

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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PUBLIC HEARING

+ + + + +

TUESDAY,

JULY 3, 2007

+ + + + +

The Public Hearing convened in Room 220 South, 441 4th Street, N.W., Washington, D.C. 20001, pursuant to notice at 1:00 p.m., Ruthanne G. Miller, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

RUTHANNE G. MILLER Chairperson
CURTIS ETHERLY, JR. Vice Chair
JOHN A. MANN, II Board Member
(NCPC)

ZONING COMMISSION MEMBER PRESENT:

ANTHONY J. HOOD Vice Chair

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY Secretary
BEVERLEY BAILEY Sr. Zoning Spec.

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

SHERRY GLAZER, ESQ.

OFFICE OF PLANNING STAFF PRESENT:

KAREN THOMAS
DOUGLAS WOODS
ARTHUR JACKSON

This transcript constitutes the minutes from the Public Hearing held on July 3, 2007.

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

2:13 p.m.

CHAIRPERSON MILLER: This hearing will come to order. Good afternoon, ladies and gentlemen, sorry to keep you waiting. When our mornings run late, our afternoons start late, so that's the reason for the little delay.

This is the July 3rd Public Hearing of the Board of Zoning Adjustment of the District of Columbia. My name is Ruthanne Miller. I'm Chairperson. Joining me today to my right is Mr. Anthony Hood, who sits on the Zoning Commission, and to my left is Mr. John Mann representing the National Capital Planning Commission, and the Mayoral appointee, Mr. Curtis Etherly, will be joining us shortly.

Also up here on the dias is Sherry Glazer from the Office of Attorney General. Next to her is Bryan Stockton, who is an intern in the Office of Attorney General, and

1 next to him is Beverley Bailey from the Office
2 of Zoning.

3 Copies of today's hearing agenda
4 are available to you and are located to my
5 left in the wall bin near the door. Please,
6 be aware that this proceeding is being
7 recorded by a Court Reporter and is also
8 webcast live. Accordingly, we must ask you to
9 refrain from any disruptive noises or actions
10 in the hearing room.

11 When presenting information to the
12 Board, please, turn on and speak into the
13 microphone, first, stating your name and home
14 address. When you are finished speaking,
15 please, turn your microphone off, so that your
16 microphone is no longer picking up sound or
17 background noise.

18 All persons planning to testify
19 either in favor or in opposition are to fill
20 out two witness cards. These cards are
21 located to my left on the table near the door
22 and on the witness tables. Upon coming

1 forward to speak to the Board, please, give
2 both cards to the Court Reporter sitting to my
3 right.

4 The order of procedure for special
5 exceptions and variances is as follows: One,
6 statement and witnesses of the applicant.
7 Two, Government reports, including Office of
8 Planning, Department of Public Works, DDOT,
9 etcetera. Three, report of the Advisory
10 Neighborhood Commission. Four, parties or
11 persons in support. Five, parties or persons
12 in opposition. Six, closing remarks by the
13 applicant.

14 Pursuant to Section 3117.4 and
15 3117.5, the following time constraints may be
16 maintained: The applicant, appellant, persons
17 and parties, except an ANC, in support,
18 including witnesses, 60 minutes collectively.
19 Appellees, persons and parties, except an ANC,
20 in opposition, including witnesses, 60 minutes
21 collectively. Individuals 3 minutes.

22 These time restraints do not

1 include cross examination and/or questions
2 from the Board. Cross examination of
3 witnesses is permitted by the applicant or
4 parties. The ANC within which the property is
5 located is automatically a party in a special
6 exception or variance case.

7 Nothing prohibits the Board from
8 placing reasonable restrictions on cross
9 examination, including time limits and limits
10 on the scope of cross examination.

11 The record will be closed at the
12 conclusion of each case, except for any
13 material specifically requested by the Board.
14 The Board and the staff will specify at the
15 end of the hearing exactly what is expected
16 and the date when the persons must submit the
17 evidence to the Office of Zoning. After the
18 record is closed, no other information will be
19 accepted by the Board.

20 The Sunshine Act requires that the
21 Public Hearing on each case be held in the
22 open before the public. The Board may,

1 consistent with it's rules of procedure and
2 the Sunshine Act, enter Executive Session
3 during or after the Public Hearing on a case
4 for purposes of reviewing the record or
5 deliberating the case.

6 The decision of the Board in these
7 contested cases must be based exclusively on
8 the public record. To avoid any appearance to
9 the contrary, the Board requests that persons
10 present not engage the Members of the Board in
11 conversation.

12 Please, turn off all beepers and
13 cell phones, at this time, so as not to
14 disrupt these proceedings.

15 The Board will make every effort
16 to conclude the Public Hearing as near as
17 possible to 6:00 p.m. If the afternoon cases
18 are not completed at 6:00 p.m., the Board will
19 assess whether it can complete the pending
20 case or cases remaining on the agenda.

21 At this time, the Board will
22 consider any preliminary matters. Preliminary

1 matters are those that relate to whether a
2 case will or should be heard today, such as
3 requests for postponement, continuance or
4 withdrawal or whether proper and adequate
5 notice of the hearing has been given. If you
6 are not prepared to go forward with a case
7 today or if you believe that the Board should
8 not proceed, now is the time to raise such a
9 matter.

10 Does the staff have any
11 preliminary matters?

12 MS. BAILEY: Madam Chairman,
13 Members of the Board, to everyone, good
14 afternoon. Staff does not have any
15 preliminary matters at this time. There are
16 some, but they are case-specific and so I
17 would suggest that you take that up when the
18 case is called.

19 CHAIRPERSON MILLER: Okay. I
20 would agree. Then would all individuals in
21 the audience who wish to testify today,
22 please, rise to take the oath?

1 MS. BAILEY: Would you, please,
2 raise your right hand?

3 (Whereupon, the witnesses were
4 sworn.)

5 MS. BAILEY: Thank you.

6 CHAIRPERSON MILLER: Would you,
7 please, call the first case?

8 MS. BAILEY: The first application
9 is 17659 and it is of the Metropolitan Police
10 Department, pursuant to 11 DCMR 3103.2, for a
11 variance from the side yard provisions under
12 subsection 2500.2, to allow the installation
13 of an accessory structure, that's a 24 hour
14 manned security booth, serving the Mayor's
15 residence in the R-1-B District. The premises
16 is at 4712 17th Street, N.W., Square 2657, Lot
17 21.

18 Members of the Board, I placed
19 before you a copy of the Affidavit of Posting.
20 The property was posted on 6/29/07. It was
21 posted four days prior to the Public Hearing.
22 As you know, 15 days are required, so it was

1 not posted for the requisite 15 days.

2 CHAIRPERSON MILLER: Thank you.
3 Would the parties in this case, please, come
4 forward to the table? Good afternoon, could
5 you identify yourselves for the record,
6 please?

7 MR. BLAND: I'm Commissioner
8 Ronald Bland, ANC-4C03.

9 MR. WILLIAMS: My name is Lawrence
10 Williams, with the Metropolitan --

11 COURT REPORTER: Could you talk
12 into the mike?

13 MR. WILLIAMS: I believe I --

14 CHAIRPERSON MILLER: I'm sorry,
15 before you go, could you also give your home
16 address? Your address with your name.

17 MR. BLAND: 1605 Buchanan Street,
18 N.W., Washington, D.C. 20011.

19 CHAIRPERSON MILLER: Thank you.

20 MR. WILLIAMS: My name is Lawrence
21 Williams. My address is 15712 Cheswick Lane,
22 Upper Marlboro, Maryland. Wash -- Upper

1 Marlboro 20772.

2 CHAIRPERSON MILLER: You don't
3 have to give the ZIP Code, that's okay. But
4 are you representing the applicant in this
5 case?

6 MR. WILLIAMS: Yes, I am.

7 CHAIRPERSON MILLER: Okay.

8 LIEUTENANT DOUGLAS: Lieutenant
9 Angela Douglas, home address, 518 15th Street,
10 S.E., Washington, D.C.

11 MS. DIAMOND: Shirley Diamond,
12 Metropolitan Police Department, home address,
13 2909 Davenport Street, N.W., Washington, D.C.

14 CHAIRPERSON MILLER: Thank you. I
15 just want to first have you all address the
16 posting issue that Ms. Bailey raised. We can
17 waive that, but in order to do that, we just
18 need to know the facts surrounding that, why
19 it wasn't posted in the required time.

20 MR. WILLIAMS: It wasn't posted in
21 the required time, because I really didn't
22 know that it had to be done within that 15 day

1 time frame. And when I received notification,
2 I responded.

3 CHAIRPERSON MILLER: Okay. And
4 then the other aspect of our decision on
5 waiving goes to whether or not the public was
6 notified adequately, in any event, and perhaps
7 the ANC Commissioner might want to address
8 this as well.

9 MR. BLAND: We were not notified
10 with respect to the posting. We did come to
11 the Board of Zoning Adjustment and got the
12 schedule for today's hearing, but we did not
13 see anything on the posting of the property.

14 CHAIRPERSON MILLER: Did you get
15 the written notices on the application?

16 MR. BLAND: Yes.

17 CHAIRPERSON MILLER: Okay. Also,
18 the rules provide for a variety of notices, so
19 sometimes if one notice doesn't work out, the
20 public is still notified because of the other
21 means. So are you aware of anyone who wasn't
22 notified or any problems with this posting?

1 MR. BLAND: No, I'm not aware of
2 any problems with respect to the neighborhood
3 not knowing.

4 CHAIRPERSON MILLER: Okay. Okay.
5 And do you have any objection to our waiving
6 that requirement?

7 MR. BLAND: No.

8 CHAIRPERSON MILLER: Okay. I
9 would suggest we waive that requirement.
10 Okay. I have the consensus of the Board to
11 waive that requirement. So now, we are ready
12 to proceed with the application.

13 I just want to reiterate that you
14 need to shut off your microphones unless you
15 are speaking, because it distracts from what
16 we hear from the person speaking. Okay. Go
17 ahead. Thank you.

18 MR. WILLIAMS: The Metropolitan
19 Police Department is recommending a variance.
20 Can you hear me now? My light is on.

21 CHAIRPERSON MILLER: It's kind of
22 soft. Can you --

1 MR. WILLIAMS: Turn the volume up?

2 BOARD MEMBER MANN: Pull it closer
3 to you.

4 CHAIRPERSON MILLER: Yes, if you
5 just pull it a little closer, that would be
6 better.

7 MR. WILLIAMS: Again, the
8 Metropolitan Police Department is recommending
9 a variance for the location of a security
10 booth in the side yard of the subject
11 residence, which is 4712 17th Street, N.W., on
12 the condition that it shall be moved after it
13 is used by MPD and is no longer necessary.

14 The space provided does not allow
15 space on the lot or the Mayor's residence does
16 not allow for us to place the booth in public
17 space.

18 CHAIRPERSON MILLER: Normally, it
19 would be put in public space, but --

20 MR. WILLIAMS: It normally would
21 be put in public space.

22 CHAIRPERSON MILLER: Okay.

1 MR. WILLIAMS: But the space on
2 that lot, the configuration of the lot does
3 not allow the booth to be placed on public
4 space.

5 CHAIRPERSON MILLER: Can you
6 explain that a little more?

7 MR. WILLIAMS: Well, yes. In
8 detail, I have a copy of the diagram, but I'll
9 explain it. The Mayor's house sits in the
10 middle of a lot. You have residential streets
11 in front of his house and you have an alley,
12 a 20 foot alley, behind his house. You have
13 a residential home on the right and left side
14 of his house. There is absolutely -- I think
15 about 12 feet of actual space that could be
16 considered public space in front of his house
17 and none on the back or side.

18 CHAIRPERSON MILLER: So normally,
19 it's in public space and the only public
20 space --

21 MR. WILLIAMS: Would be --

22 CHAIRPERSON MILLER: -- with

1 respect to this house is in front?

