

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

+ + + + +

PUBLIC HEARING

+ + + + +

TUESDAY,

OCTOBER 7, 2008

+ + + + +

The Public Hearing convened in Room 220 South, 441 4th Street, N.W., Washington, D.C. 20001, pursuant to notice at 2:26 p.m., Ruthanne G. Miller, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

RUTHANNE G. MILLER Chairperson
MARC D. LOUD Vice Chairman
SHANE L. DETTMAN Board Member
(NCPC)
MARY OATES WALKER Board Member

ZONING COMMISSION MEMBER PRESENT:

GREGORY JEFFRIES Vice Chairman

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY Secretary
BEVERLEY BAILEY Sr. Zoning Spec.

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:
LORI MONROE, ESQ.

OFFICE OF PLANNING STAFF PRESENT:

STEVEN COCHRAN
ARLOVA JACKSON
MICHAEL GIULIONI

This transcript constitutes the
minutes from the Public Hearing held on
October 7, 2008.

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

2 2:27 p.m.

3 CHAIRPERSON MILLER: Good
4 afternoon, ladies and gentlemen. This hearing
5 will, please, come to order. This is the
6 October 7, 2008 Public Hearing of the Board of
7 Zoning Adjustment of the District of Columbia.
8 My name is Ruthanne Miller. I'm the Chair of
9 the BZA.

10 To my right is Mr. Marc Loud, who
11 is our Vice Chair, and next to him is Mr. Greg
12 Jeffries from the Zoning Commission. To my
13 left are Mary Oates Walker and Shane Dettman,
14 Board Members. And next to Mr. Dettman is Mr.
15 Clifford Moy from the Office of Zoning, Ms.
16 Lori Monroe from the Office of Attorney
17 General and Ms. Beverley Bailey from the
18 Office of Zoning.

19 Copies of today's hearing agenda
20 are available to you and are located to my
21 left in the wall bin near the door. Please,
22 be aware that this proceeding is being

1 recorded by a Court Reporter and is also
2 webcast live. Accordingly, we must ask you to
3 refrain from any disruptive noises or actions
4 in the hearing room.

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

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

20 The order of procedure for special
21 exceptions and variances is as follows: One,
22 statement and witnesses of the applicant.

1 Two, Government reports, including Office of
2 Planning, Department of Public Works, DDOT,
3 etcetera. Three, report of the Advisory
4 Neighborhood Commission. Four, parties or
5 persons in support. Five, parties or persons
6 in opposition. Six, closing remarks by the
7 applicant.

8 Pursuant to Section 3117.4 and
9 3117.5, the following time constraints will be
10 maintained: The applicant, appellant, persons
11 and parties, except an ANC, in support,
12 including witnesses, 60 minutes collectively.
13 Persons and parties, except an ANC, in
14 opposition, including witnesses, 60 minutes
15 collectively. Individuals 3 minutes.

16 These time restraints do not
17 include cross examination and/or questions
18 from the Board. Cross examination of
19 witnesses is permitted by the applicant or
20 parties. The ANC within which the property is
21 located is automatically a party in a special
22 exception or variance case.

1 Nothing prohibits the Board from
2 placing reasonable restrictions on cross
3 examination, including time limits and
4 limitations on the scope of cross examination.

5 The record will be closed at the
6 conclusion of each case, except for any
7 material specifically requested by the Board.
8 The Board and the staff will specify at the
9 end of the hearing exactly what is expected
10 and the date when the persons must submit the
11 evidence to the Office of Zoning. After the
12 record is closed, no other information will be
13 accepted by the Board.

14 The Sunshine Act requires that the
15 Public Hearing on each case be held in the
16 open before the public. The Board may,
17 consistent with it's Rules of Procedure and
18 the Sunshine Act, enter Executive Session
19 during or after the Public Hearing on a case
20 for purposes of reviewing the record or
21 deliberating on the case.

22 The decision of the Board in these

1 contested cases must be based exclusively on
2 the public record. To avoid any appearance to
3 the contrary, the Board requests that persons
4 present not engage the Members of the Board in
5 conversation.

6 Please, turn off all beepers and
7 cell phones, at this time, so as not to
8 disrupt the proceedings.

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

15 At this time, the Board will
16 consider any preliminary matters. Preliminary
17 matters are those that relate to whether a
18 case will or should be heard today, such as
19 requests for postponement, continuances or
20 withdrawal or whether proper and adequate
21 notice of the hearing has been given. If you
22 are not prepared to go forward with a case

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1 today or if you believe that the Board should
2 not proceed, now is the time to raise such a
3 matter.

4 Does the staff have any
5 preliminary matters?

6 MS. BAILEY: Madam Chair, Members
7 of the Board and to everyone, good afternoon.
8 Staff does not.

9 CHAIRPERSON MILLER: Okay. I
10 think that there may be some preliminary
11 matters within some of the cases and we are
12 aware of that, so we will deal with them when
13 they come up in those cases.

14 Would you like to swear in today
15 everyone who is interested in testifying? So
16 all of you who are interested in testifying
17 today, either in support or opposition on any
18 of the cases scheduled for this afternoon,
19 should rise now and Ms. Bailey will administer
20 the oath.

21 MS. BAILEY: Would you, please,
22 raise your right hand?

1 (Whereupon, the witnesses were
2 sworn.)

3 MS. BAILEY: Thank you. Are you
4 ready for the first case, Madam Chair?

5 CHAIRPERSON MILLER: Yes, thank
6 you.

7 MS. BAILEY: Application No. 17819
8 of Alison Rein and Matthew Gardner, pursuant
9 to 11 DCMR 3104.1, for a special exception to
10 allow the construction of a two-story rear
11 addition to an existing one-family row
12 dwelling under section 223, not meeting the
13 lot occupancy requirements, that's section
14 403. The property is located in the R-5-B
15 District at premises 1811 15th Street, N.W.,
16 Square 206, Lot 132.

17 CHAIRPERSON MILLER: Good
18 afternoon. Why don't you introduce yourself
19 for the record, please.

20 MR. FIELD: My name is Allan
21 Field. I'm with the Levine Group Architects
22 and Builders and I am representing our

1 clients, Alison Rein and Matthew Gardner, for
2 their special exception to increase lot
3 coverage to 70 percent at 1811 15th Street,
4 N.W.

5 This case we have received
6 recommended approval from the Office of
7 Planning and from the ANC and preliminary
8 approval from, at the staff level, Steve
9 Calcott at HPO. And there has been no
10 opposition, that I'm aware of. So we are
11 prepared to stand on record, but we're also
12 glad to walk through the project if that's
13 helpful.

14 CHAIRPERSON MILLER: Okay. I
15 don't think we need you to walk through the
16 project. Actually, the file is very full on
17 this and I think it's very straightforward.
18 Do Board Members have any questions for the
19 applicant? No?

20 COMMISSIONER JEFFRIES: Just one.

21 CHAIRPERSON MILLER: Yes.

22 COMMISSIONER JEFFRIES: So that's

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1 a trumpet vine in the back?

2 MR. FIELD: That is -- I am not --
3 over the fence there?

4 COMMISSIONER JEFFRIES: Uh-huh.

5 MR. FIELD: That might be, but
6 that will be going.

7 COMMISSIONER JEFFRIES: Oh, that
8 will be gone. Too bad. It looks nice.
9 Anyway --

10 MR. FIELD: Something will come
11 back, hopefully more like a Wisteria perhaps.

12 CHAIRPERSON MILLER: Okay. Then
13 we can go to the Office of Planning.

14 MR. GIULIONI: Good afternoon,
15 Members of the Board. For the record, my name
16 is Michael Giulioni. I'm a Development Review
17 Specialist with the Office of Planning. As
18 the applicant did state, we are recommending
19 approval and we would also like to stand on
20 the record, but I am here also to answer any
21 questions should you have them.

22 CHAIRPERSON MILLER: Do Board

1 Members have any questions? Now, this is a
2 very excellent and thorough report. I don't
3 have any questions either. Does the applicant
4 have a copy of the Office of Planning report?

5 MR. FIELD: Yes, we do.

6 CHAIRPERSON MILLER: Great. Okay.
7 And do you have any questions for the Office
8 of Planning?

9 MR. FIELD: Nope, I don't.

10 CHAIRPERSON MILLER: Okay. And is
11 anybody here from the ANC? Nope. Okay. We
12 do have, I believe in our file, Exhibit 25, an
13 ANC report in support, let me just pull that,
14 by a vote of 9-0. Also, in my notes it says
15 that they -- it was filed one day late, but I
16 don't believe the Board has a problem with
17 accepting that into the record? Nope, okay.

18 So okay, that's that for the ANC.
19 Is there anybody here who wishes to testify
20 either in support or opposition to this
21 application? Not hearing from anybody, any
22 closing remarks? I was just asking you if you

1 had any closing remarks? Yes?

2 MR. FIELD: Is this something
3 where you do -- and I'm not sure of the
4 procedure here, is this a Bench vote or is
5 this -- how does the process go?

6 CHAIRPERSON MILLER: Well, the
7 process is that when we are finished with the
8 hearing, which we are almost finished, this is
9 very speedy, because the record is full. It's
10 very straightforward. There aren't really any
11 problems with this. So we are almost through
12 and then the Board will deliberate on it.

13 And what you are asking about is
14 would we issue like a Bench decision, which
15 would mean we would decide today.

16 MR. FIELD: Um-hum.

17 CHAIRPERSON MILLER: And we will
18 be deciding today, yes.

19 MR. FIELD: Thank you.

20 CHAIRPERSON MILLER: Okay.

21 MR. FIELD: That's it.

22 CHAIRPERSON MILLER: Any closing

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1 remarks?

2 MR. FIELD: No, not from me.

3 CHAIRPERSON MILLER: You're the
4 only one I'm asking. Okay. Any other final
5 questions? No?

6 MS. MONROE: Madam Chair?

7 CHAIRPERSON MILLER: Yes?

8 MS. MONROE: I just want to add
9 but the decision is not the final word,
10 because a order will be issued based on that
11 decision, which will come out in a few days.
12 Just that's what you need.

