

18 MR. BRADY: If you can multiply 15
19 times 96 and it was -- we did a subdivision
20 with the building next door which was a two-
21 story building that was 30 by 96. That
22 existing structure would not -- it was a two-

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1 story structure. It was completely gutted.
2 Every piece of wood came out of it. The only
3 thing, they made us keep the building.

4 MS. DUMAS: And were those also in
5 the R-5 Zone?

6 MR. BRADY: Yes.

7 MS. DUMAS: R-5B.

8 MR. BRADY: Yes, or whatever, yeah.

9 MS. DUMAS: Nothing further.

10 CHAIRMAN GRIFFIS: Questions?

11 MR. WILHELM: Mr. Chairman.

12 MEMBER ETHERLY: Thank you very
13 much. Mr. Brady, if you could hang around for
14 a moment, please, I'd appreciate it. I wanted
15 to take advantage of a little bit of your
16 unique perspective and of course, your
17 background as an architect, but we're kind of
18 speaking primarily kind of as a lay person.
19 You've heard a little bit of the testimony
20 regarding some of the needs for, I don't want
21 to say -- let's just say modernization of the
22 subject property.

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1 MR. BRADY: Uh-huh.

2 MEMBER ETHERLY: Having had some
3 familiarity inside, and of course your
4 familiarity is going to be somewhat dated and
5 not timely in all due respect, but could you
6 speak a little bit to just what your thoughts
7 are as an architect in reaction to that. And
8 again, I'm walking very carefully and I'm
9 saying that with a nod towards counsel for the
10 Applicant because I don't want to necessarily
11 suggest that I'm inviting your testimony as an
12 expert witness. But just by virtue of having
13 had some experience in this area and having
14 some experience with the subject property, I
15 just want to kind of have you speak a little
16 bit to that.

17 Part of the argument that we're
18 hearing is that there are some challenges with
19 respect to the existing building in order to
20 get it up to code. We haven't walked in
21 extraordinary detail through those but we've
22 gotten some indication as to some of the

1 challenges that are confronting the Applicants
2 in this case. What's your sense on that if
3 you will?

4 MR. BRADY: Well, I would tell you
5 that my standard -- and I've been a developer,
6 too, built 40, 50 houses.

7 MEMBER ETHERLY: And in terms of
8 that experience, in the District and in --

9 MR. BRADY: I'm just talking, yeah.
10 We would never -- we would almost never
11 consider what I would describe as a kind of
12 mild renovation as a developer, as a new
13 project. Everything needs to be new because
14 the liability of trying to finagle what you
15 don't know is just without question a bad
16 concept. So all the projects we do, we get
17 new utilities. We have to upgrade electric,
18 so that when we buy something we're not buying
19 anything, We don't want to buy value of
20 systems because they're zero. In fact, they
21 cost money to get them out.

22 So, you know, and I would say that

1 the \$600,000.00 sale price reflected in a very
2 favorable way that sense that you're not
3 getting a finished building. You're getting
4 -- you know, you're living in it now, so
5 that's housing but going forward, it would
6 certainly not be that price reflected that you
7 weren't going to use what was there, the old
8 system. But back to your question, we don't
9 use existing anything. So we would just pay
10 a demolition company to come in, strip out all
11 mechanical, electrical, plumbing, asbestos,
12 whatever is in there and get back to a
13 foundation and a skeleton and then -- and I
14 think that's very, very typical. You can't go
15 onto this market with kind of a half old, half
16 new look, not at Dupont Circle. I mean, it's
17 too valuable.

18 MEMBER ETHERLY: Okay, thank you. I
19 appreciate that. Thank you. Thank you, Mr.
20 Chair.

21 MR. WILHELM: Mr. Chairman, I was
22 handed a letter by one of the witnesses I have

1 not seen before, and I apologize we don't have
2 a copy. It's from the Dupont Circle Citizens'
3 Association and it's in opposition to the
4 proposal, and we can submit copies for the
5 record later if that's all right.

6 CHAIRMAN GRIFFIS: Why don't we
7 submit them now?

8 MR. WILHELM: If I can get copies
9 made, yes, I just have this one copy. I'm
10 sorry this is a letter. I did not see him
11 come in, I'm sorry.

12 CHAIRMAN GRIFFIS: I thought he was
13 being shy today or something.

14 MS. DUMAS: I would object to this
15 coming in. The Dupont Circle Citizens'
16 Association hasn't seen this project in the
17 formal setting that I'm aware of, and I do
18 believe they were noticed on the application
19 as far as I can remember. I wasn't involved
20 in the case at the time the application was
21 filed but the -- my question is, I haven't
22 seen the letter.

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1 CHAIRMAN GRIFFIS: Are you finished
2 with your case in chief?

3 MR. WILHELM: I have a brief summary
4 and then --

5 CHAIRPERSON GRIFFIS: We'll finish
6 up with you and then we'll move on to submit
7 any others.

8 MR. WILHELM: Thank you very much.
9 I think the testimony today and the record
10 shows that basically the Applicant has flunked
11 the three tests. I mean, the answer for
12 uniqueness is that the property is unique
13 because it needs a lot of work. You've heard
14 testimony that there is nearly an identical
15 property next door and that doesn't make it
16 unique. And you heard testimony from the
17 architect that the house is typical of row
18 houses he has worked with. From a practical
19 difficulty standpoint, the point is that the
20 Applicant needs additional space because the
21 building doesn't have room for seven
22 condominiums. Why does the building require

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1 seven condominiums? Because they can't meet
2 the debt service without that and have the
3 established what that debt service is? Have
4 they established what the building is going to
5 cost? Have they established the very, very
6 foundation of their entire argument for the
7 seven condominiums?

8 I don't think so. I think we've
9 shown that the building -- there is a feasible
10 alternative under Gilmartin that the building
11 can be successfully renovated and sold within
12 the existing zoning regulations without
13 expansion.

14 Finally, I would note that we have
15 in the record a letter from 13 of our
16 neighbors. These are 13 residences, we
17 haven't double-counted for the two people
18 living there. Some of them have lived there
19 for as long as 79 years. The letter contains
20 an aerial photograph showing the location of
21 their homes relative to the property and it
22 shows their statistics, how long they have

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1 lived there and where they live.

2 The Applicant attempted to establish
3 that there would be no adverse impact and the
4 only showing it made in that regard was; A, an
5 assertion in the application that there would
6 be no adverse impact, and B, a shadowing study
7 that they introduced for the first time today.
8 Now, your cases hold that the burden is on the
9 Applicant to establish by substantial evidence
10 that the variance is required. We submit that
11 that has not been met and that this
12 application should be denied. Thank you very
13 much.

14 CHAIRPERSON GRIFFIS: And follow-up
15 questions? Very well, let's move ahead then.
16 Let me see a show of hands, how many persons
17 are here present to provide additional
18 testimony? I know you -- excellent, just two.
19 Why don't we bring you both up at this point?