2 MR. WILLIAMS: -- in front of his
3 house.

4 CHAIRPERSON MILLER: And what's
5 the problem with putting it in front?

6 MR. WILLIAMS: It does not allow
7 sufficient space to house the booth.

8 CHAIRPERSON MILLER: Okay.

9 MR. WILLIAMS: The booth is larger
10 than the space itself.

11 CHAIRPERSON MILLER: How big is
12 it?

13 MR. WILLIAMS: The booth is about
14 9 x 4 x 8. I'm sorry, it's 9 x 4 x 6.

15 CHAIRPERSON MILLER: Okay.

16 MR. WILLIAMS: The actual space is
17 about 8 feet, will not accommodate.

18 CHAIRPERSON MILLER: Did you want
19 to say any more?

20 MR. WILLIAMS: No.

21 CHAIRPERSON MILLER: Are there
22 questions from Board Members?

1 VICE CHAIR ETHERLY: Thank you
2 very much, Madam Chair. Just very, very
3 briefly, because I think the record is very
4 full and complete on this application. From
5 the standpoint of, and I want to be sure I
6 word my question appropriately, because
7 clearly there are probably considerations that
8 dictate just how much information we get into,
9 and I want to be sensitive to that, of the
10 size of the booth, what is DC MPD's position
11 on the size of the booth?

12 Is the booth itself of a typical
13 size that is necessary for the level of
14 security that is being provided, i.e., you
15 can't make it smaller? The size is dictated
16 by other considerations that exist? Would
17 that be an accurate statement in this case?

18 MR. WILLIAMS: That's a very
19 accurate statement, sir.

20 VICE CHAIR ETHERLY: Okay. Thank
21 you, Madam Chair. Thank you, sir.

22 CHAIRPERSON MILLER: Yes, I would

1 like to ask a question and I certainly don't
2 want to cross over into, you know, security,
3 so you don't have to answer it necessarily.
4 However, just in our proceedings it raises a
5 question. When we're being asked to put on a
6 condition that it be removed after it is used
7 by the MPD and is no longer necessary. Can
8 you give us any ideas as to what does that
9 mean? Does that mean like soon after the
10 Mayor is no longer Mayor or what does it mean?

11 MR. WILLIAMS: As soon as the
12 Mayor is no longer the Mayor, that booth will
13 be removed, yes. It's on those conditions.

14 CHAIRPERSON MILLER: It's what?

15 MR. WILLIAMS: It's on those
16 conditions.

17 CHAIRPERSON MILLER: Okay. So
18 really --

19 MR. WILLIAMS: At the end of his
20 tenure --

21 CHAIRPERSON MILLER: At the end of
22 his tenure, it will be removed.

1 MR. WILLIAMS: -- the booth will
2 be removed, yes.

3 CHAIRPERSON MILLER: Okay.

4 COMMISSIONER HOOD: Let me just
5 follow up. If for sake of discussion, if you
6 wanted to stay there, I don't know why, you
7 might want to use it for a shed or something,
8 but if you wanted it to stay there, then I
9 guess, Madam Chair, they would have to come
10 back down in front of the Board, if they
11 wanted to continue to use that for some other
12 purpose after he is no longer the Mayor.
13 Would that be an arrangement or something he
14 may be able to enter into?

15 MR. WILLIAMS: I'm going to let my
16 director answer that question.

17 COMMISSIONER HOOD: I'm just
18 curious. If he wanted to keep it there,
19 that's just my issue. We're making it a
20 condition, but if for sake of discussion, if
21 the Mayor, current Mayor, wanted to keep that
22 there, I don't know why he would, but he may

1 want to use it for something else later, you
2 know, it may become attractive and he may want
3 to keep it, then I know he would have to come
4 down in front of us. Obviously, it's
5 something he might not want to keep, but for
6 the sake of discussion, if we put that in the
7 condition and he wants to keep it there, then
8 they will have to come back in front of this
9 Board.

10 LIEUTENANT DOUGLAS: May I?

11 MR. WILLIAMS: The booth would be
12 Government property and he would no longer be
13 Mayor.

14 COMMISSIONER HOOD: Okay.

15 MR. WILLIAMS: So it would have to
16 go back to the Government.

17 COMMISSIONER HOOD: I gotcha.
18 That's the difference. Thank you. Thank you,
19 Madam Chair.

20 CHAIRPERSON MILLER: Yes, and
21 these may seem like tedious questions, but,
22 you know, we do put time limits on certain

1 relief. And so in this case, if we put a time
2 limit on being for the tenure of the Mayor's
3 term, if it ever -- would it ever be a problem
4 that oh, they might need or he might need
5 security longer than that and therefore we
6 shouldn't make it so specific to his term or
7 is it that this is only provided for his term
8 as Government property and it will definitely
9 end at the end of his term?

10 LIEUTENANT DOUGLAS: Yes, the
11 Mayor would only receive security during his
12 time in office. Once that's over with,
13 security does end immediately.

14 CHAIRPERSON MILLER: Thank you.

15 COMMISSIONER HOOD: Another
16 question. Is there going to be any like air
17 conditioner or something, anything running in
18 it, so it would have power, electricity and
19 everything?

20 MR. WILLIAMS: Yes, sir. The
21 booth has electric. It has AC unit. It has
22 a security system as well inside. It's just

1 like the normal booths you see around Capitol
2 Hill for security guards.

3 COMMISSIONER HOOD: Okay. Okay.
4 All right. Thank you.

5 CHAIRPERSON MILLER: Does the ANC
6 have any questions for the applicant?

7 MR. BLAND: No.

8 CHAIRPERSON MILLER: Okay. Thank
9 you. If you are finished with your initial
10 presentation, we'll turn to the Office of
11 Planning.

12 MS. THOMAS: Good afternoon, Madam
13 Chair, Members of the Board. The Office of
14 Planning will stand on the record on this
15 matter. We recommend approval and subject to
16 the condition that it is removed after it's no
17 longer necessary. Thank you.

18 CHAIRPERSON MILLER: Now, it's the
19 Office of Planning's analysis that accessory
20 buildings are only allowed in the rear yard
21 and that's why there is being a variance
22 sought. Is that right?

1 MS. THOMAS: Yes, that's correct.
2 Yes, and it couldn't be placed in the rear
3 yard, given the lot's configuration and the
4 location of the house on the lot. So it would
5 have been impractical to place such a security
6 system in the rear yard.

7 CHAIRPERSON MILLER: Is it because
8 it couldn't serve its purpose if it was in the
9 rear yard or is it because the rear yard can't
10 accommodate it?

11 CHAIRPERSON MILLER: I mean, the
12 rear yard is large enough to accommodate it,
13 but it couldn't serve its purpose functioning
14 from the rear yard to provide security to the
15 front of the residence at the same time for
16 deliveries, for -- you now, to examine
17 deliveries, examine access to the home, to
18 provide security for access to the home and
19 all of that. It would have been impractical
20 to place it at the rear of the house, because
21 the officer would have to leave every time
22 from the rear to come to the front and that's

1 impractical.

2 CHAIRPERSON MILLER: So when it's
3 on the side, can they see both the rear and
4 the front?

5 MS. THOMAS: Yes, they can. I
6 believe they can from the security cameras
7 that is placed at the rear. They can see the
8 rear as well, but most of the activity is
9 expected to take place at the front of the
10 property.

11 CHAIRPERSON MILLER: Oh, I see,
12 okay. So it's mainly so they can see the
13 front?

14 MS. THOMAS: Yes.

15 CHAIRPERSON MILLER: And it can't
16 be placed in the front, right?

17 MS. THOMAS: Right. It can't be.
18 It would also affect the public space issue
19 putting it in the front of the property. It
20 will affect that regulation, so we thought
21 that the side yard was a better compromise in
22 this instance.

1 CHAIRPERSON MILLER: And is there
2 any impact on the neighbor on that side?

3 MS. THOMAS: None that we could
4 observe. We didn't see a window directly at
5 the other side of the -- there is a window,
6 but there is sufficient space. If you look at
7 the photograph, there is sufficient space
8 difference between the booth and the house
9 next door and we received no complaints from
10 that neighbor.

11 CHAIRPERSON MILLER: Any other
12 questions? Do you have a copy of the Office
13 of Planning report?

14 MR. WILLIAMS: Yes, I do.

15 CHAIRPERSON MILLER: Do you have
16 any questions for the Office of Planning?

17 MR. WILLIAMS: No, I do not.

18 CHAIRPERSON MILLER: Okay. And do
19 you have any questions for the Office of
20 Planning?

21 MR. BLAND: No.

22 CHAIRPERSON MILLER: Okay. Thank

1 you very much.

2 MS. THOMAS: Thank you.

3 CHAIRPERSON MILLER: At this point
4 then, it's time for the ANC. If you have
5 something you would like to testify to with
6 respect to the application.

7 MR. BLAND: Yes, thank you. So
8 that the record is complete, the neighbors,
9 the 19 neighbors affected by this exception
10 were notified via U.S. Mail on May 14, 2007
11 and those residences were advised of the
12 petition, why the petition was necessary and
13 whether or not they objected or did not object
14 to the position.

15 They were given in that
16 correspondence a return envelope stamped and
17 it was returned to me, the ANC office. I had
18 12 responses of the 19. There were 10
19 responses that did not object. There was one
20 objection and there was response that made no
21 preference one way or the other.

22 So we had an 80 percent favorable

1 rate from the residents who did respond. Of
2 the 19, we had a 63 percent response rate, so
3 based on that and the 80 percent favorable
4 response rate, I went to the Commission and
5 this was before the full 4C Commission on June
6 12th. I recommended that the Commission
7 support the request for the variance. The
8 Commission voted unanimously to support the
9 request for variances, for the variance and
10 that's where we are as of right now.

11 CHAIRPERSON MILLER: Thank you.
12 What was the one objection to?

13 MR. BLAND: Didn't say. Just on
14 the return to me, there was -- you know, the
15 way I set it up, they were to clip off their
16 object, not object. They did not give me a
17 reason. The one who made no comment, he did
18 write a one-liner and said the issue was moot,
19 because the building had been erected already.
20 And if you look at the record, the record
21 shows that the petition did not come forward
22 until April. The Mayor was elected in

1 November and there was about a six month lag
2 time.

3 And so the neighbor, he was not
4 angry, he was just saying bad way to do
5 business. We should have known about this
6 exception prior to the building actually
7 having been put in place. So that was his
8 position. That's why he didn't make any
9 preference.

10 CHAIRPERSON MILLER: Thank you.
11 Okay. I also want to note that we do have in
12 our record at Exhibit No. 21 the report from
13 ANC-4C that does show a vote of 7-0-0 in
14 support of the application.

15 COMMISSIONER HOOD: Madam Chair?

16 CHAIRPERSON MILLER: Yes.

17 COMMISSIONER HOOD: You're the
18 chairperson, right?

19 MR. BLAND: No, I'm Vice Chair.

20 COMMISSIONER HOOD: You're the
21 Vice Chair?

22 MR. BLAND: Yes.

1 COMMISSIONER HOOD: Your name
2 again is?

3 MR. BLAND: Bland, Commissioner
4 Bland.

5 COMMISSIONER HOOD: Mr. Bland.
6 Commissioner Bland, you did the survey of
7 sending out the stamp, you did all that?

8 MR. BLAND: Yes.

9 COMMISSIONER HOOD: Well, I want
10 to applaud you for doing that. I don't hear
11 a lot of ANC Commissioners that do that, so
12 keep -- continue to keep doing the good work
13 you are doing, because you don't get paid for
14 it and to do that survey, I think, shows your
15 efforts and your concern of representing your
16 constituents.

17 MR. BLAND: Thank you. I do have
18 the envelopes that were returned to me, so in
19 case someone wants to look at them.

20 CHAIRPERSON MILLER: Okay. Any
21 other questions? Does the applicant have any
22 questions of the ANC?

1 MR. WILLIAMS: No. Thank you very
2 much.

3 CHAIRPERSON MILLER: Okay. Is
4 there anybody else in the audience who wishes
5 to testify in support or in opposition to this
6 application? Okay. At this point then, I'll
7 turn to you for any closing remarks.

8 MR. WILLIAMS: We would just like
9 to thank the Board for addressing this today
10 and hopefully we get approved. Hopefully we
11 get approved.

12 CHAIRPERSON MILLER: Thank you.
13 Okay. I think that the Board is prepared to
14 deliberate on this today. I would move
15 approval of application of the Metropolitan
16 Police Department for an area variance,
17 pursuant to 11 DCMR 3103.2, to allow the
18 location of an accessory building in the side
19 yard of a single-family dwelling under
20 subsection 2500.2 in the R-1-B District at
21 premises 4712 17th Street, N.W.

