

GOVERNMENT  
OF  
THE DISTRICT OF COLUMBIA

+ + + + +

BOARD OF ZONING ADJUSTMENT

+ + + + +

PUBLIC HEARING

+ + + + +

TUESDAY

SEPTEMBER 18, 2007

+ + + + +

The Regular Public Hearing convened in Room 220 South, 441 4<sup>th</sup> Street, N.W., Washington, D.C. 20001, pursuant to notice, at 10:00 a.m., Ruthanne G. Miller, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

RUTHANNE G. MILLER           Chairperson  
CURTIS ETHERLY, JR, ESQ   Vice Chairperson  
MARC D. LOUD                 Board Member

ZONING COMMISSION MEMBER PRESENT:

ANTHONY J. HOOD             Vice Chairperson

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY                Secretary  
BEVERLEY BAILEY   Sr. Zoning Specialist

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

LORI MONROE, ESQ.

OFFICE OF PLANNING STAFF PRESENT:

JOHN MOORE  
KAREN THOMAS  
MAXINE BROWN-ROBERTS  
ARTHUR JACKSON

This transcript constitutes the minutes from the Public Hearing held on September 18, 2007.

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

2 Time: 9:58 a.m.

3 CHAIRPERSON MILLER: Good morning,  
4 ladies and gentlemen. This is the September  
5 18th morning Public Meeting of the Board of  
6 Zoning Adjustment of the District of Columbia.

7 My name is Ruthanne Miller. I am  
8 Chair of the BZA. Joining me today is the  
9 Vice Chair to my right, Mr. Curtis Etherly,  
10 and to his right is Mr. Anthony Hood from the  
11 Zoning Commission, and to my left is Mr. Marc  
12 Loud, Mayoral appointee.

13 Further down is Ms. Lori Monroe  
14 from the Office of Attorney General, Ms.  
15 Beverley Bailey from the Office of Zoning.

16 Copies of today's agenda are  
17 available to you and are located to my left in  
18 the wall bin near the door.

19 Please be advised that the  
20 proceeding is being recorded by a court  
21 reporter and is also webcast live.  
22 Accordingly, we must ask you to refrain from  
23 any disruptive noises or actions in the

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1 hearing room.

2 When presenting information to the  
3 Board, please turn on and speak into the  
4 microphone, first stating your name and home  
5 address. When you are finished speaking,  
6 please turn your microphone off so that your  
7 microphone is no longer picking up sound or  
8 background noise.

9 All persons planning to testify  
10 either in favor or in opposition are to fill  
11 out two witness cards. These cards are  
12 located to my left on the table near the door  
13 and on the witness table. Upon coming forward  
14 to speak to the Board, please give both cards  
15 to the reporter, sitting to my right.

16 The order of procedure for special  
17 exceptions and variances is as follows: (1)  
18 Statement and witnesses of the applicant; (2)  
19 government reports, including Office of  
20 Planning, Department of Public Works, DDOT,  
21 etcetera; (3) report of the Advisory  
22 Neighborhood commission; (4) parties or  
23 persons in support; (5) parties or persons in

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1 opposition; (6) closing remarks by the  
2 Applicant.

3 Pursuant to Section 3117.4 and  
4 3117.5, the following time constraints will be  
5 maintained. The Applicant, Appellant, persons  
6 and parties except an ANC in support,  
7 including witnesses, 60 minutes collectively;  
8 Appellees, persons and parties except an ANC  
9 in opposition, including witnesses, 60 minutes  
10 collectively; individuals, three minutes.

11 These time restraints do not  
12 include cross-examination and/or questions  
13 from the Board. Cross-examination of  
14 witnesses is permitted by the Applicant or  
15 parties. The ANC within which the property is  
16 located is automatically a party in a special  
17 exception or variance case.

18 Nothing prohibits the Board from  
19 placing reasonable restrictions on cross-  
20 examination, including time limits and  
21 limitations on the scope of cross-examination.

22 The record will be closed at the  
23 conclusion of each case except for any

1 materials specifically requested by the Board.  
2 The Board and the staff will specify at the  
3 end of the hearing exactly what is expected  
4 and the date when the persons must submit the  
5 evidence to the office of Zoning.

6 After the record is closed, no  
7 other information will be accepted by the  
8 Board.

9 The Sunshine Act requires that the  
10 public hearing on each case be held in the  
11 open before the public. The Board may,  
12 consistent with its rules of procedure and the  
13 Sunshine Act, enter Executive Session during  
14 or after the public hearing on a case for  
15 purposes of reviewing the record or  
16 deliberating on the case.

17 The decision of the Board in these  
18 contested cases must be based exclusively on  
19 the public record. To avoid any appearance to  
20 the contrary, the Board requests that persons  
21 present not engage the members of the Board in  
22 conversation.

23 Please turn off all beepers and

1 cellphones at this time so as not to disrupt  
2 these proceedings.

3 The Board will now consider any  
4 preliminary matters. Preliminary matters are  
5 those which relate to whether a case will or  
6 should be heard today, such as requests for  
7 postponement, continuance or withdrawal or  
8 whether proper and adequate notice of the  
9 hearing has been given.

10 If you are not prepared to go  
11 forward with a case today, or if you believe  
12 that the Board should not proceed, now is the  
13 time to raise such a matter.

14 Does the staff have any  
15 preliminary matters?

16 MS. BAILEY: Madam Chair, members  
17 of the Board, to everyone, good morning.

18 Staff does not have any  
19 preliminary matters at this time other than  
20 swearing in the witnesses.

21 CHAIRPERSON MILLER: Thank you.  
22 Then would all individuals wishing to testify  
23 today please rise to take the oath.

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

3 (Witnesses sworn.)

4 CHAIRPERSON MILLER: Thank you.  
5 Ms. Bailey, would you call the first case,  
6 please.

7 MS. BAILEY: The first case is  
8 Application Number 17660 of Shirley Frierson  
9 and Pamela Bright, pursuant to 11 DCMR 3104.1,  
10 for a special exception to allow the  
11 construction of a rear addition to an existing  
12 single-family detached dwelling under Section  
13 223, not meeting the lot occupancy and rear  
14 yard requirements. That is Section 403 and  
15 Section 404. The property is zoned R-5-A, and  
16 it is located at 2460 Skyland Place, S.E.,  
17 Square 5740, Lot 840.

18 CHAIRPERSON MILLER: Good morning.  
19 Would you introduce yourself for the record,  
20 please?

21 MS. FRIERSON: My name is Shirley  
22 Frierson.

23 MS. BRIGHT: And I am Pamela

1 Bright.

2 CHAIRPERSON MILLER: Okay. And we  
3 know you are here for a special exception, and  
4 there is a very complete file on your case.  
5 If you would just like to highlight aspects of  
6 your case for us, that would be fine.

7 MS. FRIERSON: My name is Shirley  
8 Frierson. I live at 2460 Skyland Place, S.E.  
9 I have lived at this address for 34 years. My  
10 home was a part of a new development that was  
11 built in Southeast in the early 1970s.

12 What I wish to do is add a two-  
13 level addition to the rear of my home. The  
14 first level will be an all-season sunroom.  
15 The second level would be added space to the  
16 master bedroom and the walk-in closet.

17 I know I do not meet the occupancy  
18 -- lot occupancy of the rear yard requirements  
19 of the zoning regulations. So I am applying  
20 for a special exception under Section 3104.

21 As to answering the questions  
22 regarding the adverse effect on the use or  
23 enjoyment of any abutting or adjacent dwelling

1 or property, the addition -- my addition will  
2 only be the same height and width of the  
3 existing structure. So, therefore, it should  
4 not block any light or air from my neighbors  
5 on each side of me.

6 CHAIRPERSON MILLER: May I ask  
7 you: I know that there is a petition in  
8 support of your application.

9 MS. FRIERSON: Yes.

10 CHAIRPERSON MILLER: And I  
11 believe, certainly, at least one of your  
12 abutting has signed the petition.

13 MS. FRIERSON: Both signed.

14 CHAIRPERSON MILLER: Both have  
15 signed it?

16 MS. FRIERSON: Yes.

17 CHAIRPERSON MILLER: Okay. Is  
18 that Ms. Wilson?

19 MS. FRIERSON: Wilson and Bennett.

20 CHAIRPERSON MILLER: How many  
21 names do you have on your petition? I'm  
22 wondering if I have the whole thing.

23 MS. FRIERSON: It was only about

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1 five or six, I think. Let's see if I have it  
2 here.

3 CHAIRPERSON MILLER: Oh, Bennett,  
4 2456?

5 MS. FRIERSON: Yes, ma'am.

6 CHAIRPERSON MILLER: Okay. I see  
7 four names on it. Okay. I wasn't sure that  
8 was the neighbor, an abutting neighbor. Okay,  
9 good. It doesn't affect their privacy or  
10 light and air, because it comes out the same  
11 distance in the back, or what?

12 MS. FRIERSON: No. Mine only  
13 extends 10.53 feet out backwards, and the  
14 height is the same. So on the left side of me  
15 where the Bennetts live, it would not extend  
16 the whole length of the house. So it won't be  
17 at the property line.

18 On the other side of me, the young  
19 man -- he has a privacy fence which is six  
20 feet tall. So that wouldn't affect that.

21 CHAIRPERSON MILLER: And did you  
22 appear before the ANC?

23 MS. FRIERSON: Yes. I talked with

1 my ANC -- No, I didn't appear before them, but  
2 I talked with my ANC person, Mr. Braxton  
3 Jones, and he came by and saw where the  
4 addition is to go, and he had promised to get  
5 me -- get us a letter. He give me a copy up  
6 until last weekend. I haven't been able to  
7 contact him the last couple of days.

8 CHAIRPERSON MILLER: Okay.  
9 Anything else you want to add? I think the  
10 record is pretty full, but feel free if you  
11 want to add anything else right now.

12 MS. FRIERSON: No. I just want to  
13 let you know that the property will remain a  
14 single family home.

15 CHAIRPERSON MILLER: Okay. And  
16 nobody is here from the ANC, are they? Okay.  
17 Do you have a copy of the Office of Planning  
18 report? Office of Planning did a report on  
19 your case.

20 MS. FRIERSON: Yes, I do have a  
21 copy.

22 CHAIRPERSON MILLER: Okay, good.  
23 Do Board members have any questions? Okay.

1 I think then what we will do now is just turn  
2 to the Office of Planning. Good morning, Mr.  
3 Moore.

4 MR. MOORE: Good morning, Madam  
5 Chair and members of the Board. I am John  
6 Moore of the Office of Planning.

7 The Office of Planning will stand  
8 on the record in support of this application.

9 CHAIRPERSON MILLER: Okay. It's  
10 an excellent report, and I wanted to ask you,  
11 did you have any success in reaching the ANC?

12 MR. MOORE: No. I put in a couple  
13 of calls to the ANC. The Applicant called,  
14 and I think she met with him. She didn't go  
15 to a hearing, I believe, but I didn't get  
16 anything back from the ANC.

17 CHAIRPERSON MILLER: Okay. Any  
18 questions from Board members? Okay.

19 Is there anybody here in the  
20 audience who wishes to testify, either in  
21 support or opposition of this application?

22 Okay. Not hearing from anyone, do  
23 you have any other final remarks?

1 MS. FRIERSON: Okay.

2 CHAIRPERSON MILLER: Any final  
3 questions from Board members? Okay. Do we  
4 have any motion on this case?

5 MEMBER LOUD: Madam Chair, I would  
6 like to move approval of Application Number  
7 17660 under Section 3104 and 223 to add a rear  
8 two-story addition to existing single family  
9 detached structure, and look for a second.

10 COMMISSIONER HOOD: Second.

11 MEMBER LOUD: In this case, Madam  
12 Chair, the parties are before us because they  
13 are seeking a rear two-story addition to an  
14 existing single family structure. The BZA is  
15 authorized to grant special exceptions  
16 regarding such additions to single family  
17 structures under 3104.1, specifying certain  
18 conditions.

19 In this case, those conditions  
20 would be found under Section 223 of our  
21 regulations, which were spelled out very  
22 clearly in OP's report, which I will  
23 incorporate by reference, and just briefly

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1 summarize with respect to pertinent conditions  
2 right here.

3 The addition shall not have a  
4 substantially adverse effect on the use or  
5 enjoyment of any abutting or adjacent dwelling  
6 or property. The light and air available to  
7 neighboring properties shall not be unduly  
8 affected. The privacy of use and enjoyment of  
9 neighboring properties shall not be unduly  
10 compromised.

11 The addition, together with the  
12 original building, as viewed from the street,  
13 alley and other public way shall not  
14 substantially visually intrude upon the  
15 character, scale and pattern of houses along  
16 the subject street frontage, and in  
17 demonstrating compliance with the paragraphs,  
18 of course, the Applicant shall use graphical  
19 representations such as plans, photographs,  
20 etcetera, which are a part of our file and  
21 submitted before us today.

22 I want to commend Ms. Frierson for  
23 being a resident of our community for 34

1 years, and finally having the opportunity to  
2 add to your home and enjoy a sunroom on the  
3 ground floor and much needed additional space  
4 in what I hope will be a really peaceful and  
5 expansive master bedroom on the second floor.

6 As OP noted in its report to us,  
7 going item by item with respect to Section  
8 223, the existing structure occupies about 952  
9 square feet. However, when the additional  
10 improvement is added, there are an additional  
11 -- I think it was an additional -- I can't  
12 locate it in the file right now, but the  
13 additional square footage brings the maximum  
14 lot occupancy up to about 41 percent of what  
15 is allowed currently. However, under Section  
16 223, that goes up to 70 percent lot occupancy,  
17 and in this case we only have 41 percent. So  
18 that does not create a problem in terms of us  
19 granting a special exception.

20 The second area where there may  
21 have been some concern is that there is a rear  
22 yard minimum setback of 20 feet. In this  
23 case, there will only be 10.47 feet, requiring

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1 a special exception in this case of about 9.5  
2 feet. Again, for the reasons articulated in  
3 the OP's report, which I incorporate by  
4 reference into my comments, the special  
5 exception should be granted.

6 I defer to my colleagues on the  
7 council for further deliberation.

8 CHAIRPERSON MILLER: Thank you  
9 very much. I think that was very well put,  
10 and the Office of Planning's report is very  
11 comprehensive, addressing all the elements of  
12 223, which sets forth the standards for our  
13 evaluation.

14 I agree with Mr. Loud. I am  
15 pleased that you are able to stay in your  
16 house and be able to expand and grow and stay  
17 in the District. Most importantly, your  
18 addition won't cause any adverse impact to  
19 neighbors. Your abutting neighbors support  
20 it, and you have explained about the privacy  
21 fence and the heights and everything.

22 So I don't see any problems with  
23 this whatsoever. Are there any other further

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1 comments? Okay. Then I think that we are  
2 ready to vote on this.

3 All those in favor of the motion  
4 to grant the special exception in this case,  
5 say Aye. All those opposed? All those  
6 abstaining?

7 Would you call the vote, please?

8 MS. BAILEY: Madam Chair, the vote  
9 is recorded as four-zero-one to approve the  
10 application. Mr. Loud made the motion. Mr.  
11 Hood seconded. Mrs. Miller, Mr. Etherly  
12 support the motion. The NCPC representative  
13 is not present at this time.

14 CHAIRPERSON MILLER: Thank you. I  
15 would also suggest, if there is consensus of  
16 the Board, that we issue a summary order in  
17 this case, as there is no opposition. Do we  
18 have a consensus to issue a summary order?  
19 Yes. Okay. Then a summary order will be  
20 issued in this case, which means you will get  
21 this order very quickly. Good luck. Thank  
22 very much.

23 Ms. Bailey, would you call the

1 next case when you are ready?

2 MS. BAILEY: Madam Chair, the next  
3 case is Application 17658. That is of Michael  
4 D. Parry, pursuant to 11 DCMR 3103.2, for a  
5 variance from the story limitations under  
6 subsection 2500.4, and a variance from the use  
7 provisions to allow the second floor of an  
8 accessory structure to be used as an exercise  
9 room under subsection 2500.5. The property is  
10 zoned R-5-B. It is located at 1529 S Street,  
11 N.W., Square 191, Lot 15.

12 CHAIRPERSON MILLER: Good morning.  
13 Would you identify yourselves for the record,  
14 please?

15 MS. PARRY: Peggy Parry.

16 MR. PARRY: Michael Parry.

17 MR. BLUM: Daniel Blum.

18 CHAIRPERSON MILLER: Could I ask  
19 you, could you give your name and home  
20 address?

21 MR. PARRY: I'm sorry. The home  
22 address is 1529 S Street, N.W. in Washington  
23 20009.

1 MS. PARRY: Do you need that from  
2 me also?

3 CHAIRPERSON MILLER: I assume  
4 yours is the same. Is that correct?

5 MS. PARRY: Yes. I mean, we are  
6 still married.

7 CHAIRPERSON MILLER: Okay.

8 MR. BLUM: Daniel Blum, 807  
9 Quintana Place, N.W., Washington, D.C.

10 CHAIRPERSON MILLER: Thank you.  
11 Okay. This one is just a little more  
12 complicated than the one before. But you were  
13 referred here by Zoning Administrator for  
14 relief, for variance relief, as I understand  
15 it, under two provisions, 2500.4 and 2500.5,  
16 and I believe that the Office of Planning  
17 didn't think that you needed variance relief  
18 from 2500.5.

19 Do you want to make some just  
20 intro remarks about where you are and what  
21 relief you think you are required?

22 MR. PARRY: Yes. Thank you.

23 Good morning. My name is Michael

1 Parry. My wife, Peggy Parry, and I are owners  
2 of the townhouse at 1529 S Street, N.W.  
3 Joining us today is Daniel Blum of Landis  
4 Construction Corporation, a firm that we have  
5 retained to assist us with the zoning and the  
6 planning process.

7 We are proposing to alter our  
8 existing historic two-story carriage house to  
9 enable us to fit a second automobile parking  
10 space on the first floor and to create a  
11 finished second floor which would include an  
12 exercise and storage room.

13 Our home was constructed in 1870  
14 with the existing two-story carriage house  
15 built around that time. At some point, the  
16 carriage house was converted to use as a  
17 private automobile garage.

18 There is currently an existing  
19 unfinished second story with an interior  
20 stairway leading up to it. The building was  
21 already two stories when we bought the  
22 property, and we have not made any changes to  
23 alter that condition.

1                   CHAIRPERSON MILLER: Excuse me.  
2 Does the two stories you are referring to  
3 right now -- this is the residence?

4                   MR. PARRY: The carriage house.

5                   CHAIRPERSON MILLER: The carriage  
6 house. It was two stories?

7                   MR. PARRY: Yes, ma'am.

8                   CHAIRPERSON MILLER: Because that  
9 is kind of like one of the key elements here,  
10 that second floor, whether it is a mezzanine  
11 or whether it is a story. Does it go all the  
12 way across?

13                  MS. PARRY: You basically take the  
14 stairs up from the garage, and you go up  
15 there, and it is -- It was used for something,  
16 for storage or for -- It was either used for  
17 storage or for -- When we bought it, it was  
18 staged to have a television and a sofa in it.  
19 So it looks like somebody had just sat there.

20                  MR. PARRY: The flooring on the  
21 second deck or second level is actually in  
22 place. There's joist boards and floorboards  
23 across it. There's probably some repair work

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1 required to the subfloor, but there is one  
2 there.