20 MR. WILHELM: Would you state your
21 name, address and position, please?

22 MR. HALLIGAN: Rob Halligan,

1 President Dupont Circle Citizens Association.

2 MR. WILHELM: And I show you a
3 letter dated February 4th --

4 CHAIRMAN GRIFFIS: He's not your
5 witness.

6 MR. WILHELM: Nice try, though.

7 CHAIRMAN GRIFFIS: Yeah.

8 MR. WILHELM: I'm sorry.

9 CHAIRPERSON GRIFFIS: Go ahead.

10 MR. HALLIGAN: Statement?

11 CHAIRPERSON GRIFFIS: Yeah, well,
12 let's just get to the heart of the matter.
13 You're here representing the Levitt Circle?

14 MR. HALLIGAN: Dupont Circle, yes.

15 CHAIRPERSON GRIFFIS: I'm sorry,
16 Dupont Circle? So let's go through the
17 proformas of they -- do you have authorization
18 to represent them? Did you see the project?
19 Was it reviewed? How was it done? What are
20 you doing here today?

21 MR. HALLIGAN: At my January Board
22 meeting we discussed the project. That was in

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1 advance of the ANC meeting, so we didn't vote
2 at that time. I went to the ANC meeting,
3 observed the proceedings. I've spoken to the
4 Applicant, the architect and the neighbors
5 about the project. Last night at the
6 membership meeting, hoping there was going to
7 be a compromise, I didn't -- I hadn't pursued
8 it. I was hoping there would be a negotiation
9 between the parties that wouldn't have to
10 bring me here.

11 One of the last things a citizen's
12 association wants to do is to back one set of
13 neighbors against another set. I've known the
14 Applicant and their architect for quite a bit
15 of time and even tried to help the Applicant
16 with some of the processes in their tenant's
17 first right of refusal purchase. So that's
18 how I ended up here.

19 CHAIRPERSON GRIFFIS: Okay, so you
20 have a letter to submit?

21 MR. HALLIGAN: Yes, I sent it this
22 morning through Jerralee Cress (phonetic),

1 sent it to Mr. Jackson and I hadn't yet sent
2 it to the Applicants. I'm sorry.

3 CHAIRMAN GRIFFIS: Do you have a
4 copy for them?

5 MR. HALLIGAN: Yes.

6 CHAIRPERSON GRIFFIS: If you have
7 additional copies, let's take a look. I
8 wasn't handed one. I'm not sure it made it up
9 to the process. I'm sorry, Ms. Bailey needs
10 to take them. Yeah, if we have one quick
11 copy. Is that your only copy?

12 All right, while they make copies of
13 that, why don't you give us the short version?

14 MR. HALLIGAN: The short version is
15 that I did talk with the neighbors and that's
16 my responsibility as the neighborhood
17 president, neighborhood association president
18 to protect the residential character of the
19 neighborhood and to keep the neighbors from
20 getting their light blocked, essentially.

21 CHAIRPERSON GRIFFIS: Okay, so you
22 took the position that you would not support

1 the application moved for because of the
2 adverse impact of the diminished light and air
3 to the adjacent property?

4 MR. HALLIGAN: That's a better way
5 of saying the same thing I was saying, thank
6 you.

7 MS. DUMAS: Mr. Chair, I would
8 continue to object to the testimony. I would
9 at least appreciate the opportunity to cross
10 examine Mr. Halligan as to when he met with
11 the Applicant, because --

12 CHAIRPERSON GRIFFIS: Sure, sure,
13 let me save us a little bit so we don't waste
14 too much time because actually, there would be
15 nothing that would require them to meet with
16 them. There's nothing that would preclude him
17 from showing up here as --

18 MS. DUMAS: I understand. I just
19 wanted us to come in for the value of the --

20 CHAIRPERSON GRIFFIS: Absolutely,
21 absolutely, let's get to the bottom of it. Go
22 ahead.

1 MS. DUMAS: Mr. Halligan, you
2 mentioned that you had met several times with
3 the Applicant and spoken with them in the
4 process of their opportunity to -- or their --
5 exercise their right of first refusal under
6 the Tenant Opportunity to Purchase Act.

7 MR. HALLIGAN: We discussed it
8 several times.

9 MS. DUMAS: Do you recall when or
10 where you had those discussions?

11 MR. HALLIGAN: One was at a mayoral
12 debate and one was in the street.

13 MS. DUMAS: Was it in the context of
14 having the Dupont Circle Citizens Association
15 participate or otherwise assist in the
16 exercise of right of first refusal?

17 MR. HALLIGAN: At the time I was an
18 ANC commissioner. It was informal discussions
19 about how I could --

20 MS. DUMAS: And has the Dupont
21 Circle Citizens' Association had any formal
22 communication with the Applicant about the

1 review of their application?

2 MR. HALLIGAN: They did not present.
3 We figured the ANC's proceeding and the
4 discussion I had with Marc on the telephone.

5 MS. DUMAS: Were they invited to
6 present?

7 MR. HALLIGAN: No.

8 MS. DUMAS: And have you been privy
9 to any discussions with either the Applicant
10 -- well, have you been privy to any
11 discussions with the Applicant or his
12 architect with regard to negotiating with the
13 neighbors recently?

14 MR. HALLIGAN: Both sides told me
15 they were going to attempt to negotiate an
16 agreement.

17 MS. DUMAS: But you weren't part of
18 those discussions?

19 MR. HALLIGAN: No, I did not want to
20 be part of the negotiations.

21 MS. DUMAS: And you did not review
22 the application and the application documents

1 with the Applicant at any time, did you?

2 MR. HALLIGAN: Did I review the
3 application? I certainly have gone through
4 it. I've watched the presentation at the ANC
5 hearing. I've talked to the ANC commissioner.
6 I've talked to several people who know zoning
7 better than I do and I have a board that's
8 pretty educated and we came to this decision.

9 MS. DUMAS: Okay, but again, you
10 didn't invite the Applicant to present or have
11 any discussion with the Applicant about any
12 changes that could be made to the application.

13 CHAIRPERSON GRIFFIS: Right, he
14 answered that.

15 MR. HALLIGAN: We don't generally do
16 that.

17 MS. DUMAS: Thank you.

18 CHAIRPERSON GRIFFIS: Anything else,
19 any questions?

20 MR. WILHELM: You have seen the
21 property in person, have you not?

22 MR. HALLIGAN: From the outside.

1 MR. WILHELM: Thank you.

2 CHAIRPERSON GRIFFIS: Okay, there it
3 is. Thank you very much.

4 MR. MORAN: Thank you. John Moran.

5 CHAIRPERSON GRIFFIS: I'm sorry,
6 move the microphone close to you.

7 MR. MORAN: I'm John Moran. I live
8 at 1815 19th Street NW. I'm a tenant. I'm
9 the longest standing tenant at that property
10 be several years. Marc Eisenberg is the only
11 tenant from the LLC that still lives there.
12 The others, Matt Greer and Jeff Nelson both of
13 whom are here, have moved out, as well, as two
14 others. I don't know the exact circumstances
15 for the two others but I believe they were
16 paid to leave by the LLC in an effort to
17 convert this apartment house. I was made
18 numerous offers to move out as well as another
19 tenant who lives on the third floor.

20 The reasons that Marc -- well, Marc
21 hasn't moved out. He has a very nice unit on
22 the second floor, overlooks 19th Street. I

1 haven't been in his unit since he moved in but
2 it's a nice unit for the cost, as is my unit
3 on the first floor.