22 VICE CHAIR ETHERLY: Seconded,

1 Madam Chair.

2 CHAIRPERSON MILLER: Thank you.
3 This is a pretty straightforward variance
4 test, I believe. The first prong of that test
5 is whether we have a unique or exceptional
6 condition on the property. And I believe the
7 fact that the Mayor is occupying this
8 residence does qualify for a unique and
9 exceptional situation and that there is a
10 practical difficulty in that the Mayor has to
11 have a security booth on the premises for
12 security and accessory buildings are only
13 allowed under our regulations in the rear
14 yard.

15 And based on the analysis of the
16 Office of Planning, it appears that the
17 configuration of the rear yard will not allow
18 the security booth to be positioned, so that
19 it can accomplish what it needs to accomplish,
20 which is to house those -- to provide security
21 for the Mayor. And therefore, it needs to be
22 put on the side.

1 There is no adverse impact that
2 has been brought to our attention from putting
3 it on the side. There have been no complaints
4 from any neighbors and it's actually for the
5 public benefit to be protecting the Mayor.

6 So that's my analysis and I turn
7 to other Board Members for their points of
8 view on this. Anything else?

9 COMMISSIONER HOOD: No, I think
10 you wrapped it up just fine, Madam Chair.

11 CHAIRPERSON MILLER: Okay. Then
12 why don't we vote then.

13 All those in favor say aye.

14 ALL: Aye.

15 CHAIRPERSON MILLER: All those
16 opposed? All those abstaining? And would you
17 call the vote, please?

18 MS. BAILEY: Madam Chair, the vote
19 is recorded as 4-0-1 to approve the
20 application. Mrs. Miller made the motion, Mr.
21 Etherly seconded, Mr. Mann, Mr. Hood support
22 the motion. Board Member Loud is not present

1 at this time.

2 CHAIRPERSON MILLER: Okay. I'm
3 going to revisit this motion. I was just
4 reminded by my colleague, Mr. Etherly, that we
5 want to put a term on this variance and that
6 would be that the relief is for the term of --
7 for the tenure of the Mayor's term. Do I have
8 the consensus of the Board for that?

9 COMMISSIONER HOOD: Or should we
10 say --

11 CHAIRPERSON MILLER: Do you want
12 to discuss it?

13 COMMISSIONER HOOD: Well, I'm just
14 curious. Shall we say until his term, because
15 we know what's going to happen or should we
16 leave it up to the Metropolitan Police
17 Department to make that --

18 CHAIRPERSON MILLER: Okay. We
19 started out hearing that, you know, when the
20 MPD -- for as long as the MPD determines it's
21 necessary and that seemed a little bit vague.
22 And so then we discussed well, you know, if we

1 say it's for the tenure of the Mayor's term,
2 is that limiting it too much? And they said
3 no, that that's exactly the amount of time
4 they would have this booth for.

5 COMMISSIONER HOOD: Okay. All
6 right.

7 CHAIRPERSON MILLER: So I think
8 better to be more specific.

9 COMMISSIONER HOOD: Okay.

10 CHAIRPERSON MILLER: Okay.

11 COMMISSIONER HOOD: All right.

12 CHAIRPERSON MILLER: All right.

13 Do we need to vote again? Okay. It's the
14 consensus of the Board to approve the variance
15 with that term. Okay. And I would also
16 suggest that we waive our rules and
17 regulations for a full order of findings of
18 fact and conclusions of law, since there is no
19 opposition to this case, and issue a summary
20 order. Do I have the consensus of the Board
21 for a summary order in this case? Okay. All
22 right. Thank you very much. So an order will

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1 be coming out very shortly. Thank you.

2 Ms. Bailey, we're ready for the
3 next case when you are.

4 MS. BAILEY: Application No. 17629
5 of Robin A. Pressman, pursuant to 11 DCMR
6 3103.2, for a variance from the parking space
7 requirements under subsection 2100.7, and
8 pursuant to 11 DCMR 3104.1, a special
9 exception to allow a two-story addition to an
10 existing single-family detached dwelling under
11 section 223, not meeting the rear yard
12 requirements of section 404. The property is
13 located in the R-1-B District at premises 1501
14 Roxanna Road, N.W., Square 2766N, Lot 1.

15 There is a party request, Madam
16 Chair. It is in support of the application
17 and additionally, clarification may be needed
18 concerning whether a variance from the parking
19 space requirement is needed for this project.

20 CHAIRPERSON MILLER: I'm sorry,
21 where is the variance issue coming from?

22 MS. BAILEY: The applicant in his

1 filings with the Board, there are several
2 exhibits which indicate parking is required,
3 parking is not required, parking is required,
4 so it has been back and forth with that.

5 CHAIRPERSON MILLER: Right. Okay.
6 Thank you. Would the parties, please, come
7 forward? And is Mr. Hill here? No. I see a
8 hand go up, but, okay, would you introduce
9 yourself for the record?

10 MS. PRESSMAN: Hi, sorry, Robin
11 Pressman. I'm the property owner of 1501
12 Roxanna Road, N.W., Washington, D.C.

13 MR. BLUM: I'm Daniel Blum with
14 Landis Construction.

15 CHAIRPERSON MILLER: Okay. I was
16 just asking if Mr. Hill was here, because we
17 deal with party status first. And I think as
18 Ms. Bailey may have indicated, he filled out
19 a party status application, though it didn't
20 really appear that he wanted party status,
21 since he was in support, but if he were here,
22 he could speak for himself, but he is not

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1 here.

2 So we're going to accept that
3 application as testimony in support and not
4 grant him party status, because party status
5 would mean he would be participating fully in
6 this proceeding and he is not here to do that
7 anyway.

8 Okay. So you can proceed. Do you
9 want to address the other matter that Ms.
10 Bailey brought up about the variance?

11 MR. BLUM: Yes.

12 CHAIRPERSON MILLER: Okay.

13 MR. BLUM: I also want to address
14 the matter of the special exception, if I may.
15 The matter of the parking variance is based on
16 a misunderstanding of the zoning requirement
17 concerning increase and intensity of use. And
18 I clarified the ambiguity in the Zoning
19 Regulations with the professional zoning staff
20 at DCRA and they say there is no need for a
21 variance for parking for this application. So
22 we notified the BZA and withdrew that from our

1 application here.

2 CHAIRPERSON MILLER: Okay. Right.
3 So you are here just for a 223. Is that
4 right?

5 MR. BLUM: Yes, but --

6 CHAIRPERSON MILLER: Okay.

7 MR. BLUM: -- even that is in
8 question. If I could take a couple of minutes
9 and just clarify, we have been -- we are a
10 design-build contractor. We have been working
11 with Robin Pressman and Michael Matthews
12 concerning this proposed addition. And it
13 seemed like it was a pretty straightforward
14 special exception, but about 10 days before
15 the hearing was to take place here, I received
16 new information that suggested that the BZA
17 application was apparently not necessary and
18 that our project could be approved as a
19 matter-of-right.

20 Just by way of background, we
21 applied for the hearing using the Zoning Self-
22 Certification under the supervision of a

1 licensed architect and we felt it was a
2 straightforward case and we did not ask the
3 zoning staff at DCRA to independently review
4 the application.

5 In the process of preparing my
6 testimony for today, I spoke with Mrs. Xoon
7 Mac at the DCRA who explained that what we had
8 been calling a rear yard was actually a side
9 yard all along and pointed out that according
10 to section 199.1, the definition for street
11 frontage with a corner lot, "The property
12 owner shall have the option of selecting which
13 is to be the front for purposes of determining
14 street frontage."

15 And she said the deepest yard is
16 automatically declared to be the rear yard and
17 the shallower yards are assigned as the side
18 yards. And she said it was irrelevant which
19 street carried the official address or the tax
20 record showed was the front of the house or
21 which side the mail is delivered to and that,
22 therefore, we could construct the proposed

1 addition as a matter-of-right.

2 CHAIRPERSON MILLER: I'm sorry,
3 who is saying this?

4 MR. BLUM: Ms. Xoon Mac, DCRA.

5 CHAIRPERSON MILLER: Okay.

6 MR. BLUM: And to my right is just
7 a blow-up of the plat showing the existing
8 house in yellow and the proposed expansion of
9 the footprint in the red color. And the yard
10 in question is the upper right -- to the upper
11 right of the house. Given the late date of
12 this discovery and the fact that we -- Ms.
13 Mac's superiors were unavailable for
14 corroborating opinion, we decided to come to
15 the hearing and bring this new information to
16 your attention.

17 Although, in the meantime, we have
18 already received a stamped approved plat and
19 drawings for the building permit application,
20 which were also assigned and we forwarded a
21 copy of this to the BZA, but it was just seven
22 days before this hearing. And we would like

1 some guidance because of the unusual situation
2 as to whether the case should be heard,
3 whether it requires any further zoning
4 approval and we would be perfectly happy if
5 you considered it to be moot and agreed that
6 the addition could be constructed as a matter-
7 of-right.

8 CHAIRPERSON MILLER: Well, let me
9 ask you, what other documents are you waiting
10 for? I mean, you have the stamped and
11 approved plat. What else do you need from
12 DCRA to proceed?

13 MR. BLUM: Well, just -- we just
14 have to complete our building application, as
15 far as we know. But given the late date, we
16 wanted to make sure -- I guess as an abundance
17 of caution, we didn't want to cancel this
18 hearing, unless it was clear that that's what
19 we should do.

20 And just in talking with the other
21 District employees involved, it wasn't clear
22 whether we should just go ahead and cancel our

1 application or just bring this to your
2 attention to the Board, so that's what we have
3 done.

4 CHAIRPERSON MILLER: Um-hum. And
5 Ms. Xoon Mac, what position is she in at DCRA?
6 Is she a zoning specialist?

7 MR. BLUM: Xoon Mac?

8 CHAIRPERSON MILLER: Yeah.

9 MR. BLUM: Yes, she is a reviewer,
10 a zoning reviewer.

11 CHAIRPERSON MILLER: Okay. Good
12 morning, good afternoon, Mr. Woods. I was
13 wondering if you have an opinion on this
14 before the Board ventures one?

15 MR. WOODS: Well, good afternoon,
16 Madam Chair, Members of the Board. With
17 respect to the first issue, which was parking,
18 the Office of Planning agrees with the
19 applicant that they are not intensifying the
20 use. It's going to stay a single-family
21 detached home and so they didn't need to come
22 in for that.

1 With respect to which is the side
2 yard or rear yard, this issue didn't come to
3 our attention until after the Planning report
4 actually was sent over to you all. When I
5 received a call from the applicant and we sat
6 and had a conversation and he directed me to
7 the definition section of the Zoning Regs and
8 it appears, to me, that his direction from
9 DCRA would actually be accurate.

10 But I think that that would have
11 to be a determination from the Zoning
12 Administrator or from -- direction from the
13 BZA. But from reading the definition, it does
14 seem as if a corner lot can actually choose
15 which is their rear and which is their side.
16 But I would not be the one that would make
17 that determination.

18 We did go ahead and since we
19 didn't -- since this didn't come to our
20 attention until after the staff report was
21 written, we did go ahead and submit it,
22 recommending approval of the special exception

1 based on their needing the special exception
2 for the side yard.

3 CHAIRPERSON MILLER: Thank you.
4 Okay. I'm just going to air what we were
5 talking about. Basically, we don't give
6 advisory opinions and we are usually looking
7 at something that has been briefed before us.
8 I mean, what you are saying sounds right and
9 you're not going to need zoning relief if DCRA
10 is moving your application forward.

11 And this application may be not
12 really appropriate if it's being determined a
13 different way. So but we don't want to
14 jeopardize, you know, your plan since it looks
15 like, based on the record in any event, you
16 should be able to move forward.

17 But just so that this is -- I'm
18 going to throw this out to you, because we
19 don't want to, you know, jeopardize your case,
20 you know, when DCRA does something different.
21 I don't know. So far they have given you an
22 okay. Usually, you know, they will stop you

1 and send you to us if they think zoning relief
2 is necessary and you just kind of jumped that
3 by self-certifying.