3 I believe we have pictures of it  
4 which we have submitted. Those weren't in the  
5 information, I don't think, that you had prior  
6 to coming to this meeting, I think. Mr. Blum  
7 just distributed those this morning. Sorry.

8 CHAIRPERSON MILLER: Okay. I did  
9 notice -- I think we got a report from the ANC  
10 this morning as well. Are you aware of that?

11 MR. PARRY: That is correct.

12 CHAIRPERSON MILLER: In support of  
13 the application. Okay, I did see that. I  
14 didn't see this picture. Now I see it. Okay.

15 So do you want to describe the  
16 floor as shown on this picture? I mean, this  
17 is taken when? These pictures were taken  
18 when?

19 MR. PARRY: At the time of the  
20 Office of Planning inspection was done. So  
21 that was two, three months ago.

22 I can describe it. I mean, I  
23 think there is some work that is required for

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1 the subfloor, but there is a subfloor in  
2 there. There is no holes that go from the  
3 second story down to the first story.

4 VICE CHAIR ETHERLY: And if I may,  
5 Madam Chair, the only opening would be the  
6 stairway leading up to the second floor.

7 MR. PARRY: Yes, sir, that is  
8 correct.

9 CHAIRPERSON MILLER: Part of the  
10 floor -- Is it part of the floor is finished,  
11 and part of the floor is just board, or what  
12 is it? I'm looking at the bottom picture.

13 MR. PARRY: Yes.

14 CHAIRPERSON MILLER: I think it's  
15 the bottom picture.

16 MR. PARRY: It appears that  
17 someone sometime ago put oak flooring on part.  
18 They just sort of laid it on there and glued  
19 it down to the subfloor or nailed it down to  
20 the subfloor on part of the floor. The rest  
21 of the floor was used for storage of -- well,  
22 when we moved in there, there were some old  
23 appliances in there. Boxes were in there when

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1 we looked at the property. So it was used for  
2 storage.

3 I mean, it appears to be  
4 reasonably water tight, although it is not air  
5 conditioned or heated. So anything you put in  
6 there is going to be subject to the climate of  
7 the outside.

8 CHAIRPERSON MILLER: I am focusing  
9 on the floor, because that goes to one of the  
10 provisions that the Zoning Administrator said  
11 you needed relief with respect to adding a  
12 second story, because I believe, as it was  
13 described, that it didn't go all the way  
14 across it. It was more a mezzanine than a  
15 story. My impression was that the -- from  
16 that, that it wasn't totally covered with  
17 floor.

18 So now looking at this picture,  
19 I'm trying to figure out what the ZA might  
20 have been differentiating between. Is it  
21 finished floor and unfinished floor? What is  
22 that? Do you know what I'm saying, the  
23 difference?

1                   MR. PARRY: I know what you are  
2 saying.

3                   MR. BLUM: I could offer an  
4 explanation, if that would be helpful.

5                   I asked the Zoning Administrator  
6 staff about this, and I wasn't sure exactly  
7 what they were saying. But the idea was, if  
8 it was a mezzanine, then whatever structure it  
9 had would be allowed as a matter of right, as  
10 far as the story requirements. It still  
11 wouldn't meet the height requirement for an  
12 accessory structure, but if the second floor  
13 was covered with one-third or less of  
14 flooring, then that structure would meet the  
15 story requirements for a carriage house, and  
16 that because we were planning to do  
17 construction to finish the entire second  
18 floor, they were regarding that as an  
19 addition, even though the floor structure is  
20 already existing.

21                   I don't know if they were thinking  
22 we were going to remove the structure and  
23 replace it or what, but that is the only way

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1 I can interpret what they are saying, is  
2 saying the second floor is an addition and  
3 that it was a mezzanine before.

4 CHAIRPERSON MILLER: Do you  
5 understand how it would be a mezzanine, given  
6 the configuration, that it goes all the way  
7 across?

8 MR. BLUM: No.

9 VICE CHAIRPERSON ETHERLY: And  
10 perhaps just to offer some context to the  
11 conversation, I'm inclined to believe that it  
12 is probably an existing story already. The  
13 definition for mezzanine from the zoning regs  
14 reads: A floor space within a story between  
15 its floor and the floor or roof next above it  
16 and having an area of not more than one-third  
17 of the area of the floor immediately below.  
18 A mezzanine shall not be considered a story in  
19 determining the maximum number of permitted  
20 stories.

21 So if it were a mezzanine, then we  
22 would be in an area where you would  
23 essentially be creating a story, but based on

1 the pictures and based on the testimony, it  
2 appears that you already have a story, which  
3 would affect the zoning relief. You know, it  
4 would make it a somewhat different inquiry,  
5 not necessarily further complicate things.

6 So I think it's fairly clear. I  
7 would tend to read, based on the pictures and  
8 the testimony, that you have an existing  
9 story. So you have another existing  
10 nonconformity.

11 CHAIRPERSON MILLER: And how long  
12 has this -- To the best of your knowledge, how  
13 long has this floor existed there?

14 MS. PARRY: We think a very long  
15 time, years, probably decades. It is an  
16 original carriage house. So we are assuming  
17 that, even by the door, the blue door, if you  
18 look at it, that even that part of it was used  
19 at one point for -- perhaps for hay for horses  
20 or for whatever else. So it was used.

21 The floorboards are fairly old. I  
22 would say that the floorboards were probably  
23 put in in the Fifties or Sixties. That's my

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1 opinion, but I don't know.

2 MR. PARRY: The joists appear to  
3 be original.

4 MS. PARRY: Yes. The joists and  
5 everything.

6 MR. PARRY: 1800-1890.

7 MS. PARRY: Yes. We want to keep  
8 the integrity of the carriage house. We don't  
9 want to -- We like the idea of living in a  
10 very historic home with a lot of history. We  
11 don't want to destroy that. We want to make  
12 it -- Right now it looks like an eyesore from  
13 the outside in the garage, you know, from the  
14 alleyway. We just want to make it look nice  
15 and like other parts -- like other houses in  
16 the community, and also keep the historical  
17 integrity with the windows, with the floors,  
18 you know, with the brick. We don't want to  
19 alter that.

20 I mean, I know we will probably  
21 have to put new floors in, because some of  
22 these are warped, you know, and replace some  
23 of the floorboards. But we want to really

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1 keep everything the way it is.

2 CHAIRPERSON MILLER: When did you  
3 buy the house?

4 MS. PARRY: A year ago.

5 CHAIRPERSON MILLER: A year ago,  
6 okay. So you don't exactly know -- is that  
7 right? -- when the floor was put in?

8 MS. PARRY: No, ma'am.

9 CHAIRPERSON MILLER: Okay. So it  
10 could have been 30 years ago, 40 years ago?

11 MS. PARRY: Yes, exactly. It's  
12 very old.

13 CHAIRPERSON MILLER: Is there any  
14 difference as to when each part of that floor  
15 was put in?

16 MR. PARRY: We really don't know.

17 CHAIRPERSON MILLER: Okay, that's  
18 fine. I can tell you where the Board is  
19 coming from to a certain extent, why we are  
20 zeroing in on these questions.

21 The Zoning Administrator referred  
22 the case to us for two reasons. One was under  
23 -- that variance relief was required under

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1 2500.4 and 2500.5. 2500.5 we haven't talked  
2 about yet, and we can address. But I think  
3 that the Office of Planning has said in their  
4 report that it is not really applicable,  
5 because it doesn't apply to this zone that you  
6 are in, number one; and number two, you are  
7 not seeking to use the quarters for domestic  
8 employees.

9 So I think the way the Board is  
10 looking at this application with respect to  
11 that variance relief is that it is not  
12 required, because it is not really even  
13 applicable unless you have -- Do you have  
14 something to say about that different?

15 MR. PARRY: No, no. We do not  
16 intend to use the second story of the carriage  
17 house for living quarters for anybody. There  
18 won't be any sleeping quarters, and we have no  
19 plans to run water. So there won't be any  
20 toilet or sink or anything like that.

21 COMMISSIONER HOOD: Madam Chair,  
22 could I just ask: So you are aware of the --  
23 Have you seen the Office of Planning report?

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1 MR. PARRY: I have, sir.

2 COMMISSIONER HOOD: Okay. So you  
3 are aware of the condition they are asking us,  
4 and you have no problems with that?

5 MR. PARRY: No, I don't. No. I  
6 mean, the restriction that it not be used for  
7 a dwelling or sleeping quarters?

8 COMMISSIONER HOOD: And then some  
9 other things they had?

10 MR. PARRY: No, we don't have a  
11 problem with that.

12 CHAIRPERSON MILLER: Okay. But to  
13 begin with anyway, you don't believe you need  
14 that relief either, and the only reason it is  
15 before us was because the Zoning  
16 Administrator thought you might. You are not  
17 seeking variance relief yourselves from that  
18 provision so that you can put domestic  
19 employees up there or anything like that?

20 MR. PARRY: No, ma'am.

21 CHAIRPERSON MILLER: Okay. So  
22 moving on from that variance relief to the  
23 other one, which deals with 2500.4, and that

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1 provision states that an accessory building in  
2 any zone district shall not exceed one story  
3 or 15 feet in height except as provided in  
4 2500.5.

5 As I understand it, the carriage  
6 house is 19 feet. So it is already  
7 nonconforming. It is an historic structure,  
8 and it is what is considered under our  
9 regulations, though, as legally nonconforming.  
10 It was in existence at the time the  
11 regulations went into effect and, therefore,  
12 you don't need relief to maintain it at that  
13 height.

14 So then the next question came in  
15 then -- that is why we are zeroing in on these  
16 floors -- whether or not you are adding to the  
17 nonconformity under that provision by adding  
18 a second story. From what I hear you saying,  
19 it is that you are not adding a second story.  
20 I do want to go to the Office of Planning  
21 after you, but that's how we see this case  
22 breaking down, and that is why we are focusing  
23 on the floors question. Do you even need this

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1 relief, because what are you doing?

2 Are you adding a second story or  
3 not?

4 MR. PARRY: All we are doing is  
5 refinishing an existing second story, and none  
6 of the changes that we propose would alter the  
7 size or height or width or length of the  
8 carriage house. I mean, it sits on the  
9 property. It fills the entire width of the  
10 property. There is no way to make it wider.  
11 We don't intend to make it any longer. So it  
12 is going to stay the same footprint, if you  
13 will.

14 All we want to do is move the  
15 stairwell, basically reversing it, so that we  
16 can park a second car in the carriage house,  
17 and then use the second story for an exercise  
18 room and then storage.

19 MS. PARRY: We also -- When you  
20 come in the lower level where you go in, there  
21 is -- Right now, there's glass blocks where  
22 there was a door at one time. So it's a  
23 sealed-off door with glass blocks, which looks

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1 absolutely hideous. So we want to remove that  
2 and make the garage door opening a little bit  
3 larger.

4 MR. PARRY: Actually, it's to  
5 restore the -- Someone took the original two-  
6 car -- or two-car garage door and modified it  
7 into a one-car garage door and put up some  
8 glass blocks to cover up the hole. We want to  
9 remove the glass blocks and restore the  
10 original size of the garage door opening,  
11 which is -- or carriage house opening, which  
12 is almost the equivalent of a two-car garage.

13 MS. PARRY: With the historical  
14 integrity of the carriage house itself, so  
15 that it looks like an original carriage house  
16 with the garage door now on it. But even the  
17 garage door opening would be within -- looking  
18 historic, as if it had always been there.

19 CHAIRPERSON MILLER: And did you  
20 already get approval by HPRB with this? Okay.

21 MR. PARRY: Yes.

22 CHAIRPERSON MILLER: Mr. Blum, can  
23 I just ask you one more time. I know you

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1 addressed this, but what was the basis for the  
2 ZA's determination that this was a mezzanine  
3 being changed to a second story?

4 MR. BLUM: Well, to answer the  
5 question directly, I don't know. But in  
6 trying to figure out their interpretation, the  
7 only way I can see that it would make sense is  
8 that, since there is no provision for a second  
9 story in a carriage house in an R-5-B zone,  
10 they were trying to find out what was it in  
11 the zoning regulations that's the closest to  
12 what it is we are trying to accomplish, and  
13 work from that point to what we are trying to  
14 do.

15 The closest thing they could find  
16 is, well, it would be permitted if it was a  
17 mezzanine, but they want a whole second story.  
18 So we have to call that something different.  
19 So that's the only way I can interpret their  
20 remarks.

21 VICE CHAIRPERSON ETHERLY: It's  
22 kind of funny. You know, it's like what came  
23 first, the chicken or the egg, and trying to

1 figure out what do we call it, because we have  
2 to call it something. I mean, it just strikes  
3 me as just a nonconforming use. It's an  
4 existing story.

5 I was perhaps inclined to query,  
6 well, maybe it's because the floor isn't  
7 necessarily as finished as a typical floor  
8 might be, but I think that's kind of just  
9 splitting the hair entirely too finely.

10 I think -- Again, Madam Chair, I'm  
11 inclined to treat it as a story, given the  
12 picture, given the testimony, and based on the  
13 further testimony it appears that there is not  
14 an enlargement. There is not an addition to  
15 the current nonconformity. You are simply  
16 doing some work to the look of it.

17 The stair relocation doesn't  
18 concern me too much. So I appreciated the  
19 clarification and, as Mr. Parry said, you are  
20 not enlarging. You are not expanding. You  
21 are not going up higher. You are doing some  
22 -- Are you doing wall work upstairs on that  
23 second story? You will be creating separate

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1 rooms, so to speak, as I look at Sheet A-30.  
2 Is that correct? Or A-3?

3 MS. PARRY: At this point, we have  
4 a separate wall in there, but we are -- You  
5 know, this has been a while now. So we have  
6 actually thought about not putting a wall  
7 there and just leaving that open, you know,  
8 and having the exercise room just there and  
9 having --

10 VICE CHAIRPERSON ETHERLY: The  
11 space.

12 MS. PARRY: Just having like a  
13 loft space, you know. You don't really have  
14 to have dividers or anything like that, where  
15 it's just open. You have the exercise  
16 bicycle, a sofa, and a television.

17 VICE CHAIRPERSON ETHERLY: Got  
18 you.

19 MR. PARRY: We feel it would be  
20 cheaper to air condition and heat the entire  
21 space without the wall.

22 VICE CHAIRPERSON ETHERLY:  
23 Understood. In these days of rising fuel

1 costs, very smart.

2 Madam Chair, I'm definitely  
3 inclined to hear from the Office of Planning  
4 on what the nature of this testimony changes,  
5 if anything, in their opinion. I know that we  
6 had had some discussion about whether 2001,  
7 which is the section that deals with  
8 nonconforming structures devoted to conforming  
9 uses, would have any role to play here.

10 I won't necessarily broach that  
11 just yet. I would perhaps like to hear from  
12 Office of Planning and kind of sort out where  
13 we are. Thank you, Madam Chair.

14 CHAIRPERSON MILLER: Yes. I think  
15 we are going to turn to Office of Planning in  
16 a moment.

17 I just want to clarify. I think  
18 at one point, Mr. Etherly, you referred to  
19 this as a nonconforming use. I don't think  
20 you really meant that. We are talking about  
21 a nonconforming structure.

22 VICE CHAIRPERSON ETHERLY:  
23 Nonconforming structure.

1 CHAIRPERSON MILLER: Yes, because  
2 our regs differentiate between structures and  
3 use.

4 VICE CHAIRPERSON ETHERLY: That's  
5 right, nonconforming structure. Thank you,  
6 Madam Chair, for that clarification.

7 CHAIRPERSON MILLER: And I also  
8 want to clarify what the applicant -- you  
9 know, where you talked about it being open on  
10 the second level. That floor will, though,  
11 still cover more than a third of the floor  
12 below it. Correct?

13 MS. PARRY: Oh, yes, ma'am.

14 CHAIRPERSON MILLER: Okay, because  
15 that's where the definition of mezzanine comes  
16 in, and that's where we are determining that  
17 it does not seem to fit the definition of  
18 mezzanine.

19 MS. PARRY: No. It's just the  
20 floor and then on an original construction  
21 drawing or whatever it was, we had -- it was  
22 like a separate room divider thing for the  
23 storage part, and then the other part would be

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1 the exercise room part. We are just putting  
2 the divider in, just leaving the whole floor  
3 open from one end of the -- just like this  
4 floor is. It's not going to cut anything off.  
5 It's just going to be the whole floor.

6 CHAIRPERSON MILLER: Okay. And  
7 you don't have any intention of putting in any  
8 plumbing. Is that correct?

9 MS. PARRY: No.

10 CHAIRPERSON MILLER: Okay.

11 MS. PARRY: I don't even know if  
12 there is plumbing in there. I just know that  
13 there is a water spigot that is there to water  
14 the garden.

15 MR. PARRY: On the exterior.

16 MS. PARRY: In the exterior, but I  
17 really don't even know if there is anything in  
18 there, because we haven't really used it yet.  
19 We are actually renovating and getting  
20 everything ready before we can move into our  
21 new home.

22 CHAIRPERSON MILLER: Thank you. I  
23 think, unless you have any further remarks at

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1 this time, it would be appropriate to go to  
2 the Office of Planning.

3 MR. PARRY: That would be fine.

4 CHAIRPERSON MILLER: Okay. Good  
5 morning, Mr. Jackson.

6 MR. JACKSON: Good morning, Madam  
7 Chair, and members of the Board. My name is  
8 Arthur Jackson. I am a development specialist  
9 with the District of Columbia, Office of  
10 Planning, and I will briefly summarize the  
11 Office of Planning's report.

12 Specifically, with this  
13 application the Zoning Administrator forwarded  
14 a letter to the Board dated April 2, 2007,  
15 suggesting that this application requires a  
16 variance from 2500.4 of the zoning regulations  
17 to allow an interior addition to a two-story  
18 accessory structure and a variance from 2500.5  
19 so the new second floor of the accessory  
20 structure can be put to use other than living  
21 quarters for domestic servants.

22 As is stated in that report, we do  
23 not think 2500.5 is applicable, because this

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1 provision is limited to the R-1-A and R-1-B  
2 zoned districts, and this property is in R-5  
3 zoned district.

4 As a result, the Office of  
5 Planning did the analysis, felt that the  
6 application meets the requirements for  
7 variance relief, and recommends approval of  
8 the variance from 2500.4 to allow the  
9 installation of a finished second floor on the  
10 second level subfloor of the accessory garage.

11 We also included a recommendation  
12 that there would be conditions that no  
13 kitchen, bathing or toilet facilities be  
14 allowed to be installed in this accessory  
15 building, in order to address the concerns of  
16 this possibly turning into an accessory  
17 dwelling.

18 That concludes the brief summary  
19 of the Office of Planning report, and we  
20 remain available to answer questions.

21 CHAIRPERSON MILLER: Mr. Jackson,  
22 is your analysis with respect to 2500.4 based  
23 on the ZA's characterization of the second

1 floor as a mezzanine as opposed to a story?

2 MR. JACKSON: Yes.

3 CHAIRPERSON MILLER: And do you  
4 know what that was based on, that  
5 determination?

6 MR. JACKSON: No. We contacted --  
7 The Office of Planning contacted the Zoning  
8 Administrator's office several times to ask  
9 for further interpretation and possibly a  
10 reissuance of the letter to address the issue  
11 of relief, and were not successful.

12 CHAIRPERSON MILLER: Did that  
13 request only go to 2500.5 or did it also go to  
14 2500.4?

15 MR. JACKSON: Both sections.

16 CHAIRPERSON MILLER: Both? Okay.  
17 So did you see the photographs that were  
18 distributed this morning showing the floor on  
19 the second floor?