13 MR. FIELD: All right. Thank you.

14 CHAIRPERSON MILLER: The written
15 order to take with you to DCRA.

16 MR. FIELD: You send that to us or
17 to DCRA?

18 CHAIRPERSON MILLER: I think to
19 you, but Ms. Monroe, she is our OAG.

20 MS. MONROE: To the applicant.

21 MR. FIELD: To the applicant.

22 MS. MONROE: It's likely DCRA gets

1 copies of everything, too.

2 MR. FIELD: Okay.

3 CHAIRPERSON MILLER: Okay. I
4 think we are ready to deliberate on this
5 application, are we not? Okay. Then I would
6 move approval of Application No. 17819 of
7 Alison Rein and Matthew Gardner, pursuant to
8 11 DCMR section 3104.1, for a special
9 exception to allow the construction of a two-
10 story rear addition to an existing one-family
11 row dwelling under section 223, not meeting
12 the lot occupancy requirements under section
13 403, at premises 1811 15th Street, N.W.

14 COMMISSIONER JEFFRIES: Second.

15 CHAIRPERSON MILLER: Okay. I
16 think that I will just briefly say that the
17 Office of Planning did a very thorough
18 analysis of this going through all the
19 elements of 223 finding that the proposed
20 addition won't have a negative impact on the
21 light and air available to neighboring
22 properties.

1 The addition is the same height as
2 the rest of the house and because of its
3 orientation to the sun, it doesn't affect
4 property to the north. And then there's an
5 alley with respect to the properties to the
6 rear and the south. It doesn't affect
7 privacy, enjoyment of neighboring properties.

8 It's not noticeable from 15th
9 Street. Let's see, and it falls within the
10 lot occupancy required to come under 223. It
11 has to be up to 70 percent. And it meets all
12 the other area requirements.

13 So I think that we can, basically,
14 adopt Office of Planning's analysis that it
15 meets all the requirements and also the ANC is
16 in support and there is no opposition, that I
17 know of, in the record.

18 So any other comments? Okay.

19 All those in favor say aye?

20 ALL: Aye.

21 CHAIRPERSON MILLER: All those
22 opposed? All those abstaining? And would you

1 call the vote, please?

2 MS. BAILEY: Madam Chair, the vote
3 is recorded as 5-0-0 to grant the application.
4 Mrs. Miller made the motion, Mr. Jeffries
5 seconded, Mr. Dettman, Mrs. Walker and Mr.
6 Loud support the motion.

7 CHAIRPERSON MILLER: Thank you.
8 And this can be a summary order, as there is
9 no party in opposition.

10 MS. BAILEY: Thank you.

11 CHAIRPERSON MILLER: So we are
12 ready for the next case when you are, Ms.
13 Bailey.

14 MR. FIELD: Thank you.

15 CHAIRPERSON MILLER: She's going
16 to call it. Okay.

17 MS. BAILEY: Application No. 17820
18 of Michael and Meta Carr, pursuant to 11 DCMR
19 3104.1, for a special exception to allow the
20 construction of a third story addition to an
21 existing one-family row dwelling under section
22 223, not meeting the court requirements,

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1 that's section 4-6. The property is located
2 in the Dupont Circle R-5-B District at
3 premises 1718 15th Street, N.W., Square 192,
4 Lot 102.

5 CHAIRPERSON MILLER: Okay. Would
6 you introduce yourself again for the record?

7 MR. FIELD: Yeah, my name is Allan
8 Field. I'm with the Levine Group Architects
9 and Builders representing our client, Michael
10 and Meta Carr, at 1718 15th Street, for a
11 special exception regarding the court setback
12 on the -- in the dogleg portion of the house.

13 Again, we have Office of Planning
14 recommended approval, ANC recommended
15 approval. This has been before HPO, so we are
16 fully approved there. And we have no
17 opposition and several letters of
18 recommendation, I believe. So again, we are
19 prepared to stand on the record, but I also
20 have boards and information for you that I can
21 walk you through the project, if you would
22 like.

1 CHAIRPERSON MILLER: I think we
2 are all right with what's in the record, are
3 we not? Okay. And this one seems to be even
4 more straightforward almost than the previous
5 one. And that none of the zoning requirements
6 are really changed. You are only out of
7 compliance with the open court requirement of
8 406, right?

9 MR. FIELD: That's correct.

10 CHAIRPERSON MILLER: But you were
11 before to the same extent before --

12 MR. FIELD: Yes.

13 CHAIRPERSON MILLER: -- you were
14 doing this addition.

15 MR. FIELD: Yes.

16 CHAIRPERSON MILLER: Okay. So
17 that doesn't even change.

18 MR. FIELD: It doesn't change.

19 CHAIRPERSON MILLER: Okay.

20 Anything else you want to say before we go to
21 Office of Planning?

22 MR. FIELD: No, I think we're

1 okay.

2 CHAIRPERSON MILLER: Okay. Mr.
3 Cochran?

4 MR. COCHRAN: For the record,
5 Steve Cochran, Office of Planning. OP would
6 be pleased to stand on the record.

7 CHAIRPERSON MILLER: Board Members
8 have any questions on this case? Okay. Any
9 questions from the applicant?

10 MR. FIELD: Nope.

11 CHAIRPERSON MILLER: You do have a
12 copy of the report?

13 MR. FIELD: Yes, I do.

14 CHAIRPERSON MILLER: Okay. Is
15 anybody here from the ANC? Anybody here to
16 testify either in support or opposition to
17 this application? Okay. Board Members, any
18 questions? Applicant any closing argument?

19 MR. FIELD: Nope.

20 CHAIRPERSON MILLER: Okay.

21 COMMISSIONER JEFFRIES: Other than
22 this photograph here, it's just showing some

1 of the best of D.C.'s row house. I mean, it's
2 just really quite nice.

3 CHAIRPERSON MILLER: All right.
4 Any other remarks now? All right. Then I
5 would move approval of Application No. 17820
6 of Michael and Meta Carr, pursuant to 11 DCMR
7 section 3104.1, for a special exception to
8 allow the construction of a third story
9 addition to an existing one-family row
10 dwelling under section 223, not meeting the
11 court requirements, section 406, at premises
12 1718 15th Street, N.W.

13 COMMISSIONER JEFFRIES: Second.

14 CHAIRPERSON MILLER: Thank you. I
15 think, you know, similar to the previous case,
16 this is very straightforward. Office of
17 Planning has done a very thorough analysis of
18 all the elements under 223 and, in fact, this
19 extension is not even creating or extending
20 any nonconformities.

21 It's just seeking relief from the
22 court requirement under 406, which isn't even

1 changing from the way it was before. So it's
2 not changing at least with respect to its
3 variance from the court requirements.

4 It's not having any adverse impact
5 on any neighboring properties. It can be seen
6 from the rear alley, but it has been
7 determined to be acceptable by the Historic
8 Preservation Office. And it comes in within
9 the lot occupancy requirements. It's a 59
10 percent lot occupancy. And the limit here is
11 60 percent.

12 It has been reviewed and approved
13 by HPRB. It's supported by adjacent
14 neighbors. No letters of opposition. The ANC
15 also voted to support the application. That's
16 our Exhibit 24. Let's see, and the Dupont
17 Conservancy supports the application.

18 Anything else anyone wants to add
19 to this? Okay.

20 All those in favor say aye.

21 ALL: Aye.

22 CHAIRPERSON MILLER: All those

1 opposed? All those abstaining? And would you
2 call the vote, please?

3 MS. BAILEY: Madam Chair, the vote
4 is recorded as 5-0-0 to grant the application.
5 Mrs. Miller made the motion, Mr. Jeffries
6 seconded, Mr. Dettman, Mrs. Walker and Mr.
7 Loud support the motion. Are we doing a
8 summary order?

9 CHAIRPERSON MILLER: Summary
10 order, yes, no party in opposition, um-hum.
11 Thank you very much. That was quick, huh?

12 MR. FIELD: Thank you all very
13 much.

14 CHAIRPERSON MILLER: Okay.

15 MS. BAILEY: No, you can take
16 those, um-hum. You can leave the easel there,
17 yes, um-hum.

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

21 MS. BAILEY: Madam Chair, the next
22 case has several preliminary matters

1 associated with it. I will call the case and
2 then, with your permission, discuss the
3 preliminary matters, at that time.

4 Application No. 17814 of DRM &
5 Associates, Inc., pursuant to 11 DCMR 3103.2,
6 for a variance from the lot area requirements
7 under subsection 401.3, a variance from the
8 rear yard requirements under section 404, a
9 variance from the open court requirements
10 under section 406, a variance from the
11 nonconforming structure provisions under
12 subsection 2001.3(b), and a variance from the
13 parking requirements under subsection 2101.1,
14 to allow the conversion of a one-family
15 dwelling to a four unit apartment building for
16 the elderly at premises 1238 New Jersey
17 Avenue, N.W.

18 As I indicated, there are several
19 preliminary matters, more than several,
20 associated with the application. The first of
21 which is the applicant did amend the
22 application and eliminated some of the

1 variances and perhaps he may want to discuss
2 that with the Board, at the appropriate time.

3 Secondly, there are two requests
4 for party status. You have one in the record,
5 but we also received another one today. That
6 one you do not have and I have copies here to
7 hand out.

8 And lastly, the property was
9 posted for 13 days. As you know, Madam Chair,
10 15 days are required, so the Board would need
11 to waive two days of the posting requirements.

12 And lastly, I'm sorry, one more,
13 the applicant did file an additional document
14 in the record. So the request for party
15 status, the additional request for party
16 status and the filing that the applicant made
17 today, I'll be passing out at this time.

18 CHAIRPERSON MILLER: There was
19 just a filing from the applicant today?

20 MS. BAILEY: Yes, ma'am.

21 CHAIRPERSON MILLER: Okay. So
22 that's untimely also, correct?

1 MS. BAILEY: Yes, all of his
2 filings should have been 14 days before today.

3 CHAIRPERSON MILLER: Okay. Let me
4 just get to the table the parties or the --
5 including party status applicants. The
6 applicants at the table.