4 So we were wondering if we might
5 postpone this case and let you withdraw it
6 once you are sure, this is just an option and
7 I'll take any feedback you want to give me, we
8 could schedule it for another date, the
9 hearing and you could withdraw it, unless
10 something occurs that you have to come forward
11 on the case.

12 If that's too complicated -- we
13 just feel like your special exception really
14 may not be needed and -- based on the
15 different reading of how your property is
16 looked at.

17 MS. PRESSMAN: May I ask a
18 question?

19 CHAIRPERSON MILLER: Yes, yes.

20 MS. PRESSMAN: Because I'm still
21 trying to get my head around understanding the
22 nuances.

1 CHAIRPERSON MILLER: Okay.

2 MS. PRESSMAN: If we withdraw,
3 what else and perhaps -- I'm sorry, Daniel,
4 you can even answer this for me. What else
5 are we still waiting on, do we need, to move
6 forward beyond the obvious permits, but by way
7 of approval, are we okay to move forward based
8 on the certification we have at this point?
9 Is that what you are suggesting?

10 CHAIRPERSON MILLER: What we are
11 saying is we're not encouraging you to
12 withdraw yet, because we want you to make sure
13 that you are all set in the DCRA process
14 before you lose your opportunity for your case
15 to be heard. That's why I was asking you what
16 is left for DCRA to do.

17 It sounds like you have already
18 gotten the sign-off, but if you want, what we
19 are saying is instead of going forward on the
20 case that would really -- it may not be
21 appropriate, that you maintain your place here
22 in the event something goes wrong at DCRA,

1 based on, you know, how you have been led to
2 view this.

3 And I'm wondering how long would
4 that be? When will you know for sure? We
5 don't know what you are waiting for.

6 MR. BLUM: Yes, we -- as far as I
7 know, we don't need any kind of zoning
8 approval beyond what we have already got. So,
9 you now, with Ms. Pressman's concurrence, I
10 would accept your suggestion.

11 CHAIRPERSON MILLER: Do you want
12 to withdraw now or do you want to hold it in
13 abeyance? If you are confident about
14 withdrawing, you know, you can withdraw now.
15 We just didn't -- we don't know what's out
16 there for you.

17 MR. BLUM: Well, I would like to
18 accept your suggestion to postpone it in the
19 event something unexpected happens, we could
20 always come back and request the relief that
21 might be required.

22 CHAIRPERSON MILLER: I mean, we

1 haven't really -- we don't usually do this.
2 And the only reason I'm possibly suggesting it
3 is because it sounds like you said this just
4 happened right before the hearing. You
5 haven't had a chance to really make sure. Do
6 you have some comments?

7 COMMISSIONER HOOD: I was
8 concurring. I would think that we were
9 looking at -- we were talking about two weeks,
10 but we may want to revisit that and give them
11 a little more time, but we do need to have a
12 time certain.

13 CHAIRPERSON MILLER: I agree, yes.
14 This morning we were looking at our calendar
15 and we had a space on July 31st and also the
16 Board takes a recess in August, so if you
17 think you can know before the 31st, we could
18 tentatively put this case in in the event that
19 you misunderstood DCRA or something like that.
20 But the sooner you know for sure, the better,
21 because we would really -- we might put in
22 another case.

1 MR. BLUM: I accept.

2 CHAIRPERSON MILLER: Okay.

3 MS. PRESSMAN: Okay. Thank you.

4 CHAIRPERSON MILLER: Okay. So
5 this case would be postponed until July or
6 continued until July 31st. And the applicant
7 will notify the Board if it intends to
8 withdraw before that date.

9 MS. PRESSMAN: Okay.

10 CHAIRPERSON MILLER: Thank you.
11 Okay. Good luck. You can come to the table.
12 Can you? You don't want to be on the record?

13 MS. LEWIS: My name is Elizabeth
14 Clark Lewis. I live at 1520 Roxanna Road. My
15 question simply was if there is a
16 continuation, will the neighbors be notified,
17 so that if we want to come to speak, at that
18 time, we will be permitted? Will we be
19 permitted to come?

20 CHAIRPERSON MILLER: That's a good
21 question. Okay. This case is being continued
22 as of now to July 31st. Let me just see where

1 in the -- well, I'm not sure whether it's
2 morning or afternoon, at this point. It will
3 be posted on the website. If it is withdrawn,
4 that should also be indicated on the website.
5 Am I correct? Okay.

6 Ms. Bailey, we're ready for the
7 next case when you are.

8 MS. BAILEY: Application No. 17630
9 of Gerald H. Bass, pursuant to 11 DCMR 3103.2,
10 for a variance from the floor area ratio
11 requirements under section 402, a variance
12 from the lot occupancy requirements under
13 section 403, a variance from the rear yard
14 requirements under section 404, a variance
15 from the court requirements under section 406,
16 and a variance from the nonconforming
17 structure provisions under subsection 2001.3,
18 to construct a garage and a deck addition for
19 an existing single-family row dwelling at
20 premises 1831 19th Street, N.W. The property
21 is also known as Square 132, Lot 201 and it is
22 Zoned R-5-B.

1 CHAIRPERSON MILLER: Good
2 afternoon, would you introduce yourselves for
3 the record, please?

4 MR. GELL: Good afternoon,
5 Chairperson Miller. This is -- my name is
6 Steven Gell. With me is Jerry Bass, the owner
7 of 1831 19th Street, and the architect, Jack
8 Brady. Now, Jack has not been sworn in.
9 Jerry has. I wonder if your rules would
10 require him to be sworn in, at this point?

11 CHAIRPERSON MILLER: If he is
12 going to testify, he should be sworn in, um-
13 hum. Ms. Bailey, do you want to swear him in
14 now?

15 MS. BAILEY: Would you, please,
16 raise your right hand?

17 (Whereupon, the witness was
18 sworn.)

19 MS. BAILEY: Thank you.

20 MR. GELL: Thank you. I assume
21 the Board now has a copy of the Advisory
22 Neighborhood Commission 2B statement or letter

1 and I would appreciate it if the Board could
2 consider that or waive the fact that it was
3 not in within the time period that's required
4 by the regulations and then be permitted to
5 give great weight to it, because there was a
6 7-1 vote in favor of the project.

7 CHAIRPERSON MILLER: I don't think
8 we have it. Ms. Bailey, is there an ANC
9 report? Is the ANC here? No?

10 MR. GELL: I don't believe they
11 are, no.

12 CHAIRPERSON MILLER: Okay. I'm
13 going to read this and it's kind of out of
14 order, but while we're waiting for Ms. Bailey
15 to make the copies, because the Board Members
16 didn't get this.

17 MR. GELL: I appreciate that. And
18 I think it was emailed last night, so I
19 understand.

20 CHAIRPERSON MILLER: Okay.
21 Because we will need --

22 MR. GELL: It's going to really

1 press the staff.

2 CHAIRPERSON MILLER: Right.

3 MR. GELL: But it did come in.

4 CHAIRPERSON MILLER: Okay. Well,
5 we need to waive our rules to accept it today.
6 So I'll read it in the meantime. It says "At
7 its regular meeting on June 13, 2007, the
8 Dupont Circle Advisory Neighborhood
9 Commission, ANC-2B Commission, considered the
10 above referenced application for variances for
11 a garage and deck addition to an existing
12 single-family row dwelling at 1831 19th
13 Street, N.W.

14 With 7 of 9 Commissioners in
15 attendance, a quorum at a duly noticed public
16 meeting, the Commission approved the following
17 motion by a vote of 6-1. ANC-2B supports BZA
18 Application No. 17630 by Gerald Bass for
19 variances for a garage and deck addition to an
20 existing single-family row dwelling at 1831
21 19th Street, N.W. Commissioner Mike
22 Silverstein is the representative on this

1 matter and may be reached," whatever, okay.

2 So we need to waive our rules to
3 accept this into the record and I would move
4 that we do so, since it's important to get the
5 views of the ANC.

6 COMMISSIONER HOOD: Second.

7 CHAIRPERSON MILLER: And there's
8 no prejudice that I can see to any party.
9 Okay. So this will be considered waived into
10 the record and given great weight, because it
11 appears to meet all the requirements for great
12 weight under our regulations. Okay.

13 MR. GELL: Just for the Board's
14 information, I think some of the confusion was
15 caused by the fact that there was no Single
16 Member at that time for that District. The
17 spot was vacant, but anyway, it was finally
18 done.

19 CHAIRPERSON MILLER: Do you mean
20 that because there wasn't a Single Member that
21 that person didn't take care of getting it to
22 the BZA? There was nobody to -- I mean,

1 because they met June 13th. Do you have any--

2 MR. GELL: I beg your pardon?

3 CHAIRPERSON MILLER: Well, it has
4 been over a week since they met.

5 MR. GELL: Right.

6 CHAIRPERSON MILLER: So I'm just
7 asking what you think because they didn't have
8 a Single Member, what's the --

9 MR. GELL: I'm assuming that a
10 Single Member would have made sure that it got
11 done. Apparently, it slipped through the
12 cracks.

13 CHAIRPERSON MILLER: Okay. They
14 don't have a Single Member for this?

15 MR. GELL: It was unintentional.
16 No, there may be one now.

17 CHAIRPERSON MILLER: Okay.

18 MR. GELL: I think somebody has
19 been voted in.

20 CHAIRPERSON MILLER: Okay.
21 Whatever. Okay.

22 MR. GELL: I'm -- actually, let me

1 begin by introducing Jerry Bass who has a
2 statement and I think many of the facts will
3 come through that statement, rather than have
4 me reiterate it. And then Jack Brady will
5 take you through the plans and then I'll have
6 some comments.

7 CHAIRPERSON MILLER: Thank you.

8 MR. BASS: Okay. Thank you. And
9 good afternoon, Madam Chairperson and Members
10 of the Board. My name is Jerry Bass. I live
11 at 1831 19th Street, N.W. I'm a native
12 Washingtonian and we have lived in our house
13 now for about 16 months. I work as an
14 Associate Vice President for George Washington
15 University.

16 Our house is a townhouse near the
17 Washington Hilton. I have asked the BZA for
18 variances in order to build a garage for two
19 cars and an outdoor patio deck on the roof of
20 the garage in place of our current small,
21 undesirable patio fence and two paved parking
22 spaces. All the work will be on the alley at

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1 the rear of the house and will not be seen
2 from 19th Street.

3 In order to accomplish this, we
4 need special exceptions and I won't reiterate
5 them. I think they were stated before and
6 kind of long. Our next -- our two next door
7 neighbors to the north were granted a near --
8 nearly exactly the same variance and
9 exceptions about 15 years ago by the Board.

10 In fact, part of the problem we
11 have in enjoying our backyard is due largely
12 to the fact that these neighbors' garages
13 basically shade my house, my yards and my area
14 most of the time and the small yard that we do
15 have is considerably below the neighbors'
16 structures. I think you have a picture kind
17 of of that there and these are the two garages
18 that were added back in about 1990.

19 And basically, what I'm attempting
20 to do is just continue on the same thing and
21 actually use their side as a same kind of yard
22 as the same as mine and do exactly the same

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1 thing, just extended one more thing. And as
2 you see, my neighbor on my other side is also
3 pretty high up and that was a pre -- you know,
4 grandfathered in or something house.

5 And so my back patio is down in
6 kind of a gully between these two houses off
7 of a walkout basement type of thing into that
8 house. So it's pretty dark, dingy and
9 depressed down there in that area. Light
10 doesn't get down there at all.

11 CHAIRPERSON MILLER: Well, what's
12 going to happen to your neighbor on the other
13 side that doesn't have a garage?

14 MR. BASS: The neighbor does have
15 a garage.

16 CHAIRPERSON MILLER: Oh.

17 MR. BASS: It's back there in the
18 back, the garage, and it will be about 3 feet
19 or so behind where I am right now.

20 CHAIRPERSON MILLER: Oh, I see.

21 MR. BASS: They just park one down
22 and they go into a garage down there already.

1 So they have that. And as I -- they have in
2 my petitions, etcetera, that all my neighbors,
3 basically, are in support of this, at this
4 point. They have all supported this addition.

5 CHAIRPERSON MILLER: But that
6 neighbor isn't one of the ones you are
7 referring to that got a variance for that,
8 correct?