20 MR. JACKSON: We visited the site.

21 So we have --

22 CHAIRPERSON MILLER: Oh, you  
23 visited?

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1 MR. JACKSON: Yes.

2 CHAIRPERSON MILLER: Okay. Well,  
3 does that look like a mezzanine to you or a  
4 floor -- or a story?

5 MR. JACKSON: Well, again it  
6 depends on the -- This wasn't the Office of  
7 Planning's interpretation. That's the Zoning  
8 Administrator's interpretation. So we would  
9 defer to them for their direct interpretation  
10 of this regulation, since they have that  
11 responsibility.

12 Again, we tried to get  
13 clarification for that, but since we cannot  
14 get clarification or additional information  
15 about how they reached that determination,  
16 rather than dispute that, we felt that it was  
17 more pertinent to just address the provision  
18 that we don't think really applies, which is  
19 2500.5, and to accept that, if this does  
20 apply, then certain relief is required, and we  
21 support that relief.

22 That is -- I'm sorry. If their  
23 interpretation on the mezzanine does apply,

1 then 2500.4 would be a provision that needed  
2 relief and, as such, we support that relief.

3 CHAIRPERSON MILLER: Do you have  
4 an opinion, if the Board were to determine  
5 that the second floor is not a mezzanine but,  
6 in fact, a story, whether or not relief would  
7 be required?

8 MR. JACKSON: I am inferring from  
9 what you are saying that, if you were to  
10 interpret this an existing nonconformity in  
11 the building, would relief be required. If  
12 that was the case, I would say no.

13 CHAIRPERSON MILLER: Also, do you  
14 have an opinion whether an exercise room and  
15 storage use would be uses that are incidental  
16 or subordinate to a residence; and, therefore,  
17 a permitted use?

18 MR. JACKSON: We did have  
19 communication with the Zoning Administrator's  
20 office where they said that there have been  
21 instances, similar instances, where they had  
22 approved requests to use accessory buildings  
23 for uses that were incidental or are normally

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1 associated with a single family dwelling.

2 We did get a positive response to  
3 that. So we would concur with that  
4 interpretation.

5 CHAIRPERSON MILLER: Other  
6 questions from Board members?

7 MR. JACKSON: Madam Chair, I would  
8 note that this -- With the decision, the Board  
9 does seem to be making a further  
10 interpretation of how they would deem the  
11 status of a building -- of a second level of  
12 a building like a garage, like this garage,  
13 should be determined. So it has to be not  
14 determined a mezzanine but a floor.

15 I think it might be worthwhile to  
16 have a full order coming out explaining that  
17 interpretation such that it could be useful  
18 for the Zoning Administrator and, of course,  
19 the Office of Planning to use in future cases.

20 As you know, with a summary order  
21 we really oftentimes don't have all the  
22 thinking behind that order, and so it's not as  
23 useful as something that is more specific to

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1 the details of how you reached that decision  
2 and how it should be used in the future.  
3 That's just a suggestion.

4 VICE CHAIRPERSON ETHERLY: Madam  
5 Chair, never being one to hold my water with  
6 respect to an opinion here, it's a fairly  
7 unusual circumstance, but not one in which we  
8 haven't dealt with before where, through the  
9 testimony, through the Office of Planning  
10 presentation, perhaps we are confronted with  
11 a circumstance where it could very well be  
12 possible that relief is not required in this  
13 instance, I think we have walked very  
14 carefully through 2500 and, in particular  
15 2500.5 which clearly on its face does not  
16 apply here, because we are not talking about  
17 living quarters for a domestic employee.

18 2500.4 would appear to not be  
19 applicable, because we have what I am probably  
20 leaning very strongly toward interpreting to  
21 already be an existing story as opposed to a  
22 mezzanine, again based on the testimony and  
23 the photographic evidence, it would appear

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1 that the definition of a mezzanine as  
2 presented in the zoning regulations would not  
3 be satisfied here; because it appears that  
4 more than -- and as I find the definition, it  
5 would appear that more than one-third of the  
6 area of the floor immediately below what is  
7 your second floor level is, in fact, covered.

8 So it is not an open loft space  
9 or, more formally, a mezzanine. The only  
10 opening would be the stairwell, and just to  
11 reiterate, you are simply moving the stairwell  
12 to create better vehicular access on the first  
13 floor. You are not enlarging the stairwell or  
14 otherwise creating any kind of larger opening  
15 that would turn this into a mezzanine.

16 As I look at the applicant, the  
17 applicant is indicating that, no, their plans  
18 do not contemplate that. So it would appear  
19 to be the case that you have an existing story  
20 which just further makes this a nonconforming  
21 structure.

22 As you are not enlarging it, you  
23 are not expanding it, and that would,

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1 therefore, take us into 2001, nonconforming  
2 structures devoted to conforming uses. 2001  
3 simply doesn't appear to be invoked here.

4 So I would suggest, Madam Chair,  
5 that we are confronted with really a question  
6 of, as Mr. Jackson alluded to, if it is the  
7 case that there is no relief required here,  
8 because we are interpreting the mezzanine to,  
9 in fact, be a story here, this applicant may  
10 not be required to be here. But I'm not  
11 certain if that means that is the end of our  
12 case here, because I wouldn't want to put you  
13 in the position -- I'm not suggesting that you  
14 would end up there, but I wouldn't want to put  
15 the applicant in the position of having to go  
16 back to DCRA and the Zoning Administrator and  
17 say, hey, well, wait a minute, we just kind of  
18 had this conversation, and BZA thinks  
19 something differently.

20 Hence, Mr. Jackson's, I think,  
21 very, very apropos suggestion of perhaps how  
22 we proceed. But that's my leaning at this  
23 point, Madam Chair. I mean, I've just been

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1 perusing the regs and trying to think if there  
2 is anything that we are missing here in terms  
3 of -- I'm just casting about for relief, and  
4 I just can't simply find it here.

5 So that's kind of where I'm at at  
6 this point, Madam Chair. If it's the case  
7 that there is no relief required, we may have  
8 to be somewhat specific in our determination  
9 or in our written order as to why we find  
10 there to be no required relief here, but you  
11 are not enlarging the structure. You are not  
12 expanding it. 2001 is very clear in terms of  
13 what an applicant can do with an existing  
14 nonconforming structure as it relates to  
15 enlargements and additions, and that's not the  
16 case in front of us.

17 Thank you, Madam Chair.

18 CHAIRPERSON MILLER: Thank you.  
19 Does the Applicant have any questions for the  
20 Office of Planning?

21 MR. PARRY: No.

22 CHAIRPERSON MILLER: Just going  
23 through the procedure here.

1 MR. PARRY: No. I don't think we  
2 have any questions for Mr. Jackson.

3 MS. PARRY: But you are all  
4 welcome to come out and to look at it  
5 yourselves to see. It gets very confusing,  
6 because -- It's just very confusing. You  
7 know, it's like, well, you don't need this,  
8 you don't need that, but we want to do  
9 everything legally so we don't have any  
10 problems down the road.

11 CHAIRPERSON MILLER: Right, right.  
12 Okay. Is the ANC here in this case? No?  
13 Okay. Is there anybody else here who wishes  
14 to testify on this case, either in support or  
15 opposition?

16 Are there any other questions from  
17 Board members?

18 VICE CHAIRPERSON ETHERLY: No  
19 questions, Madam Chair. I'll just -- As you  
20 indicated earlier during our proceeding, we  
21 did receive a copy of ANC-2B's report just  
22 prior to the proceeding and a letter dated  
23 July 26, 2007.

1           It appears, of course, to consider  
2           the case on the merits of what was the  
3           previously contemplated -- or what was  
4           originally advertised as variance relief, and  
5           they did vote at a duly noticed public meeting  
6           with a quorum, not indicating what the quorum  
7           was, but they did a vote to support the  
8           application by a vote of eight to zero.

9           CHAIRPERSON MILLER: Okay. Does  
10          the applicant have any final remarks?

11          MR. PARRY: No, I don't think we  
12          have any.

13          CHAIRPERSON MILLER: Okay. Then -  
14          -

15          MR. PARRY: Thank you for  
16          considering everything.

17          MS. PARRY: Yes, thank you.

18          CHAIRPERSON MILLER: Okay. I  
19          think the Board is ready to deliberate on this  
20          today now. Mr. Etherly has already somewhat  
21          deliberated on it, and I think we've had some  
22          indication where we are coming from.

23          Okay. So at this point then, I

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1 think what we will do is the Board will --  
2 Well, I'll do a motion, I think, and we will  
3 deliberate under motion.

4 That motion would be to dismiss  
5 Application Number 17658 for a variance from  
6 the story limitations under Subsection 2500.4  
7 and a variance from the use provisions to  
8 allow the second floor of an accessory  
9 structure to be used as an exercise room under  
10 Subsection 2500.5 at premises 1529 S Street,  
11 N.W. Do I have a second?

12 VICE CHAIRPERSON ETHERLY :  
13 Seconded, Madam Chair.

14 CHAIRPERSON MILLER: Okay. Taking  
15 the two variances, at least -- Well, taking  
16 the variance from 2500.5 first, that is the  
17 variance that goes to using the structure for  
18 living quarters of domestic employees of  
19 family living in the main structure. As the  
20 Office of Planning has stated, this is in the  
21 R-5-B district, and that provision is not  
22 applicable in that provision at all, and also  
23 the applicants are not seeking to use the

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1 living quarters for domestic employees.

2 So, therefore, no relief is  
3 required, in my opinion, for that one on those  
4 grounds.

5 2500.4 states that an accessory  
6 building in any zone district shall not exceed  
7 one story or 15 feet in height except as  
8 provided in 2500.5.

9 In this case, the carriage house  
10 at issue is 19 feet at height. It is already  
11 nonconforming with 2500.4, and the evidence  
12 that we have heard today in the form of a  
13 photograph and testimony indicate that there  
14 already is a second story in place, and there  
15 is no evidence that this hasn't been in place  
16 since enactment of the regulations. The  
17 carriage house is historic. That was in place  
18 well before the enactment of our regulations.

19 Therefore, we have a legally  
20 nonconforming structure which is allowed to  
21 continue without any variance relief unless we  
22 had evidence that there are nonconforming  
23 aspects that are going to be increased,

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1 enlarged, expanded, etcetera, and that does  
2 not seem to be the case, based on the evidence  
3 before us.

4           There was an indication that the  
5 ZA determined somehow this was a mezzanine,  
6 but we can't see it in the photos, and there  
7 is no written basis that accompanies the ZA  
8 referral. So in my view, there is no  
9 expansion of a nonconforming use which would  
10 trigger variance relief.

11           Finally, I don't believe a use  
12 variance is required in that applicants have  
13 indicated that they are going to be using this  
14 second story for exercise and for storage, and  
15 as the Office of Planning has indicated in  
16 many instances, that has been determined by  
17 the ZA to be incidental or subordinate to a  
18 residential use, and I would think -- It is  
19 this Board member's opinion that that, in  
20 fact, is an incidental or subordinate use  
21 found in many main houses.

22           So, therefore, I don't find any  
23 relief required.

1                   VICE CHAIRPERSON ETHERLY: As  
2                   second of the motion, I would agree  
3                   wholeheartedly and would associate myself with  
4                   the Chair's remarks.

5                   As the definition of mezzanine  
6                   reads -- and I will just be very clear, again  
7                   with Mr. Jackson's suggestion very much in  
8                   mind -- a floor space within a story between  
9                   its floor and the floor or roof next above it  
10                  and having an area of not more than one-third  
11                  of the area of the floor immediately below.  
12                  A mezzanine shall not be considered a story in  
13                  determining the maximum number of permitted  
14                  stories.

15                  Clearly, by the photographic  
16                  evidence -- and I will be very decisive with  
17                  my language. Clearly, the photographic  
18                  evidence would indicate that more than one-  
19                  third of the floor space below the second  
20                  story is, in fact, covered by the existing  
21                  floor. It would appear very much, based on  
22                  the testimony -- it would be a longstanding  
23                  condition.

1           So I think the evidence would very  
2 solidly support that this is, in fact, a  
3 story, as was indicated in the Office of  
4 Planning's written report. Perhaps there was  
5 some concern on the ZA's part that the floor  
6 wasn't finished. I'm not reaching that.

7           I don't think we have to reach it,  
8 and I don't necessarily read into the  
9 definition of mezzanine any requirement  
10 regarding the percentage of which a floor has  
11 to be finished. It simply has to be more than  
12 the area below it and, clearly, the  
13 photographic evidence and the testimony on the  
14 record would support it.

15           As the Chair said, 2005.4, 2005.5,  
16 simply do not apply -- 2500.4 and 2500.5  
17 simply are not applicable here, and 2001 which  
18 deals with nonconforming structures devoted to  
19 conforming uses would not apply, because we  
20 are not talking enlargement here.

21           My only question as a closeout to  
22 the motion, Madam Chair, would be how do we  
23 want to deal, if at all, with regard to the

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1 Office of Planning's suggested condition  
2 regarding the prohibition against kitchen or  
3 -- I apologize for not having Office of  
4 Planning's language here, but I would perhaps  
5 suggest that it is not necessary, as the  
6 applicant has indicated on the record that  
7 their plans do not include or contemplate the  
8 addition of a kitchen or bathroom facilities  
9 on that second story.

10 CHAIRPERSON MILLER: Okay. Well,  
11 two things. First of all, I think -- I also  
12 want to add that I think this falls under  
13 2001.2 which allows ordinary repairs,  
14 alterations, and modernizations to a  
15 structure. It says, "including structural  
16 alterations shall be permitted." And that is  
17 under nonconforming structures devoted to  
18 conforming uses.

19 I think that what we should do is  
20 issue an order that explains our reasoning in  
21 this case, basically which puts in writing  
22 what we have said here. Whether that is a  
23 full order per se or a summary order or a

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1 hybrid order, I think what we want to do is  
2 we'll get it in writing so that there will be  
3 no question when you take it to the ZA that no  
4 relief is required, because A, B, C, these are  
5 the regs, this is the way we interpreted them.

6 Sometimes a full order can go into  
7 whole big findings of fact and legal cases,  
8 and it can take a very long time to do when we  
9 don't exactly probably want to do that,  
10 because you probably need this soon to go  
11 forward.

12 Ms. Monroe is here, who will  
13 probably be writing this order, and so I think  
14 that basically we could -- I don't know if we  
15 need to authorize this as a summary order, but  
16 if we do, we can say that with the proviso  
17 that we have done this before, that we will  
18 give clear direction to the Zoning  
19 Administrator as to why no relief is required  
20 and what regs, so that you won't have any  
21 problems.

22 MS. PARRY: Thank you.

23 CHAIRPERSON MILLER: Is that the

1 consensus of the Board? Well, we haven't  
2 voted on this yet, have we? Are there other  
3 comments?

4 All right. Then I think we are  
5 ready to vote on it.

6 All those in favor of -- Oh, wait  
7 a minute. I'm sorry. Let me make one other  
8 comment about the kitchen and all that kind of  
9 stuff.

10 Okay. First of all, a dismissal  
11 order can't have any conditions with it. I  
12 mean, we are dismissing the case.

13 I don't think that the case gives  
14 rise to a concern about conditions anyway. I  
15 think, if you wanted to do something like  
16 that, you actually would have to seek relief.  
17 We are saying you don't need relief for this  
18 use, exercise and storage, and that will be  
19 put in the order. So that if somebody were to  
20 come along and want to do a dwelling up there,  
21 they would then have to get relief, because  
22 that is not what is covered here.

23 COMMISSIONER HOOD: I just want to

1 ask Ms. Monroe. If we dismiss the case -- and  
2 I think the evidence is clear -- my first  
3 question that I would have asked early on was  
4 were they even here. But anyway, if we  
5 dismiss -- I just don't want to put this  
6 applicant through a whole lot, and I think  
7 that's where the Chair is going.

8 If we dismiss this case and then  
9 the Zoning Administrator -- I'm not sure what  
10 they may come back with -- come back, does  
11 that still put them in that realm of not being  
12 able to come back in front of this Board for  
13 a year or is it six months?

14 I just don't want to -- If they  
15 have to come back -- and I hope they won't  
16 have to keep going back and forth, but I'm  
17 just wondering. If we dismiss, or is it  
18 easier for them to just --

19 MS. MONROE: I have to look,  
20 because I don't remember. But I don't think  
21 they would have to come back. I mean, if you  
22 make it clear. And we can do a full order, if  
23 you want to. I mean, I will say that.

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1 COMMISSIONER HOOD: A full order?

2 MS. MONROE: I mean, I don't think  
3 they would have to come back at all. It's  
4 come back within a year if you are denied and  
5 you need new facts. I don't remember what it  
6 is for dismissal, to be honest. I'd have to  
7 look. I could tell you in a second.

8 COMMISSIONER HOOD: No, no. If  
9 you feel confident, I'm confident.

10 MS. MONROE; Yes, I don't think  
11 there would be any question.

12 COMMISSIONER HOOD: Okay, thank  
13 you.

14 CHAIRPERSON MILLER: I think that  
15 the order would be written just about as  
16 clearly as if we were granting the variance,  
17 like the reasons why and the reasons why we  
18 are dismissing it; and the ZA has to follow  
19 our orders. So I don't think this is going to  
20 create any problem, and maybe prevents future  
21 problems.

22 Yes, it's here because the ZA made  
23 some interpretation that we don't agree with,

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1 based on the evidence. So maybe in the future  
2 the ZA will talk some more with the Office of  
3 Planning before it gets here.

4 Okay, any other comments? Then  
5 we are ready for a vote.

6 All those in favor, say Aye. All  
7 those opposed? All those abstaining?

8 Would you call the vote, please?

9 MS. BAILEY: Madam Chair, the vote  
10 is recorded as four-zero-one. The Board has  
11 voted to dismiss the application. Ms. Miller  
12 made the motion. Mr. Etherly seconded. Mr.  
13 Loud, Commissioner Hood support the motion,  
14 and the NCPC representative is not present at  
15 this time.

16 Just for clarification, this is a  
17 full/dismissal order?

18 CHAIRPERSON MILLER: I think --  
19 Well, if we need to authorize something less,  
20 we can always do more. I mean, it's somewhat  
21 of a hybrid between a summary order and a full  
22 order, because I think the goal is to fully  
23 express the reasoning here, but not to --

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1 There is no need -- there is no opposition  
2 with respect to the findings of facts and  
3 things like that. So it may not be quite as  
4 full an order as some. Is that the consensus  
5 of the Board? Okay.

6 MS. BAILEY: Thank you.

7 CHAIRPERSON MILLER: Thank you. Do  
8 you have any questions?

9 MR. PARRY: No, ma'am.

10 CHAIRPERSON MILLER: Okay. So as  
11 soon as the order is written, I'm sure you  
12 will be contacted, and you can contact the  
13 Office of Zoning if you have any other  
14 questions.

15 MR. PARRY: All right. Thank you.

16 CHAIRPERSON MILLER: Okay, good  
17 luck to you.

18 MS. PARRY: Thank you very much.

19 CHAIRPERSON MILLER: Ms. Bailey,  
20 we are ready for the next case when you are.

21 MS. BAILEY: Madam Chair, that is  
22 Application 17655 of Terence A. Gerace,  
23 pursuant to 11 DCMR 3104.1 for a special

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1 exception to operate a bed and breakfast  
2 facility having six sleeping rooms under  
3 subsection 203.10. The property is located in  
4 the Dupont Circle R-5-B District at premises  
5 1824 R Street, N.W., Square 134, Lot 152.