4 Matt Greer has moved out because
5 he's married and has a kid. He lives in
6 Virginia now. It's hard to believe he can
7 still call himself a tenant. Jeff Nelson is
8 also married and has moved out. He maintains
9 a unit -- or possession of the unit behind me
10 but he's no longer a resident there. The
11 house is in basically good repair. The people
12 that testified about its condition are
13 probably addressing this condition a few years
14 ago, before the house was sold to the tenants.

15 It got to a point where it was --
16 the condition -- there were a number of
17 Housing Code violations and I was a victim of
18 a burglary and there were people living in the
19 basement illegally who were a big part of the
20 problem. They ultimately joined the tenant
21 associations ironically, and as I said, I
22 think they were paid to move out by the LLC.

1 But in response to the conditions, I
2 started with holding my rent. I was the only
3 tenant to hold his rent. There was no tenant
4 association. They were -- for whatever reason
5 they did not -- probably because their units
6 weren't in that bad a shape. They also were
7 not concerned about things that I was
8 concerned about. Besides being a tenant
9 there, I'm also a lawyer. I like -- I don't
10 want to live in, you know, a dump even though
11 the house as been called that.

12 But for me, when it's fixed -- you
13 know, when things are taken care of, it's
14 satisfactory. In any event, once I started --
15 I withheld the rent and involved the Housing
16 Office and the my litigation or case with the
17 landlord spanned a good couple of years.

18 CHAIRPERSON GRIFFIS: Why don't we
19 jump to the application that's before us?

20 CHAIRPERSON GRIFFIS: Well, the only
21 reason I raise this is because for the Board
22 to let Mr. Eisenberg speak at such length on

1 the condition of the house and so forth, and
2 I just wanted to dissolution the Board a
3 little bit about what he said and I'll try to
4 get to it as quickly as possible.

5 It was about 2002, 2003, there were
6 a number of citations that were issued. At
7 that time, rather than undertake the repairs,
8 the owner decided to put the house up for
9 sale. He, for some reason, thought I was the
10 one that wanted to buy the house and that my
11 reasons for wanting it fixed were protectural.
12 That was not the basis for my wanting repairs.
13 Once he realized that I wasn't interested in
14 buying the house, it was too late however.
15 The other tenants formed an organization and
16 indicated they wanted to buy the house. It
17 was only \$600,000.00. And even in the so-
18 called bad condition, it was still a very good
19 price.

20 The owner said, "I've changed my
21 mind, I don't want to sell it". They hired a
22 lawyer to enforce a third party -- the

1 contract that they said they had accepted when
2 they learned about the third party contract.
3 That litigation lasted about two years.
4 During that time, the owner brought in a
5 contractor who essentially fixed the place up,
6 all the units and worked throughout the house.
7 And most of the significant Housing Code
8 violations were abated. And that's been the
9 condition of the house since the house was
10 purchased. The bought a house that was in
11 pretty good condition. There are no pending
12 Housing Code violations incidentally. They
13 haven't presented anything.

14 I don't think -- they would have a
15 hard time. There are things that need to be
16 fixed and maintenance needs to be performed
17 but they're not doing it.

18 CHAIRPERSON GRIFFIS: Okay.

19 MR. MORAN: Okay, just to address
20 this issue, as an illustration of the
21 looseness that Mr. Eisenberg has been
22 addressing the Board, he mentioned the

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1 \$60,000.00 litigation cost that they had to
2 pay or that they -- that the -- presumably
3 there's a bill out there for the difference
4 between \$60,000.00 and \$16,000.00. The bill
5 submitted to the Court by the lawyer, Benny
6 Tass (phonetic) was \$16,000.00. I know that
7 because I saw the file. And he's reimbursed
8 every -- to the penny.

9 So if his costs were \$60,000.00
10 under the law, he would have been reimbursed
11 \$60,000.00. Now he probably wouldn't have
12 gotten that much but that was the extent of
13 the bill. So the \$60,000.00 is misleading to
14 say the least.

15 I just want to read -- it will only
16 take a minute, unless the Board will adopt the
17 statements that I made in my application
18 because I don't think --

19 CHAIRPERSON GRIFFIS: It's in the
20 record.

21 MR. MORAN: Okay, if it's part of
22 the record, then I'll live with that. The --

1 and I'll submit on that. I do want to
2 emphasize the C of O issue. It's another
3 instance of, I think, attempting to mislead
4 the Board. If the C of O was only for the
5 first, second and third floor, there are only
6 six units in the house and I don't know as a
7 technical matter, if the C of O does not
8 include the basement, whether it's fair to
9 include that basement area in figuring the
10 percentage increase of the floor area ratio.
11 In other words, if it's the --

12 CHAIRPERSON GRIFFIS: That would
13 have been calculated on where units would have
14 been provided.

15 MR. MORAN: So I think that's
16 significant, now, and I'm happy that Mr.
17 Jackson obtained a prior C of O that's
18 basically the same C of O that was issued to
19 Mr. Cavillis and so I do want to emphasize
20 that.

21 With respect to this really baloney
22 that's been presented to the Board about how

1 are these tenants going to live -- all live
2 happily ever after in this house, it's --
3 after it's converted is just -- it's nonsense.
4 As I emphasized or stated in my statement, I
5 just want to say here, the aim of this LLC and
6 it was the reason that they converted to an
7 LLC is to convert the property and it's in
8 their LLC application with the Corporation
9 Office, is to convert the property into as
10 large a condominium regime as possible and to
11 sell the units at a substantial profit that it
12 does not intend to share with the other
13 tenants.

14 VICE-CHAIR MILLER: Mr. Moran, what
15 did you just read from?

16 MR. MORAN: That's my statement.

17 VICE-CHAIR MILLER: Your statement,
18 okay, thank you.

19 MR. MORAN: I did -- the portion
20 about converting -- their objective under the
21 LLC statute was to convert and to develop and
22 to sell. I've editorialized a bit but that is

1 what their aim is and when this was before the
2 Housing Board -- incidentally, they're
3 precluded at this point from voting in the
4 conversion election because they're no longer
5 considered tenants but in one of the
6 submissions made to Housing --

7 MS. DUMAS: Objection. This is
8 really not relevant to --

9 CHAIRPERSON GRIFFIS: Right, I tend
10 to agree. Anything else then on the zoning
11 application that we have before us?

12 MR. MORAN: No, thank you.

13 CHAIRPERSON GRIFFIS: Okay, thank
14 you very much.

15 VICE-CHAIR MILLER: I have a
16 question.

17 CHAIRPERSON GRIFFIS: Yes, Ms.
18 Miller.

19 VICE-CHAIR MILLER: So you and one
20 other woman are the only tenants living in the
21 building at this time?

22 MR. MORAN: Mr. Eisenberg also lives

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1 there.

2 VICE-CHAIR MILLER: But he's not a
3 tenant. He's a --

4 MR. MORAN: Well, they're still
5 calling themselves tenants. I mean, yes.

6 VICE-CHAIR MILLER: And I understand
7 the relevance of your testimony with respect
8 to the condition of the property. So I just
9 want to ask you, for instance like your
10 kitchen, was that updated at all? Was the --

11 MR. MORAN: Everything could be
12 fixed. Actually, when work was done by the
13 contractor, I agreed to do a certain amount to
14 it. I put the tile on the floor. There's
15 always been a certain amount of self-servicing
16 done by the tenants in their unit. Yeah, I
17 could use a new oven. I could use a lot of
18 new things. Are they -- you know, you have to
19 balance what's currently there versus the cost
20 of rent and it's still a good deal. I mean,
21 everything works.