9 MR. BASS: No, that's correct.
10 That I think has been there a long, long time,
11 grandfathered.

12 MR. GELL: That house is always
13 extended. I mean, when it was first built, it
14 extended much further back than Jerry's house.
15 And I think it is probably about 20 feet
16 further than his house is right now. So his
17 house will extend just slightly beyond that
18 once the garage and deck are built. But
19 again, that's only on one level. He is not
20 building a two-story structure there. He's
21 just building the one-story.

22 MR. BASS: Just a few more

1 comments. The house is not a landmark, but
2 has been selected as a contributing structure
3 of the Dupont Circle Historical District. We
4 had discussed the project with the HPRB staff
5 and they have had a favorable reaction.

6 We are confident that the rear
7 reduction of the yard will not have an adverse
8 effect on the neighboring properties in terms
9 of light and air, since their decks are
10 already up in the air covering most of their
11 rear yards nor will any of their privacy be
12 compromised.

13 Let me just say, I already talked
14 about most of this. Oh, in addition to the
15 garage, we will also provide greater security
16 for our -- my cars. We have had a couple
17 broken windows already in the back, since they
18 are parked out there, that I have had to
19 replace since then and also will increase off-
20 street parking by about 50 percent, because a
21 car could visit or something, could park
22 behind my garage if they need to and the

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1 street parking has gotten very complicated
2 with all the multi-family homes that have been
3 divided in my area.

4 My house is single-family, but
5 most of the -- many of them have been
6 converted to condos in the front and also with
7 the Hilton, they -- we got a lot of traffic,
8 too. We will also be more aesthetic, since
9 now we will have a continuation of the line
10 and I think it will make the alley a lot more
11 attractive out there. Also, we will have more
12 greenery, both on my patio and planting of one
13 or two trees on the side of my garage there.
14 So that's something else that actually will be
15 more attractive than what it is now, too.

16 Let's see, I guess, you know, we
17 are pleased to report, basically, all my
18 neighbors have been supportive on both sides
19 down about three houses each. I've talked to
20 all of them and they have either signed the
21 petition or a couple of them just said that
22 they are supportive of that.

1 The ANC was supportive of it and,
2 basically, I would be happy to answer any
3 questions and/or Mr. Brady would as far as the
4 architectural plans go.

5 MR. GELL: While Mr. Brady is
6 getting up, I'm going to give Beverley the
7 last two signatures. You already have a
8 petition with several signatures and then
9 these came in much more recently, so I'll pass
10 these around to you.

11 CHAIRPERSON MILLER: We were
12 handed a picture and I'm not sure what this is
13 of.

14 MR. BASS: That's actually what my
15 neighbor's, I'm sorry, patio looks like from
16 my house looking over at them and I'm over at
17 the right side of that, so that's, in effect,
18 what it would look like from my house and my
19 neighbor's house in the future, which I think
20 would be attractive, because again I'm going
21 to do a similar patio on the top there.

22 CHAIRPERSON MILLER: Are you

1 saying your patio is going to look something
2 like this?

3 MR. BASS: Yes.

4 CHAIRPERSON MILLER: Okay. Or
5 your deck.

6 MR. BASS: Yes.

7 CHAIRPERSON MILLER: Okay. I
8 think you say that your house is the only one
9 in a row without a rear parking garage. Is
10 that correct?

11 MR. BASS: Go ahead.

12 MR. BRADY: My name is Jack Brady,
13 I'm the architect. I also happen to be a
14 neighbor. I am directly across the alley.
15 The side of my house is -- looks out on both
16 the previous garage/deck project, Jerry's
17 project proposed and Tia's, who has the one to
18 the south. Having been there long enough, I
19 can tell you that nobody had a deck and nobody
20 had a garage in 1975.

21 CHAIRPERSON MILLER: So can I ask
22 you something?

1 MR. BRADY: So all this has been
2 constructed since, you know.

3 CHAIRPERSON MILLER: Since 1975?

4 MR. BRADY: Yes. There were yards
5 and trees.

6 CHAIRPERSON MILLER: But are we
7 talking about both sides of the alley or are
8 we talking about one side of the alley? Do
9 you know what I mean?

10 MR. BRADY: No.

11 CHAIRPERSON MILLER: Is there only
12 one?

13 MR. BASS: There's only one.

14 CHAIRPERSON MILLER: There's only
15 one? Okay.

16 MR. BRADY: The houses on 19th
17 Street of which there is five in a row and
18 Jerry is in the middle, two to the north have
19 the newer garage deck structures in 1990, two
20 to the south have decks, screened porches,
21 something we call Fort Ticonderoga all built
22 on top of garages or existing structures. So

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1 every -- both to the north and to the south
2 for two properties, they have added outdoor
3 space in my short lifetime, since 1975. All
4 this has happened since then.

5 CHAIRPERSON MILLER: And where is
6 your house?

7 MR. BRADY: If you turn --

8 CHAIRPERSON MILLER: You turn?

9 MR. BRADY: If you go up 19th, you
10 turn right onto T, my house is -- the side of
11 my house is 100 feet long or the property is
12 on the alley.

13 CHAIRPERSON MILLER: Okay.

14 MR. BRADY: So directly across you
15 look at my house.

16 CHAIRPERSON MILLER: Okay. Thank
17 you.

18 MR. BRADY: And I did support in
19 1990 the applicant who asked to have
20 permission to build, because he owned two
21 houses at the time, so he built them
22 simultaneously. We negotiated about adding

1 trees, which he did, which is great. I mean,
2 good trees.

3 MR. BASS: This is looking out of
4 my house. That's Jack's house across from me
5 here. I'm sorry, this is a picture I have
6 that I didn't give yet, but -- because I
7 didn't think was that valuable, but it's -- if
8 you looked out of my house, you would see
9 Jack's is right across, so that's the only
10 thing that's across from me at all. And then
11 there is just an alley that goes down to
12 Lauriol Plaza.

13 CHAIRPERSON MILLER: I have a
14 question about HPRB, but you probably can
15 answer it.

16 MR. BRADY: Yes.

17 CHAIRPERSON MILLER: I don't know.
18 Mr. Bass said that they got a favorable
19 reaction from HPRB. What does that mean?

20 MR. BRADY: An email from -- Steve
21 Calcott reviewed it. I sent him the document.
22 I talked to him on the phone and he said send

1 it down to me, I'll look at it, and he emailed
2 me, which should be in the file, I think. I
3 sent a copy to Mr. Gell, but he, in an email,
4 said that HPRB had no issue with what we
5 proposed.

6 CHAIRPERSON MILLER: Okay. So
7 they didn't make any recommendations or
8 anything?

9 MR. BRADY: No, no, we haven't
10 gone before them, but --

11 CHAIRPERSON MILLER: Okay.

12 MR. BRADY: -- staff said, staff
13 being Steve said, the staff had no problem
14 with this application.

15 CHAIRPERSON MILLER: Okay.

16 MR. BRADY: But we haven't made
17 the -- you know, we haven't gone to it.

18 CHAIRPERSON MILLER: If you had to
19 avoid getting a variance in this case, could
20 you build a garage and the deck within the
21 envelope of the Zoning Regulations and still
22 get HPRB approval, do you think? Do you know?

1 MR. BRADY: Well, I don't --

2 CHAIRPERSON MILLER: Is that an
3 issue?

4 MR. BRADY: -- think that it's
5 possible to get the parking and the deck.
6 They basically -- one has to sit on top of the
7 other and so typically you put the deck on top
8 of the parking. To try and take those two
9 elements and get them inside the existing
10 structure, I'm --

11 CHAIRPERSON MILLER: Would you not
12 have to --

13 MR. BRADY: With a deck on the
14 roof --

15 CHAIRPERSON MILLER: -- demolish
16 part of the --

17 MR. BRADY: Oh, absolutely. Yeah,
18 I mean, it would be -- I mean, when Jerry
19 asked me about this, the possibility of this
20 project, I just said, you know, every project
21 is reviewed individually. However, here is
22 two adjacent properties that I was part of the

1 process that had the same situation, the same
2 conditions and everybody has lived with it and
3 everybody seems very happy.

4 And so I think, you know, as an
5 architect, I certainly don't take any pride in
6 saying to a client I'll just draw up what the
7 neighbors already did and put it on my
8 letterhead and say this is a design, because
9 it's really just a duplication of two existing
10 solutions that we said would be better to
11 repeat a third time than to try to tear open
12 the back of the house and put the car in the
13 building and there is issues of grade trying
14 to do that actually.

15 So for that reason, the design is
16 just very, very straightforward. And that's
17 why the photographs in a way are better than
18 the drawings, because it's already built. And
19 I think that's why the neighbors have all said
20 they are happy with it. I must say that the
21 last thing is I have pressured the previous
22 applicant, back in 1990, to do the trees and

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1 he put in two Pin Oaks and, you know, the city
2 is full of lead trees and whatnot.

3 But he put in two Pin oaks, one of
4 which survived, which is magnificent. It
5 shields my house visibly from those decks and,
6 I mean, it's a very -- in my mind, that was
7 part of what benefitted the neighborhood.
8 Jerry has agreed to on the property line
9 replace, and there is a tree space, so there
10 is no concrete there, he has agreed to place
11 a new Pin Oak and one on the opposite side.

12 So I mean, I think it's definitely
13 a win for the ambiance of the alley to get
14 more trees. As I said, when I moved there in
15 1975, there were backyards and trees. There
16 was no -- parking wasn't an issue, if you can
17 believe that or it certainly wasn't what it is
18 now.

19 CHAIRPERSON MILLER: And if you
20 will remember --

21 COURT REPORTER: Ms. Miller, your
22 microphone. Ms. Miller, your microphone.

1 CHAIRPERSON MILLER: When you
2 moved there before that when there were
3 backyards and trees and there weren't these
4 neighboring garages with decks on top, do you
5 remember that there was sun in that location?

6 MR. BRADY: Oh, absolutely, yes.
7 I mean, it was almost suburban. There was
8 actually a pond out on -- there was a pond in
9 Jerry's backyard that the rats really enjoyed.

10 CHAIRPERSON MILLER: I guess my
11 question --

12 MR. BRADY: There was literally a
13 pond.

14 CHAIRPERSON MILLER: How about sun
15 though?

16 MR. BRADY: Oh, yes, it was -- I
17 mean, there was. It -- the sun was allowed to
18 get to the ground, because there were no
19 structures. It would be just like a typical
20 yard.

21 CHAIRPERSON MILLER: Any other
22 questions?

1 COMMISSIONER HOOD: I was glad to
2 hear -- Mr. Brady, it is?

3 MR. BRADY: Yes, sir.

4 COMMISSIONER HOOD: I was glad to
5 hear you say that each case stands on its own.
6 I was glad to hear that, because I've heard a
7 lot of reference to my neighbor and --

8 MR. BRADY: I've heard that, yes.

9 COMMISSIONER HOOD: -- so I was
10 glad to hear you say that.

11 MR. BRADY: Yes.

12 COMMISSIONER HOOD: Mr. Bass, let
13 me just ask a question. I'm getting ready to
14 contradict myself. You mentioned about the
15 other cases, one of the other cases, your
16 neighbor who came down for a variance. Were
17 you a participant in that case? Because you
18 mentioned about your light and air.

19 MR. BASS: No. I just bought the
20 house, basically, two years ago, so this was
21 back in 1989.

22 COMMISSIONER HOOD: Okay. So you

1 weren't --

2 MR. BASS: No.

3 COMMISSIONER HOOD: Okay. All
4 right.

5 MR. BASS: And the other thing
6 like the light and air, too, I mean, I have
7 not -- like even this week, it's nice. My
8 wife says I wish we could go out and sit down
9 out there, but it's just so down below these
10 structures here, we just haven't even sat
11 outside in the two years that we have lived
12 there. So, you know, it will make it a
13 livable deck right off my first floor where I
14 live and my kitchen is and we'll be able to go
15 out there and use it.

16 And again, I think it actually
17 improves the values and everything of not my
18 house, but really my neighbors, too. It makes
19 everything pretty nice in conformity. There's
20 really no backyards in my area any more.
21 Everything is either paved over, even at the
22 best, it's going to be a paved over situation

1 for most people and no greenery in there.

2 COMMISSIONER HOOD: So on that
3 block, I guess, there's what two or three
4 homes that have not extended?

5 MR. BASS: The only one -- I think
6 the only one that isn't is the first one who
7 is that corner lot that's primarily a music
8 school, too, that really is not. Is it?