6 If I am not mistaken, there was a  
7 request for party status in this application.

8 CHAIRPERSON MILLER: Thank you. I  
9 as going to say the parties can come forward,  
10 but you are the party. Okay. Would you  
11 introduce yourself for the record, please?

12 MS. GERACE: Good morning. I'm  
13 Terence Gerace, and I am the owner and full  
14 time resident of 1824 R Street, N.W. where I  
15 currently operate a two-bedroom bed and  
16 breakfast as a matter of right under a home  
17 occupation permit, 129610, and today we are  
18 seeking to increase our number of sleeping  
19 rooms from two to six.

20 CHAIRPERSON MILLER: Okay, I'm  
21 going to stop you right there, just because we  
22 have what Ms. Bailey has identified as a  
23 request for party status, and they would need

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1 to introduce themselves before we get into it.

2 Are Sarah and Sam Cliburn here?

3 Okay.

4 I just want to bring my Board  
5 members' attention to Exhibit 22, which is a  
6 party status application from them. It is not  
7 very specific, specifically with respect to  
8 how their interests would be more  
9 significantly, distinctly, or uniquely  
10 affected in character or time by the proposed  
11 zoning action. They say not interested.

12 In any event, they are not here to  
13 participate as a party. So I would suggest  
14 that we not grant them party status based on  
15 that, as well as the application, which really  
16 doesn't identify how they would qualify for a  
17 party status.

18 We could take their application  
19 into the record as evidence testimony. Okay?

20 MEMBER LOUD: Where do you see  
21 that name?

22 CHAIRPERSON MILLER: Well, their  
23 name is actually at the bottom.

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1 MEMBER LOUD: Oh, I see it.

2 CHAIRPERSON MILLER: Do you have a  
3 copy of this?

4 MR. GERACE: No, I don't. Am I  
5 understanding that they wrote "not  
6 interested," meaning that they weren't  
7 considering being a party to it?

8 CHAIRPERSON MILLER: Well, it's  
9 kind of --

10 MR. GERACE: I have no idea who  
11 those people are. They are not immediate  
12 neighbors.

13 CHAIRPERSON MILLER: Okay. They  
14 say they object; there is nothing to benefit  
15 the neighborhood. They don't know what legal  
16 interests they have. They don't know how far  
17 away they are, and --

18 MR. GERACE: And neither do I.

19 CHAIRPERSON MILLER: And that  
20 there would be too much traffic. That would  
21 be the impact. Anyway, there is not a lot in  
22 here, but indicating for participation as a  
23 party.

1           So if there is no objections by  
2 the Board, we would -- Okay, then we will, by  
3 consensus of the Board, deny party status, but  
4 take in the application into the record as  
5 testimony. Okay.

6           That's the only preliminary  
7 matter. Now we can go forward with your  
8 presentation.

9           MR. GERACE: Sure. So we  
10 currently operate a legal two-bedroom bed and  
11 breakfast at that residence. I am the full  
12 time owner/occupant. I run the business, make  
13 the breakfast, make the beds.

14           Section 203.8, I think you  
15 probably have before you: The maximum rooms  
16 shall be two except, pursuant to 203.10, the  
17 maximum sleeping rooms can be increased to  
18 four in a dwelling that is an historic  
19 landmark; or located in a historic district  
20 and certified by state Historic Preservation  
21 Officer as contributing to the character of  
22 the historic district, the number of sleeping  
23 rooms may be increased to six.

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1                   We do have that Historic  
2 Preservation Officer certification in the  
3 application.

4                   Then the next, probably most  
5 pertinent, following there is Section 203.8(e)  
6 which goes to parking. In addition to the  
7 required parking for the dwelling unit, one  
8 parking space shall be provided for each two  
9 sleeping rooms devoted to guests' use.

10                  There should be a photo there of  
11 the parking lot. It shows four vehicles,  
12 actually will take five vehicles, but that  
13 satisfies 203.8(e).

14                  That's in terms of what is on that  
15 block. Actually, it's mixed commercial,  
16 residential, but more toward the commercial  
17 side, in fact, on our side of the street.  
18 There to the left of us is the American Friend  
19 Service Committee, followed by the American  
20 Colleges Association, followed by some shadow  
21 organization. There's something there. It's  
22 owned by something in the British Embassy,  
23 followed by doctors' offices on the first

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1 level of a condominium.

2 On the opposite side of the  
3 street, there is a single family dwelling,  
4 actually two single family dwellings, one  
5 five-unit condominium, a rooming house, the  
6 International Student Dormitory, and the  
7 Jewish War Museum.

8 So it's clearly a very, very mixed  
9 use. The building, before I restored it,  
10 actually was commercial office space, which  
11 had far more traffic. They actually had 12  
12 parking spaces and far more traffic than we  
13 could ever hope to generate.

14 The nice thing about that  
15 particular section is that that alley and  
16 parking area has three accesses to it, which  
17 many only have two. So you can actually -- We  
18 do sit on the alley. So you can actually  
19 approach our parking lot from three different  
20 directions, and like I said, we do have  
21 adequate parking, which is highly unusual at  
22 any bed and breakfast in the city.

23 Our location, being a block and a

1 half from the Dupont Circle Metro and being in  
2 the city itself, means that most people  
3 arriving aren't coming by car anyway. It's  
4 for the business traveler and vacationer in  
5 general. So we don't have a whole lot of  
6 parking issues.

7 CHAIRPERSON MILLER: How long have  
8 you been operating?

9 MR. GERACE: Since -- Well,  
10 October of 2006 is when we got our C of O or  
11 HOP, rather.

12 CHAIRPERSON MILLER: Can you just  
13 remind me where the certification from the  
14 Historic Preservation Officer is in the  
15 application?

16 MR. GERACE: It should be -- and  
17 I've got a copy here, but it should be  
18 attached. The form looks like this, and it  
19 should be attached to the -- Can't tell you  
20 exactly, because I don't know how they put it  
21 together.

22 CHAIRPERSON MILLER: I think it is  
23 Exhibit Number 9. Okay. Oh, okay, is that

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1 all you wanted to say at this point or do you  
2 want to --

3 MR. GERACE: We have met with the  
4 ANC, and you should have their approval letter  
5 as of today. It was late submission from  
6 them, and I believe the Office of Planning's  
7 report was positive. So I'm not --  
8 Immediately, we've met with our condominium  
9 association behind us, actually along with our  
10 ANC Commissioner, and nobody has voiced any  
11 objections, and certainly we haven't had any  
12 problems since we have been in operation.

13 Our only comment was we weren't  
14 quite sure what the actual special exception  
15 was to, since it is codified that you can have  
16 a six-bedroom bed and breakfast.

17 CHAIRPERSON MILLER: Okay. I can  
18 explain that. 203.10(b) says that the Board  
19 can modify by special exception two of the  
20 conditions enumerated in 203.4 through 203.8.

21 MR. GERACE: Right. So what two  
22 conditions, I guess, is my question.

23 CHAIRPERSON MILLER: Oh, I see

1 what you are saying. You are saying it says  
2 you can do that?

3 MR. GERACE: It says with Historic  
4 -- as long as you've got -- I'm not asking for  
5 a parking modification. I've got the parking.  
6 No one could actually ever explain that to me.

7 CHAIRPERSON MILLER: Okay, I'll  
8 try. I just got to find the provision again,  
9 the provision which says that you can go to  
10 six.

11 MR. GERACE: Sorry. It's  
12 203.8(c).

13 CHAIRPERSON MILLER: Okay. The  
14 way the Board has interpreted this provision,  
15 I believe, is that two is a matter of right,  
16 and then if you want to increase it, you need  
17 to do that by special exception as set forth  
18 in 203.8(1), I believe. Let me just double-  
19 check. I don't think that's the right  
20 provision. I think it's 203.10 which gives  
21 the Board the authority to modify two of the  
22 provisions set forth in 203.4 through 203.8.

23 Now what you are saying is it says

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1 that the maximum number of sleeping rooms  
2 shall be two except. So the Board has  
3 interpreted that "except" meaning that you can  
4 increase it by special exception to six, if  
5 you are historic by the Board modifying that  
6 condition for you. You can't increase it as  
7 a matter of right. Two is a matter of right.  
8 Six is special exception. If you wanted to do  
9 more, then you would need to get a variance.

10 MR. GERACE: Right. No, I  
11 understand the "more," yes. I guess I'm just  
12 not seeing the two things that you've -- I  
13 would hope that maybe, when they rewrite this  
14 at some point that it's a little clearer,  
15 because it's not for the --

16 VICE CHAIRPERSON ETHERLY: Yes, I  
17 would tend to agree with the Chair.

18 MR. GERACE: I will say that I  
19 doubt that it's ever come up before that  
20 people have had the parking available. We are  
21 very unusual, which is one of the attractions.  
22 So I imagine everyone has always had to come  
23 before and had to have the parking issue

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1 addressed. So this specific situation may not  
2 have come up. So it's just--

3 CHAIRPERSON MILLER: So we've had  
4 to deal with these -- I think we have had to  
5 deal with this situation with the rooms  
6 before.

7 MR. GERACE: Oh, no, definitely  
8 the rooms. I'm just saying that there wasn't  
9 an additional -- There was no other thing that  
10 should have really held it up too much in  
11 terms of -- Usually, people have to explain  
12 why the parking, when we have the -- We  
13 actually have the parking required by code.  
14 And I wasn't sure why they would put that  
15 parking requirement if they didn't expect  
16 people to go up to six.

17 It's okay. We're here now. I'm  
18 just saying --

19 CHAIRPERSON MILLER: The regs are  
20 going to be rewritten.

21 MR. GERACE: If it simply said  
22 that a special -- You want to know what you're  
23 getting your special exception to and, if it

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1 said that you were getting a special exception  
2 to something, you would want to know.

3 CHAIRPERSON MILLER: Right. It's  
4 203.10(b), I guess, that talks about modifying  
5 no more than two of the conditions.

6 MR. GERACE: Okay. So you're  
7 saying just the modification from two to six  
8 is a condition.

9 CHAIRPERSON MILLER: Yes, because  
10 two is a matter of right, and to go more is a  
11 modification. Yes.

12 MR. GERACE: Okay.

13 CHAIRPERSON MILLER: I know that  
14 the regs are not that clear.

15 MR. GERACE: They're not clear.

16 CHAIRPERSON MILLER: Okay. But do  
17 you think that you are -- Perhaps you can just  
18 address whether you comply with all the other  
19 conditions.

20 MR. GERACE: Sure. The other  
21 additions -- 203.8(a) shall be only permitted  
22 -- and not be permitted in a multiple  
23 dwelling. It's a single family home. It's my

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1 residence. Breakfast is the only meal served  
2 and only served to overnight guests.

3 CHAIRPERSON MILLER: I'm sorry.  
4 Where are you reading from?

5 MR. GERACE: This is 203.8. Those  
6 are all the subsections that you have to  
7 comply with. Is that what you were asking?

8 CHAIRPERSON MILLER: Okay, you can  
9 start there. I think Office of Planning also  
10 goes back further, because it's a home  
11 occupation.

12 MR. GERACE: Right.

13 CHAIRPERSON MILLER: But why don't  
14 you go through these first anyway.

15 MR. GERACE: Yes, specific to the  
16 -- Yes, because some of those don't apply,  
17 because it's a bed and breakfast.

18 Right. So Part (a): It's not a  
19 multiple dwelling, and Part (b) is breakfast  
20 is the only meal served, and that's only to  
21 overnight guests. So that's correct. Then we  
22 just talked about Part (c), which is --

23 CHAIRPERSON MILLER: May I ask you

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1 a question, realistically? Does that mean you  
2 -- If guest comes to visit an overnight  
3 guest, you don't serve them breakfast?

4 MR. GERACE: You can't charge  
5 them. Of course, you can serve them  
6 breakfast. That would be a someone -- a guest  
7 in your house.

8 CHAIRPERSON MILLER: I see. It's  
9 in the -- It's included in the -- Okay.  
10 Thanks.

11 MR. GERACE: Well, yeah. I mean,  
12 I would say, if you were trying to get around  
13 that, you wouldn't be -- It would be illegal  
14 for you to charge them for breakfast. I mean,  
15 I think it's to protect restaurants in the  
16 area.

17 CHAIRPERSON MILLER: Right. Okay.

18 MR. GERACE: But, yeah. But  
19 believe me, doing extra cooking is not fun.

20 CHAIRPERSON MILLER: So you have  
21 no incentive to, because --

22 MR. GERACE: Yes. There's a  
23 protection for the cook.

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1                   We've talked about Part (d). It  
2 actually says that the area limitations shall  
3 not be -- which go back to 203.4 -- shall not  
4 be applied in this use, but even though they  
5 don't apply, actually we do fit that. It only  
6 takes up less than 25 percent of the building.

7                   (c) was the parking, which we  
8 noted that we've got, which would require a  
9 total of four spaces. We actually have five.  
10 No cooking facilities in any of the rented  
11 rooms, which we comply with, and the dwelling  
12 shall be owned and occupied as the principal  
13 residence of the operator, and that is the  
14 case.

15                   CHAIRPERSON MILLER: I think there  
16 are some other ones that do apply and, in  
17 particular, I am thinking about -- I think  
18 Office of Planning might have brought this up.  
19 There is one provision that limits the  
20 clientele at the premises to eight -- 203.4(m)  
21 limits eight clients on premises at one time.

22                   MR. GERACE: Correct. That's for  
23 our regular home occupation. Correct.

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1                   CHAIRPERSON MILLER:  If you are  
2 going to increase to six rooms, isn't there a  
3 good chance that you would go above that eight  
4 clients?

5                   MR. GERACE:  It's possible.  If  
6 it's not allowed, we won't be able to do that.  
7 We don't really anticipate -- I mean, just in  
8 terms of my workload.  We are going for six  
9 today, because if we decided to go for more --  
10 You know, it's a whole process again.  I don't  
11 anticipate even based on demand more than four  
12 rooms.  However, it is a little bit of an  
13 inconsistent standard, if they allow six  
14 rooms.  It seems reasonable that you would  
15 allow 12 people, but -- and given that this --  
16 I mean, my understand of the reason is to  
17 prevent overcrowding.  It's a 10,000 square  
18 foot building.  So it's one person per 700  
19 feet.  I think we'll be okay in terms of the  
20 spirit of the law anyway.

21                   CHAIRPERSON MILLER:  I mean, I  
22 raise that, because you have to meet the  
23 requirements -- those requirements as well,

1 but also under 203.10(b) that I was referring  
2 to earlier, the Board has the authority to  
3 modify two conditions.

4 So you have only asked for one in  
5 your application, but it seems to me that you  
6 might want to ask us to modify this one as  
7 well.

8 MR. GERACE: Sure, if that's in  
9 your judgment the best thing to do. Yes.

10 CHAIRPERSON MILLER: Well, it is  
11 within our authority right here right now  
12 today.

13 MR. GERACE: Sure. Then I'd like  
14 to request that you increase that.

15 CHAIRPERSON MILLER: Because  
16 otherwise, if you had, you know, 10 people  
17 there at one time, someone could say you are  
18 in violation of your order.

19 MR. GERACE: Okay. Thanks.

20 CHAIRPERSON MILLER: Okay. Do you  
21 -- I mean, do you ever have more than -- Do  
22 you anticipate having more than eight or 12  
23 separate from the number of clients on the

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1 premises at one time?

2 MR. GERACE: Not for a paid event,  
3 and we have family. My folks are sitting here  
4 and live in town, and my sister is -- and we  
5 have family events there and everything all  
6 the time, but that is not covered by the regs,  
7 really.

8 CHAIRPERSON MILLER: Right.

9 MR. GERACE: No, not for -- We've  
10 actually made that agreement with the  
11 neighborhood. It's not available for rental  
12 outside, apart from the bedrooms. In other  
13 words, if someone wanted to come and have a  
14 birthday party there, they would have to be  
15 renting out all the bedrooms simultaneously.

16 CHAIRPERSON MILLER: Okay. Well,  
17 let me ask you about that, though, because it  
18 talks about number of people on the premises  
19 at one time. I think that's how it is. Yes.

20 MR. GERACE: Well, that would be  
21 the difference between -- As a private home  
22 owner, I am not restricted to number of -- You  
23 know what I'm saying? So I mean, will there

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1 be more than that? Yes, but not paying to do  
2 that, no.

3 CHAIRPERSON MILLER: Right. And I  
4 don't know if this came up with the neighbors,  
5 but let's just say that you have six rooms  
6 rented to a family, and they want to have a  
7 little family reception at your place. Does  
8 that happen?

9 MR. GERACE: It hasn't happened,  
10 but again I would say we wouldn't be charging  
11 for the use of the public space.

12 CHAIRPERSON MILLER: You can't  
13 charge for use?

14 MR. GERACE: And that's what we  
15 agreed with the neighbors, that if someone did  
16 want to do that, they are doing that as our  
17 guests, not as paying -- and there is no  
18 adjustment in the price cost or whatever.  
19 Honestly, we aren't advertising to do that,  
20 because it's a pain in the neck.

21 CHAIRPERSON MILLER: Okay.

22 MR. GERACE: So, yeah, we won't be  
23 making any income off of people throwing

1 parties, and it's a reasonable question, I  
2 mean, certainly, for the neighbors, and we did  
3 talk about that particularly.

4 We are surrounded by a -- The  
5 whole back row -- I'm not sure if you are  
6 familiar with that area -- has actually all  
7 low-rise condos, and we met with the condo  
8 association, and we agreed no valet parking.  
9 There are a number of things that we agreed  
10 voluntarily to, most because we are not -- We  
11 are doing this as a adjunct to the family  
12 home, not as a money maker, basically.

13 CHAIRPERSON MILLER: Okay. I want  
14 to ask it, because if we go to modifying that,  
15 we have a choice as to how to modify it. We  
16 have a choice as to whether to come up with a  
17 different number -- you know, no more than 12,  
18 no more than 20, no more than -- or just --

19 MR. GERACE: I guess it would be  
20 in your -- I mean, in your judgment, if we are  
21 not charging for it, whether that -- if you  
22 think that we should still be covered to have  
23 some more people, that's fine. If we are not

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1 charging, whether that really falls into how  
2 many people we have in our house, I suppose.  
3 I defer to your judgment what would be --

4 CHAIRPERSON MILLER: Now we don't  
5 have an ANC report in this case.

6 MR. GERACE: You do. It was e-  
7 mailed to you last night at 10:30 from the  
8 ANC, but I also printed it out for you.

9 CHAIRPERSON MILLER: Oh, it just  
10 came in this morning?

11 MR. GERACE: Yes. But I submitted  
12 a copy, actually, to Mr. Moy this morning.

13 CHAIRPERSON MILLER: Did this  
14 issue come up at all as to how many people  
15 could be there?

16 MR. GERACE: No. The ANC wondered  
17 why I had to be before them as well. That was  
18 the direct words. They were not sure why  
19 exactly.

20 CHAIRPERSON MILLER: I know why it  
21 has to be this way.

22 MR. GERACE: But, no, there  
23 wasn't. I mean, in the neighborhood there's

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1       receptions going on all the time for people.  
2       So it barely -- We are a block and a half off  
3       Connecticut and between 17th Street. So  
4       between the bar traffic and -- I mean, it's  
5       not perceptible.