7 COMMISSIONER JEFFRIES: Madam
8 Chair, what exhibit is the party status?

9 CHAIRPERSON MILLER: I'm not sure.

10 COMMISSIONER JEFFRIES: This is
11 17813, right? This is --

12 MEMBER LOUD: 14.

13 COMMISSIONER JEFFRIES: Oh, 14.

14 CHAIRPERSON MILLER: 14.

15 COMMISSIONER JEFFRIES: Oh.

16 CHAIRPERSON MILLER: But some of
17 the papers in the various cases were filed in
18 both and I think that might be the problem.
19 Why don't we wait one second for us to locate
20 our papers.

21 COMMISSIONER JEFFRIES: Exhibit
22 22, did I hear that?

1 CHAIRPERSON MILLER: I didn't say
2 anything.

3 COMMISSIONER JEFFRIES: Oh. Is
4 this it? This is the new one. Okay.

5 CHAIRPERSON MILLER: Is the ANC
6 here in this case? Oh, okay, okay. You
7 should be at the table. Are you waiting for
8 a document though?

9 COMMISSIONER JEFFRIES: Well, I
10 got the new one. What's the old one? Oh,
11 okay.

12 CHAIRPERSON MILLER: Is Arsine
13 Kailian here? Okay. You can come to the
14 table as well, please. And then an Ana Bilik?
15 Okay. Why don't we start with introductions,
16 beginning with the applicant?

17 COMMISSIONER JEFFRIES: Are you --

18 MR. MADDEN: My name is Donald
19 Madden. I'm President of DRM & Associates,
20 Inc. and I own both 1238 and 1242 New Jersey
21 Avenue, N.W.

22 CHAIRPERSON MILLER: Why don't we

1 start with the first preliminary matter that
2 Ms. Bailey identified, which was did you amend
3 your application to subtract some of these
4 variances or what?

5 MR. MADDEN: Yes.

6 CHAIRPERSON MILLER: Okay.

7 MR. MADDEN: Madam Chair, it was
8 in error that we submitted to build, I guess,
9 the senior citizens facility, that wasn't the
10 intent. The intent was to have a facility
11 that I hoped to place emphasis in renting to
12 senior citizens, not as a senior citizens
13 facility. And therefore, I withdrew that
14 part.

15 CHAIRPERSON MILLER: Okay. Is
16 there anything else that's different?

17 MR. MADDEN: The matter of
18 parking. We met with Zone Planning and the
19 Historical Society. It was, basically,
20 discussed and realized that there was no
21 capabilities to provide parking, because it's
22 not allowed on the front and the lot is lot

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1 bound, even though the neighbor next door in
2 between the two buildings did place parking in
3 front without proper authorities.

4 CHAIRPERSON MILLER: But my --

5 MR. MADDEN: And the parking of
6 two cars --

7 CHAIRPERSON MILLER: I mean, the
8 application is advertised for a variance from
9 the parking requirements. Are you still
10 seeking that?

11 MR. MADDEN: I was informed to beg
12 the Board to grant us permission to build
13 without parking, based on the facts presented
14 as we discussed with planning and with
15 Historical Society.

16 CHAIRPERSON MILLER: Okay. I
17 guess it was Office of Planning's position
18 that variances are required for parking,
19 because it's historic. Is that it? No? So
20 what is -- I don't understand what is changing
21 then. You're seeking a variance still from
22 parking?

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1 MS. JACKSON: Historic -- I'm
2 sorry. For the record, my name is Arlova
3 Jackson with Office of Planning. This is --
4 we're on 18 -- 17814, correct? For that one,
5 because the building is still considered a
6 contributing structure to the District, it's
7 exempt from parking.

8 CHAIRPERSON MILLER: Oh, okay. I
9 thought that's what I said.

10 MS. JACKSON: Okay. I thought you
11 said something else. Sorry.

12 COMMISSIONER JEFFRIES: Okay.
13 Wait a minute. The party status that we just
14 got was for Case 17813.

15 MR. MADDEN: May I address that,
16 sir?

17 CHAIRPERSON MILLER: No, wait.

18 COMMISSIONER JEFFRIES: It's for
19 both? Oh, I'm sorry.

20 MR. MADDEN: Yes.

21 COMMISSIONER JEFFRIES: I'm sorry,
22 okay. Okay. I'm sorry, that's my fault.

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1 CHAIRPERSON MILLER: Okay. No, I
2 don't want you to address party status yet.
3 They haven't even introduced themselves, so --
4 no, that's okay for you. I'm not talking to
5 you. I thought the applicant wanted to
6 address it and I just wanted to first deal
7 with the relief that, you know, Ms. Bailey
8 said that the application had been amended.

9 So it has been amended to
10 eliminate the relief for an elderly center and
11 it has been eliminated to seek relief from the
12 parking requirements. Okay. That's it,
13 right?

14 MR. MADDEN: That's it.

15 CHAIRPERSON MILLER: All right.
16 Why don't we let the others introduce
17 themselves, at this point, and then we'll go
18 to party status.

19 MR. DIXON: Good afternoon. My
20 name is Mark Dixon and I'm the Vice Chair of
21 the 6C and this is my Single Member District.

22 CHAIRPERSON MILLER: Okay. Thank

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1 you.

2 MS. KAILIAN: Good afternoon. My
3 name is Arsine Kailian. I live at 1108 5th
4 Street, N.W., and I'm the owner of 1227 4th
5 Street, N.W., which is in close proximity to
6 both of the properties in Case No. 17813 and
7 17814. I'm also the Vice President of the
8 Mount Vernon Square Neighborhood Association.

9 MEMBER LOUD: I'm sorry, could you
10 just repeat your address again?

11 MS. KAILIAN: My home address or
12 the address that is in proximity? My home
13 address is 1108 5th Street, N.W. The other
14 property I own is 1227 4th Street, N.W.

15 MEMBER LOUD: Is that a rental
16 property?

17 MS. KAILIAN: Yes, sir, yes.

18 CHAIRPERSON MILLER: So you live
19 in close proximity, but you also own something
20 else in close proximity?

21 MS. KAILIAN: That's correct. The
22 house that is close to us is the one that I

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1 rent out to other people.

2 CHAIRPERSON MILLER: Why don't we
3 also just have Ms. Bilik introduce yourself?

4 MS. BILIK: My name is Ana Bilik.
5 I reside at 1240 New Jersey Avenue, which is
6 the property sandwiched between the two
7 properties that are in question here today.
8 And I'm a homeowner and reside there.

9 CHAIRPERSON MILLER: All right.
10 Why don't we consider the two party status
11 application, at this point, then? Let me find
12 out is there any objection to granting either
13 of these individuals party status by either
14 the applicant or the ANC? Mr. Dixon is
15 shaking his head no.

16 MR. DIXON: I'm sorry. No.

17 CHAIRPERSON MILLER: That's okay.
18 All right.

19 MR. MADDEN: No.

20 CHAIRPERSON MILLER: No objection.
21 Okay. Then Board, let me just ask very
22 briefly, it looks like you two are affected

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1 differently from the general public. But
2 could you just state for the record how you
3 are affected or would be more affected by the
4 relief being granted in this case?

5 MS. KAILIAN: I should also tell
6 you that I did live at 1227 4th Street, N.W.
7 for about three years, three or four years.
8 But I'm also deeply involved in the
9 neighborhood as I am an officer in the
10 Neighborhood Association, so I -- it does, you
11 know, affect the whole neighborhood and
12 especially that block.

13 CHAIRPERSON MILLER: But your
14 application is based on you individually, not
15 the association.

16 MS. KAILIAN: That's true. My
17 rental property is -- the back property line
18 for the back yard is about 20 feet from one of
19 the properties and about 50 feet from the
20 other properties. And the entire block has no
21 alley and it's actually a very thin block, so
22 whatever extra building occurs on a lot does

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1 affect the neighboring properties in terms of
2 light and air and that kind of thing more so
3 than if it did have an alley.

4 CHAIRPERSON MILLER: Okay. Thank
5 you. Ms. Bilik?

6 MS. BILIK: As I mentioned
7 earlier, I live right between the two
8 properties in question. When the house
9 collapsed at 1242 New Jersey Avenue it landed
10 on top of my house. We were asked to leave my
11 house for five weeks while the property was
12 made secure, the neighboring property was made
13 secure.

14 I have little confidence in the
15 structural integrity of the work that has been
16 done thus far on the two properties. And I'm
17 very concerned about the additional work that
18 is being requested to be done, particularly
19 the extensions and how that might affect the
20 foundation of my property.

21 I believe he is also proposing to
22 extend the property out further back from

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1 where it was before, which would affect the
2 light and air in my back yard and impinge
3 possibly on the privacy. I believe I saw in
4 one of the applications that he, Mr. Madden,
5 was preparing to build balconies instead to
6 supplement the fact that there would be less
7 backyard.

8 And those balconies would be
9 directly overlooking my backyard. I have a 3
10 year-old son and would prefer not to have
11 people staring at my son from their balconies.
12 Thank you.

13 CHAIRPERSON MILLER: Thank you. I
14 noticed that your application was just filed
15 today and the regulations require that it be
16 filed 14 days a head of time, though it's
17 within the discretion of this Board to waive
18 that requirement. Do you want to just put on
19 the record why you didn't file it earlier than
20 today?

21 MS. BILIK: No reason other than
22 procrastination and I have a 3 year-old son

1 and I work full-time in didn't have the time
2 to do it quite honestly, sorry.

3 CHAIRPERSON MILLER: Okay. Do
4 Board Members have any questions? I just will
5 say one other thing, that do you all know the
6 difference between party status and just
7 participating as an individual?

8 Okay. To make sure you want party
9 status, very simply stated, any individual can
10 testify in a hearing for an application, such
11 as this. You don't need permission by this
12 Board to do that. So you can testify.

13 If we grant you party status,
14 which you have applied for, because you have
15 made an indication that you are going to be
16 impacted greater than the general public, that
17 will allow you to cross examine the applicant,
18 the Office of Planning and the ANC, any of the
19 parties and possibly file any other filings
20 that the Board may ask for.