9 MR. BRADY: At the corner of 19th
10 and T, at the same time I purchased, a
11 musician purchased and it's a studio. And
12 it's an old District grocery store, so it's
13 very unique. It's a little two-story and he
14 plants the most amazing yard and he is the
15 most meticulous gardener you have ever seen.
16 So his is spectacular.

17 Unfortunately, it's on the corner,
18 so everybody gets to appreciate it. But after
19 that property, everything south, including
20 Jerry's property, are built just complete --
21 the properties are almost totally built-out.

22 Let me point out that as an

1 architect, I would say that the structure to
2 the south of Jerry's property, which is not
3 the two deck garages, is a much more
4 significant impact on this canyon feeling,
5 because that property had existing, at the
6 back, at the rear of the structure a two-story
7 part.

8 Since 1975, they built a deck on
9 top of that and part of it is a screened
10 porch. So it's actually three stories high to
11 the south. And I said to Jerry, I mean, you
12 know, when you get into the wintertime, the
13 sun will -- you know, I mean, in the
14 summertime the sun is high enough that
15 occasionally you get a glimpse of light, but
16 once it starts to lower in the sky, that that
17 three-story neighbor to the south is really
18 completely blocked.

19 And that's -- if you were to sit
20 in a chair, you would literally have a wall
21 next to you. It goes up three stories, which
22 is quite uncomfortable in a 20 x 20 patio.

1 COMMISSIONER HOOD: Okay. All
2 right. Thank you.

3 CHAIRPERSON MILLER: I was
4 wondering if you have a copy of the Office of
5 Planning report?

6 MR. GELL: Yes, we do.

7 CHAIRPERSON MILLER: You do.
8 Okay. And they are going to testify shortly,
9 but I didn't know whether, Mr. Brady, you
10 might want to address the question about
11 available light to the terrace. The Office of
12 Planning talks about moving a fence to the
13 rear property line as a solution and parking
14 the vehicles inside the fence. Do you see
15 this? This is on page 4 of the Office of
16 Planning report.

17 MR. BRADY: I don't have a copy in
18 front of me.

19 CHAIRPERSON MILLER: Oh.

20 MR. BRADY: It here. We have it.

21 CHAIRPERSON MILLER: Take your
22 time and look at it. I just would be

1 interested in your opinion on the Office of
2 Planning.

3 MR. BRADY: Well, I think Mr.
4 Jackson does a splendid job, so I'm not here
5 to debate him. Page 4, so rear yard.

6 CHAIRPERSON MILLER: Page 4, rear
7 yard access to light and security.

8 MR. BRADY: Okay.

9 MR. BASS: While he is reading
10 that, you know, from my standpoint, yes, that
11 might give us some more light in there, but
12 then where would you do the cars? If you park
13 the cars inside, now you have defeated some of
14 that purpose and you have a smaller yard with
15 maybe a little more light coming in, but, then
16 again, you still don't -- you're still in that
17 funnel, you know. You know, you have opened
18 the funnel a little bit, but you're still in
19 that funnel between these two structures on
20 the side. And now you park your cars inside
21 your house and it just would be difficult.

22 Also, it's hard to actually park.

1 It would be hard, I think, to turn in, because
2 if you move the fence all the way out to near
3 the street, it's a narrow alley already for me
4 to make the turn. So even to park my cards
5 there, so at least if the garage is there and
6 it's back the 9 feet, I can get in and make it
7 more mobile.

8 MR. BRADY: Yes, I mean, I would
9 agree with Jerry that, number one, the access
10 of the two cars is greatly enhanced and that's
11 why the Zoning Regulations require you to set
12 garages off the center line of the alley,
13 because you can't just -- I could draw it, but
14 you could never turn into it or only one car
15 would get into it.

16 So I think the location creeping
17 the fence a little closer to the alley would
18 have some amount of morning light improvement,
19 but I don't think it would make a significant
20 difference and it certainly wouldn't do
21 anything to address the neighbor to the south
22 that is already three stories.

1 So I mean, personally as an
2 architect, I guess I'm so used to seeing the
3 solution on the two adjacent properties that
4 visually, I mean, I do look out my living room
5 and dining room and they look out on the backs
6 of these three properties. I would much
7 rather have a continuation of a very plain
8 structure, but I would rather see three of
9 them than two of them and then get to the
10 third one and have something different.

11 And, you know, I have seen free-
12 standing roll-up doors around, that
13 occasionally seems to make sense for those
14 applications and, you know, I think we would
15 consider it if we actually thought that it
16 would solve the issue of being in this hole.
17 I think the only solution is to allow the
18 applicant to get his living space out, you
19 know, 9 feet, which is the adjacent property.

20 It certainly has no impact on
21 anybody as far as being above them or blocking
22 them or just kind of getting to zero.

1 CHAIRPERSON MILLER: Mr. Bass,
2 could you just address a little more the
3 security question? Is your security different
4 from that of your neighbors, because of your
5 not having this garage and deck?

6 MR. BASS: Yes, well, I think,
7 yes. I mean, there's no question that since
8 I'm on the alley and we do have traffic in and
9 out the alley and sometimes -- again, we're
10 down the street from Lauriol Plaza, so we get
11 that -- we get a lot of little traffic walking
12 through, too.

13 You know, I have had my car broken
14 into a couple of times. Sometimes just for
15 some coins that were sitting out. They left
16 the pennies and they took the dimes and the
17 quarters, left the nickels and the pennies
18 that were sitting out, so I can't leave
19 anything sitting out in, theoretically, my
20 car, because I'm afraid, you know, somebody is
21 going to come by and just break a window or
22 something in the back alley there.

1 So certainly getting inside again,
2 sure I could move a fence out and move it
3 inside and that would solve that problem, but
4 it doesn't solve all the problems. And I
5 think this is still a more attractive
6 alternative, even for the community.

7 CHAIRPERSON MILLER: Okay. Any
8 other questions? Okay. Do you have further
9 on your presentation?

10 MR. GELL: I would like to hold
11 that until after OP makes its statement.

12 CHAIRPERSON MILLER: Okay. Mr.
13 Jackson, good afternoon.

14 MR. JACKSON: Good afternoon,
15 Madam Chair and Members of the Board. My name
16 is Arthur Jackson. I'm the Development Use
17 Specialist, the District of Columbia Office of
18 Planning. You have before you the Office of
19 Planning report. And for the sake of brevity,
20 I will stand on the record. There have been
21 a number of issues raised by the report.

22 I would note that in terms of

1 floor area, this application actually would be
2 allowed 1.8 FAR. They are currently at 1.73
3 FAR and they would go to 2.64 FAR lot
4 occupancy as a maximum of 60 percent allowed
5 in the District, at this point. The current
6 construction exceeds that at 65 percent and
7 they are going to 86 percent if this is
8 approved.

9 In terms of the rear yard, it has
10 more than adequate rear yard setback, but, of
11 course, if they build their -- on this
12 proposal, they would be reduced to 9 feet when
13 15 feet is required.

14 I also note in the report that it
15 appears that instead of a special exception,
16 there's at least three variances for this
17 application. And I think the key point that
18 we are making in the report is that the
19 subject property is a rectangular lot with a
20 modest lobe abutting an existing rear alley.

21 They have developed with three-
22 story row dwelling, such that the applicant

1 has not been denied reasonable use of their
2 property. It is developed in a manner that is
3 similar to other buildings on the property --
4 other buildings on adjacent lots and to an
5 extent it's actually beyond what is allowed
6 under the regulations.

7 Of course, this was based on
8 decisions made by the previous owner. But as
9 such, there are no practical difficulties
10 associated with the lot per se that prevents
11 it from being put to reasonable use and for a
12 use allowed in the Zone District.

13 With that, we'll just end our
14 basic short presentation and we'll be
15 available to answer questions.

16 CHAIRPERSON MILLER: Did you
17 consider the Comprehensive Plan when you did
18 this report?

19 MR. JACKSON: Just for reference,
20 yes.

21 CHAIRPERSON MILLER: Because I'm
22 not sure if I recall where it is referenced.

1 MR. JACKSON: Well, this is --
2 this clearly is not related to the
3 Comprehensive Plan. It's more related to --

4 CHAIRPERSON MILLER: It's what?
5 I'm sorry.

6 MR. JACKSON: The use is related
7 to the use of a particular piece of property.
8 It's not -- there is no limitations on the
9 use, such that we're introducing something
10 that is dissimilar to the Zone District or not
11 currently existing. We're talking about an
12 additional accessory use that's in addition to
13 the existing residential use. So the Comp
14 Plan, per se, would not apply.

15 CHAIRPERSON MILLER: Would you say
16 it's not inconsistent with the Comprehensive
17 Plan, this project?

18 MR. JACKSON: To add an addition
19 to -- to add a garage to --

20 CHAIRPERSON MILLER: Well, there's
21 so many different --

22 MR. JACKSON: -- a house?

1 CHAIRPERSON MILLER: -- sections,
2 maybe that's really not a fair question.

3 MR. JACKSON: Well, in this case,
4 since we're talking about a single-family
5 residence and adding an accessory use that's
6 allowed under the Zoning Regulations, I think,
7 the Comprehensive Plan probably does not look
8 at that in that type of detail to the overall
9 -- in terms of policy of land use development.
10 So I don't think it's really applicable in
11 this case.

12 Really, the more pertinent issue
13 is, of course, the standards and the test
14 under the Zoning Regulations, in our opinion.

15 CHAIRPERSON MILLER: Okay. Before
16 we leave that subject though, in the new
17 Comprehensive Plan, isn't there a policy about
18 improving greening in the city, which is one
19 of the aspects of this project.

20 MR. JACKSON: Including greening?

21 CHAIRPERSON MILLER: Greening.
22 For instance, they are going to improve the

1 greenery in their location by having this deck
2 with trees on it.

3 MR. JACKSON: Well, I think that
4 equally important is the -- not creating so
5 many lots that are complete impervious service
6 -- surface, so that you are putting more
7 demands on the drainage system to take care of
8 runoff off a property. So in terms of
9 greening, what we probably want to see is more
10 open green space as opposed to structures that
11 may have planting on top.

12 So that is an item that's
13 addressed in the Comp Plan, but there are
14 various tools for addressing that goal. And
15 one of the preferred tools would probably be
16 that we see more green space and not
17 impervious surface constructed across the
18 city.

19 CHAIRPERSON MILLER: Okay. I
20 don't believe you identified any adverse
21 impacts from this project though. Is that
22 correct?

1 MR. JACKSON: No, we would concur
2 with the applicant that we do not see that
3 there will be adverse impacts from this
4 construction. Our concern is that the first
5 two parts of the test are not seen to be
6 addressed adequately.

7 COMMISSIONER HOOD: You said
8 addressed adequately?

9 MR. JACKSON: Yes.

10 COMMISSIONER HOOD: Okay. So in
11 other words, you're saying it's the
12 presentation of the case or is it just that
13 they have not presented it sufficiently in
14 your terms, I mean, the way you see it in the
15 regulations to pass those first two tests?

16 MR. JACKSON: Right.

17 COMMISSIONER HOOD: If I
18 understand.

19 MR. JACKSON: In terms of the
20 actual -- the way the Office of Planning has
21 interpreted the test in the Zoning
22 Regulations. Uniqueness test and the

1 practical difficulty test, we don't think that
2 their presentation -- well, the facts that
3 they put forth meet those tests. With that,
4 we are recommending denial or we're saying we
5 cannot support this application.

6 CHAIRPERSON MILLER: With respect
7 to the practical difficulty test, I believe
8 you are saying that you don't find that there
9 is a practical difficulty, because they
10 haven't been denied a reasonable use of their
11 property. Is that correct?

12 MR. JACKSON: Well, what has
13 happened, essentially, is that the applicant--
14 the previous owners of the property have built
15 the -- built their -- the allowable use to the
16 extent that's allowed. Now, that prevents
17 them from building any more, but that's -- the
18 fact that the previous applicant took the
19 opportunity to take the full advantage of the
20 property to build an allowable use, shouldn't
21 be interpreted as a practical difficulty for
22 the current applicant.