6                       On the other hand, I appreciate --  
7       I mean, I would want to know that, if I were  
8       a neighbor, and certainly living there myself,  
9       it's not in my interest to make -- You know,  
10      I plan to be there for the rest of my life.  
11      So I have no problem agreeing. We entered a  
12      voluntary agreement, which unfortunately,  
13      Commissioner Mehan hasn't printed out yet, but  
14      the agreement was basically what I said, that  
15      we weren't -- We didn't give a number of  
16      people, but that we weren't renting it out as  
17      event space apart from the bedrooms, and we  
18      would never have valet parking or anything  
19      like that.

20                      CHAIRPERSON MILLER: Okay. So you  
21      did address the events question with the ANC.

22                      MR. GERACE: Sure. And we made it  
23      clear to them that we -- you know, we have

1 family events fairly regularly, but that's not  
2 -- you know, that's not covered, and we  
3 actually don't -- For example, last night we  
4 had some people over to show some artwork. It  
5 was the Washington Studio School, which is a  
6 nonprofit. There was no charge. And they are  
7 fine with that.

8 CHAIRPERSON MILLER: Because it's  
9 also your residence. So you have your own  
10 events.

11 MR. GERACE: Sure. Yes. It's  
12 your house. I mean, in fact, by having a bed  
13 and breakfast, the neighborhood has a lot more  
14 control over what happens in my house than  
15 they would if it were just my house. I could  
16 be throwing raucous parties.

17 CHAIRPERSON MILLER: Right, right.  
18 Okay.

19 MR. GERACE: At least here,  
20 someone could complain.

21 CHAIRPERSON MILLER: Okay. Mr.  
22 Etherly?

23 VICE CHAIRPERSON ETHERLY: Thank

1 you very much, Madam Chair.

2 First of all, I'm curious. Your  
3 parents are in town. Welcome to you. So did  
4 you cook breakfast for them this morning?

5 MR. GERACE: They actually had  
6 cold cereal this morning, because -- Well,  
7 I'll tell you why -- because our sign said the  
8 meeting was at nine o'clock, and said we were  
9 first on the meeting. So we were here at  
10 8:30.

11 VICE CHAIRPERSON ETHERLY: Well,  
12 we definitely won't hold that against you, but  
13 I hope it was good cold cereal this morning.

14 MR. GERACE: They do live in --

15 VICE CHAIRPERSON ETHERLY: They  
16 live in the District. Okay.

17 MR. GERACE: Yes. My brother-in-  
18 law is actually a prosecutor down here.

19 VICE CHAIRPERSON ETHERLY: Okay.  
20 And then that was asked very much in jest, not  
21 part of the analysis here.

22 MR. GERACE: But they did have  
23 cold cereal.

1 VICE CHAIRPERSON ETHERLY: Okay.  
2 Very good waffles, we hear. All righty then.  
3 Well, that's a good ringing endorsement for  
4 you then.

5 Quick question: What is your  
6 current C of O? Does your current C of O  
7 specify any maximum occupancy?

8 MR. GERACE: Actually, because  
9 they made an error on it, it says nothing. It  
10 says I can have unlimited. My business  
11 license says two rooms, but my C of O does not  
12 have a --

13 VICE CHAIRPERSON ETHERLY: What  
14 I'm getting at is perhaps more a step away  
15 from what's driven by the bed and breakfast  
16 inquiry, to is there some type of limit, just  
17 based on the square footage from a code  
18 standpoint?

19 MR. GERACE: Sure. There's eight  
20 bedrooms and nine bathrooms. So I kind of  
21 leave that up to -- and it's 10,000 square  
22 feet, I imagine. Under the residential code,  
23 I don't know that there is, as long as -- It's

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1 number of families and unrelated relatives  
2 that can live in a place, but if you've got a  
3 really big family, I don't know.

4 VICE CHAIRPERSON ETHERLY: Okay.  
5 Because, as the Chair indicated in the  
6 discussion about 203.4(m) which gets to the  
7 practitioner shall have no more than eight  
8 clients or customers on the premises at any  
9 one hour period, what prompted a little bit of  
10 that inquiry was in what is your application  
11 Part D statement in Exhibit Number 4. You  
12 indicate an intended maximum of 12, double  
13 occupancy in six rooms.

14 MR. GERACE: Right. But sort of  
15 the caveat that I didn't expect to really  
16 reach that. That would be more than I really  
17 wanted.

18 VICE CHAIRPERSON ETHERLY: Got  
19 you. And I'm definitely, just as one member,  
20 not too bent out of shape about it. I want to  
21 be sure, as the Chair indicated, that we just  
22 get it right for you so it doesn't become an  
23 unnecessary handcuff.

1                   Okay. Thank you. Thank you,  
2                   Madam Chair.

3                   CHAIRPERSON MILLER: In looking at  
4                   that further while you were speaking, it talks  
5                   about no more than eight clients or customers  
6                   on the premises. So it's a little different  
7                   from events. You know, I think that the eight  
8                   clients is probably talking about your guests  
9                   and the bed and breakfast. However, just so  
10                  that we do get it right, it probably does make  
11                  sense to come up with a number as opposed to  
12                  -- or perhaps it does. I don't know. We'll  
13                  see.

14                  Then I'm wondering, okay, so if  
15                  you think it's double occupancy to come up  
16                  with 12, but then I don't know. Do you have  
17                  the families that might stay in the rooms?

18                  MR. GERACE: No. We actually set  
19                  it up not to do that. I mean, there's just  
20                  either a king or a queen sized bed. There is  
21                  no chance of the bedrooms having more than 12  
22                  people. No.

23                  CHAIRPERSON MILLER: Okay. What

1 Mr. Etherly and I are saying is we don't want  
2 to set you up for violation, you know.

3 MR. GERACE: Sure. I appreciate  
4 that.

5 CHAIRPERSON MILLER: Do you think  
6 that 12 is a good number or do you think that  
7 you would want a little -- you would need a  
8 cushion there for 14? I don't know. We have  
9 to do something about that provision.

10 MR. GERACE: Sure. Well, I'm not  
11 sure. Do you know if there is a section that  
12 says something about not having more than five  
13 on-site sales, which I took it to be five  
14 events; because usually what comes up in the  
15 neighborhood is whether you are going to have  
16 tons of paid events, and they don't give like  
17 a number of people, like I'm not sure if they  
18 are counting -- It should be in that same list  
19 of requirements there.

20 I believe it's if you want five or  
21 more or six or more events or on-site sales on  
22 the premises that you need to get an exception  
23 or a variance to that. I'm not sure if they

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1 mean -- Yeah, I don't know if they are  
2 counting people for that specifically or not.

3 CHAIRPERSON MILLER: I see it.  
4 That's 203.6, but I don't see people.

5 MR. GERACE: That's what I'm  
6 saying. So does it mean they still meant that  
7 you were only supposed to have eight people at  
8 your on-site sale or --

9 CHAIRPERSON MILLER: All right.

10 MR. GERACE: Whatever --  
11 Unfortunately, I've read it too many times.

12 CHAIRPERSON MILLER: But do you  
13 have an opinion as to --

14 MR. GERACE: I mean, if you set it  
15 -- You can set it at 14, but what I'm saying  
16 is that, since I'm not going to rent the space  
17 out, I guess it doesn't -- or in your opinion,  
18 does it matter?

19 Otherwise, I would say, well,  
20 let's say that someone came and wanted to use  
21 -- have an expanded brunch and bring a caterer  
22 in to do that, and they might have 25 people  
23 there. Now none of those -- I wouldn't be

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1 charging for the space. I wouldn't be making  
2 money off the caterer, and I would just be  
3 allowing them use of my home for their event,  
4 for their convenience, actually.

5 Do we need to adjust the number up  
6 for that or -- That would be my question, I  
7 guess.

8 CHAIRPERSON MILLER: Okay. Just  
9 looking at this with respect to your  
10 particular business, which is primarily bed  
11 and breakfast --

12 MR. GERACE: Exactly, yes.

13 CHAIRPERSON MILLER: -- I'm  
14 looking at it as your clients would only be  
15 the people that occupy your room, because  
16 that's what you said. You are not allowed to  
17 have another client, a separate event person  
18 for the bed and breakfast.

19 MR. GERACE: Well, yes, I've  
20 chosen not to. I have chosen that I don't  
21 want to see that, because I don't want to do  
22 events. It's a nightmare.

23 CHAIRPERSON MILLER: Right, only

1 for your own personal thing, which is  
2 separate. So this is a bed and breakfast. So  
3 let's just say you have six rooms. So we know  
4 that it needs to be more than eight, and then  
5 I was asking you, well, do you have any  
6 families instead of just double occupancy.

7 MR. GERACE: You know, maybe if  
8 push came to shove, we would let someone put  
9 a cot in. So maybe we do want to say 14. I  
10 mean, that would be -- I mean, I appreciate  
11 it. That's fine, but I mean, not my intention  
12 to be using that.

13 CHAIRPERSON MILLER: Right, okay.

14 MR. GERACE: Because there is also  
15 the -- I mean, I'm just not going to be able  
16 to staff -- Of course, you are restricted on  
17 the number of staff members you can have. So  
18 it's just more than I can handle.

19 CHAIRPERSON MILLER: So in your  
20 opinion right now, 14 would be a safe number?

21 MR. GERACE: Sure.

22 CHAIRPERSON MILLER: I think,  
23 unless you have anything else to say right

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1 now, we could go to Office of Planning and get  
2 their input.

3 MR. GERACE: No, just that, like I  
4 said, I'm an active member of the community,  
5 and we plan to be -- It is a family home. You  
6 know, we eat dinner there together every  
7 Friday night. So I mean, our plan is to be  
8 good neighbors, and I think the neighbors that  
9 we have spoken to know that, and that's why  
10 there hasn't been much of a -- The Cliburns --  
11 I don't know who they are, but --

12 CHAIRPERSON MILLER: Are you the  
13 only family member living there, or not?

14 MR. GERACE: Full time, yes.

15 CHAIRPERSON MILLER: Full time?  
16 Okay. And how many staff do you have?

17 MR. GERACE: There is one full  
18 time, and then we have part-time who is not  
19 employed by me. It's actually my mother's  
20 maid who comes in sometimes to help me.

21 CHAIRPERSON MILLER: Okay.  
22 Anything else?

23 MR. GERACE: I don't think so.

1 CHAIRPERSON MILLER: Okay. Good  
2 morning.

3 MS. THOMAS: Good morning, Madam  
4 Chair, members of the Board. I am Karen  
5 Thomas with the Office of Planning.

6 We support this request for the  
7 increase. We don't see it as having any  
8 adverse impact on the immediate neighborhood  
9 due to traffic or noise, and we would stand on  
10 the record as submitted in our report. I will  
11 be happy to take any questions.

12 CHAIRPERSON MILLER: Do you have  
13 an opinion with respect to our modifying the  
14 other condition we were talking about  
15 regarding number of clients on the premises in  
16 any one hour?

17 MS. THOMAS: I think that it would  
18 make -- It's common sense, because if you have  
19 six rooms, what if they were all rented at the  
20 same time to six couples. That will be 12.  
21 Six twos are 12. I don't know how, unless you  
22 wake up somebody and say you need to leave,  
23 don't sleep -- I don't see that as being

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1 practical. So I don't have an objection to 12  
2 or 14, as the case may be, allowing for two  
3 people extra who might be on the premises to  
4 cook or help out, for maintenance.

5 CHAIRPERSON MILLER: You raised  
6 this point in your report, and I probably  
7 should have asked the applicant, and we can  
8 ask applicant unless you know it at this  
9 point. But there is that other provision,  
10 203.4(1), that talks about vehicular trips to  
11 the premises and delivery persons to not  
12 exceed eight trips daily on a regular and  
13 continuing basis.

14 Did you get anymore information  
15 about that?

16 MS. THOMAS: No, I didn't have  
17 anything. I would defer to the applicant for  
18 that.

19 MR. GERACE: Other than --  
20 Vehicular trips, I would say, definitely would  
21 be less than eight. I mean, it's -- Yes, most  
22 people aren't arriving by car. So usually if  
23 they are arriving by car, they are staying for

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1 some length of time. So the car gets parked,  
2 and there is no delivery unless you count UPS  
3 deliveries. I mean, I do my grocery shopping  
4 at Whole Foods.

5 CHAIRPERSON MILLER: Okay. There  
6 really aren't deliveries different from a  
7 residence then, basically. Is that what you  
8 are saying?

9 MR. GERACE: Yes. No, there is  
10 nothing.

11 CHAIRPERSON MILLER: Okay. Did  
12 you go -- You went through each and every  
13 provision that they would need to meet and  
14 found that they meet them, except for you have  
15 the question about the deliveries, and I think  
16 you may even have the question about the  
17 number of people on premises.

18 MS. THOMAS: I think that would be  
19 the only area that was sort of a gray area  
20 with respect to the number of persons on the  
21 premises at a time, and the trips.

22 I think the Applicant explained  
23 how -- with respect to the number of people

1 altogether, the guests check in, the times  
2 that they check in guests. And I don't -- You  
3 know, on a practical note, people don't go to  
4 a bed and breakfast and sit and stay all day.  
5 So I don't see that they should have any  
6 problems with, you know, so many people being  
7 on the premises all at once or that you would  
8 have 12 people checking in at the same time.

9 CHAIRPERSON MILLER: Any other  
10 questions by Board members? Okay, thank you.  
11 I think that was a very -- Oh, go ahead, Mr.  
12 Etherly. Oh, okay. I think that was a very  
13 thorough report that took us through all of  
14 the conditions they need to meet. Thank you.

15 I am going to ask the applicant  
16 also, though, about the check-in time. Could  
17 you -- I know it's in here, but I --

18 MR. GERACE: Yes, 2:00 p.m. to  
19 9:00 p.m.

20 CHAIRPERSON MILLER: And why are  
21 they set at those hours?

22 MR. GERACE: Well, check-out is at  
23 eleven. So it's enough time to change the

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1 rooms over, basically, and then 9:00 p.m. --  
2 basically, I need to get to bed. I don't want  
3 them to be coming in later than that. That's  
4 the standard. It's the standard pretty much.  
5 Some are maybe ten or a little bit earlier.

6 CHAIRPERSON MILLER: And you don't  
7 have any signage. Is that right?

8 MR. GERACE: No, we are not  
9 actually going to put any up.

10 CHAIRPERSON MILLER: And how do  
11 people find out about you?

12 MR. GERACE: Internet.

13 CHAIRPERSON MILLER: You are on  
14 the Internet?

15 MR. GERACE: Yes.

16 CHAIRPERSON MILLER: Okay.

17 MR. GERACE: And we got a pretty  
18 extensive thing about parking in the  
19 neighborhood, too, on the Internet under our  
20 parking, you know, how useless it is to bring  
21 your car, and we've got good public  
22 transportation right here.

23 CHAIRPERSON MILLER: Okay. Any

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1 other questions? Anybody else wish to testify  
2 in support or --

3 MR. GERACE: We had taken some --  
4 If you see from the aerial shot, we've taken  
5 some unique steps. There's actually solar  
6 panels on the roof of the building. So we are  
7 trying to contribute to the cause there. But  
8 the OP's report, if you look on the top of the  
9 building, those are actually solar panels,  
10 making us, I believe, the only solar powered  
11 inn in the --

12 CHAIRPERSON MILLER: The only  
13 solar powered what? Bed and breakfast?

14 MR. GERACE: Bed and breakfast, I  
15 would venture to say, in D.C.

16 CHAIRPERSON MILLER: In the  
17 District?

18 MR. GERACE: Yes.

19 CHAIRPERSON MILLER: Okay. Do you  
20 have any closing remarks?

21 MR. GERACE: Just basically, like  
22 I said before, in seeking the special  
23 exception, the goal is not to create a

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1       difficult situation for the neighbors or the  
2       neighborhood. You know, I thought when we  
3       decided to go forward, about two rooms, about  
4       the impact it would play. Certainly, in my  
5       judgment, it was my goal is to protect the  
6       house, protect the neighborhood, and I think  
7       we've done a nice job in rehab-ing the  
8       building and that it's an asset to the  
9       neighborhood. So I would hope that you would  
10      feel the same.

11                   CHAIRPERSON MILLER: Okay, thank  
12      you. I think that the Board can deliberate on  
13      this at this point. Do I have the consensus  
14      of the Board?

15                   To start it off then, I would make  
16      a motion, unless there is an objection? I  
17      would move approval of the special exception  
18      to increase -- Okay, well, this is the way it  
19      reads on here -- a special exception to  
20      operate a bed and breakfast facility having  
21      six sleeping rooms under Subsection 203.10 at  
22      premises 1824 R Street, N.W.

23                   As I understand it, it is a

1 special exception, though, to increase the  
2 number of sleeping rooms from two to six, and  
3 also today to add modifying Section 203.4(m)  
4 which limits eight clients on premises at one  
5 time to 14.

6 Do I have a second?

7 COMMISSIONER HOOD: Second.

8 VICE CHAIRPERSON ETHERLY: I'll  
9 defer to my colleague, Mr. Hood.

10 CHAIRPERSON MILLER: Okay. Under  
11 Section 203.10(b) of our regulations, the  
12 Board has authority to modify two of the  
13 conditions enumerated in 203.4 through 203.8,  
14 and this application is for the modification  
15 of two of those provisions, and the standard  
16 that we use to evaluate it is a special  
17 exception standard set forth in 3104, which  
18 allows the modifications if they are in  
19 harmony with the general purpose and intent of  
20 the regulations and zoning maps, and they do  
21 not tend to adversely affect use of  
22 neighboring property.

23 We have a very comprehensive

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1 report from the Office of Planning and a full  
2 application from the applicant showing that  
3 the bed and breakfast is in compliance with  
4 the home occupation provisions of our  
5 regulations, including the bed and breakfast  
6 ones, except for these two provisions.

7 The ANC is in support of the  
8 application. There is no evidence of any  
9 adverse impact. The bed and breakfast is  
10 located in an area that is accessible to Metro  
11 and public transportation in general is two  
12 blocks away.

13 It is in an area where it is  
14 allowed to operate as a bed and breakfast.  
15 The owner lives there, has a good relationship  
16 with the community. There has been absolutely  
17 no indication of any adverse impacts from  
18 operation so far, nor from this small  
19 increase.

20 We do have evidence in the record  
21 of certification from the Historic  
22 Preservation Officer, which qualifies this bed  
23 and breakfast to increase up to six rooms.

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1                   What else? Does anyone want to  
2 add anything right now?

3                   COMMISSIONER HOOD; Madam Chair, I  
4 would just say that I think the Office of  
5 Planning report, as you stated earlier, was  
6 sufficient.

7                   In sections in our requirements,  
8 deliberating sections 203.10 applies to  
9 related conditions, be consistent with the  
10 purpose of Section 203.1, and I think we have  
11 had enough testimony to find that the Board  
12 can move forward.

13                   Also with Section 203.4 through  
14 203.8, subject to the findings of the Board,  
15 I think the applicant has well addressed all  
16 of those questions under Section 203  
17 adequately for our approval.

18                   CHAIRPERSON MILLER: Thank you.  
19 Other comments from Board members?

20                   Okay. I would note that I don't  
21 believe that the Office of Planning has  
22 recommended any conditions. In fact, the  
23 regulations contain a lot of conditions

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1       anyway.

2                   So at this point, is there any  
3 further discussion? All right. Then I think  
4 at this point, then I think that we are ready  
5 to vote on this application.