21 So I just want to make sure you
22 want party status.

1 MS. KAILIAN: Yes.

2 MS. BILIK: Yes, thank you.

3 CHAIRPERSON MILLER: Okay. All
4 right. So do Board Members have any objection
5 to granting either of the party status
6 applicants party status? No, okay. So you
7 are now granted party status, which will allow
8 you to participate fully in the rest of the
9 proceedings.

10 So I may ask, you know, do any
11 parties have any objection to such and such
12 and you also can weigh in on that as a party.

13 Which brings us to the next
14 preliminary issue, which was that the
15 application was posted -- advertisement for
16 the application, the placard was posted late,
17 I believe, in this case, two days later. Do
18 you want to address that, Mr. Madden?

19 MR. MADDEN: Yes. When I was here
20 before the Board and we made the decisions to
21 postpone it until today with both applicants,
22 I went next door to pick up the signs to post

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1 and the young lady asked me to come back the
2 next day to pick them up, which I did. I came
3 back the next day and picked them up and I
4 posted them. And that was my reason for it
5 not being posted that day.

6 CHAIRPERSON MILLER: Oh, because
7 you had to come back the next day and then by
8 then you were already late?

9 MR. MADDEN: Yes, Chairman.

10 CHAIRPERSON MILLER: Okay. You
11 know, and when we consider this, we consider,
12 it's similar to waiving any of the
13 requirements, whether there is, you know,
14 prejudice to any party or good cause. And Mr.
15 Madden has addressed the good cause aspect as
16 to why it was posted late and it's two days
17 late. And it would be prejudicial, for
18 instance, you know, if certain members of the
19 community, certainly the neighbors or whoever,
20 didn't have notice of the application, because
21 it's one of the means of notice. It's not the
22 only means.

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1 So do the parties have any
2 objection to waiving this time requirement,
3 the two days?

4 MR. DIXON: ANC, Mark Dixon. We
5 still haven't seen them post it. If he got
6 the posters, he didn't put them on the
7 property. And of course, I have been going
8 past there and looking. So, you know, he --
9 I asked him about it and he said the rain must
10 have knocked it down or the wind must have
11 knocked it down. I haven't seen posters yet.

12 MR. MADDEN: May I address that?

13 CHAIRPERSON MILLER: Ms. Bailey,
14 do we have an Affidavit of Posting?

15 MS. BAILEY: Yes, Madam Chair.

16 CHAIRPERSON MILLER: Okay. Yes,
17 you want to address that?

18 MR. MADDEN: Yes. I posted, as I
19 stated, when I received them and I have gone
20 past verified as the regulation requires to
21 make sure they are still posted. I went by
22 there Saturday and they were posted. After

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1 the rain, one of the posters were taken down
2 or blown down on the left hand side of the
3 neighborhood here. And I put that back up.
4 And the other one has been posted and has not
5 been removed from the time I posted it.

6 I have a second poster just in
7 case it was taken. I could have placed it up,
8 but it has been there all the time. I don't
9 know why the gentleman hasn't seen it. I
10 think the neighborhood will verify that they
11 have been posted.

12 CHAIRPERSON MILLER: Why don't we
13 hear from the neighbors? Do you all have --

14 MS. KAILIAN: I have not seen a
15 poster on 1238 New Jersey Avenue. And I did
16 see a poster on 1242 New Jersey Avenue, but it
17 was put up late.

18 MS. BILIK: I do recall seeing
19 posters on both the properties at some point.
20 I couldn't tell you if they were there this
21 morning or this weekend. I'm not quite that
22 observant on the details.

1 CHAIRPERSON MILLER: All right.
2 Well, let's get to the, you know, point of it.
3 It is one form of advertising about the
4 application that may meet some people that
5 other forms don't meet. But everyone within
6 200 feet is supposed to get a written notice
7 anyway. The ANC got their notice.

8 I think, you know, we're talking
9 about the possibility of postponing this case
10 if there wasn't adequate notice. And the
11 question is, you know, that something we
12 really should do or do the players or do the
13 people who are affected actually have notice?

14 MR. DIXON: That's one thing we're
15 here for, because he has not been though the
16 ANC yet. Matter of fact, we have a meeting
17 this evening that he is supposed to be at.
18 And so we can discuss this. There's a little
19 bit more than just posting and notifying the
20 neighborhood. And I asked them for the
21 signatures of the people in the neighborhood
22 that he got and none of them live on the

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1 street that he got.

2 So I'm very curious about these
3 signatures what he is turning in, because they
4 are not in the neighborhood or where we have
5 the house. So that's a lot of things, a lot
6 of problems with this situation here that we--
7 that I'm getting back from the neighborhood
8 and if I'm not mistaken, I think we have
9 neighbors that already sent information in to
10 you and with complaints about this
11 neighborhood.

12 So about this meeting here, so I
13 really think that we need to postpone this as
14 far as the ANC is concerned. And trying to
15 clear up all these matters that he has against
16 him here, if you don't mind.

17 MR. MADDEN: May I speak? First
18 of all, if you look at the signatures in the
19 statement just made, none are the signatures
20 from the block, that's not correct. So there
21 are signatures from the same street and the
22 neighborhood.

1 As far as meeting with the ANC, I
2 did go before the ANC. The ANC notified me a
3 short time before the meeting, I appeared with
4 my architect, however, they didn't have
5 adequate time to review the applications.
6 However, there were testimonies given at the
7 ANC and that's why I addressed them in this
8 file of all the people that got up and brought
9 up oppositions. And I consequently answered
10 those in the file.

11 And so I think I have met my
12 burden to a certain degree and meeting the
13 comments that were provided at the ANC
14 meeting.

15 CHAIRPERSON MILLER: I don't
16 understand. Did you present at the ANC
17 meeting?

18 MR. MADDEN: We went to the ANC
19 meeting, but -- I had my architect there. And
20 when we got to the meeting, they were sort of
21 in opposition, because they said that they
22 hadn't had time to review the application.

1 However, they allowed the neighbors to testify
2 at the ANC in my presence and the architect.
3 And at that time, I took the notes and that's
4 why I addressed them in the file.

5 CHAIRPERSON MILLER: So what were
6 they testifying on though? They had -- you
7 had them make a presentation. Were they
8 testifying on the application that was filed?

9 MR. MADDEN: The application?
10 They had the application.

11 CHAIRPERSON MILLER: They had the
12 application. So that's what they were
13 commenting on?

14 MR. MADDEN: Right.

15 CHAIRPERSON MILLER: Okay.

16 MR. MADDEN: They didn't notify--

17 CHAIRPERSON MILLER: They just
18 didn't have the benefit of your presentation,
19 correct?

20 MR. MADDEN: Not to the full as I
21 -- I did present somewhat, but they said it
22 wasn't adequate for me to go into all the

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1 details of it.

2 CHAIRPERSON MILLER: Okay.

3 MR. MADDEN: But those comments
4 that were presented there, I have addressed
5 them in the file. I think all of them that
6 were presented, I have addressed them to
7 include the Mount Vernon Square.

8 CHAIRPERSON MILLER: Okay.

9 MR. MADDEN: And I have not yet
10 heard from them to get a meeting date or
11 whatever to appear. I wasn't aware that I was
12 to -- the requirement to appear before them.
13 I thought the ANC -- everybody wanted to
14 testify at the ANC, that would be appropriate
15 form for that.

16 MR. DIXON: If I may clear this up
17 a little bit? He came before a committee. We
18 have a Zoning Committee meeting before the
19 full ANC. And he came before the committee.
20 At this time, he knew everything he knew he
21 had to do before he comes back to the full
22 commission where -- and that's where he was.

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1 He -- and when he came there,
2 there were a house full of opposition people
3 there against his project. And I think we had
4 to slow this up and look at it and investigate
5 a little bit more and look at it. That's what
6 the problem is. And this meeting right here
7 coming up tonight, we was just there last
8 week, so, you know, we did our investigation
9 and we found a lot of little things wrong with
10 this whole project.

11 And we would like to talk to him
12 about it, but, you know, we hadn't had a
13 chance to do that yet.

14 CHAIRPERSON MILLER: Okay. I
15 know --

16 MR. DIXON: And the question --

17 CHAIRPERSON MILLER: Yeah?

18 MR. DIXON: -- about, you know,
19 nobody, I'll take that back. We do have two
20 or three signatures from New Jersey Avenue on
21 the signature thing here, but --

22 CHAIRPERSON MILLER: Okay. We're

1 not really focusing on that though now anyway.

2 MR. DIXON: Okay.

3 CHAIRPERSON MILLER: But I'm just
4 trying to focus on whether it would be prudent
5 to postpone the hearing or whether it would be
6 prudent to go forward with the hearing and
7 leave the record open for an ANC report.

8 I know there is somebody else at
9 the table, so let me just ask you, did you
10 apply for party status or anything of that
11 sort? You need to put the microphone on.

12 MS. GORING: No, I didn't. Can
13 you hear me?

14 CHAIRPERSON MILLER: Yes.

15 MS. GORING: I'm sorry.

16 CHAIRPERSON MILLER: Okay.

17 MS. GORING: I was out of town.
18 I'm sorry.

19 CHAIRPERSON MILLER: That's okay.
20 I just wanted to know who was at the table.

21 MS. GORING: I filled out a card.

22 CHAIRPERSON MILLER: You filled

1 out a card.

2 MS. GORING: Just now.

3 CHAIRPERSON MILLER: Why didn't --

4 MS. GORING: Lydia Goring. My
5 name is Lydia Goring.

6 CHAIRPERSON MILLER: Okay. Are
7 you a neighbor or something?

8 MS. GORING: Yes.

9 CHAIRPERSON MILLER: Okay.

10 MS. GORING: I am.

11 CHAIRPERSON MILLER: But you are
12 not seeking party status, you are just sitting
13 with your other neighbor?

14 MS. GORING: Yes.

15 CHAIRPERSON MILLER: Okay. Only
16 the parties though can be participating at
17 this time, just so you know. They got party
18 status. Your neighbors were here. They filed
19 for special party status, which the Board
20 conferred upon them. We can call upon you
21 later to testify as an individual.

22 MR. DIXON: Okay. But she is a

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1 neighbor. She is right next door, just to let
2 you know, too.