1 It's just that there is very
2 little FAR and no lot occupancy left for any
3 additional construction.

4 CHAIRPERSON MILLER: Well, let me
5 ask you what your authority is for that
6 conclusion, that because the previous owner
7 did something, that we can't consider the
8 given situation as creating a practical
9 difficulty for the applicant.

10 MR. JACKSON: Because there are no
11 unique characteristics of the property.

12 CHAIRPERSON MILLER: Okay. That's
13 going to uniqueness then, not practical
14 difficulty.

15 MR. JACKSON: Right. But again,
16 one builds on the other.

17 CHAIRPERSON MILLER: They are
18 related.

19 MR. JACKSON: But there are unique
20 -- well, no, one builds on the other. Okay.
21 I'm not arguing the fact. I'm just saying, in
22 our opinion, the tests build on one another.

1 First, as uniqueness, then there is practical
2 difficulty, then there are impacts. If the
3 property is unique, then there is
4 characterization to create the practical
5 difficulty.

6 If there are no real
7 characteristics -- if there are no unique
8 characteristics, that is if all the properties
9 in the row have the same problems and
10 concerns, it's not unique. If for -- and
11 beyond that, if we're looking at doing a
12 variance as opposed to an amendment, if you
13 had a series of properties that had the same
14 problem and all the problems created, what you
15 could term a practical difficulty, then that
16 would mererit an amendment to the Zoning
17 Regulations, rather than going lot to lot to
18 lot making the -- making different variances.

19 So in this case, building upon the
20 fact that there are no unique characteristics
21 of the property to create a practical
22 difficulty, as shown by the previous applicant

1 -- previous owners being able to build a use
2 that's allowed in the Zone District to the
3 extent that's allowed under the Zoning
4 Regulations, then the difficulty of -- the
5 fact that someone now wants to build more than
6 is allowed under the regulations, is not a
7 practical difficulty, in our opinion.

8 CHAIRPERSON MILLER: Okay. Any
9 other questions? Does the applicant have any
10 cross examination for the Office of Planning?

11 MR. GELL: Yes, thank you. I
12 would just ask Mr. Jackson, first of all, if
13 he had looked at the floor of the patio that's
14 there now? Did you make a judgment as to
15 whether it is impervious or pervious
16 condition?

17 MR. JACKSON: Well, it seemed to
18 be -- if I remember, it was tiles on the
19 ground. I don't recall whether it was paved
20 or whether there were individual tiles that
21 are placed on the ground. And beyond the
22 fence, there was pavement for the car. I

1 don't remember exactly what the materials were
2 on the ground, but it appeared to be tiles.

3 MR. GELL: Okay. Let me ask you
4 also, did you look at Case No. 14848, which
5 was the property of Steven McClain right next
6 door, the two houses next door, to the north?
7 Did you review those orders?

8 MR. JACKSON: No.

9 MR. GELL: Is the Office of
10 Planning's opinion that you really can't take
11 into consideration anything but the land or
12 the shape of the land, the slope of the land
13 or would it be possible for the Office of
14 Planning to say that because of the condition
15 of the property, the condition of -- that the
16 property finds itself, vis-a-vis properties
17 nearby, that there is a practical difficulty
18 that can be created, which denies the owner
19 full use of his and enjoyment of his property,
20 such that would justify a practical
21 difficulty?

22 MR. JACKSON: Oh, I would agree

1 that under the regulations, the way they are
2 stated, there are other issues that could be--
3 could come into play, special circumstances
4 and other such things that could actually
5 create practical difficulties, yes. In this
6 case, I don't think those are present.

7 MR. GELL: Okay. I think I'll
8 stop there.

9 CHAIRPERSON MILLER: I have one
10 question. Mr. Jackson, did you say that the
11 applicant doesn't need variance relief from
12 the court requirements?

13 MR. JACKSON: Well, in looking at
14 the regulations the definition of a court, the
15 definition of a court the way I interpret it,
16 the way we interpreted it was that you need to
17 have two yards or two walls that actually
18 formed a court. In this case, the design of
19 the garage is such that there is no real wall
20 to the garage, at least according to the
21 plans.

22 If there is no real wall to the

1 garage and there is no real connection on the
2 south side, because there's just stairs
3 connecting the existing house to the roof
4 deck, then there is no court. This is,
5 essentially, just a space in the rear yard.
6 And so with that, we did not think that really
7 merited that we qualify it for -- as a court,
8 and such, was not -- did not trigger any
9 additional relief in that area.

10 CHAIRPERSON MILLER: Could the
11 applicant respond to that as well, so we know
12 what we're looking at?

13 MR. GELL: Well, we would like
14 very much to accept Mr. Jackson's view of it
15 that, in fact, a court was not created by
16 this. It was our thought that it could be
17 interpreted either way. And on that score, we
18 simply added that as an additional variance.

19 CHAIRPERSON MILLER: How could it
20 be interpreted the other way? Where would the
21 other wall be? Mr. Jackson said there's no
22 wall, right, from the garage into the house or

1 something.

2 MR. GELL: Well, there is a wall
3 next door created by the other property.
4 There is the face of the rear of Mr. Bass'
5 property. There is another wall on the other
6 side.

7 COMMISSIONER HOOD: So you count
8 the --

9 MR. GELL: And there is a garage
10 that would be in front of it. So we thought
11 it was a closed court.

12 MR. BRADY: Mr. Jackson is right,
13 I think, in saying that there is no wall at
14 the back of the garage. Where the garage door
15 goes up --

16 MR. BASS: That's right.

17 MR. BRADY: -- what you have is a
18 covered parking area, which then opens 100
19 percent to the patio. And it was actually my
20 suggestion that we -- because I looked at all
21 of the things that Steve had gone through, and
22 there was some question about a court then and

1 he then put in a skylight or something, so
2 knowing that there was the possibility, I just
3 said well, let's, you know, err and say we
4 have one. And, you know, if we don't, then we
5 just -- you know, we're just better off either
6 way to get it in the application and not come
7 here and then find out that there is something
8 we missed.

9 But I understand what Mr.
10 Jackson's definition is and to be honest with
11 you, I'm just not familiar enough to know that
12 it wasn't a court. So I said call it a court
13 and add it.

14 CHAIRPERSON MILLER: But you don't
15 think it is either?

16 MR. BRADY: Not once hearing Mr.
17 Jackson define it, because there is no wall at
18 the back of the garage, so if you need that
19 enclosure to make it a court, then, in fact,
20 it isn't a court. So I agree. I think he is
21 correct.

22 CHAIRPERSON MILLER: We don't

1 really think it is a court either, basically.
2 So, okay.

3 MR. GELL: In that case, we have
4 reduced the numbers of variances that we need.
5 I do agree with Mr. Jackson, however, that the
6 rear yard issue is, indeed, a variance rather
7 than a special exception. Obviously, because
8 of the involvement of the lot occupancy
9 variance.

10 CHAIRPERSON MILLER: Okay. I
11 don't see anybody else in the audience who
12 would be coming forward. That would be
13 someone from the ANC, but we do have the ANC
14 report that I mentioned earlier that we are
15 giving great weight to that is supportive of
16 the application. I don't see anybody in the
17 audience who would testify in support or
18 opposition, so are there any other Board
19 questions, at this point?

20 Okay. Then, Mr. Gell, if you want
21 to make any closing remarks?

22 MR. GELL: I said in the

1 submissions that I made to the Board pretty
2 much all I wanted to say about interpretation
3 of the requirements for uniqueness and
4 practical difficulty. I can go into some of
5 those cases again, if you would like.

6 I know that in the past the Office
7 of Planning has taken a far more stringent
8 narrow view of what it takes to have
9 uniqueness and practical difficulty than we
10 would and, indeed, a more narrow view than, in
11 fact, the Board took very recently in the case
12 involving a house just a couple door down at
13 1825 19th Street, where the view of the Office
14 of planning was, indeed, countered by the
15 Board and a variance was granted.

16 I don't mean to say that the --
17 all of the issues were the same as this, but,
18 in general, there was that difference of
19 opinion between the two. I think we have made
20 a very strong case. It's certainly not
21 something that is going to affect negatively
22 any of the neighbors or the Zone Plan.

1 In fact, it's going to look a good
2 deal better than it looks now. So I think
3 it's a definite plus not only to Mr. Bass, but
4 also to the neighborhood, in general. And
5 with that, I would be glad to answer any
6 questions that you might have about anything
7 that we have raised.

8 CHAIRPERSON MILLER: Any
9 questions? No. I think we have asked all our
10 questions. Is the Board prepared to
11 deliberate on this, at this time? It's early
12 in the afternoon, so we have time to do it.
13 I'm prepared to go forward. Okay.

14 I think I'm going to do it under a
15 motion and that would be to grant Application
16 No. 17630 of Gerald H. Bass, pursuant to 11
17 DCMR section 3103.2, for a variance from the
18 floor area ratio requirements under section
19 402, a variance from the lot occupancy
20 requirements under section 403, a variance
21 from the rear yard requirements under section
22 404, and a variance from the nonconforming

1 structure provisions under subsection 2001.3,
2 to construct a garage and deck addition for an
3 existing single-family row dwelling at
4 premises 1831 19th Street, N.W. Do I have a
5 second?

6 COMMISSIONER HOOD: Madam Chair, I
7 would like for us to --

8 CHAIRPERSON MILLER: To --

9 COMMISSIONER HOOD: -- considering
10 you get a second. I think we need to
11 deliberate before we -- that's just my -- but
12 unfortunately, you already put a motion.
13 Maybe somebody will second it. I have some
14 unreadiness.

15 CHAIRPERSON MILLER: That's fine.
16 That's fine. I will withdraw the motion right
17 now and we can just deliberate, if you're more
18 comfortable proceeding that way.

19 COMMISSIONER HOOD: I think,
20 unless somebody was going to second it.

21 CHAIRPERSON MILLER: It's up --

22 BOARD MEMBER MANN: If Mr. Hood

1 has something to say, I think that perhaps it
2 just might be better if we deliberate and then
3 we can pick up the -- because I would like to
4 hear what Mr. Hood has to say, before I second
5 it.

6 CHAIRPERSON MILLER: Okay.

7 COMMISSIONER HOOD: Well, what I
8 have to say, you know, I think we just need to
9 flesh out the issues, because when I look at
10 the 16 percent in which we're allowing over
11 the envelope and stuff like that, I just want
12 to know if we're setting a precedent. Even
13 though I know it's real simple, I could throw
14 the Zoning Regs out, which we're not supposed
15 to. Throw them out, yes, it would look good
16 for the neighborhood. I agree with all of
17 that.

18 But I'm just wondering are we
19 setting a precedent for the flood gates to
20 open. And I may be talking out of school, but
21 I'm just curious. You guys have more
22 experience on this than I do. So I just

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1 wanted us to deliberate first before we second
2 it.

3 CHAIRPERSON MILLER: That's fine.

4 COMMISSIONER HOOD: If we can do
5 that.

6 CHAIRPERSON MILLER: Because, you
7 know, we do it both ways and, you know, I feel
8 fairly confident about granting the
9 application, that's why I presented it that
10 way, but I'm fine to put forth my reasons. We
11 can fully discuss it and then when we're
12 finished do a motion. And, you know, I might
13 be persuaded another way.

14 COMMISSIONER HOOD: But I think,
15 Madam Chair, the way I saw it --

16 CHAIRPERSON MILLER: Yes.

17 COMMISSIONER HOOD: -- I may be
18 wrong, we're going to open -- you putting the
19 motion to second and then we are going to
20 discussion?

21 CHAIRPERSON MILLER: Right.

22 COMMISSIONER HOOD: Okay.

1 CHAIRPERSON MILLER: It's fine.
2 I'm going to withdraw the motion. It doesn't
3 matter.

4 COMMISSIONER HOOD: Okay. Well, I
5 mean --

6 CHAIRPERSON MILLER: Okay.

7 COMMISSIONER HOOD: -- somebody
8 may have seconded, so I don't want to come in
9 and upset that.

10 CHAIRPERSON MILLER: No.

11 BOARD MEMBER MANN: No, I didn't
12 want to second it. I wanted to hear what Mr.
13 Hood had to say, so this is better.