6                   All those in favor, say Aye. All  
7 those opposed? All those abstaining?

8                   Would you call the vote, please?

9                   MS. BAILEY: The vote is recorded  
10 as four-zero-one to grant the application as  
11 amended by the Board. Mrs. Miller made the  
12 motion. Mr. Hood seconded. Mr. Etherly and  
13 Mr. Loud support the motion. The NCPC  
14 representative is not present at this time.

15                   CHAIRPERSON MILLER: As there is  
16 no opposition to this case, then I would  
17 suggest that this be a summary order. Is that  
18 the consensus of the Board? Okay. Then it  
19 will be a summary order. So you should be  
20 getting this fairly quickly.

21                   MR. GERACE: Thank you.

22                   CHAIRPERSON MILLER: Thank you  
23 very much. Good luck.

1 Ms. Bailey, is there any other  
2 business on the agenda for this morning?

3 MS. BAILEY: Not for the morning,  
4 Madam Chair.

5 CHAIRPERSON MILLER: Okay. then  
6 this hearing is adjourned.

7 (Whereupon, the foregoing matter  
8 went off the record at 11:43 a.m.)

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## 1 A F T E R N O O N S E S S I O N

2 Time: 1:42 p.m.

3 CHAIRPERSON MILLER: I will call  
4 the Hearing for September 18 in the afternoon.5 This is the September 18th Public  
6 Hearing of the Board of Zoning Adjustment of  
7 the District of Columbia.8 My name is Ruthanne Miller. I am  
9 the Chair. To my right is Mr. Curtis Etherly,  
10 Vice Chair; Mr. Anthony Hood, Zoning  
11 Commissioner on the BZA today; and Mr. Marc  
12 Loud to my left, Mayoral appointee. Mr.  
13 Clifford Moy from the Office of Zoning has  
14 joined us, and also with us is Lori Monroe,  
15 Office of Attorney General, and Ms. Beverley  
16 Bailey, Office of Zoning.17 Copies of today's hearing agenda  
18 are available to you and are located to my  
19 left in the wall bin near the door.20 Please be aware that this  
21 proceeding is being recorded by a court  
22 reporter and is also webcast live.  
23 Accordingly, we must ask you to refrain from**NEAL R. GROSS**COURT REPORTERS AND TRANSCRIBERS  
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1 any disruptive noises or actions in the  
2 hearing room.

3 When presenting information to the  
4 Board, please turn on and speak into the  
5 microphone, first stating your name and home  
6 address. When you are finished speaking,  
7 please turn your microphone off so that your  
8 microphone is no longer picking up sound or  
9 background noise.

10 All persons planning to testify,  
11 either in favor or in opposition, are to fill  
12 out two witness cards. These cards are  
13 located to my left on the table near the door  
14 and on the witness table.

15 Upon coming forward to speak to  
16 the Board, please give both cards to the court  
17 reporter, sitting to my right.

18 The order of procedure for special  
19 exceptions and variances is: (1) Statement  
20 and witness of the Applicant; (2) government  
21 reports, including Office of Planning,  
22 Department of Public Works, DDOT, etcetera;  
23 (3) report of the Advisory Neighborhood

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1 Commission; (4) parties or persons in support;  
2 (5) parties or persons in opposition; (6)  
3 closing remarks by the Applicant.

4 Pursuant to Section 3117.4 and  
5 3117.5, the following time constraints will be  
6 maintained: The Applicant, appellant, persons  
7 and parties, except an ANC in support,  
8 including witnesses, 60 minutes collectively;  
9 appellees, persons and parties, except an ANC  
10 in opposition, including witnesses, 60 minutes  
11 collectively; individuals, 3 minutes.

12 These time restraints do not  
13 include cross-examination and/or questions  
14 from the Board. Cross-examination of  
15 witnesses is permitted by the Applicant or  
16 parties. The ANC within which the property is  
17 located is automatically a party in a special  
18 exception or variance case.

19 Nothing prohibits the Board from  
20 placing reasonable restrictions on cross-  
21 examination, including time limits and  
22 limitations on the scope of cross-examination.

23 The record will be closed at the

1 conclusion of each case except for any  
2 materials specifically requested by the Board.  
3 The Board and the staff will specify at the  
4 end of the hearing exactly what is expected  
5 and the date when the persons must submit the  
6 evidence to the Office of Zoning.

7 After the record is closed, no  
8 other information will be accepted by the  
9 Board.

10 The Sunshine Act requires that the  
11 Public Hearing on each case be held in the  
12 open before the public. The Board may,  
13 consistent with its rules of procedure and the  
14 Sunshine Act, enter executive session during  
15 or after the public hearing on a case for  
16 purposes of reviewing the record or  
17 deliberating on the case.

18 The decision of the Board in these  
19 contested cases must be based exclusively on  
20 the public record. To avoid any appearance to  
21 the contrary, the Board requests that persons  
22 present not engage the members of the Board in  
23 conversation.

1           Please turn off all beepers and  
2 cellphones at this time, so as not to disrupt  
3 the proceedings.

4           The Board will make every effort  
5 to conclude the Public Hearing as near as  
6 possible to 6:00 p.m. If the afternoon cases  
7 are not completed at six, the Board will  
8 assess whether it can complete the pending  
9 case or cases remaining on the agenda.

10           At this time, the Board will  
11 consider any preliminary matters. Preliminary  
12 matters are those that relate to whether a  
13 case will or should be heard today, such as  
14 requests for postponement, continuance or  
15 withdrawal, or whether proper and adequate  
16 notice of the hearing has been given.

17           If you are not prepared to go  
18 forward with a case today or if you believe  
19 that the Board should not proceed, now is the  
20 time to raise such a matter.

21           Does the staff have any  
22 preliminary matters?

23           MS. BAILEY: Madam Chair, members

1 of the Board, good afternoon.

2 Yes. An application was initially  
3 filed that has been withdrawn. That was  
4 scheduled for the last case this afternoon,  
5 Appeal Number 17649 of Cosi Inc. That  
6 application was withdrawn.

7 CHAIRPERSON MILLER: Thank you.  
8 And I believe that no action is required on  
9 the Board's part.

10 MS. BAILEY: No action is  
11 required.

12 CHAIRPERSON MILLER: Okay. Any  
13 other preliminary matters?

14 MS. BAILEY: Just the swearing in  
15 of the witnesses this afternoon.

16 CHAIRPERSON MILLER: Okay. Then  
17 would all individuals wishing to testify today  
18 please rise to take the oath.

19 MS. BAILEY: Please raise your  
20 right hand.

21 (Witnesses sworn.)

22 MS. BAILEY: This is Application  
23 Number 17661 of John and Janet Moreth,

1 pursuant to 11 DCMR 3103.2, for a variance  
2 from the lot occupancy requirements under  
3 Section 403, to construct a two-story garage  
4 serving a single family row dwelling in the R-  
5 4 District at premises 531 9th Street, S.E.,  
6 Square 926, Lot 41).

7 CHAIRPERSON MILLER: Good  
8 afternoon.

9 MS. FOWLER: Hi. Good to see you  
10 again.

11 CHAIRPERSON MILLER: Thank you.  
12 You, too. Would you introduce yourself for  
13 the record, please.

14 MS. FOWLER: I am Jennifer Fowler  
15 of 1742 D Street, S.E.

16 MR. MORETH: And I am John Moreth  
17 of 531 9th Street, S.E.

18 CHAIRPERSON MILLER: If you read  
19 your papers, it appears that you are here for  
20 a variance from the lot occupancy requirement  
21 under 403, and this is self-certified. Is  
22 that correct?

23 MS. FOWLER: Yes, that's correct.

1                   CHAIRPERSON     MILLER:   Okay.  
2     Reviewing your application, we notice that you  
3     may need additional variance relief, and we  
4     wanted to bring that to your attention and see  
5     if you have a response, and if Office of  
6     Planning might have a response to that.  That  
7     is under 2500.4.

8                   2500.4 states that an accessory  
9     building in any zone district shall not exceed  
10    one story or 15 feet in height except as  
11    provided in 2500.5.

12                  It appears that your project is  
13    for a two-story garage.

14                  MS. FOWLER:  Yes.  Okay.  so we  
15    should probably include that as part of the --  
16    Do we need to modify the application in order  
17    to do that?

18                  CHAIRPERSON MILLER:  Well, what  
19    you can do today is verbally amend the  
20    application to include that, and then we will  
21    evaluate that variance today.

22                  Then I do want to say, though,  
23    that in doing so, we have to consider whether

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1 or not you would need to readvertise. We are  
2 inclined not to think so, but I want to tell  
3 you why, and then maybe you can add anything,  
4 and maybe Office of Planning can as well. But  
5 this variance doesn't change the plans, I  
6 believe, that were shown to the public and  
7 community, your neighbors. It doesn't change  
8 that. So they could visually see what was  
9 being built.

10 You are already seeking a  
11 variance. So it doesn't increase the level of  
12 relief that you are seeking.

13 So for those reasons, we don't  
14 have -- I don't believe we have a problem with  
15 that.

16 Let me just skip to Maxine Brown  
17 just for a minute, from the Office of  
18 Planning. Good afternoon.

19 MS. BROWN-ROBERTS: Good  
20 afternoon.

21 CHAIRPERSON MILLER: Do you have  
22 any comment about that additional variance  
23 relief?

1 MS. BROWN-ROBERTS: I think when I  
2 looked at it, if I remember correctly, I think  
3 my interpretation, that it was a two-story or  
4 15 feet in height, and I did check the height  
5 to make sure that it was in the 15 feet. So  
6 I think, unless there is an error in my  
7 interpretation there --

8 CHAIRPERSON MILLER: Okay. If you  
9 just look at those words, your interpretation  
10 is certainly --

11 MS. BROWN-ROBERTS: I am not  
12 contradicting what --

13 CHAIRPERSON MILLER: No, no. We  
14 had this regulation in another case this  
15 morning also. So we have been looking at this  
16 regulation. On the one hand, you could read  
17 it "either/or," you know. It's 15 feet. But  
18 then when we were looking at it broadly, we  
19 thought that, if it really was "or" and if it  
20 was one story, but like 100 feet, no, you  
21 couldn't do that -- I mean, whatever it was.

22 So I think, to be on the safe side  
23 in this case, we should read it --

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1 MS. BROWN-ROBERTS: As either/or?

2 CHAIRPERSON MILLER: -- the other  
3 way. Yes. That it is going to be two stories  
4 and so, therefore, you should get variance  
5 relief.

6 MS. BROWN-ROBERTS: I don't have a  
7 problem with that.

8 CHAIRPERSON MILLER: Okay. And do  
9 you have a problem with adding that additional  
10 relief without sending it out to the  
11 community?

12 MS. BROWN-ROBERTS: No. No, i  
13 think they thoroughly reviewed it and, you  
14 know, they understood that it was going to  
15 two stories.

16 CHAIRPERSON MILLER: Okay. Any  
17 other comments from Board members on that  
18 question? Okay.

19 Before we get into the merits any  
20 further, we have the preliminary issue of a  
21 party status application. I don't see anybody  
22 else here in the audience who would be  
23 participating as a party, but I want to note

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1 for the record that Ms. Louise Hobbs submitted  
2 a party status application, and she lives at  
3 531 1/2 9th Street, S.E., and I don't see her  
4 here.

5 MS. FOWLER: We did have a letter  
6 of support from Ms. Hobbs in our paperwork.

7 CHAIRPERSON MILLER: We have that  
8 letter of support as well, and it is dated  
9 stamped April 30, 2007, and it is marked as  
10 Exhibit 9 in our record.

11 Do you also have a copy of the  
12 party status application?

13 MS. FOWLER: No, I do not.

14 CHAIRPERSON MILLER: Oh, okay.  
15 Maybe we can get you a copy, but I think I  
16 might as well let you know what it says. It  
17 is fairly brief.

18 The first question asked on that  
19 is: How will the property owned or occupied  
20 by such a person or in which the person has an  
21 interest be affected by the action requested  
22 of the Board?

23 The response written here is: If

1 the structure is approved with restrictions of  
2 a four foot space between the two garages,  
3 this will -- something; it's off the page.

4 So it appears that she is looking  
5 for a four-foot space between the garages. So  
6 you might -- I don't know if you want to  
7 respond to that right now. Do you want to  
8 take a minute and look it over?

9 MS. FOWLER: Yes, please.

10 It looks to me like she is  
11 concerned about structurally attaching to her  
12 garage. But in our plans, we are actually  
13 building a separate wall. We are not going to  
14 be using that wall structurally. I'll just  
15 double-check that. Because her garage is a  
16 face-on-line wall on her property. So we will  
17 be building a wall on our side of the  
18 property, butting up against it.

19 CHAIRPERSON MILLER: Do you know  
20 how much space is going to be between the two  
21 garages?

22 MS. FOWLER: No space in between.  
23 It will be right next to it.

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1 CHAIRPERSON MILLER: Right next to  
2 it?

3 MS. FOWLER: Yes.

4 CHAIRPERSON MILLER: But not  
5 abutting it, but right next to it?

6 MS. FOWLER: Abutting it.

7 CHAIRPERSON MILLER: Abutting it?

8 MS. FOWLER: Yes.

9 CHAIRPERSON MILLER: Touching it?

10 MS. FOWLER: Touching it. Both  
11 garages will be built up to the property line.

12 CHAIRPERSON MILLER: Do the Board  
13 members have any -- Well, do you have any  
14 comments on party status application? Well,  
15 let me see. Not hearing a resounding voice  
16 here, do you have any comments on the party  
17 status application?

18 MS. FOWLER: I have had this  
19 situation come up with other garages where  
20 there's been an existing garage, and we just  
21 basically build the framing up against it, and  
22 then we will put brick veneer above, and we  
23 haven't had any issues with that. So I don't

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1 think it is going to be a problem.

2 That seems to me like her main  
3 concern in this party status application.

4 CHAIRPERSON MILLER: Okay. I  
5 think what I want to do is just move on the  
6 question of whether or not she should be  
7 admitted as a party, and then we can get into  
8 the concerns that are raised.

9 I think the fact that she is not  
10 here to participate as a party is one reason  
11 not to grant party status in this case, and  
12 there is no written material that would enable  
13 her to participate somehow as a party in this  
14 case. So I would suggest that we deny party  
15 status and take in this application as her  
16 testimony, written testimony, in this case.  
17 Do I have any objections from the Board on  
18 that? Okay.

19 All right. So we are denying  
20 party status to Miss Louise Hobbs.

21 Yes, she does seem to have a  
22 concern about your garage not being attached  
23 to her garage. Currently, are they attached

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1 or next to each other?

2 MS. FOWLER: Currently, hers is a  
3 brick garage, which is a face-on-line wall,  
4 and then they have a carport that is -- I  
5 mean, it is a garage, but it is wood frame,  
6 and I'm trying to remember. Is there wood  
7 framing on your side or do you see the brick  
8 from the inside?

9 MR. MORETH: You see the brick.

10 MS. FOWLER: Okay. So currently,  
11 I think the roof structure probably is  
12 attached to her brick wall. So we will be  
13 removing that and then building a separate  
14 structure that is touching, but it is self-  
15 supporting.

16 CHAIRPERSON MILLER: And why would  
17 you say that -- or would you say that that  
18 wouldn't have an adverse impact on her  
19 property? That's one of the prongs of the  
20 variance test.

21 MS. FOWLER: Right. We don't feel  
22 that it will have an adverse effect on her  
23 property. Her garage actually extends an

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1 additional several feet toward their house.  
2 Her garage is 24 -- almost 24 1/2 feet from  
3 front to back, and we are only going 18 feet.  
4 So in terms of light and air, we are not  
5 impacting her yard. And in fact, the garage  
6 is about the same size that it is now, except  
7 we are expanding it over to the other property  
8 line. But structurally, I don't think we will  
9 be causing any adverse effect on her garage.

10 CHAIRPERSON MILLER: If I'm  
11 looking at the plans correctly, is your  
12 expansion basically going in a direction away  
13 from her property, the new part anyway?

14 MS. FOWLER: Correct.

15 CHAIRPERSON MILLER: But the whole  
16 thing is going to be new, but what is being  
17 replaced next to her property is somehow  
18 different, closer to her property or anything  
19 like that?

20 MS. FOWLER: It is approximately  
21 the same as what we are proposing here, except  
22 that we are going to go with a brick  
23 structure. What they have now is a one-story,

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1 wood framed structure that seems to be tied in  
2 structurally to her -- not holding up her  
3 garage, but being supported by her garage. So  
4 we will be removing that. But it is the same  
5 footprint that we are keeping, plus we are  
6 expanding over that 12 x 6 section to the  
7 north.

8 COMMISSIONER HOOD: Let me just  
9 ask a question. Let me ask this before we  
10 have to evacuate.

11 So where is this now? It is  
12 touching, but it's a structure that stands on  
13 its own. It's not like it depends on her  
14 garage to stand?

15 MS. FOWLER: That's correct.

16 COMMISSIONER HOOD: And that's  
17 exactly how you are going to replace it?

18 MS. FOWLER: That's right. Well,  
19 I think the existing structure may be using  
20 her wall for support. It's a wood framed  
21 structure. We will be removing that, and then  
22 everything new will be self-supporting.

23 COMMISSIONER HOOD: Okay.

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1 MS. FOWLER: So we are actually  
2 reducing any loads on her garage.

3 COMMISSIONER HOOD: Good. Thank  
4 you.

5 VICE CHAIRPERSON ETHERLY: I  
6 wanted to try to understand this issue, too,  
7 of the structure and her concern. She is  
8 asking for a four-foot space between the two  
9 garages, as I understand it, but her garage --  
10 Well, there is no four-foot space now?

11 MS. FOWLER: No.

12 VICE CHAIRPERSON ETHERLY: But you  
13 are going to tear down what is there now?

14 MS. FOWLER: Correct.

15 VICE CHAIRPERSON ETHERLY: Could  
16 she be asking that you rebuild it such that  
17 there is only four -- such that there is four  
18 feet of space between the new structure and  
19 the existing structure? Have you had any  
20 conversations with her about this?

21 MR. MORETH: No. In fact, she  
22 signed a letter of support.

23 VICE CHAIRPERSON ETHERLY: I saw

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1 it.

2 MR. MORETH: This is kind of a --

3 MS. FOWLER: We are surprised.

4 VICE CHAIRPERSON ETHERLY: How are  
5 you surprised?

6 MS. FOWLER: It does sound like  
7 she is asking for some kind of a side yard for  
8 our garage, the four feet, which we wouldn't  
9 be able to do anyway. It's not really in the  
10 legal court.

11 VICE CHAIRPERSON ETHERLY: I'm  
12 just trying to get inside of her head on this.

13 MS. FOWLER: Yes. This is the  
14 first we have heard anything from her, and she  
15 has seen the plans, and she has not appeared  
16 before the ANC or any other entities.

17 CHAIRPERSON MILLER: Okay. But it  
18 was one story before, which was next to her  
19 garage. Now it is going to be two stories.

20 MS. FOWLER: Correct.

21 CHAIRPERSON MILLER: Does she have  
22 two stories or one story?

23 MS. FOWLER: Hers is one story,

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1 but it is -- Let me see if I can remember the  
2 height. Her garage is 11 foot-6 tall. So  
3 it's on the tall side of a one-story garage,  
4 in my opinion.

5 CHAIRPERSON MILLER: So is your  
6 second story going to enable you to look into  
7 something next-door on her property? Is it  
8 just a garage that's there?

9 MS. FOWLER: It's just a garage.  
10 We do have windows on that side, just  
11 basically from going through Historic, them  
12 wanting us to break up the facade. But it is  
13 just a storage space on the second floor. You  
14 know, her garage comes out quite a bit further  
15 than ours, which is also going to block some  
16 of the view into the yard.