3 MR. MADDEN: That's not true.

4 CHAIRPERSON MILLER: All right.

5 Now, let's just focus on -- and I guess the
6 ANC, do you also have in a request for a
7 postponement, correct? Is that right or no?
8 Did you ask for a postponement --

9 MR. DIXON: Yes, we did.

10 CHAIRPERSON MILLER: -- so that
11 the ANC --

12 MR. DIXON: Yes.

13 CHAIRPERSON MILLER: Okay. The
14 first question is does the fact that the
15 posting was -- you say it wasn't up all the
16 time. It was two days late for good cause
17 shown, I believe. And the question is, you
18 know, if it didn't take away from people
19 getting notice, then I wouldn't postpone the
20 hearing based on that ground. And then we
21 could get to the next ground, which you are
22 asking for with respect to the ANC's meeting

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1 tonight or whatever.

2 So I just want to get an
3 understanding from -- for the Board to hear
4 whether or not you feel that the posting, the
5 two days late, and the question about whether
6 it was up the whole time, actually has
7 resulted in people not getting notice who
8 should have notice.

9 MR. DIXON: True.

10 CHAIRPERSON MILLER: That would
11 interfere, you know, with the due process in
12 this hearing. Is it your opinion that it did?

13 MR. DIXON: Yes, I think so.

14 MR. MADDEN: May I?

15 CHAIRPERSON MILLER: Yes, please,
16 yes.

17 MR. MADDEN: I'm swearing under
18 oath, Your Honor, that it was posted and the
19 poster remained there and the neighbor just
20 testified that she recalled seeing it there.
21 And he is testifying that he has never seen it
22 there. There's some very bad conflict and I

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1 know it was posted and it remained posted
2 during the entire period.

3 It was posted late, as I testified
4 for the reasons, and I'll still swear to that,
5 you know.

6 CHAIRPERSON MILLER: Okay.

7 MR. DIXON: If you're saying that
8 you are testifying that it was there and you
9 came and you put it back up or you saw it went
10 down, so it wasn't the entire time. Don't say
11 that.

12 CHAIRPERSON MILLER: Okay. What's
13 the feeling of the Board? To postpone or not
14 to postpone, based on the two day delay in the
15 posting? And the questions that Mr. Dixon has
16 raised.

17 COMMISSIONER JEFFRIES: I'm not
18 interesting in postponing based on the two
19 day.

20 CHAIRPERSON MILLER: Anybody else?
21 I can go along with that as well. I don't
22 think that that's -- I think the people have

1 gotten notice that need to get notice, I
2 think. Anybody else?

3 COMMISSIONER JEFFRIES: And it's
4 also just very difficult. I mean, unless the
5 applicant is sitting there and just watching
6 this every day to make certain that it's
7 there, I mean, it's just a very tough thing to
8 manage. And so, you know, we should move
9 forward.

10 CHAIRPERSON MILLER: Okay. And
11 then the other thing, well, there are two
12 other things. I mean, our docket is pretty
13 crowded and all of you have taken off from
14 work or whatever and you are here today. And
15 so sometimes, you know, unless it's something
16 that's really going to affect the hearing,
17 it's better to proceed and leave the record
18 open, which we would do for, I believe, that
19 ANC meeting tonight and anything that the ANC
20 wants to submit as a result of that.

21 Okay. There is one other issue
22 and I'm not sure what was filed late today by

1 the applicant and I think that that should be
2 identified and we should make sure that the
3 parties have a copy of that and that they are
4 not prejudiced by the fact that it was just
5 filed today. What is that that was filed
6 today?

7 MR. MADDEN: The cost
8 justification of construction.

9 CHAIRPERSON MILLER: That's it?

10 MR. MADDEN: Yes.

11 CHAIRPERSON MILLER: Okay.

12 MR. MADDEN: I gave that to the
13 ANC already.

14 CHAIRPERSON MILLER: Okay.

15 MR. MADDEN: I call you, Your
16 Honor, I mean, Madam Chair.

17 CHAIRPERSON MILLER: I don't think
18 that's a problem. Do you all have a copy of
19 the cost justification though? Other parties
20 should. Okay. Can you make a copy for the
21 other two parties? Thank you.

22 I have one more preliminary

1 question and then we can move into the merits,
2 I think. Did you file plans late or not?
3 When did you file your most recent plans, Mr.
4 Madden?

5 MR. MADDEN: No, they were filed.

6 CHAIRPERSON MILLER: They were
7 filed in a timely way?

8 MR. MADDEN: Yes, ma'am.

9 CHAIRPERSON MILLER: Are they the
10 ones that were shown to the ANC?

11 MR. MADDEN: I'm sorry?

12 CHAIRPERSON MILLER: They weren't
13 shown to the ANC Land Use Committee?

14 MR. MADDEN: The ANC?

15 CHAIRPERSON MILLER: Yeah.

16 MR. MADDEN: I don't think they
17 got a copy.

18 MR. DIXON: We didn't get nothing.

19 MR. MADDEN: We had them when we
20 appeared, but they didn't -- we didn't leave
21 a copy there. They didn't ask for it.

22 CHAIRPERSON MILLER: Okay. They

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1 are a party in this case.

2 MR. MADDEN: Right.

3 CHAIRPERSON MILLER: So they need
4 to get a copy of your filing.

5 MR. MADDEN: Right, that's no
6 problem. I just gave it to him earlier today.

7 CHAIRPERSON MILLER: He got it?
8 The plans?

9 MR. MADDEN: Everything, yes.

10 CHAIRPERSON MILLER: Okay. Good.
11 All right.

12 MR. DIXON: He just gave it to me
13 today, just today.

14 MR. MADDEN: Right. I gave him
15 the same thing that's in the file.

16 CHAIRPERSON MILLER: Okay. And we
17 recognize that also just giving it to Mr.
18 Dixon is different from the ANC considering
19 it, so you will have that opportunity tonight.

20 MR. DIXON: Thank you.

21 CHAIRPERSON MILLER: Okay. All
22 right. In which case, I think we can go

1 forward, at this point. Okay. I don't know
2 the relevance of this either, but I guess you
3 will bring that to our attention in your
4 presentation, correct?

5 MR. MADDEN: Yes.

6 CHAIRPERSON MILLER: Okay. So
7 then I think that takes care of the
8 preliminary matters, unless anybody has any
9 questions about that.

10 Okay. So pursuant to our
11 regulations, the applicant goes first with --
12 to make the case for the various variances.
13 Okay.

14 MR. MADDEN: Thank you, Madam
15 Chair. First of all, I will try to make this
16 brief as possible and I'm very hoarse and I
17 apologize. I won't belittle a lot of the
18 things that is in the files, because, you
19 know, I'm sure you've seen what is there, but
20 I will highlight some of the things I think is
21 important for this review.

22 First of all, it has taken almost

1 two and a half years for me to get before the
2 Board to present my case. There has been
3 tremendous delays through zoning to get the
4 process of the files and two and a half years
5 has cost me a considerable amount of loss of
6 funds to do this.

7 And during that period of time, it
8 has created other problems of trying to
9 maintain the property in a status that is
10 presentable to DCRA and the Condemnation
11 Board. I had to appear before the
12 Condemnation Board to justify and that I was
13 meeting the requirements.

14 COMMISSIONER JEFFRIES: Wait a
15 minute. Are you really certain you -- you
16 seem to be struggling here. Do you need some
17 water or?

18 MR. MADDEN: Yes, I would
19 appreciate that.

20 CHAIRPERSON MILLER: Mr. Moy is
21 going to get you some water.

22 MR. MADDEN: I was like that

1 earlier.

2 COMMISSIONER JEFFRIES: Yeah. You
3 seem to be getting progressively worse. I'm
4 just a little concerned.

5 CHAIRPERSON MILLER: While you
6 pause for a second, I just want to say that
7 this case is different from the ones,
8 obviously, that you heard us do right before.
9 They were very straightforward, one, two,
10 three, out of here.

11 Your's isn't. Your's is not. And
12 I just want you to think about, in your
13 approach to this, it's an area variance. And
14 the way we need to analyze it and you need to
15 present it to a certain extent is to show us
16 what is exceptional about the property, either
17 its condition or the circumstances or whatever
18 that has led to a practical difficulty for you
19 to comply with the regulations.

20 And third, that there would be no
21 adverse impacts on the Zone Plan or on the
22 Zoning Regulations if we grant the relief.

1 Okay. So try to keep those three aspects in
2 mind.

3 COMMISSIONER JEFFRIES: In fact,
4 why don't you just start there, I mean?

5 CHAIRPERSON MILLER: Yeah.

6 COMMISSIONER JEFFRIES: Rather
7 than -- I think what Madam Chair is saying is
8 she wants you to be very, very direct in terms
9 of what we are looking at today. And I
10 understand your hardships and so forth, but in
11 the essence of time, you know, just to move it
12 along.

13 CHAIRPERSON MILLER: And also, do
14 you have a copy of the Office of Planning
15 report?

16 MR. MADDEN: No, I don't have that
17 with me.

18 CHAIRPERSON MILLER: But you did
19 see it?

20 MR. MADDEN: Yes, I saw it first.
21 We met with them twice.

22 CHAIRPERSON MILLER: Okay.

1 Because they do approach it that way and they
2 have issues that they point out as to why, you
3 know, you don't meet those requirements. So
4 maybe we can get you a copy of the Office of
5 Planning report, too.

6 MR. MADDEN: Thank you.

7 CHAIRPERSON MILLER: Did you just
8 do that? You just gave him a copy? Thank you
9 very much. Okay. Okay. So I think what Mr.
10 Jeffries is suggesting also is you go right to
11 -- I mean, it's your case to present, but this
12 is how we analyze it. If you go right to what
13 is unique or exceptional about the property.

14 MR. MADDEN: Yes.

15 CHAIRPERSON MILLER: Okay.

16 MR. MADDEN: I'll try to be as
17 fast as I can.

18 CHAIRPERSON MILLER: We're not
19 trying to rush you. We're just trying to help
20 you focus.

21 MR. MADDEN: Right.

22 CHAIRPERSON MILLER: Okay.

1 MR. MADDEN: There are some
2 significant things that I think the Board
3 should have in mind when they are considering
4 the whole -- in order to make this move
5 faster, both buildings are basically identical
6 in what we're proposing as the building in
7 between. The building that is at 1238 New
8 Jersey Avenue, if you can see the chart over
9 there, what we are proposing to do with that
10 building is to build a top floor out.