22 The radiator -- the heating system

1 that they're complaining about, during the
2 period that I was talking about when things
3 were fixed, we had a plumbing and heating guy
4 come in. That radiator system works
5 beautifully. And their costs are down. I
6 mean, they're only paying -- they're paying so
7 much less than what the previous owner paid
8 since those repairs were made.

9 VICE-CHAIR MILLER: Okay, and when
10 were the repairs made?

11 MR. MORAN: They were made in 2004,
12 2005 period.

13 VICE-CHAIR MILLER: Thank you.

14 MR. MORAN: You're welcome.

15 MS. DUMAS: I have a question for
16 Mr. Moran.

17 MR. MORAN: Sure.

18 MS. DUMAS: There are seven units in
19 the building.

20 MR. MORAN: There are six units, six
21 legal units. The seventh unit that they keep
22 talking about, is in the basement.

1 MS. DUMAS: Have you seen the
2 Certificate of Occupancy dated January 2005?

3 MR. MORAN: If you've heard my
4 testimony, I mean, my statement which I
5 presume you read, they obtained --

6 MS. DUMAS: But I understand you
7 believe that it was obtained fraudulently but
8 there is --

9 MR. MORAN: I don't know if it was
10 obtained fraudulently or by mistake. I've
11 seen the application --

12 CHAIRPERSON GRIFFIS: Hold on here.
13 She's going to ask the questions. Answer
14 them, and we'll go on from there. Have you
15 seen -- what's the date of the C of O?

16 MS. DUMAS: It's a 2005 C of O --

17 CHAIRPERSON GRIFFIS: 2005 C of O?

18 MS. DUMAS: -- listing seven
19 apartment units.

20 MR. MORAN: That's not a C of O.
21 That was a license issued by the Corporation
22 Office. The C of O has first second and third

1 floors, as Mr. Jackson noted.

2 MS. DUMAS: I'd like to enter into
3 the record the most recent Certificate of
4 Occupancy for the property which is dated
5 January 26th, I'm sorry, 2006.

6 MR. MORAN: Oh, that's the new one.
7 Yes, I've seen -- that's -- I saw that as a
8 result -- that's not been posted,
9 incidentally. They got that in January of
10 last year and they still haven't posted in on
11 the property. So, yes, I've seen it. I've
12 seen it in connection with this case and as
13 soon as I saw it, you know, I realized, well,
14 it says seven units and it says basement on
15 it.

16 MS. DUMAS: You've seen it. You've
17 seen it.

18 MR. MORAN: Yes, but it's invalid.
19 I've raised it with the --

20 MS. DUMAS: And did you take it down
21 from the apartment building?

22 MR. MORAN: It was never posted

1 there. They still haven't posted it. It's
2 not been posted on the property. They know
3 what would have occurred if they had posted
4 it. I would have done exactly what I'm doing
5 which is to challenge it because that was
6 always a problem.

7 MS. DUMAS: Right, and that
8 Certificate of Occupancy was also part of the
9 Applicant's application in this case, was it
10 not?

11 MR. MORAN: There was no -- I
12 learned about it in December and it was over
13 the holidays and it's being challenged. As I
14 told them, the Zoning Administrator has the
15 information.

16 MS. DUMAS: Okay, the party in
17 opposition's --

18 MR. MORAN: I'm sorry.

19 MS. DUMAS: I mistakenly referenced
20 the Applicant's submission.

21 MR. MORAN: Yes, they submitted
22 what's an -- yes, they're misleading the Board

1 with that --

2 CHAIRPERSON GRIFFIS: Okay, let's
3 continue on.

4 MR. MORAN: -- C of O.

5 CHAIRPERSON GRIFFIS: Any other
6 questions.

7 MS. DUMAS: And there are seven
8 tenants in the building?

9 MR. MORAN: There are only -- there
10 are six habitable or six legal units for
11 which, and there are only three tenants
12 currently living in the building.

13 MS. DUMAS: Are there seven people
14 with leases signed for space in the building?

15 MR. MORAN: I don't know what the
16 arrangement is. As I said, they've moved out
17 and I don't know that their arrangement is
18 with the LLC since the LLC is technically now
19 the owner.

20 MS. DUMAS: Mr. Moran, one last
21 question for you; would you mind stating what
22 your monthly rental is for this --

1 MR. MORAN: It's \$400.00. That's
2 what I negotiated. They might be burned about
3 that, but that was negotiated when -- in my
4 litigation. I was the only one that was in
5 litigation with it.

6 CHAIRPERSON GRIFFIS: That doesn't
7 have any relevancy to ours, I don't think that
8 I see. Okay, anything else? Do we have this
9 C of O that -- Exhibit 9? That's not it, is
10 it?

11 MR. MORAN: Id' like to -- the only
12 I'm referring to is --

13 CHAIRPERSON GRIFFIS: No, that's all
14 right. What do you have on the date of yours?
15 The 26th of January?

16 MR. MORAN: Can I have this marked
17 as the exhibit?

18 CHAIRPERSON GRIFFIS: We have that
19 one. That's yours.

20 MR. MORAN: Is it marked as an
21 exhibit though?

22 CHAIRPERSON GRIFFIS: Your exhibit -

1 - yeah, I'll give you that. Hold on, I just
2 passed it.

3 MR. MORAN: It is the --

4 CHAIRPERSON GRIFFIS: Exhibit 24.

5 MR. MORAN: Thank you.

6 CHAIRPERSON GRIFFIS: Okay, anything
7 else? Any other questions? Did you have a
8 question?

9 MR. WILHELM: I'd just like to say
10 that we do not join Mr. Moran on the charges
11 of misrepresentation, just for the record.

12 CHAIRPERSON GRIFFIS: Okay. Let's
13 go to --

14 MR. MORAN: As I say in my statement
15 for clarification, I don't know how they were
16 able to get the recent C of O without an
17 inspection, without any work having been done
18 in the basement. So I specifically --

19 CHAIRMAN GRIFFIS: Okay, I know.

20 MR. MORAN: -- say it was obtained
21 either in error or fraudulently.

22 CHAIRPERSON GRIFFIS: Let me -- I

1 don't know but let me not raise your
2 expectations that we have any control over any
3 of those issues. We're not going to be
4 investigating a Certificate of Occupancy. We
5 don't have an appeal of the issuance of the
6 Certificate of Occupancy. It really has not
7 bearing of --

8 MR. MORAN: Well, it's a point --

9 CHAIRMAN GRIFFIS: I just don't want
10 you leaving here thinking, "I'm going to wait
11 for the BZA to do something about that issue
12 that came up with the C of O.

13 MR. MORAN: No, no, no, I don't have
14 any illusions of that. I believe the Zoning
15 Administrator will act accordingly because he
16 has the information now.