17 I don't think she is really  
18 concerned about the light and air. That  
19 doesn't seem to be the issue, in my opinion.

20 CHAIRPERSON MILLER: She raises an  
21 issue about if it is connected -- if your  
22 structure is connected to her garage, she  
23 won't be able to make repairs on her garage.

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1 MS. FOWLER: Well, what will  
2 happen is the new roof will be flashed to her  
3 brick wall. So anything that we are abutting  
4 or touching will not need to have -- to be  
5 maintained, because it will be completely  
6 water sealed and enclosed.

7 So, really, anything -- the brick  
8 above our roof -- I'm sorry. We will be  
9 maintaining brick above her roof on her side,  
10 but her entire wall will be concealed by this  
11 new garage, except for anything that -- the  
12 part that extends beyond our garage, which  
13 will not change.

14 CHAIRPERSON MILLER: Okay. I  
15 think that does it with her concerns.

16 I have a question. Did you appear  
17 before the Capitol Hill Restoration Society?

18 MS. FOWLER: Yes, we did.

19 CHAIRPERSON MILLER: Okay. Did  
20 you see their letter which is dated July 2,  
21 2007? It is marked as Exhibit Number 25.

22 MS. FOWLER: I believe I got a  
23 copy of their letter in support.

1 CHAIRPERSON MILLER: Okay. So you  
2 did present?

3 MS. FOWLER: We did, and they did  
4 vote to support, as far as I know.

5 CHAIRPERSON MILLER: And you  
6 presented it as a variance?

7 MS. FOWLER: As a special  
8 exception.

9 CHAIRPERSON MILLER: You presented  
10 it as a special exception?

11 MS. FOWLER: Yes.

12 CHAIRPERSON MILLER: Why?

13 MS. FOWLER: Because we are aware  
14 of the text change that's imminent, and we  
15 were encouraged by Zoning Office to go ahead  
16 and proceed as a special exception, because I  
17 have had other garages where we've had the  
18 same situation where now we are waiting until  
19 the text change. So that is why we did  
20 proceed with a special exception at that time.

21 CHAIRPERSON MILLER: Okay. So  
22 they looked at adverse impacts, though,  
23 basically. They didn't look at uniqueness or

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1 something like that?

2 MS. FOWLER: No, they did not.

3 CHAIRPERSON MILLER: Okay.

4 MS. FOWLER: That's correct. And  
5 the same with the ANC. We were presenting it  
6 as a special exception with the ANC.

7 CHAIRPERSON MILLER: Do we have a  
8 letter from the ANC?

9 MS. FOWLER: No, I haven't gotten  
10 one yet. We just presented last week.

11 CHAIRPERSON MILLER: Oh, okay.  
12 You presented it as a special exception?

13 MS. FOWLER: Yes, and it was  
14 approved as a special exception.

15 CHAIRPERSON MILLER: And they also  
16 looked at adverse impacts on neighboring  
17 properties? Is that it?

18 MS. FOWLER: Yes. Correct.

19 CHAIRPERSON MILLER: Okay.

20 COMMISSIONER HOOD: You said it  
21 was approved. Were there any dissenting  
22 votes?

23 MS. FOWLER: ANC was unanimous.

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1 CHAIRPERSON MILLER: Okay. It's  
2 been brought to my attention that we do have  
3 a report from the ANC. Did you see that, a  
4 letter in support?

5 MS. FOWLER: No, I haven't seen it  
6 yet. No.

7 CHAIRPERSON MILLER: Okay. Then I  
8 think I will read it for the record. It is  
9 dated June 13, 2007.

10 "At its regularly and properly  
11 noticed meeting on September 11, 2007, with a  
12 quorum present, ANC-6B voted unanimously,  
13 eight-zero, to support the applicant's request  
14 for a special exception to construct a garage  
15 on the rear of the property. The Commission  
16 believes the applicant has met the test for a  
17 special exception for lot occupancy to  
18 construct a garage at the rear of the  
19 property. Additionally, the applicant has  
20 received letters of support from adjoining  
21 neighbors, as to the fact that there is no  
22 impediment on air and light, thereby meeting  
23 the test for a special exception. Please

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1 notify the Commission if you have any  
2 questions or comments."

3 COMMISSIONER HOOD: Was that in  
4 our file? That wasn't in our file.

5 CHAIRPERSON MILLER: I don't think  
6 -- I think it didn't get in our file.

7 COMMISSIONER HOOD: You said it  
8 was dated June? What date is it?

9 CHAIRPERSON MILLER: June 13th.

10 VICE CHAIRPERSON ETHERLY: Is  
11 there an exhibit number on that, madam Chair?

12 CHAIRPERSON MILLER: No.

13 COMMISSIONER HOOD: And the  
14 meeting was September 11th.

15 CHAIRPERSON MILLER: Oh, right.  
16 That's a little unusual, isn't it?

17 COMMISSIONER HOOD; Yes, it's very  
18 unusual. Maybe they preempted. They knew  
19 they were going to vote on it September 11th  
20 when they wrote the letter back in June.

21 MS. FOWLER: They hadn't seen the  
22 project in June.

23 CHAIRPERSON MILLER: Okay. Well,

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1 it is Exhibit 30, which is our last exhibit.  
2 So I think it's possible that it was -- the  
3 date is a mistake. The meeting was September  
4 11th?

5 MS. FOWLER: Yes. Planning and  
6 Zoning was one week prior to that, and that  
7 was the first time they had seen the project.

8 CHAIRPERSON MILLER: Okay. Let me  
9 ask you this. You advertised the case as a  
10 variance, though, right?

11 MS. FOWLER: Right.

12 CHAIRPERSON MILLER: Did the ANC  
13 notice that, raise that at all, like this has  
14 been advertised as a variance?

15 MS. FOWLER: When we applied for  
16 this project, there was no talk of the text  
17 change at that point. So we did apply as a  
18 variance, and we thought there was a fairly  
19 strong case for it. But then by the time we  
20 met with the ANC and with the other  
21 neighborhood groups, it was clear that there  
22 was a text change imminent. So we didn't  
23 pursue the variance with those folks at that

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1 time, knowing that that was changing. But  
2 since then, I believe we have a favorable  
3 report from the Office of Planning.

4 So that is why we thought we would  
5 go ahead and try for the variance. So that's  
6 why the switch from variance to special  
7 exception.

8 CHAIRPERSON MILLER: I understand  
9 that.

10 MS. FOWLER: They were all aware  
11 of the -- I mean, ANC and the Capitol Hill  
12 Restoration are all aware that that text  
13 change is happening. So I think -- I don't  
14 think they were willing to vote as a variance,  
15 even though they thought it did -- it was a  
16 reasonable case. But they weren't willing to  
17 vote on it until the text changes happened.

18 CHAIRPERSON MILLER: They weren't  
19 willing to vote on the variance until the text  
20 changes happened?

21 MS. FOWLER: Sorry.

22 CHAIRPERSON MILLER: You don't  
23 mean that? Right. Okay. They perhaps didn't

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1 want to vote on the variance if they didn't  
2 have to, since they thought that --

3 MS. FOWLER: Exactly. That's what  
4 I meant, yes. They didn't want to make a  
5 statement about accessory structures. That  
6 would be a statement that they feel that it  
7 should be allowed.

8 CHAIRPERSON MILLER: Okay. Any  
9 other questions?

10 Do you want to go through briefly  
11 how you think you meet the variance test?

12 MS. FOWLER: Okay. Well, as you  
13 know, we are going from 67.4 percent to 70  
14 percent. So it is only a 2.6 percent  
15 increase, very small increase in that lot  
16 occupancy there.

17 A couple of things about the  
18 property itself: The house was built in the  
19 1800s, and it was the one of the first houses  
20 on the block. It is a two-story, wood framed  
21 structure with no basement.

22 We are pretty sure that there are  
23 no -- that it is the only house on the block

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1 on that stretch of 9th Street without a  
2 basement. So with that, knowing that, we  
3 think the garage -- the storage in the garage  
4 is something that we are asking for, because  
5 they don't have that space in the house;  
6 whereas everybody else on the block has a  
7 basement.

8 Another thing about the house is  
9 that it was built with a side setback on the  
10 front, about 4 1/2 feet kind of a side yard,  
11 which they would never be able to enclose  
12 because of Historic. It's just impossible to  
13 regain that space. So it is essentially lost  
14 square footage that we are trying to gain back  
15 with this storage space and the enlarged  
16 garage.

17 So those are two aspects of the  
18 existing house that we feel make it unique  
19 compared to other houses on that block.

20 Additionally, the property is  
21 abutting 8th Street, Barracks Row. They are  
22 immediately behind the Chateau Animo, which is  
23 a very popular dog grooming/pet store kind of

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1 place, and they have a front entry on 8th  
2 Street as well as a back entry on the alley.

3 So what happens is you have people  
4 pulling out to drop their dogs off to get  
5 groomed that are blocking the alley. You  
6 could see probably one of the photos that I  
7 have in here. There is actually a car  
8 blocking their garage. It's not my car. It's  
9 not his car.

10 Oftentimes, people are just parked  
11 on the other side of the alley, making it  
12 really difficult for him to get out of his  
13 garage. So that's why we are wanting the  
14 larger garage door, the extra width on the  
15 alley, in order to have more maneuverability  
16 going in and out.

17 Then as you have heard with other  
18 cases, 8th Street is really booming. There is  
19 a lot of traffic problems, parking problems.  
20 Parking is getting more and more difficult.  
21 So to be able to have access to a parking spot  
22 where they can get in and out reasonably is  
23 our goal here.

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1 Did you have anything to add?

2 MR. MORETH: Part of it is a  
3 safety concern as well. We have a young  
4 daughter and, really, the current carport --  
5 you have to kind of unload the car before you  
6 pull in. You can kind of barely get the doors  
7 open. So it's kind of in the middle of the  
8 night. My wife is taking the baby out, and  
9 it's not a good thing.

10 There's been a couple of car  
11 thefts from the alley and some violence back  
12 there. So I'd like her to be able to pull in  
13 before she has to unload the car and not  
14 unload everything in the alley, then pull the  
15 car in.

16 CHAIRPERSON MILLER: Is the garage  
17 unusually narrow?

18 MR. MORETH: It's fairly narrow.  
19 I think it's about 10 feet, I'm guessing.

20 MS. FOWLER: It's 13 1/2 from the  
21 outside of the structure. So it's probably  
22 and 12 1/2 feet wide.

23 CHAIRPERSON MILLER: But compared

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1 to other --

2 MS. FOWLER: That's the new one.  
3 I'd say it was probably about 10 feet wide.  
4 Right.

5 CHAIRPERSON MILLER: Compared to  
6 the other garages on the row, is it more  
7 narrow?

8 MS. FOWLER: Yes. The garage  
9 next-door goes from property line to property  
10 line. So it's the full -- I don't know -- 18  
11 or 20 feet.

12 MR. MORETH: Almost all of them in  
13 our alley go from property -- you know, the  
14 full width of the property line.

15 I guess the other piece, the door  
16 is 10 feet wide. Subsequently --

17 MS. FOWLER: Eight feet. The  
18 garage is 10 feet wide.

19 MR. MORETH: Okay. So the door is  
20 fairly narrow to get in and out of, and as  
21 much as we -- You know, we are patrons of a  
22 lot of the new stores that have gone in on  
23 8th. The parking has become very difficult in

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1 the alley itself or I should say the alley is  
2 usually always crowded with cars.

3 Subsequently, it is almost  
4 impossible to kind of make the turn into our  
5 garage. So the new structure has a wider  
6 door, and that will -- and we have done,  
7 believe me, thousands of dollars worth of  
8 damage to our own car just trying to kind of  
9 maneuver back and forth to get in and out.

10 MS. FOWLER: There's just cars  
11 parked on both sides of the alley. This is  
12 just, you know, 10 o'clock in the morning on  
13 a weekday.

14 CHAIRPERSON MILLER: Well, what  
15 I'm trying to focus on, though, is for the  
16 variance test, we are looking at uniqueness  
17 and how that uniqueness gives rise to  
18 practical difficulty.

19 So I heard you say before that  
20 your property was unique, because it doesn't  
21 have a basement, and all the other properties  
22 have basements. I'm wondering, is it unique  
23 in its narrowness or not?

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1 MS. FOWLER: No, it's not unique  
2 in its narrowness.

3 CHAIRPERSON MILLER: Okay. And  
4 it's not unique then -- just to separate what  
5 goes into our analysis, it is not unique that  
6 there is a parking problem, because I gather  
7 the other homes have the parking from the  
8 businesses and stuff interfering, or is yours  
9 situated somehow differently, so you have a  
10 greater parking problem?

11 MR. MORETH: Well, there are only  
12 two garages that kind of back up on our side  
13 of the street anyhow. The rest of them are  
14 all on G, and they are pretty much -- They  
15 have a straight shot to drive into their  
16 garage, whereas ours, we have to make a 90  
17 degree turn and, when there's other cars  
18 there, it really -- you can eliminate about  
19 half of the alley width, making it more  
20 difficult.

21 I guess the other unique piece of  
22 it: We do have the only carport or garage  
23 there now that does not span the full width of

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1 the property. Everyone else on G Street that  
2 we share an alley with, and immediately next-  
3 door -- all the other homes take up the full  
4 20 feet or whatever their property width is,  
5 and they have wider doors, subsequently.

6 CHAIRPERSON MILLER: Yours isn't  
7 the only one that has that 90 degree turn?  
8 You and one other have it. Is that it?

9 MR. MORETH: The garage  
10 immediately next-door, which does have a wider  
11 door.

12 CHAIRPERSON MILLER: That has a  
13 wider door?

14 MS. FOWLER: Ms. Hobbs, yes.

15 CHAIRPERSON MILLER: Okay. So the  
16 fact that you are the only one that doesn't  
17 span from property line to property line leads  
18 to what practical difficulty?

19 MR. MORETH: Getting in and out of  
20 the garage.

21 CHAIRPERSON MILLER: Getting into  
22 the garage? Okay. So you have that problem  
23 more than any other one, even the other

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1 neighbor that has the 90 degree turn?

2 MR. MORETH: You know, I don't  
3 think she drives, but there is a -- I mean, I  
4 know she doesn't, but she does -- If she did,  
5 she wouldn't have that problem because of her  
6 larger garage.

7 MS. FOWLER: You can see in the  
8 pictures, mostly all of the garages on the G  
9 Street -- they can pull right in, and then the  
10 other garages, there's a large commercial  
11 garage on the corner of the alley that has  
12 additional parking in front. So it is a very  
13 commercial alley and very dense.

14 Of the private garages, his is the  
15 only one that has that problem.

16 MR. MORETH: And we are  
17 immediately behind Chateau Animo, and they do  
18 have the dog -- you know, pet grooming kind of  
19 dropoff right behind our door. So we are  
20 unique in that sense as well.

21 MS. FOWLER: They basically built  
22 all the way to their rear property line. They  
23 have completely covered their lot immediately

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1 behind them. So there is no setback in the  
2 rear on that side.

3 CHAIRPERSON MILLER: Just so I  
4 have the facts right, though: With respect to  
5 the narrowness, it sounds like you are not  
6 like uniquely narrow in the back there, but at  
7 least, Ms. Fowler, I guess in your experience,  
8 would you still say that it was perhaps  
9 exceptionally narrow for a garage?

10 MS. FOWLER: Meaning the garage  
11 itself?

12 CHAIRPERSON MILLER: Is that  
13 correct or not correct?

14 MS. FOWLER: I think it is  
15 exceptionally. I think an 8 foot door,  
16 considering the alley, is very narrow. It is  
17 really difficult to maneuver.

18 CHAIRPERSON MILLER: So is the  
19 combination of the narrowness and the  
20 situation where there is this 90 degree turn  
21 and being right behind the animal grooming --  
22 that leads to the practical difficulty of  
23 accessing the garage with a car?

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1 MR. MORETH: Yes.

2 CHAIRPERSON MILLER: Okay. And  
3 the narrowness also leads to the difficulty in  
4 loading and unloading with respect to your  
5 children and groceries and things like that.  
6 Okay. Anything else on that?

7 MS. FOWLER: I think that, along  
8 with the uniqueness of the house itself --

9 CHAIRPERSON MILLER: It's  
10 historic?

11 MS. FOWLER: -- the loss of square  
12 footage because of side yard and the lack of  
13 the basement and its historic status also lend  
14 to the uniqueness of the property.

15 CHAIRPERSON MILLER: It's not  
16 necessarily unique, though, in that the other  
17 properties are historic also. Is that right?

18 MS. FOWLER: Well, it's just  
19 unique that they can't add onto the house to  
20 regain that square footage, because it's  
21 visible. It would be visible from the front.

22 CHAIRPERSON MILLER: Right.

23 MS. FOWLER: From 9th Street. So

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1 because of Historic, we really can't gain any  
2 square footage -- Well, we can't regain that  
3 side area that's been set back.

4 CHAIRPERSON MILLER: It also goes  
5 to the -- I think, the practical difficulty  
6 test, because you can't do something else,  
7 because you are limited by Historic.

8 MS. FOWLER: That's right.

9 CHAIRPERSON MILLER: With respect  
10 to the basement, how does -- Well, yes.  
11 You're saying that the uniqueness in not  
12 having a basement leads to the practical  
13 difficulty of not having a place for storage?  
14 Is that it?

15 MS. FOWLER: Right.

16 CHAIRPERSON MILLER: I mean, I  
17 don't know what the house is like. Isn't it  
18 possible that the house has space for storage?

19 MR. MORETH: Well, with a new  
20 child, there's lots of stuff that comes along  
21 with, and that is really part of the reason as  
22 well that we are going up for storage of kids'  
23 bicycles, things like that. So I mean, not --

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1 Unless we want to -- and we do it now. I  
2 mean, the baby's stroller and all the things  
3 have to go in the living room. I mean, there  
4 is really nowhere else to put that kind of  
5 stuff.

6 So it would be nice to have a  
7 garage so we don't track dirt in the house and  
8 such.

9 CHAIRPERSON MILLER: Isn't it true  
10 probably that a lot of the houses that are  
11 historic weren't made to have these great  
12 storage areas like modern houses? Is that  
13 right?

14 I mean, is it the structure of the  
15 house which you can't really add onto very  
16 well because of the preservation laws? I  
17 guess I'm saying, like in your house I am  
18 assuming that you don't have these large rooms  
19 for storage, that most historic homes on  
20 Capitol Hill aren't these large spaces.

21 MR. MORETH: There's minimal  
22 storage inside, other than there is an attic  
23 which -- you know, with a pull-down staircase.

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1 It's difficult to get things up there, but  
2 there is that, and that is kind of filled to  
3 capacity, I guess.

4 CHAIRPERSON MILLER: Not really  
5 good for bicycles.

6 MR. MORETH: Not good for  
7 bicycles.

8 CHAIRPERSON MILLER: And  
9 strollers.

10 MR. MORETH: Or strollers,  
11 anything you don't want to bang up trying to  
12 fit through the narrow opening.

13 MS. FOWLER: I know that it's not  
14 -- that many of the other houses don't have  
15 that kind of storage, but I know there was a  
16 case that was reviewed -- I'm not sure how  
17 long ago -- where they wanted a work shed and  
18 a garage in the back, and the fact that they  
19 had no basement and everybody else on the  
20 block had a basement was pretty much the  
21 argument that gave them the variance.