11 Yes, yes. And that's on the back
12 side and I have that outlined on the easel,
13 that's the area that we hope to build out.
14 And it will be not interfering with basic
15 sunlight from either side. It's pretty much
16 the same as the house in between.

17 The -- as -- I don't know if I
18 should address the balconies, at this point,
19 because it came up as an issue.

20 CHAIRPERSON MILLER: Personally, I
21 think it's just easier if you go to what is
22 exceptional about the property and then what

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1 practical difficulty that is created and then,
2 you know, if we give you the relief that you
3 are asking, in which case that would then be
4 maybe to do the balconies, why that wouldn't
5 have an adverse impact.

6 MR. MADDEN: Right.

7 CHAIRPERSON MILLER: But it would
8 be better if you can, you know, start with No.
9 1, which is what's exceptional about the
10 property.

11 MR. MADDEN: Okay. First of all,
12 the property is unique. It's a unique lot.
13 It's bound from the rear and both sides and
14 it's a restriction from any avenues of exit by
15 any means, because it's just landlocked. And
16 that was one of the unique aspects of this lot
17 that disallowed any parking or maneuvers other
18 than coming out the front way, even though we
19 do have a backyard and there is some space
20 back there, a courtyard.

21 The reason that we presented the
22 plans that we presented to you is because we

1 put the balconies on the rear and this was a
2 suggestion by the Historical Society as we
3 were going through.

4 If we put the balconies on the
5 rear, we give basically six times more space,
6 outside space than what exists now. And in
7 this situation that we are proposing, each
8 unit would have a balcony with outside space
9 for sunlight and air. As it exists now, the
10 only use would be if we did less than four
11 units.

12 It would be only accessible to the
13 first floor to come out into the back and
14 putting the balconies on the property, each
15 unit would have access to outside activities.
16 And I think that's significant and justified
17 allowing to build out that space.

18 COMMISSIONER JEFFRIES: So what,
19 okay, makes this property unique is that you
20 said it does not have an alley or it's
21 somewhat -- is that -- I mean, but there are
22 other properties that have a similar

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1 characteristic though, right?

2 MR. MADDEN: Basically, all the
3 properties on that street has that.

4 COMMISSIONER JEFFRIES: So what
5 makes this property unique then?

6 MR. MADDEN: Well, it's --

7 COMMISSIONER JEFFRIES: Than the
8 others. I mean, something about this
9 particular property that is different than
10 your adjoining properties. I mean, what is it
11 about this property? I mean, if they are all
12 having the same issue in terms of, you say,
13 being landlocked, I mean, what makes your
14 property unique?

15 MR. MADDEN: Well, mine basically
16 is unique as it's in between all of these
17 properties. And although some of the
18 properties -- most of them are similar in
19 nature, they are, I guess, when the exception
20 is given, there was means taken to provide
21 parking on the front, even though no permit
22 was pulled to do that. That's why I put in

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1 for parking, thinking that we would be able to
2 do it. And we find out that that was
3 authorized structure to put the parking on the
4 front.

5 So in conjunction with that and
6 discussing with planning, we -- not withdrew
7 the parking requirement, but it was justified
8 that it wasn't necessary, because of
9 restrictions.

10 It's a small lot and --

11 COMMISSIONER JEFFRIES: Is it
12 smaller than the other adjoining lots? Is it
13 around the same size?

14 MR. MADDEN: Well, one of them is
15 smaller, because we're sitting in -- angled
16 into the space. I guess it's 6 feet
17 difference in the back, back space of the lot
18 of 1242 where it's angled.

19 COMMISSIONER JEFFRIES: So your's
20 is more shallow?

21 MR. MADDEN: Yes.

22 COMMISSIONER JEFFRIES: This one

1 is -- okay.

2 MR. MADDEN: Yes. So that created
3 some problems there as far as having the
4 courtyard that 1238 has.

5 COMMISSIONER JEFFRIES: Okay.

6 MR. MADDEN: The rear yard
7 requirement is, basically, the same. We're
8 not eliminating the rear yard requirement. We
9 are actually adding what we call outdoor space
10 by performing the balconies on each unit.

11 Another aspect of this and the
12 other properties in the area, what we are
13 asking for is not out of the ordinary for the
14 community. There are units in this area
15 ranging from 3 to 7 units. And this also
16 landlocked in some of those cases. So this
17 property will not be very much different from
18 what is in existence there once we complete
19 the construction.

20 As a matter of fact, it will
21 almost be identical to the houses in between.
22 The 1238 house and the 1240 house is basically

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1 identical. And as I stated before, the only
2 addition we are asking for that is that build
3 out space that you see marked in red.

4 Now, the area also consists of
5 businesses, churches, schools and day cares.
6 And the -- we considered the living space that
7 we are proposing to be very adequate for
8 accommodating families.

9 The item that I submitted today
10 before the Board is what I pray for the -- ask
11 the Board to consider in building four units
12 versus two units. The cost factor is pretty
13 much prohibited from going with two units.
14 And as I tried to outline in the document you
15 have in front of you, it would take 100 plus
16 years to recoup any benefits from constructing
17 a two unit facility there and renting it.

18 And I wanted to point out to the
19 Board that my intent is not to sell the
20 property. I still have the first property I
21 bought 40 years ago. So I -- my philosophy is
22 not to sell and my philosophy is to rent.

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1 And I've been doing that in the
2 District for 30 years accommodating moderate
3 and low income families. And as of today, the
4 District has 40 people on the waiting list,
5 the voucher, Housing Voucher Program. And if
6 we could put four units, rather than two in
7 these facilities, I think I can make an impact
8 on providing housing.

9 So that's part of the
10 justification that I'm requesting the Board to
11 consider, rather than two units. We can
12 accommodate more families if we can go with
13 the four units there. With the four units,
14 I'll be able to possibly recoup some of the
15 investment within a 23 year period.

16 I don't know how much more --

17 MEMBER DETTMAN: Excuse me, excuse
18 me, can I interrupt just for a second?

19 MR. MADDEN: Sure.

20 MEMBER DETTMAN: Because I want to
21 stay on this document. Would you mind taking
22 the Board through these numbers? Because it's

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1 not -- just demonstrate to us how the two
2 units, the calculation goes where you come up
3 with 100 plus years. And then how the
4 calculation goes where you come up with 23
5 years.

6 MR. MADDEN: Okay. Gladly, sir.
7 As you have in your files there is a
8 construction cost done by a construction firm.
9 And they estimated the cost to do the four
10 unit at \$253,800. The cost to do the two
11 units is \$179,000. The taxes is self-
12 explanatory, those are estimates. Insurance,
13 the mortgage that, it's not a hypothetical,
14 are presented here are based on a 7 percent.
15 And for this type it might be far fetched for
16 me to think I can get a 7 percent mortgage,
17 but I thought I would put that as a
18 possibility.

19 And in order to do a 7 percent
20 mortgage for 23 years for the four bedrooms
21 and it wouldn't be practical for the two
22 bedrooms to be able to recoup for that period,

1 near that period of time.

2 COMMISSIONER JEFFRIES: You mean
3 the two one bedrooms or the four one bedrooms?

4 MR. MADDEN: Yes, sir.

5 COMMISSIONER JEFFRIES: That's the
6 difference. Okay.

7 MR. MADDEN: Yes, sir. And the
8 management fees, utilities and all that is
9 self-explanatory. I also put in there the
10 rent based on the HUD fair market rate. And
11 that shows what the income would be. And
12 dealing with the income and expenses, annual
13 income and expenses, there is not a whole lot
14 of profit. There would be no profit,
15 basically, for the two units.

16 MEMBER DETTMAN: Okay. So aside
17 from the mortgage and the cost, the
18 construction costs, all of these are annual?

19 MR. MADDEN: Yes, sir.

20 MEMBER DETTMAN: Okay. And what
21 does into the annual fees?

22 MR. MADDEN: The taxes, insurance.

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1 MEMBER DETTMAN: Okay. So the
2 annual fees is just a tally of these?

3 MR. MADDEN: Yes.

4 MEMBER DETTMAN: Is that what
5 you're saying? Okay.

6 MR. MADDEN: Yes, sir. Any other
7 questions on that?

8 CHAIRPERSON MILLER: Wait. The
9 point of this is to show, obviously, that you
10 would make more of a profit if you have four
11 units versus two. Is that right?

12 MR. MADDEN: Well, I'm showing
13 it's a hardship.

14 CHAIRPERSON MILLER: It's a
15 hardship?

16 MR. MADDEN: Yeah.

17 CHAIRPERSON MILLER: Okay. You
18 couldn't --

19 MR. MADDEN: If I can't put a four
20 unit there, it's a real hardship to put two
21 units, it's almost impractical to be able to.

22 CHAIRPERSON MILLER: Well, let me

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1 ask you this. Why is it that it sounds like
2 when Mr. Jeffries asked you what was unique,
3 you said, well, it's small and it's
4 landlocked. But so are the other properties
5 surrounding you. Is that an accurate
6 characterization of your response?

7 MR. MADDEN: Well, no, but we
8 further detailed it in the manners sitting --
9 the side that's sitting compared to the
10 others. It's narrower in the back and it's
11 not as deep as the others.

12 CHAIRPERSON MILLER: Okay. It's
13 narrower in the back. I mean, my basic
14 question is it's narrower in the back. Okay.
15 That's what you are saying is different.
16 Because next to you it sounds like are
17 similarly situated properties and they are
18 able to comply with the regulations. What is
19 it about your property that makes it unable to
20 comply with the regulations?

21 MR. MADDEN: That's one of them.

22 CHAIRPERSON MILLER: The fact that

1 it's narrow?

2 MR. MADDEN: No. One of the
3 properties is identical to 1240 -- 1238 and
4 1240 is pretty much identical. 1242 the lot
5 is shaped different and it's unique and
6 different from the other lots.