17 CHAIRMAN GRIFFIS: That's a whole
18 different agency and obviously, they're able
19 to do that.

20 MR. MORAN: Okay.

21 CHAIRPERSON GRIFFIS: Let's go to
22 closing.

1 MS. DUMAS: My client would like to
2 make a very brief statement in closing and
3 then I'll summarize legal arguments in our
4 case.

5 MR. EISENBERG: Very quickly, and I
6 appreciate folks are here really late. I know
7 this is a long time. Well, I can't make clear
8 enough just how important this is to us, this
9 issue. I mean, this is -- you know, this is
10 our home, this is where we live. I think a
11 lot of what's been talked about today was in
12 regards to, well, if you make this four units,
13 then all these issues go away and that's not
14 -- just kind of a reminder that that's not --
15 you know, that's not the building that we
16 purchased, that's not the issue.
17 Unfortunately, that's not what we can do.

18 Another quick point that I want to
19 make is that from my perspective, the reason
20 that we're sitting here in front of you is
21 that we're asking for an additional 160ish
22 square feet, 155, whatever it is, square feet,

1 on the second floor and about 135 additional
2 square feet on the third floor. The third
3 floor rear apartment as it exists now is about
4 350 square feet. It's not a livable space.
5 The second floor rear, although a little bit
6 larger than that, is also -- it's a livable
7 space but it is -- you know, as Kendall and I
8 have spent time working out given the amount
9 of allocation, you know, if Office of Planning
10 wants to call it that, the combination of
11 space we're losing with the mechanical rooms,
12 the laundry, et cetera, we're not looking for
13 -- you know, we're not looking for significant
14 changes to the building. We're looking to be
15 able to make seven livable units, and you
16 know, make it a -- you know, that's the
17 minimum variance, I guess is the word, that we
18 can do, we feel that we can do to get to seven
19 units.

20 When the neighbors raised the -- we
21 went through -- I didn't realize that I could
22 talk Rob through this process, his

1 organization through this process. I went --
2 I thought I was going above and beyond to talk
3 to every person I could that's, you know, "Is
4 this okay by you, is this okay with this
5 neighbor, is this okay with the ANC, with the
6 HPRB"? You know talked it through with Arthur
7 and Office of Planning. I went back
8 repeatedly to the neighbors and said, you
9 know, "Can we negotiate, rather than 160
10 additional feet on the second floor, is there
11 some other number"?

12 And what we heard back consistently
13 is zero, you know, that there's no way -- we
14 want to have -- they want to have a say over
15 the windows. They want to have a say over the
16 type of materials we use and they don't want
17 us to have any increase of size. And that's
18 their opinion and that's their right and
19 that's why we're sitting here before you. But
20 I'm not -- we're happy to negotiate about just
21 how far we go back, if there's a way for --
22 like Kendall came up yesterday with

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1 potentially the way for this to work with the
2 second floor not going back quite as far which
3 would give them even more light, and that's
4 not something they wanted to hear.

5 All of this is just to say I feel
6 like our neighbors and the other folks are --
7 what they're saying repeatedly is they don't
8 want any changes. And we feel as a result of
9 being through some pretty unusual
10 circumstances, and being tenants that are
11 attempting to do this project, that we should
12 have the opportunity to get those additional
13 350 square feet.

14 CHAIRPERSON GRIFFIS: Okay, let's go
15 to that really quickly in terms of last minute
16 Board questions and let's look at -- let's
17 start with the third floor and the impact of
18 what the proposal is. Do you have the plans
19 in front of you and I'll ask Kendall also,
20 it's my understanding if I read these
21 correctly, that what the portion of the
22 addition which will be occupied is labeled

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1 "Living 303", is that correct?

2 MR. DORMAN: I didn't hear the whole
3 question, sir.

4 CHAIRMAN GRIFFIS: Okay, on A103,
5 what I'm looking at is what is the room that's
6 being provided in the addition if it went as
7 far back? It's labeled "Living 303". Is that
8 correct?

9 MR. DORMAN: That's the addition.

10 CHAIRPERSON GRIFFIS: Okay. Good,
11 and then quickly just to get through the whole
12 thing, so if we go to the second floor then,
13 the second floor, the "Living/Dining 208",
14 obviously the very further portion is new and
15 if you pull back, it would be analogous to
16 more -- a little bit more than on center of
17 that larger table there. Is that about
18 correct?

19 MR. DORMAN: Well, that shanty took
20 up this much space.

21 CHAIRMAN GRIFFIS: Okay, right.

22 MR. DORMAN: It's kind of the L

1 shaped area right there.

2 CHAIRPERSON GRIFFIS: Okay, so
3 that's the shanty area right in there. Okay,
4 and did you explore at all the opportunity of
5 putting a galley kitchen run on that, on the
6 existing party wall side and enclosing just
7 where the shanty is and then having a walk-out
8 deck on that level?

9 MR. DORMAN: That's on the second
10 floor?

11 CHAIRPERSON GRIFFIS: Right.

12 MR. DORMAN: I think we do have
13 something similar to that.

14 CHAIRPERSON GRIFFIS: Okay, so
15 that's one option that obviously, that -- so
16 far we haven't impacted any of the -- any of
17 the property in terms of the relief sought, if
18 I'm looking at this correctly.

19 And if we went up to the third
20 floor, if that living -- you don't agree?

21 MR. EISENBERG: Sorry, not that --
22 if you're talking about the galley kitchen not

1 requiring additional space in the rear of the
2 second floor then, no, I would say that's not
3 -- Kendall, that's not what you drew.

4 CHAIRPERSON GRIFFIS: No, that's not
5 what he drew.

6 MR. EISENBERG: It did require the -
7 -

8 CHAIRPERSON GRIFFIS: I'd moved it
9 all the way over onto the party wall.
10 Basically, what I'm looking at, what happens
11 if you enclose what's the existing shanty or
12 the existing enclosure? What are we losing
13 here? I understand all the arguments and I
14 understand the number of units, which I'm not
15 that concerned with but here we have --

16 MR. EISENBERG: Putting it on the
17 other wall, right, okay. Sorry.

18 MR. DORMAN: Can I show -- this
19 might be a little bit more explanatory. You
20 know, during this whole process we did some
21 extra studies and tried to kind of narrow down
22 -- you know, explain exactly what it is. I

1 did another drawing here which kind of has the
2 numbers on it and will maybe explain that a
3 little bit better than the original submission
4 as far as what they're asking for in the floor
5 plans.

6 And we had furnished early outs in
7 there, that will show you if you don't have
8 it, what you end up with.

9 CHAIRPERSON GRIFFIS: Okay, we're
10 going to ask Ms. Bailey one more time to make
11 copies of that if you don't have copies. Do
12 you have copies? You do? Oh, you do have
13 copies, excellent. Thank you, Ms. Bailey.

14 MR. DORMAN: Drawing 105 basically,
15 shows what's there right now. And Drawing 106
16 shows the proposed plans and you can see on 3
17 and 4 on A106 the additions and the
18 calculations are basically the same. The
19 tables are all the same on 105 and 106.