22 So that's kind of our thinking in  
23 including that in this application, was that

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1 there is some precedent for that being  
2 something unique enough to warrant a variance.

3 CHAIRPERSON MILLER: I think  
4 that's true, but I was just exploring it for  
5 the record, in that the first step is, okay,  
6 you are different. Okay, but how does that  
7 leads to a practical difficult, if in fact  
8 you are different. But it really didn't lead  
9 to your practical difficulty. It would pretty  
10 much end there. I mean, it's probably pretty  
11 obvious that with an historic house on Capitol  
12 Hill, etcetera, that you don't have these  
13 other huge spaces, but I just was exploring  
14 that.

15 Okay. Any other questions? Okay.

16 Do you want to just touch upon the  
17 no adverse impacts from the neighbors? You  
18 did to a certain extent with Ms. Hobbs. Is  
19 there anything else?

20 MS. FOWLER: Yes. So with Ms.  
21 Hobbs, we are not really -- because hers is  
22 extending beyond ours, I don't feel like we  
23 are impacting her, plus she did sign a letter

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1 based on the plans that she saw.

2 On the other side, there is a  
3 pedestrian alley adjacent to the garage. It's  
4 actually not abutting a property. It's about  
5 -- It was about a four-foot space between the  
6 garage and the next property, and the property  
7 immediately adjacent is actually just parking  
8 for a commercial garage.

9 So there is no house -- There is  
10 not a residential property that abuts the  
11 garage. The next two lots over, if you look  
12 at the site plan, are also part of a  
13 commercial garage. So they -- Obviously,  
14 that's just all parking right now anyway,  
15 completely filled up with cars back there. So  
16 none of those people will be negatively  
17 impacted by this structure.

18 The house adjacent at 529 9th  
19 Street is set -- The property is set well back  
20 from this property. In fact, their property  
21 only goes slightly beyond the back of the  
22 Moreth's house. So it's quite a distance  
23 between the proposed garage and the backyard

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1 next-door.

2 So it's kind of a unique situation  
3 here where you have these alley lots that are  
4 only used for parking that are abutting this  
5 property.

6 CHAIRPERSON MILLER: Okay. Let me  
7 ask one other question about parking.

8 Certainly, this is going to be  
9 able to accommodate two car instead of one.  
10 Is that right, or no? Is that extra space for  
11 the one?

12 MR. MORETH: It adds extra space.  
13 So you can actually open both doors from  
14 either side. I mean, right now it is really  
15 just the driver's side, and then you are  
16 hitting the wall of the current garage. But  
17 we will be able to unload and shut the door  
18 instead of unloading in the alley. Then the  
19 extra space, again, is storage on that first  
20 floor, but with the wider door we will be able  
21 to make that 90 degree turn a lot easier  
22 without damaging our automobile.

23 MS. FOWLER: This also allows for

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1 some work space on the first floor for kind of  
2 garage functions or things that he would be  
3 doing in the basement, but can't.

4 CHAIRPERSON MILLER: Okay. I  
5 don't have any questions. Do you have anymore  
6 questions? Do you want to say anything else  
7 right now or shall we go to Office of  
8 Planning?

9 MS. FOWLER: I think we are good  
10 now. Thank you.

11 CHAIRPERSON MILLER: I think we've  
12 covered this pretty thoroughly. Do you have  
13 a copy of Office of Planning's report?

14 MS. FOWLER: Yes, I believe she e-  
15 mailed it to me.

16 CHAIRPERSON MILLER: Okay. Okay,  
17 Ms. Brown. We are ready for you, whenever you  
18 are.

19 MS. BROWN-ROBERTS: Good  
20 afternoon, Madam Chairman and members of the  
21 Board. I am Maxine Brown-Roberts from the  
22 Office of Planning.

23 We reviewed this case as the

1 variance, and I did talk to the applicant  
2 about the special exception and the Zoning  
3 Commission case 01-115, because we thought  
4 that they would be better able to meet the  
5 requirements of the special exception over the  
6 variance. However, we do feel that there is  
7 some uniqueness to the property, again because  
8 of the historic nature of the house and also  
9 the lack of the storage space.

10 One of the things that we looked  
11 at was that, if this -- One of the things that  
12 is also on the property is that there is a  
13 pool in the middle of the property, and if  
14 this was an addition to the house to  
15 accommodate the storage, then we would be  
16 looking at it under 223 scenario and not as a  
17 variance. But that said, we think that there  
18 is an exceptional situation to the property,  
19 and that due to the lack of the basement and  
20 also the side yard, which leads to the lack of  
21 storage, that they do meet the first two  
22 requirements.

23 We also do not think that there

1 will be any substantial detriment to the  
2 public good, as we think that the new garage  
3 is set back from the properties to the north,  
4 and it is already -- there is already an  
5 existing abutting to the other property. So  
6 we don't think that there is an impact to  
7 that.

8 Then again, the alley is a pretty  
9 wide alley, and they are not adding any other  
10 vehicles. So we think that there is not any  
11 impact to the surrounding properties.

12 Regarding the new variance for the  
13 two-story structure, again we think -- I think  
14 that the additional storage, which the  
15 applicant is asking for -- it will not be  
16 detrimental to the area either. It is within  
17 the 15 foot height limit, and I just don't  
18 think that the storage, the additional area,  
19 is going to be a detriment. It does allow the  
20 applicant some additional space.

21 Thank you very much.

22 CHAIRPERSON MILLER: Thank you.

23 Do you have any concerns that the ANC and

1 Capitol Hill Restoration Society reviewed this  
2 as a special exception as opposed to a  
3 variance?

4 MS. BROWN-ROBERTS: Not really,  
5 just because of that we have analyzed the  
6 situation in the Office of Planning under the  
7 new regulation that we have proposed, and we  
8 didn't think that -- Our suggestion to the  
9 applicant was that they waited until that case  
10 was resolved, and we would have preferred  
11 that. I think it would be a much cleaner  
12 case, but they were advised otherwise.

13 One of the things why I don't have  
14 any concern, really, that they reviewed it as  
15 a special exception is that they are pretty  
16 much aware of that application, and we have  
17 spoken to them about that application, and  
18 they are fully supportive of it.

19 So that is why I don't have a  
20 great concern about that.

21 CHAIRPERSON MILLER: I'm sorry. I  
22 missed that. Who is "they"? The ANC?

23 MS. BROWN-ROBERTS: The ANC, yes.

1 CHAIRPERSON MILLER: Okay. Any  
2 other questions?

3 MEMBER LOUD: Yes. Just a  
4 question on the height of the proposed  
5 structure. What is the height going to be?

6 MS. BROWN-ROBERTS: Fifteen feet.

7 MEMBER LOUD: Where are you  
8 getting that number from?

9 MS. BROWN-ROBERTS: If you look at  
10 A-5 in the applicant's plans, A-5, you can see  
11 where the grade is at the front of the yard.

12 MEMBER LOUD: Okay.

13 MS. BROWN-ROBERTS: And that's the  
14 15 feet.

15 MEMBER LOUD: Well, I guess I  
16 could be looking at it wrong and stand to  
17 learn a lot about how to read these things,  
18 but it looks to me like the 15 feet is the top  
19 of the first level, and then there is an  
20 additional 7 feet 10 inches --

21 MS. BROWN-ROBERTS: No. No. If  
22 you notice, the line before that has 8 foot 6  
23 and 7-10.

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1 MEMBER LOUD: Okay.

2 MS. BROWN-ROBERTS: Do you see  
3 that difference there? They are showing two  
4 sets of measurements.

5 MEMBER LOUD; I got you. So it  
6 would be 15 feet, 16 feet 4 inches, something  
7 like that maybe? Eight-six and seven-ten?

8 MS. BROWN-ROBERTS: Well, the 8-6  
9 is going all the way down. So that's sort of  
10 below grade, where it says garage.

11 MEMBER LOUD: Okay. Thank you.  
12 It's just been explained to me where it was 15  
13 feet. Okay.

14 Based on sort of the -- I guess,  
15 the adjustment we made today, your uniqueness  
16 analysis and practical difficulty analysis  
17 remained the same?

18 MS. BROWN-ROBERTS: Yes, because  
19 it gives them additional storage.

20 MEMBER LOUD: Okay. And do you --  
21 What is the width of the new garage going to  
22 be?

23 MS. BROWN-ROBERTS: It's about 18

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1 feet.

2 COMMISSIONER HOOD: Ms. Brown-  
3 Roberts, that is shown on A-2?

4 MS. BROWN-ROBERTS: No.

5 MR. MORETH: I believe it is on  
6 sheet A-1.

7 COMMISSIONER HOOD: A-1?

8 MS. BROWN-ROBERTS: Oh, the width.  
9 It is going to -- Let's see, from property  
10 line to property line, it's about 18 feet --  
11 no, 19 feet 6. So the garage itself is going  
12 to be about 18 feet.

13 COMMISSIONER HOOD: Okay.

14 MEMBER LOUD: And that is roughly  
15 from the existing, which is about -- I think  
16 the testimony was 12 1/2 feet?

17 MS. BROWN-ROBERTS: Pardon me?

18 MEMBER LOUD: The existing  
19 structure is about 12 1/2 feet?

20 MS. BROWN-ROBERTS: Yes, because  
21 right now it -- The existing garage does not  
22 take up the whole property length.

23 MEMBER LOUD: The entire width?

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1 MS. BROWN-ROBERTS: Right. That's  
2 correct.

3 MEMBER LOUD: All right. Thank  
4 you.

5 CHAIRPERSON MILLER: Any other  
6 Board questions? Does the applicant have any  
7 questions for the Office of Planning?

8 MS. FOWLER: No, we don't. Thank  
9 you.

10 CHAIRPERSON MILLER: Okay. thank  
11 you, Ms. Brown. That is a very thorough  
12 report.

13 I don't see anybody else in the  
14 audience who would be here to testify. So,  
15 therefore, does the applicant have any closing  
16 remarks?

17 MS. FOWLER: I just wanted to  
18 thank you all for your time, and thank Ms.  
19 Brown-Roberts for her report as well.

20 MR. MORETH: Thank you all very  
21 much.

22 CHAIRPERSON MILLER: Okay. The  
23 Board is going to deliberate on the

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1 application today.

2 I think what we should do, though,  
3 is perhaps just talk about first briefly  
4 whether we want -- I think we said we would  
5 add the additional variance relief. I just  
6 want to -- I think the Board should talk about  
7 that just briefly, and then we can discuss the  
8 whole project; because I think the variance  
9 analysis is very similar.

10 I just want to comment that I  
11 agree with Ms. Brown-Roberts that 2500.4, to  
12 the extent that she has said that, can be  
13 interpreted in different ways, and you may or  
14 may not need variance relief.

15 It is a regulation that has an  
16 "or" in it. It talks about an accessory  
17 building in any zone shall not exceed one  
18 story or 15 feet in height, and this accessory  
19 building does not exceed 15 feet in height,  
20 but it is going to be two stories.

21 So I think the sentiment here was,  
22 since the variance analysis is very similar,  
23 that it could be added. But I just want to

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1 address the issue that it is kind of a new  
2 area of relief, and it wasn't advertised.  
3 However -- So we could go either way with  
4 bringing it in or not bringing it in.

5 I feel comfortable bringing it in,  
6 because the height was advertised. The height  
7 of 15 feet is not changing. So the structure  
8 is not changing at all, and all that is  
9 happening here is that we are noticing this  
10 regulation and this "or" question, and out of  
11 an abundance of caution would be adding that  
12 relief.

13 Before we add it, I just want to  
14 make sure that Board members are comfortable  
15 with adding that extra relief to this  
16 application. Comments?

17 All right. I think the consensus  
18 is that there is no question of prejudice to  
19 the community in our finding of adding this  
20 additional relief, and the facts don't change,  
21 and our analysis really is going to be very  
22 similar for both variances. Okay.

23 Then I think we can proceed on

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1 motion. Do we have a motion on this  
2 application.

3 MEMBER LOUD: Madam Chair, I would  
4 like to move approval of Application No. 17661  
5 for variances from 11 DCMR Section 403.2  
6 regarding lot occupancy and Section 2500.4  
7 regarding either 15 height or one story  
8 limitations for accessory buildings in any  
9 zone. And I will defer to a second for  
10 further deliberation.

11 COMMISSIONER HOOD; I will second  
12 the motion.

13 MEMBER LOUD: Colleagues and Madam  
14 Chair, the case involves the addition of a  
15 two-story garage for needed storage in the R-4  
16 District, which entails, as I understand it,  
17 tearing down the existing one-story garage,  
18 rebuilding a two-story garage measuring 15  
19 feet in height -- 15 feet in height and about  
20 19 feet 6 inches in width, which would be an  
21 increase from the existing 12.5 feet.

22 That new structure would increase  
23 the lot occupancy from the existing 67.4,

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1 which is legally nonconforming, as I  
2 understand it, to 70 percent, while the R-4  
3 allows only a 60 percent maximum lot  
4 occupancy, creating the need for a variance  
5 from the lot occupancy.

6 Additionally, the new structure  
7 would add a second story accessory structure  
8 where the Section 1500.4 only permits either  
9 one story or 15 feet height.

10 Our laws authorize the BZA to  
11 grant variances under 3103.2 setting forth the  
12 uniqueness test as the measure for granting  
13 the variance. In this case, we are seeking a  
14 variance from Section 403.2 for the reasons I  
15 stated.

16 With respect to whether the test  
17 has been met, the uniqueness prong testimony  
18 of record and in the file today demonstrated  
19 that there is only one house on the block  
20 without a basement, that there is, I believe,  
21 a four and a half foot setback on the side,  
22 and it is the only house on the block that has  
23 that, which deprives this owner of the ability

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1 to recover that space to use for storage on  
2 the house.

3 It is also the only house on that  
4 block with a garage that is about 12 1/2 feet  
5 wide, all of the other structures having  
6 garages that are about 19 1/2, 19-6 wide,  
7 which may or may not alone by itself be  
8 unique, but with the other factors that were  
9 shared contribute toward a finding of  
10 uniqueness.

11 In terms of a practical  
12 difficulty, the testimony has been that there  
13 is no storage space for the family, given the  
14 existing structure, that they are unable to  
15 exit from the interior of the garage,  
16 including late at night, middle of the night,  
17 and that there is some additional practical  
18 difficulties around getting into and getting  
19 out of the lot itself.

20 In terms of adverse impact, there  
21 has been testimony that to one side of the  
22 property there is a commercial structure which  
23 has only a room in the rear for parking

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1 spaces, and that there would be no adverse  
2 impacts on that side.

3 To the other side of the  
4 structure, however, there was some concern by  
5 a person seeking party status that the  
6 structure would attach to her wall and further  
7 made a part of the record that that party  
8 wanted a four-foot space in between the two  
9 structures, which would have, in effect,  
10 created an impermissible side yard in the rear  
11 that there is no support for.

12 There did not appear to be from  
13 the record any adverse impacts to any of the  
14 neighbors on either side, and I will defer to  
15 my colleagues for additional comments.

16 COMMISSIONER HOOD: Madam Chair, I  
17 don't know how much more I can add. But other  
18 than this case, I think the record is complete  
19 and sufficient. Office of Planning really  
20 documents, and I'm sure my colleagues will  
21 accept making sure we incorporate the comments  
22 of the Office of Planning into his comments.

23 Also, when we look at the lot

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1 occupancy, we are talking about just a 2.6  
2 percent increase, which I think is very  
3 minimal.

4 This case has also been presented  
5 for the historic side of it, approval of  
6 enlarged garage, and later for approval to the  
7 Historic Preservation Review staff, and also  
8 -- Well, I don't know this is necessary, not  
9 germane, but this is a prime case in which the  
10 Zoning Commission dealt with, as mentioned  
11 here in the Office of Planning's report, 07-  
12 15. I think this is partially par for the  
13 course, one of those cases that would  
14 definitely fit that bill, so anyway, even  
15 though that is not in front of us today .

16 That's all I have to add. Thank  
17 you.

18 CHAIRPERSON MILLER: Thank you. I  
19 will just add a little bit.

20 I think that the Applicant was  
21 advised about proceeding under special  
22 exception, because it is an easier test.  
23 There are less prongs to address. But I do

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1 believe that this case does meet the variance  
2 test, for a few reasons.

3 The first one we were talking  
4 about was that it is the only house that  
5 doesn't have a basement, and then we said,  
6 well, so -- you know, what does that mean?  
7 What practical difficulty does that lead to?

8 Strict compliance with the  
9 regulations would lead to really their not  
10 being able to add on anywhere else for  
11 storage, and really not being able to meet  
12 their general living needs. It would limit  
13 the utility of the home, without having this  
14 additional storage space.

15 I think there is also what has  
16 been called a complement of factors here the  
17 Court of Appeals have recognized. It is not  
18 just the lack of storage that seems to be  
19 practical difficulties in living in this home.  
20 It is also where the garage is situated with  
21 the 90 degree angle, the difficulty getting in  
22 there, the narrowness of the garage, which has  
23 been described as exceptionally narrow, and

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1 also the location right behind the grooming  
2 commercial establishment.

3 So I think those are all unique  
4 characteristics of the property that lead to  
5 the practical difficulties of access to the  
6 garage and use of the garage and also general  
7 storage space.

8 We talked about the fact that this  
9 is an historic property, and so are many of  
10 the other homes in that square. However, what  
11 that does is limit any other ability to  
12 expand, to find other areas for storage.

13 Then the third prong is -- Oh,  
14 just one more thing, the 2500.4, how that fits  
15 in here as well. In that case, you know, what  
16 you re doing is adding a second story even  
17 though the height is permitted, and you need  
18 to add that second story for the same kind of  
19 storage reasons that we are talking about. It  
20 is all connected. It does lead to that  
21 practical difficulty, and there haven't been  
22 any adverse impacts, really, identified.

23 You are not even adding another

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1 car to the neighborhood. So I think for those  
2 reasons, it does meet the variance test for  
3 both those regulations, and it has the support  
4 of the neighbors and the ANC and Capitol Hill  
5 Restoration Society, and even though it was  
6 for a special exception, I think it addresses  
7 -- if they had concerns, that wouldn't change.  
8 I mean, they knew the height of the garage and  
9 they knew the use that you wanted to do with  
10 it. So I don't see that as a concern.

11 There is a petition in the file  
12 also of support. I don't know if we had  
13 mentioned that. That is Exhibit 12, and  
14 Exhibit 10 and 11 are adjacent neighbors'  
15 letters in support, and HPRB has approved the  
16 project.

17 Okay. I don't have anything  
18 further. Anyone else? Okay, then I think we  
19 can vote on this.

20 All those in favor, say Aye. All  
21 those opposed? All those abstaining?

22 Would you call the vote, please?

23 MS. BAILEY: Madam Chair, the vote

1 is recorded as four-zero-one to approve the  
2 application as amended. The motion was made  
3 by Mr. Loud, seconded by Mr. Hood. Mr.  
4 Etherly and Ms. Miller support the motion.  
5 The NCPC representative is not present at this  
6 time.

7 CHAIRPERSON MILLER: Thank you. I  
8 would suggest that this be a summary order as  
9 there is no opposition in this case. Is that  
10 the consensus of the Board? Okay.

11 Thank you very much.

12 Ms. Bailey, do we have any other  
13 items on the agenda for this afternoon?

14 MS. BAILEY: That's it.

15 CHAIRPERSON MILLER: Then this  
16 hearing is adjourned.

17 (Whereupon, the foregoing matter  
18 went off the record at 4:48 p.m.)

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