7 MS. MONROE: Madam Chair, can I
8 interrupt for a moment? We need to keep on
9 1238. This is -- the first case is, honestly,
10 very confusing for everybody else. You are
11 very familiar with the neighborhood and the
12 two lots that you are dealing with. But deal
13 with one at a time.

14 Since we are in the case with, I
15 think, 1238, please, speak only to the
16 variance test for 1238. When we go to the
17 next case, we'll speak to the variance test
18 for 1242. Please, okay?

19 MR. MADDEN: Okay. What -- okay.
20 I'm sorry, but I preferenced it with in order
21 for -- to hopefully get out of here in a
22 reasonable amount of time and not take up too

1 much time, because the properties, what we are
2 proposing, is pretty much identical.

3 CHAIRPERSON MILLER: That's okay.
4 You can tell us -- go into that more later.
5 We hear you that it's pretty much identical.
6 But just focus on this property that -- you
7 know, we have a transcript and the transcript
8 is dealing with the case that has been called.

9 MR. MADDEN: Okay.

10 CHAIRPERSON MILLER: And so try to
11 focus on that property that's at issue here.
12 What's the address for 17814? 1238?

13 MR. MADDEN: 1238.

14 CHAIRPERSON MILLER: Okay.

15 MS. MONROE: Also, the only reason
16 I brought it up is because legally, the tests
17 must be made separately and individually for
18 each property. So I just want you to
19 understand that.

20 MR. MADDEN: Okay.

21 MS. MONROE: So putting them all
22 together is not helpful. We need to know the

1 test is made for what property, wholly
2 separate from the test made for the other
3 property. So keeping them separate actually
4 is really to your benefit and everybody's
5 benefit.

6 MR. MADDEN: Okay. Thank you.

7 CHAIRPERSON MILLER: My basic
8 question is on the table for you. What is it
9 that is different about your property that
10 makes it difficult for you to comply with the
11 regulations? Your property, whereas the other
12 surrounding properties, except for the other
13 one, you are asking for a variance on, can
14 comply with the regulations.

15 How is your property different
16 from theirs?

17 MR. DIXON: Madam, may I say
18 something?

19 CHAIRPERSON MILLER: Well, I don't
20 know. You will get to say something.

21 MR. DIXON: Okay.

22 CHAIRPERSON MILLER: But can you

1 answer that question, because that's what a
2 variance is all about?

3 COMMISSIONER JEFFRIES: And you
4 can't move. If you can't answer the first
5 question, you know, it's almost like you can't
6 really proceed. And so the hurdle for a
7 variance test is extremely high. I mean, but
8 it's pretty clear. So that's why we keep
9 going back to this. We're really trying to
10 understand what is it about 1238 New Jersey
11 Avenue that is unique and different from --
12 it's something about the actual shape of this
13 lot that makes it such that you can't do what
14 you need to do in terms of -- unless you get
15 this variance.

16 So you need to be very pointed
17 about this. Because at this point, you
18 haven't. It's not compelling to me. I'm just
19 trying to understand exactly what it is. And
20 let's just deal with 1238.

21 MR. MADDEN: Okay. No, sir, it
22 wasn't 1238. I understand what you are

1 saying. In order for me to refurbish or
2 rebuild the properties and be able to survive,
3 so to speak, I'm asking for these variances,
4 so that we can proceed to be able to do it and
5 provide multiple housing.

6 And the property as it is now,
7 it's considered a little bit unique, different
8 in the aspect that because of the limited
9 space and where it was built, it's hard --
10 it's difficult to impossible for me to proceed
11 without the variance.

12 So the variance is very necessary
13 for me to proceed and to doing what I need to
14 do to refurbish these properties or the
15 buildings.

16 CHAIRPERSON MILLER: Well, what's
17 the condition of this property, 1238?

18 MR. MADDEN: 1238 is, basically,
19 as you see and as is permit, we dug out the
20 basement for that property to be able to put
21 a unit in the basement. That property is
22 somewhat unique in that it has limited space

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1 on the left side. The church owns three
2 houses next to it.

3 And in that it causes the unique
4 difference from the others, because this
5 property is extended back, the max limits, to
6 the property joining in the back. So the
7 variance is what I'm requesting is based on
8 the fact of the uniqueness and the difference
9 of this property compared to most of the other
10 properties in that immediate street.

11 On the left hand side it's very
12 unique and different.

13 COMMISSIONER JEFFRIES: Do you
14 have any drawings in the file that --

15 MR. MADDEN: Yes.

16 COMMISSIONER JEFFRIES: -- really
17 talk about this lot in the context of the
18 adjacent?

19 MR. MADDEN: Yes. You have a set
20 of drawings for both properties. And you have
21 -- there were copies made. You have the two
22 large ones. You should have two large ones

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1 that is folded in front of the property.

2 COMMISSIONER JEFFRIES: Okay.

3 Because see the burden is on you to present
4 your case such that we can get it. And so I
5 mean, you're describing sort of, but I mean,
6 visually, I'm just trying to get an
7 illustration of exactly what is --

8 MR. MADDEN: Could I?

9 COMMISSIONER JEFFRIES: Yeah.

10 MR. MADDEN: I'll bring that over.

11 COMMISSIONER JEFFRIES: We don't
12 have that? We have that in our file. We
13 have --

14 MR. MADDEN: Let me reduce it.
15 You may be able to see it.

16 COMMISSIONER JEFFRIES: Yeah, I
17 was just trying to get -- I mean, you were
18 describing, you know, in terms of the rear
19 yard and, you know, showing the uniqueness.
20 And I just wanted to see some graphic
21 representation of that.

22 MR. MADDEN: Right.

1 COMMISSIONER JEFFRIES: And you
2 are saying that I have that.

3 MR. MADDEN: Yes, sir, you should
4 have a -- I guess it was reduced to put in
5 your file. I'm not sure.

6 CHAIRPERSON MILLER: What should
7 we be looking at, a reduction of what's on the
8 easel?

9 MR. MADDEN: Yes.

10 CHAIRPERSON MILLER: Okay. Is
11 that also in the other case's file?

12 MR. MADDEN: Yes.

13 CHAIRPERSON MILLER: Because some
14 of -- all right. Maybe it's in there, because
15 a lot of them are double numbered.

16 COMMISSIONER JEFFRIES: Well --

17 CHAIRPERSON MILLER: Okay.

18 COMMISSIONER JEFFRIES: -- I guess
19 what I was looking for, Madam Chair, was
20 something that showed this property and then
21 the adjoining properties and so I just had a
22 sense of exactly visually, you know, the

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1 uniqueness of 1238. Because this is just, you
2 know, in space effectively.

3 MR. MADDEN: Well, no sir. We
4 didn't show the adjacent properties on the
5 drawings. I didn't know that would be a
6 requirement. We only drew the existing and
7 the proposed.

8 COMMISSIONER JEFFRIES: Well, I
9 was just -- yeah, okay. Yeah, I recognize
10 that. But I'm just -- in terms of what you
11 are describing, in terms of uniqueness of
12 this, of 1238, I was just trying to get an
13 illustration, but I don't think you have what
14 I would be looking for based on what your
15 description is.

16 MR. MADDEN: Not in the drawings,
17 no, sir.

18 COMMISSIONER JEFFRIES: Okay,
19 okay.

20 MEMBER LOUD: Mr. Madden, I have
21 just a very quick question to follow-up Mr.
22 Dettman's question regarding your cost chart.

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1 And the question really is to make sure I
2 understand the column that deals with the two
3 one bedroom units, not a challenge at all to
4 any of the numbers, to just make sure I'm
5 reading it properly.

6 MR. MADDEN: Right.

7 MEMBER LOUD: Your annual costs
8 are \$22,953?

9 MR. MADDEN: That's correct.

10 MEMBER LOUD: Okay. And your
11 annual revenues from the property are \$28,032?

12 MR. MADDEN: That's correct.

13 MEMBER LOUD: So you basically end
14 up with a plus \$6,000 revenues over costs?

15 MR. MADDEN: That's estimated.

16 MEMBER LOUD: Okay. All right. I
17 just wanted to make sure.

18 MR. MADDEN: Now, let me explain
19 that, sir. Remember, I'm renting these to
20 moderate and low income families.

21 MEMBER LOUD: Okay.

22 MR. MADDEN: Under the Housing

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1 Voucher Program.

2 MEMBER LOUD: Okay.

3 MR. MADDEN: And --

4 MEMBER LOUD: And with that being
5 taken into consideration, nonetheless this
6 chart is to help us understand that you are on
7 an annualized basis, you are only able to
8 generate \$6,000 more in revenue than the
9 costs?

10 MR. MADDEN: That's correct.

11 MEMBER LOUD: Okay.

12 MR. MADDEN: And just further
13 explanation on that. There is my
14 understanding that the Board does consider the
15 hardship, financial hardship that can be
16 imposed, that's why I presented this.

17 CHAIRPERSON MILLER: We do, but we
18 first have to find that you have some kind of
19 exceptional condition that gives rise to that
20 hardship. And we are having trouble finding
21 that, that's the first thing. You know, we're
22 having trouble hearing what is different about

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1 your property that's exceptional that results
2 in your not being able to develop on that
3 property consistent with the Zoning
4 Regulations like everybody else.

5 COMMISSIONER JEFFRIES: And I'm
6 looking at the last page of Office of
7 Planning, the last page here, the Exhibit No.
8 1. And I'm just looking at your site just
9 graphically. And I don't see how this site is
10 any different. I mean, you know, I'm looking
11 at this or you can go to the second page,
12 Exhibit No. 2. I just don't see where you --
13 there is uniqueness, there is any, you know,
14 thing that is particularly unique about your
15 lot.

16 I mean, you can clearly do a
17 development on this lot that is in keeping
18 with the Zoning Regs.

19 MR. MADDEN: Do a degree, yeah, I
20 agree. However, and that's why I presented
21 the hardship and the cost factor to do that
22 construction on that property would create the

1 hardship, if it was a two unit, which is
2 basically authorized for that zoning.

3 COMMISSIONER JEFFRIES: But you
4 know, we could have anyone just walk in and
5 just, you know, listen I want to build, you
6 know, because I purchased the land. I spent
7 too much in terms of purchasing the land or
8 whatever the situation is. And so I just want
9 to build four more units, so that I can recoup
10 my cost.