20 CHAIRMAN GRIFFIS: But this is
21 showing -- oh, I see. So you're essentially
22 showed what's new.

1 MR. DORMAN: Yes.

2 CHAIRPERSON GRIFFIS: Okay, so maybe
3 with all these together, the third floor, the
4 third floor. Okay. Let's -- the third floor,
5 the impact on that if it was not enclosed on
6 that addition would be that could essentially
7 be a walk-out area, a deck area and you would
8 lose that living space, correct?

9 MR. DORMAN: Yes.

10 CHAIRMAN GRIFFIS: And the second
11 level, it would take a reconfiguration of that
12 kitchen and you would lose living space also.

13 MR. DORMAN: Yes.

14 CHAIRMAN GRIFFIS: That's a one-
15 bedroom on the second level.

16 MR. DORMAN: Yes.

17 CHAIRPERSON GRIFFIS: It's two-
18 bedroom on the third.

19 MR. DORMAN: Correct.

20 CHAIRPERSON GRIFFIS: Okay. Okay,
21 what else? Any other clarifications?

22 MEMBER ETHERLY: None over here.

1 CHAIRMAN GRIFFIS: There it is. All
2 right.

3 MS. DUMAS: First of all, thank you
4 all for your time and thank you Office of
5 Planning and the neighbors for taking such an
6 interest in this case because it is important
7 what we're asking. You know, it is obviously,
8 in excess of what the zoning requirements
9 allow. But I think I want to start off by
10 clarifying some of the facts, and then go into
11 the three prongs of variance relief based on
12 that.

13 First of all, what is before you
14 today is actually a seven-unit apartment
15 building. There is a Certificate of Occupancy
16 for a seven-unit apartment building and what
17 was purchased by the property owner, the
18 tenant owners was a seven-unit apartment
19 building. No condo conversion has been
20 approved thus far, although one is in the
21 works. But regardless of what this Applicant
22 has to do, or what this Applicant does with

1 respect to the condo conversion, they -- there
2 are seven units there and the Applicant
3 actually cannot eliminate units where there
4 are leases signed for those units without
5 approval of the rental -- and without the --
6 abiding by the requirements of the Rental
7 Housing Act.

8 So as the property stands now, we
9 have seven rental units and a reduction in
10 units would, I think, throw this building in
11 an only further turmoil. That being said, I
12 mean, we have a unique situation here because
13 of the existence of an -- the exercise of a
14 right of first refusal on the part of the
15 Applicant as a tenant organization, the
16 significant state of disrepair which can be
17 documented by many years of having code
18 violations. And I would offer the Board that
19 if they would like to see what current housing
20 code violations are pending, we'd be happy to
21 provide that information. I don't have it
22 with me today, but we could present that into

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1 the record.

2 And you've heard testimony from Mr.
3 Eisenberg and others about the state of the
4 building and the fact that the building is
5 really in not a great condition. I think
6 another thing that adds to the uniqueness of
7 this property is simply that this is an
8 unsophisticated group of property owners and
9 it was purchased with, as you've heard, every
10 intent to retain what was an existing,
11 preserve their homes and do as little as
12 possible to the building while upgrading it
13 and then preparing it for lease or for sale.

14 The practical difficulty that they
15 encountered in doing that is that the
16 condition of the building is really
17 necessitating an entire renovation, full new
18 mechanical systems, upgraded to a modern size
19 of bathroom and kitchen for marketability
20 purposes but most importantly the abatement of
21 those Housing Code violations which is an
22 extremely expensive and time-consuming

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1 prospect and as you can see, the owners have
2 actually gone to great lengths to try and
3 study what could be done in this building and
4 meet with the Office of Planning, Historic
5 Preservation staff, neighbors, to minimize and
6 to request the minimum relief necessary.
7 Although that's not a standard under District
8 of Columbia law, I think it is relevant for
9 this variance application that they are really
10 at the bare minimum for what they believe they
11 need to maintain circulation and access and
12 properly allocate for an area across their
13 building given the need for complete update of
14 mechanical and other systems.

15 Another part of this practical
16 difficulty, as we've discussed is the cost and
17 we would also be -- I have a -- you've heard
18 the testimony of Mr. Eisenberg as to the cost
19 of litigation to get to the point where they
20 were able to purchase the building in the
21 first place and we would be happy to provide
22 a legal bill that presents simply those costs.

1 What I have, unfortunately, includes other
2 costs and I want to make sure that if we
3 provide you anything additional, if you're
4 willing to accept that into the record that we
5 provide an accurate view. But you've heard
6 that it's, you know, approximately 60 to
7 \$70,000.00, a portion of which, at least the
8 occupants and the Applicant has had to foot
9 themselves, was not reimbursed.

10 Finally, the application presents
11 absolutely no impairments to the zone plan or
12 the neighborhood. You've seen light and
13 shadow studies which demonstrate that there
14 is, if any impact, only a minimal impact on
15 surrounding properties. The fact of the
16 matter is, that the surrounding properties are
17 already boxed in. They're already dealing
18 with, as is the Applicant, the condition and
19 the situation of the existing building. The
20 addition will not adversely effect the light
21 and air of neighboring property owners and in
22 fact, because there's no change in the

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1 building footprint and the amount of housing
2 is actually being retained, the same number of
3 units is being retained, it's arguably being
4 done as -- well, it's arguably a retention in
5 the housing stock and something that both the
6 comprehensive plan, the Dupont Circle Historic
7 District Guidelines and the R-5 zones
8 contemplate and would encourage.

9 So with that, again, we would offer
10 we can provide those additional items or any
11 other items that the Board might be willing to
12 request and we believe we met the burden of
13 proof in this case.

14 CHAIRPERSON GRIFFIS: Excellent.
15 Thank you very much. Anything else from the
16 Board? Yes.

17 MEMBER ETHERLY: I have a couple of
18 items that I think will be helpful to me.
19 This won't be lengthy but let me just kind of
20 walk through it very slowly. I think it will
21 probably be helpful for at least this one
22 Board member, I'm still struggling little bit

1 on the financial aspect of it, so I think as
2 you -- and you touched upon this in your
3 summation, in your closing.

4 I think definitely walking through a
5 very clear kind of discussion or itemization,
6 if you will, of the cost, I think will be
7 very, very helpful. That's not to suggest
8 that that's going to be the definitive thing
9 here, but I think it's going to be helpful to
10 kind of flesh that out a little more.

11 I'm trying to offer as much guidance
12 as possible so I don't want you to throw the
13 kitchen sink in there but I think it will be
14 helpful to flesh that out a little more in
15 terms of what you're anticipating doing to
16 one, bring -- deal with those code issues. I
17 think those code issues are going to be
18 somewhat helpful to me but getting a better
19 sense of what we're looking at in terms of
20 cost, I think will be very, very helpful.

21 I think with respect to the issue of
22 marketability, it is a word that this Board is

1 familiar with and that we've dealt with in
2 other cases. It is often times a very sticky
3 thicket to kind of get through. Again, I
4 don't think by itself it's necessarily
5 dispositive of the case, but to the extent you
6 can perhaps help speak to what you're trying
7 to get at or what you view as the market.
8 Again, I'm trying to walk very gingerly
9 because I don't want to suggest a full-fledged
10 market analysis that gives us Dupont Circle
11 today and 15 years down the line, but again,
12 part of what I hear the argument being is
13 there are some code issues that we need to
14 take care of and as we look at issues around
15 marketability for the units after we're done.