14 CHAIRPERSON MILLER: We just want
15 everybody to be --

16 COMMISSIONER HOOD: Oh, so you let
17 me take the -- okay.

18 CHAIRPERSON MILLER: I will just
19 tell you why I would move or will move later
20 to support this application for a variance and
21 that is because I think it does meet the
22 variance test. I don't think it opens the

1 flood gates. I don't think it's just because
2 we gave variances to these other row houses,
3 that means they should get one. I don't think
4 that at all.

5 I think that they have presented a
6 unique or exceptional condition. And there
7 are a couple of reasons I think it is
8 exceptional in this row, which is what we are
9 looking at, which is the context. It's the
10 only house now in the row without a rear
11 parking garage. And because of the
12 construction that was allowed on the other
13 houses, it is now the only one that has this
14 patio that is subject to this, what they have
15 described, as a canyon kind of impact where
16 they don't get any sun on their outdoor
17 property.

18 So I think that they are unique in
19 that sense and that, first of all, if we grant
20 the application, there aren't any others that
21 I know of that are going to be coming forward
22 with the same situation. So we are not

1 opening the flood gates here.

2 The variance test requires that
3 the practical difficulty in complying with the
4 regulations arise out of that unique
5 situation. And there are different practical
6 difficulties. One is their ability to enjoy
7 their outside space and not have it be so
8 shaded and that does arise out of their
9 uniqueness and being the only one with a patio
10 on the ground level and they get that canyon
11 effect from the other houses.

12 Any addition -- they have a
13 practical difficulty, because any addition
14 that they make, I believe, and you can correct
15 if I'm wrong, would require a variance, since
16 they are already over the lot occupancy
17 already. They talked about the other
18 practical difficulty about security. Because
19 they are the only ones that have this open
20 area, their car is more likely to be bothered.
21 The other ones are totally protected in their
22 garages.

1 And because it's in a Historic
2 District, it's limited as to what it could do
3 to accommodate these two, what I see are,
4 really reasonable uses of their property.
5 One, being able to -- one is security and the
6 other is enjoying the outside.

7 And then the third prong is no
8 substantial detriment. And even the Office of
9 Planning agreed that there was no detriment.
10 There will be an improvement in the parking.
11 In the back there will be an improvement
12 aesthetically in their neighborhood and
13 compatible with the Dupont Circle Overlay and
14 the Historic District and it is aesthetically
15 compatible.

16 So I think that the Office of
17 Planning does, at least in this case and in
18 some others, take a much stricter reading of
19 the variance test that I don't believe is in
20 line with some of the Court of Appeals cases
21 that we rely on, such as Gill Martin.

22 The fact that there is a house

1 there already doesn't preclude them from
2 expanding because of what the previous owner
3 did. What is does is -- in fact, it's often
4 grounds for a practical difficulty, because
5 they are limited as to what they can do,
6 because of what's already on the property.

7 So those were my reasons.

8 COMMISSIONER HOOD: Madam Chair,
9 the only issue that I had, and my other
10 colleagues may be able to join in with me, is
11 the lot occupancy. As you stated, we are
12 already at what 5 percent over. But we're
13 taking a nonconforming use and we're
14 compounding the interest, if you will, and we
15 are making it up to, what is it, 86 percent.
16 I'm just curious and while I want Mr. Bass to
17 know that I agree with the uniformity and all
18 that, but I think that the Office of
19 Planning's report is very key.

20 And that's why I asked the
21 question. Maybe it is the way that the
22 presentation -- that we can be able to conquer

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1 and tackle the uniqueness and the practical
2 difficulty. Because I see this as precedent
3 setting and you guys would know much more than
4 I do and I just don't want us to go down that
5 line without making sure that the record and
6 the file in the case is sufficient and
7 addresses that.

8 And I think Office of Planning
9 report is very well done. And again, that lot
10 occupancy, for me, to compound the interest to
11 go from 60 -- it was supposed to be 60
12 percent. It's already 65 percent. And with
13 the proposal in front of us, we're taking to
14 86 percent. I just feel like we need to be
15 able to defend that, if we're going to exceed
16 that. And that's --

17 CHAIRPERSON MILLER: Okay. Well,
18 first of all, I want to say that Office of
19 Planning said there was no adverse impact from
20 the project. So the fact that there is this
21 change in lot occupancy didn't create any
22 adverse impact upon neighboring properties or

1 the neighborhood. I think that's one way.

2 And the other point I want to make
3 that I think is relevant here is that
4 sometimes a unique situation arises leading to
5 a practical difficulty where there are changes
6 in the neighborhood and it seems like in this
7 case everything was changing around this
8 property. I mean, these other houses changed
9 and that's why there was this canyon effect.
10 And that's why now they are in an exceptional
11 situation.

12 COMMISSIONER HOOD: Which was
13 created.

14 CHAIRPERSON MILLER: Mr. Mann was
15 also asking about the practical difficulty
16 test and that also the court has said that --
17 well, first of all, you look at whether
18 compliance with the area restrictions would be
19 unnecessarily burdensome. And I think, in
20 this case, they would be unnecessarily
21 burdensome. They don't serve any purpose for
22 this house to have to have this canyon effect

1 and just this dark shaded patio instead of
2 being allowed to have a roof deck like the
3 others. That's one of it.

4 Let me see, I guess that seems to
5 be my -- Mr. Hood, I'm sure your concern is
6 that -- because of the change in FAR.

7 COMMISSIONER HOOD: Yes, I'm just
8 -- to me, that's quite a bit going from what
9 65 to 86, especially when we're already
10 starting off with a nonconforming use. And I
11 just don't want to see the flood gates open.
12 I don't know, maybe I'm -- I don't know.

13 CHAIRPERSON MILLER: I think we
14 stopped the flood gates from opening by
15 looking at a specific piece of property in a
16 specific context. Not everybody can increase
17 their FAR. You know, it's just the fact that
18 changes around this property have resulted, I
19 think, in practical difficulties on this
20 property. And this is the response to that.

21 And I guess there's also the whole
22 issue about, you know, a confluence of

1 factors, which I believe is also existing in
2 this case.

3 COMMISSIONER HOOD: I understand,
4 Madam Chair, and I agree changes around the
5 surrounding property have put them into this
6 predicament, but I agree with you, I just want
7 to make sure, from a regulatory standpoint,
8 that we're going to be proceeding with -- I
9 would rather proceed with caution and make
10 sure that, again, we're not opening the flood
11 gates.

12 But to me, it's not a show
13 stopper. I just thought maybe we should flesh
14 it out.

15 CHAIRPERSON MILLER: I just
16 recall, we once had a case where there were
17 these row houses or something on a square and
18 a woman wanted to put a garage behind her for
19 security reasons and the Board looked at it
20 and thought for every good reason they should
21 have that garage, but we denied the
22 application, because she was no different from

1 all the other ones around the square that
2 would want the same thing.

3 So I think that's where you would
4 have a flood gate. Where you say well, look,
5 there should be a change in the text
6 amendments or something, you know, because it
7 will affect 20 properties. In this case, what
8 we are doing won't affect any other property.

9 COMMISSIONER HOOD: They are
10 already complete. Okay.

11 CHAIRPERSON MILLER: Other
12 comments? Shall I make my motion now?

13 COMMISSIONER HOOD: Sure.

14 CHAIRPERSON MILLER: I make my
15 motion and then there can still be
16 deliberation. Okay. I move to grant
17 Application No. 17630 of Gerald H. Bass,
18 pursuant to 11 DCMR section 3103.2, for a
19 variance from the floor area ratio
20 requirements under section 402, a variance
21 from the lot occupancy requirements under
22 section 403, a variance from the rear yard

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1 requirements under section 404, and a variance
2 from the nonconforming structure provisions
3 under subsection 2001.3, to construct a garage
4 and deck addition for an existing single
5 family row dwelling at premises 1831 19th
6 Street, N.W. Do I have a second?

7 BOARD MEMBER MANN: Second.

8 CHAIRPERSON MILLER: Further
9 deliberation? Mr. Etherly, you look like you
10 might be pondering further deliberation, so we
11 can wait.

12 VICE CHAIR ETHERLY: No. I'm just
13 digesting Mr. Hood's concern. And throughout
14 our conversation, I've been trying to call to
15 mind an earlier case, not necessarily because
16 it's absolutely on point for our purposes
17 here, but I do recall earlier in the year
18 grappling with cases that look upon these
19 alleys and where applicants/residents are
20 struggling with how to make better use of the
21 space, how to articulate it in a way that's
22 going to not only enhance their own use and

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1 enjoyment of their property, but also bring a
2 little more animation to some alleyscapes that
3 at times can be challenged.

4 And I've just been struggling
5 trying to remember one name of the case and
6 what ultimately happened to it, but I --

7 COMMISSIONER HOOD: Madam Chair,
8 while Mr. -- oh, I'm sorry.

9 VICE CHAIR ETHERLY: No, please.

10 COMMISSIONER HOOD: I was --

11 VICE CHAIR ETHERLY: Please.

12 COMMISSIONER HOOD: -- just while
13 you were --

14 VICE CHAIR ETHERLY: Go ahead.

15 COMMISSIONER HOOD: Thank you.

16 VICE CHAIR ETHERLY: No, I'm
17 perhaps at a stalemate.

18 COMMISSIONER HOOD: Okay. But you
19 know, I think your question mentioned the
20 Comprehensive Plan and I can't recall it
21 verbatim, but it does talk about these
22 particular properties. I thought your

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1 question was very appropriate and that would
2 have gave me more of a comfort level, even
3 though sometimes I know it takes a while for
4 the regulations and variances and stuff to
5 catch up with the Comp Plan.

6 And I'm sure there's something
7 that talks about these properties, I just
8 can't specifically point directly to it. And
9 the Comp Plan is our policy, as Mr. Jackson
10 has already mentioned, and that would have
11 gave me more of a comfort level, but I know
12 it's in there, so again, for me, it's not a
13 show stop. I just thought maybe we needed to
14 flesh it out for the flood gates, but you guys
15 see more of these cases, much more than I do.

16 CHAIRPERSON MILLER: Well, I --

17 COMMISSIONER HOOD: And it's not a
18 show stopper.

19 CHAIRPERSON MILLER: -- don't
20 think it opens any flood gates, because I
21 really think we're looking at it in and of
22 itself. As far as the Comprehensive Plan

1 goes, I mean, I think in general, I would have
2 to look at the greening section. I'm sure
3 that the city is trying to improve the green
4 spaces and this seems to do that, even though
5 it's up above.

6 Also, I know that the city
7 certainly is trying to keep residents in the
8 District, families in the District and this is
9 improving the livable conditions. So there
10 doesn't seem any good reason not to do this,
11 unless, you know, as Mr. Jackson felt that it
12 didn't meet the first two prongs of the
13 variance test, that would be the reason. I
14 just don't read it as narrowly as he does.

15 Any other comments, deliberations?
16 We have a motion and it's been seconded. All
17 those in favor say aye.

18 ALL: Aye.

19 CHAIRPERSON MILLER: All those
20 opposed? All those abstaining? Would you
21 call the vote, please?

22 MS. BAILEY: Madam Chair, the vote

1 is recorded as 4-0-1 to approve the
2 application. Mrs. Miller made the motion, Mr.
3 Mann seconded, Mr. Etherly, Mr. Hood support
4 the motion. Mr. Loud is not present at this
5 time.

6 CHAIRPERSON MILLER: I believe
7 that we could waive our rules and regulations
8 for issuing a full order with findings of fact
9 and conclusions of law and issue a summary
10 judgment in this case. Yes, we have no party
11 in opposition, even though the OP has raised
12 some concerns.

13 MS. BAILEY: Thank you.

14 CHAIRPERSON MILLER: Yes. So is
15 the Board of that view? Okay. Then we will
16 issue a summary order in this case. Okay.
17 Thank you very much.

18 MR. BASS: Thank you.

19 MR. GELL: Thank you, Madam Chair
20 and Board.

21 CHAIRPERSON MILLER: Ms. Bailey,
22 do we have anything further on our agenda for

1 the afternoon?

2 MS. BAILEY: That's it for the
3 afternoon, Madam Chair.

4 CHAIRPERSON MILLER: Thank you
5 very much. Then this hearing is adjourned.

6 MS. BAILEY: Happy 4th of July.

7 (Whereupon, the Public Hearing was
8 concluded at 4:05 p.m.)

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