16 I think it's going to be helpful to
17 get some sense of what you're using as your
18 baseline. I believe it was, in this case
19 earlier in our discussion, that the Chair used
20 that word, kind of baseline or perhaps it
21 might have been one of our earlier cases
22 today, but I'm trying to get a sense of what

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1 your baseline is.

2 I think if you haven't already taken
3 a look at it, it might be helpful to really
4 think about you facts in the context of the
5 Gilmartin case. My colleagues, perhaps, will
6 laugh at me because we had some substantial
7 discussion about that today and you may have
8 taken a look at it already. But I think it
9 would be helpful to revisit that particular
10 case, especially as it relates to the
11 discussion of economic hardship. You're
12 arguing some broader facts, in addition to the
13 economic aspect of the case, but I think it
14 would be helpful to really look at that case
15 and how it discusses where economic hardship
16 fits in. I think at the end of the day, it's
17 still going to be a question of, as Mr.
18 Jackson very, very nicely put it, in the
19 Office of Planning's report is the nexus
20 between what you're trying to do and what you
21 simply need to do to get the building up to
22 code and make it habitable.

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1 As you heard, in terms of testimony
2 from the party in opposition and many of your
3 neighbors, and I have to say that that was
4 probably some of the best testimony in
5 opposition because everyone emphasized, "Hey,
6 we know each other. We've lived in this
7 neighborhood for a long time together. Sorry
8 that we're here under these circumstances,"
9 but that's just a little bit of an aside but
10 it's often times not the kind of tone that
11 hear when people appear in opposition, so that
12 was very nice to see.

13 But that being said, part of what
14 you heard from the Office of Planning and part
15 of what I heard from the Office of Planning
16 again, is the nexus between what you're trying
17 to do and what you need to do to simply get
18 the building back to some basic level of
19 habitability, if you will, from a code
20 compliance standpoint.

21 Those are just some of the things
22 that I think would be helpful in terms of my

1 deliberations here. That's not meant to be
2 exhaustive on the part of my colleagues, but
3 I think looking at the Gilmartin case and
4 really making sure that you're putting a pin
5 in that economic issue is going to be very,
6 very helpful and I think the more numbers we
7 can get, you know, the better.

8 Again, I'm not saying by the least
9 that it's going to guarantee that you're going
10 to get over that hump, but right now, I'm
11 still, shall we say, a little just uncertain
12 about where that fits in the whole milieu of
13 things here. So those are just some of the
14 additional items that I would want to
15 highlight, Mr. Chair. Thank you very much.

16 CHAIRPERSON GRIFFIS: Thank you.
17 Ms. Miller?

18 VICE-CHAIR MILLER: I think I just
19 want to pick up on what Mr. Etherly said but
20 maybe phrase it a little differently. But it
21 goes to the practical difficulty prong and the
22 first one particularly with respect to the

1 dialogue I had with the Office of Planning.
2 I mean, it seems to me that one of your basic
3 arguments is that you can't bring the building
4 up to the Building Code, the Housing Codes,
5 without the variance relief, and I don't think
6 that that's documented here.

7 The Office of Planning didn't think
8 it was documented, opposition didn't think it
9 was documented. It's like an assertion and an
10 assertion really isn't enough in my view to
11 carry the day on that. And then the second
12 one, it also goes to the economics. I thought
13 at one point I heard the argument that well,
14 you can't afford to live in the house and stay
15 in the house unless you get the variance
16 relief because of the cost of the litigation
17 and the cost to fix it up. Again, that could
18 be a practical difficulty but I don't see it
19 here as being documented that that's really
20 the case and we heard, you know, opposition
21 saying to the contrary. Well, you can rent a
22 unit out for a great amount of money, so how

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1 -- why should we believe that.

2 So again, it goes to documentation
3 of those assertions.

4 CHAIRPERSON GRIFFIS: Anything else.
5 Great, I don't think we need to see the legal
6 bills and I don't think we need to see
7 necessarily, Code violations except as they
8 relate to the additional information that's
9 being talked about. I think that will all go
10 down to what Ms. Miller is talking about, is
11 that everything that's submitted; one, should
12 be very succinct, but two, go to the direct
13 test. If you're establishing obviously, the
14 rationale of practical difficulty on a certain
15 element, then we'll allow an additional
16 substantiation for it.

17 With that then, let's set a date
18 which will decide this.

19 MR. WILHELM: Mr. Chairman, could I
20 ask a question, please?

21 CHAIRPERSON GRIFFIS: Yes, in two
22 seconds however. Ms. Bailey, how are we on --

1 I think I left my schedule in the back. Ms.
2 Bailey, I'd like to set this for a special
3 public meeting on the February 20th and I
4 think we could do that at 9:00 a.m.

5 MS. BAILEY: Mr. Chairman, would
6 that be sufficient time for the Applicant to
7 provide the information and for the party to
8 respond?

9 CHAIRMAN GRIFFIS: Excellent point,
10 now we'll get to that. That would mean we'd
11 have submissions in by Wednesday next, which
12 would be the 12th.

13 VICE-CHAIR MILLER: Next Wednesday
14 is the 14th.

15 MS. BAILEY: It's the 13th.

16 CHAIRPERSON GRIFFIS: I'm sorry.
17 The day after the 13th, right?

18 MS. BAILEY: Valentine's Day?

19 VICE-CHAIR MILLER: Well, we are all
20 friends here.

21 CHAIRMAN GRIFFIS: Right, it has to
22 be tied up with chocolate.

1 MR. EISENBERG: May I ask a quick
2 dumb housekeeping question? We're happy to
3 open our finances to you in absolutely any
4 way, shape or form, but we're -- we've been
5 advised in regards to our conversion issues to
6 be pretty careful. We literally have had one
7 tenant caught red-handed going through our
8 trash in an attempt to dig up more information
9 about our -- well, we don't know what he was
10 doing but at any rate, what happens to the
11 information that we give you? Is that part of
12 the public record? Can other tenants take
13 that information?

14 CHAIRPERSON GRIFFIS: Right,
15 absolutely. That's right. We'll get to
16 exactly what we're looking at and it's
17 actually to your discretion what you put in,
18 but we're not looking at -- believe me, the
19 Board doesn't want to have full financial
20 documents.

21 MR. EISENBERG: No, I understand
22 that. I'm not looking to inundate you but

1 it's -- you know, one of the tenants who
2 didn't join our tenants' association has been
3 asking --

4 CHAIRPERSON GRIFFIS: Right, that's
5 an excellent question.

6 MR. EISENBERG: -- to see everything
7 and we've been directed very specifically to
8 be careful about what we divulge.

9 CHAIRPERSON GRIFFIS: Right,
10 anything that comes to us is public record.
11 At some point, it will be posted on the Web
12 once we get around to it.

13 MS. DUMAS: So are you still looking
14 at the February 20th date with submission on
15 the 13th?

16 CHAIRPERSON GRIFFIS: That would put
17 us on the 14th, which would put us too fast to
18 have a --

19 MS. DUMAS: Or the 14th.

20 (Pause)

21 MS. BAILEY: Mr. Chairman, don't
22 forget also that the Monday before the 20th is

1 a holiday, if I'm not mistaken.

2 CHAIRMAN GRIFFIS: Do you want an
3 opportunity to respond?

4 MR. WILHELM: I'm afraid I do, Mr.
5 Chairman, and I might note as you probably
6 observed and the Board has observed, I don't
7 do this as a full time job. So the schedule
8 is kind of tight for us to have filings by the
9 20th, especially if the Plaintiff's filing is
10 extensive.

11 CHAIRMAN GRIFFIS: No, it's
12 definitely not going to be extensive, right?

13 MS. DUMAS: We promise, it's going
14 to be exactly what they asked for.

15 CHAIRPERSON GRIFFIS: We're looking
16 at probably two pages at most. It's doing to
17 be a very simple document. It's just going to
18 line it out. I mean, frankly, we've received
19 them in fashion as general as, you know, a
20 purchase price, a renovation price and a sale
21 price --

22 MS. DUMAS: Right.

1 CHAIRPERSON GRIFFIS: -- and looking
2 at that -- is that essentially what you're
3 looking for?

4 MR. EISENBERG: Yeah, I mean, I can
5 walk -- I mean, I can do that off the top of
6 my head very quickly about where we are.

7 CHAIRPERSON GRIFFIS: No, and then
8 the second aspect of it, as I understand their
9 case presentation as being based on, is the
10 fact that okay, look, these are the givens,
11 this is the overall project and then somehow,
12 it's up to you guys but somehow you have to
13 say, "All right, and if we didn't get this,
14 this is why we're being moved so strongly to
15 put this addition on." Am I encapsulating
16 what you need?

17 MEMBER ETHERLY: Yes, yes.

18 CHAIRMAN GRIFFIS: Okay.

19 MS. DUMAS: Understood.

20 CHAIRPERSON GRIFFIS: So there it
21 is.

22 MR. WILHELM: You'll just serve me

1 by hand?

2 MS. DUMAS: Absolutely.

3 MR. WILHELM: Okay.

4 CHAIRPERSON GRIFFIS: So could we
5 meet the 20th? I don't know if we can meet
6 the 120th and have a proper response time
7 basically. I mean, we could put it -- let's
8 try -- let's just do it on the 27th. If we
9 that in by the 14th -- obviously you can come
10 in quicker. You can get served on the ANC and
11 also on the party in opposition. Before you
12 guys leave, you can let each other know how
13 you want to be served. And so the 14th, that
14 would come into the record and by the -- then
15 the 41st, Ms. Bailey, the Wednesday at 3:00
16 o'clock everything would be submitted back
17 into the Office of Zoning and the record would
18 be closed at that time. So the submission on
19 the 21st is really only the respond.

20 MR. WILHELM: I see.

21 CHAIRPERSON GRIFFIS: I think we
22 could have -- he wanted a hearing, we could

1 have that all together, so the financial on
2 the reiteration and you know, if Gilmartin is
3 referenced and re-establish practical
4 difficulty by next week, a week to respond and
5 then we're set on the 27th.

6 MS. DUMAS: Would you like proposed
7 findings?

8 CHAIRMAN GRIFFIS: No. Do you?
9 Okay, and then let's set it for the 27th.
10 We're going to change our start time and call
11 for special public meeting at 9:00 and we'll
12 hold our hearing time at 9:30. Obviously
13 after the 21st, there's no other time for
14 submission of information into the record.
15 The only -- the record is only open for that
16 which we've just established. So if anything
17 else comes in after today, it obviously won't
18 be received. So just be clear on the fact
19 that we've left it to those two pieces. We
20 don't have any requirements for submissions
21 from the party in opposition, primary
22 submissions. We have just the opening for the

1 address of what is submitted. And just to be
2 clear, this is going to be succinct from the
3 Applicant coming in and your response is
4 absolutely succinct because it is only
5 responding to that which they've just put in.

6 MR. WILHELM: Guaranteed.

7 CHAIRPERSON GRIFFIS: Okay.
8 Fabulous, just trying to help all with time
9 management.

10 MEMBER ETHERLY: And I would say,
11 Mr. Chair, just to emphasize and again, to
12 perhaps respond to one of the questions from
13 that Applicants regarding, you know, we can
14 kind of give you a lot of stuff, I think the
15 Chair was right on when he said, you know,
16 keep you very focused and very succinct. I
17 think this Board, we'll all fairly familiar
18 with this line of cases and this particular
19 test. I just think this is a part of filling
20 out some of the gaps that may have been left
21 from today. So I would agree that it's
22 definitely not an extensive submittal just

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1 very tight, very focused and I think we'll be
2 ready to go.

3 CHAIRPERSON GRIFFIS: Excellent.
4 All right, any other questions procedurally?
5 Submissions, schedule? You're going to have
6 to come up if you're going to be on a mike and
7 we'll -- but let me just say while I'm
8 answering one question from a person here and
9 we're getting you all out of here, if there
10 is questions of clarification required, you
11 can obviously call into the Office of Zoning.
12 Ms. Bailey and Mr. Moy are able and very --
13 obviously have been through this whole thing
14 today, will have questions or rather answers
15 for your questions. Yes, a procedural
16 question?

17 MS. HARRINGTON: I wanted to make
18 sure because I thought I heard you say we
19 couldn't submit anything else after today. I
20 just wanted to make sure that you have in your
21 package the neighbors' objections that we got
22 because I think this is really -- particularly

1 one of the attachments which shows all the
2 houses around it and all of the places we have
3 objections.

4 MS. DUMAS: I don't have that.

5 CHAIRMAN GRIFFIS: No, we don't have
6 that.

7 MR. WILHELM: It was filed
8 yesterday.

9 MS. DUMAS: No, the only thing that
10 was filed yesterday was a letter.

11 MS. HARRINGTON: It's in part of
12 that package we did this morning. There you
13 go.

14 CHAIRPERSON GRIFFIS: Have you seen
15 it, Ms. Bailey? Did you put it in the record?

16 VICE-CHAIR MILLER: Yeah, that is
17 what we just xeroxed over here.

18 MS. BAILEY: But you didn't give it
19 to me.

20 MS. HARRINGTON: Who said that? It
21 was in that big package that we xeroxed.

22 MS. BAILEY: Did you give it to me

1 or did you leave it in the office?

2 MS. HARRINGTON: That package, isn't
3 it in that package?

4 MS. JONES: I don't think you -- I
5 don't know what you gave her.

6 MS. HARRINGTON: That big package
7 that you xeroxed.

8 MS. JONES: Yeah, yeah.

9 MS. HARRINGTON: Did you give that
10 package to her?

11 MS. JONES: Do you have a copy of
12 what I gave you? I'm going to give it to you
13 again, then.

14 CHAIRMAN GRIFFIS: Well, she made
15 copies of these, the three of these, but not
16 this. Okay, a good point of clarification.
17 Make sure you leave one, make sure the
18 Applicant has one and there it is. What else?
19 Anything else? Any other questions? Very
20 well, Ms. Bailey is going to take care of
21 that. I think we're done then. If there's no
22 further business for the Board, any other

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1 business for the Board? Excellent, thank you
2 very much. Let's adjourn.

3 (Whereupon, at 6:43 p.m. the hearing
4 in the above-entitled matter concluded.)

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