11 I mean, that's fine, but you have
12 to do it within the purview, within the regs.
13 And if you can't and if there is something
14 that's exceptional about your project, then
15 you go through the variance. But the variance
16 test is very pure, very strict and it's a high
17 hurdle.

18 And I think Madam Chair is trying
19 to be, you know, accommodating, but I don't
20 see where there is uniqueness about your
21 situation here. So, you know, Madam Chair, I
22 don't know how you want to proceed here, but

1 again, if you can't get past the first hurdle,
2 it's just hard -- you just don't make the
3 case.

4 So I don't know what it is that
5 you want to say here, but looking at what you
6 have presented here, it just does not seem --
7 and I guess my question for you, I mean,
8 normally, you know, the Office of Planning is
9 very, very good with advising applicants
10 about, you know, what is required to get an
11 approval.

12 And so they have denied you. I am
13 certain that they had conversations with you
14 about this variance test. What was your
15 response?

16 MR. MADDEN: Well, we discussed
17 it. Like I said, we met twice. And we
18 discussed it in detail. And part of the
19 justification that we discussed and then they
20 explained that in the --

21 COMMISSIONER JEFFRIES: Wait. Why
22 don't you drink some water. We will take a

1 second, please.

2 MR. MADDEN: We discussed that
3 under their understanding in the codes that
4 they couldn't approve it. But they said I
5 could come before and present my case and it
6 can be allowed by the Board for this to take
7 place. So that's what I'm trying to present
8 and ask the Board for the variance in order to
9 do the construction.

10 And I tried to present in the
11 records all the justifications to help the
12 Board to award this variance.

13 CHAIRPERSON MILLER: Okay. All
14 right.

15 MR. MADDEN: And I apologize. I'm
16 not an expert on getting to all the details on
17 what you need and try to present as much as I
18 understood to present to planning. And
19 realizing that there was a possibility that
20 with all the justifications that I presented
21 in the file, that is there was a chance that
22 I could get the variance.

1 And based on the fact that it's
2 not -- I'm not asking for something that's
3 over and beyond what is in the neighborhood,
4 there are four units and large units, they are
5 existing and I'm asking for the Board to allow
6 me to do the same. And based on the
7 circumstances of providing housing for
8 residents of the District.

9 CHAIRPERSON MILLER: Okay. Thank
10 you. I hear, you know, you have, you know,
11 some very good points. But we are limited to
12 our regulations and we have to find all three
13 elements when we are granting a variance. And
14 starting with the exceptional condition and
15 the reason for that is that, you know, you are
16 varying from some significant regulations.
17 And it's set up so that not everybody can just
18 come in and convince the Board that they want
19 -- you know, to let them do something.

20 That it has to be different from
21 the rest of their neighbors, otherwise, you
22 know, there's hardly any kind of standard. So

1 anyway, so that's where we are. But maybe we
2 should move on to the Office of Planning and
3 see what they have to say, unless you want to
4 say anything more at this point.

5 MR. MADDEN: No.

6 CHAIRPERSON MILLER: Okay. Why
7 don't we do that?

8 MS. JACKSON: Good afternoon,
9 Chair and Members of the Board. For the
10 record again, my name is Arlova Jackson. I'm
11 a Development Review Specialist with the
12 District of Columbia Office of Planning. I
13 just wanted to clarify the area variances that
14 we think are necessary.

15 We talked about a couple of them.
16 It's one from 401.3 for minimal lot area,
17 404.1 for minimum rear yard setback and 2001.3
18 for an addition to a nonconforming structure.
19 I can't remember if the additional one we
20 think is necessary from 403.2 for lot
21 occupancy was addressed as well. I just
22 wanted to point that out.

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1 And another area that needs to be
2 eliminated, we talked about the no -- that
3 they no longer need relief from the parking
4 requirement. The applicant has also made
5 revisions, since the initial submittal, that
6 eliminate the open court, so that relief is no
7 longer necessary also.

8 Let's see, I think I can stand on
9 the record for the bulk of my comments. I'll
10 just summarize that the Office of Planning
11 does not support and recommends denial of the
12 requested variances, because the applicant has
13 failed to meet the three part variance test.
14 We didn't find that there was information in
15 the record that spoke to uniqueness.

16 In addition, the variances
17 requested, if you -- well, I'll leave it at
18 that. None of the parts were met, in our
19 opinion. And I'll leave it to answering
20 questions.

21 CHAIRPERSON MILLER: Do Board
22 Members have questions for Office of Planning?

1 Well, let me say two things. One is I skipped
2 to Office of Planning without giving the other
3 parties an opportunity to cross examine the
4 applicant. So I will come back to that.

5 I guess, Office of Planning, I
6 just would want to ask you, I mean, I think
7 your report is very thorough. Is there
8 anything else you want to add to the
9 conversation about uniqueness or why this
10 property really -- what is this like? Is it
11 really like the other properties?

12 MS. JACKSON: Well, with the
13 argument about being landlocked, the entire
14 square has no alley, so none of the properties
15 on the square have alley access. If you look
16 at the exhibits and the size and shapes of the
17 lots, there are several of similar size and
18 shape that are improved with buildings of a
19 similar size and shape and that have similar
20 lot occupancies and other characteristics.

21 So it's very hard to find that the
22 lot in and of itself has any exceptional or

1 unique characteristics, physical
2 characteristics.

3 CHAIRPERSON MILLER: Separate from
4 the lot sometimes we look at to any
5 improvements on the property that would create
6 some kind of exceptional situation. Did you
7 see that here?

8 MS. JACKSON: No.

9 CHAIRPERSON MILLER: Okay.

10 COMMISSIONER JEFFRIES:

11 Topography?

12 MS. JACKSON: No.

13 MR. MADDEN: I'm sorry. What was
14 the question?

15 COMMISSIONER JEFFRIES:

16 Topography. Topo, topography.

17 MR. MADDEN: Right.

18 COMMISSIONER JEFFRIES: If there
19 is any, you know, grade changes or anything
20 that -- but there's nothing?

21 MS. JACKSON: Not significant.

22 COMMISSIONER JEFFRIES: Not.

1 MS. JACKSON: No.

2 CHAIRPERSON MILLER: Okay. Any
3 other Board questions? Does the applicant
4 have any questions for the Office of Planning?

5 CROSS EXAMINATION

6 MR. MADDEN: Yes. You mentioned
7 that we did modify our plans at the request of
8 your office and the Office of the Historical
9 Society.

10 MS. JACKSON: I wouldn't say it
11 was at our request.

12 MR. MADDEN: Well, suggestion, I
13 guess. Okay. And I believe that the last
14 submission addressed some of those and you
15 just mentioned that it has narrowed it down
16 and eliminated two of the requirements,
17 parking and --

18 MS. JACKSON: Open court.

19 MR. MADDEN: -- open court.

20 MS. JACKSON: Right.

21 MR. MADDEN: So we are basically
22 dealing with two aspects of variance at this

1 point.

2 MS. JACKSON: Four.

3 MR. MADDEN: Well, we eliminated.

4 We --

5 MS. JACKSON: You had six, down to
6 four.

7 COMMISSIONER JEFFRIES: Look to
8 the first page of the Office of Planning
9 report. Summary recommendation, the first
10 page.

11 MR. MADDEN: Right. Yes, and at
12 the suggestion of the Historical Society, you
13 recall he drew on our plans to address the, I
14 guess, No. 2, minimum yard space setback.

15 MS. JACKSON: No. We had a
16 meeting with members of the Historic
17 Preservation Office where we discussed the
18 original proposal.

19 MR. MADDEN: Right.

20 MS. JACKSON: That kept the open
21 court and in that discussion, we, you know, by
22 hand did some drawings and said well, you

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1 know, talk through the project and said if you
2 consider extending the wall to the property
3 line, you will eliminate the open court and
4 that would get rid of one of the forms of
5 zoning relief that you need.

6 I wouldn't characterize it as a
7 suggestion. It was an option that was
8 presented.

9 MR. MADDEN: Right, and we did
10 that.

11 MS. JACKSON: Okay. And that's
12 why I mentioned that the open court relief is
13 no longer needed.

14 MR. MADDEN: Okay.

15 MS. JACKSON: That didn't address
16 the minimum rear yard setback, if that's what
17 you are talking about. You are still --

18 MR. MADDEN: Short, I believe.

19 MS. JACKSON: It's about 13 or 11,
20 sorry.

21 MR. MADDEN: And, Your Honor --
22 Madam Chair, what we tried to do to satisfy

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1 that, as I explained, with the balconies.

2 CHAIRPERSON MILLER: Okay. But
3 this is -- and you've got a chance for closing
4 argument, but what -- do you have any other
5 questions for Office of Planning?

6 MR. MADDEN: No, no.

7 CHAIRPERSON MILLER: Okay.

8 MR. MADDEN: That's it.

9 CHAIRPERSON MILLER: Okay. All
10 right. You will get that opportunity to
11 address more later. Okay. Does the ANC have
12 any questions for the Office of Planning? I
13 think I'll finish Office of Planning and then
14 we can go back to the applicant.

15 MR. DIXON: Okay. Thank you. I'm
16 really --

17 CHAIRPERSON MILLER: This is just
18 for --

19 COMMISSIONER JEFFRIES: Office of
20 Planning.

21 CHAIRPERSON MILLER: -- Office of
22 Planning.

1 MR. DIXON: Office of Planning.

2 CHAIRPERSON MILLER: Just
3 questions.

4 MR. DIXON: My real question to
5 you is the building is not there at 12 --

6 MS. MONROE: We're talking about
7 1238.

8 COMMISSIONER JEFFRIES: 1238.

9 MR. DIXON: 1238? Okay. I was
10 curious about how can we judge something when
11 it's not there. But now, we --

12 MS. MONROE: We're not on that
13 one.

14 MR. DIXON: For 1238 is okay. It
15 was 1242 -- okay, I'm sorry.

16 MS. MONROE: That's okay.

17 CHAIRPERSON MILLER: Do you have
18 any questions, Ms. Kailian?

19 MS. KAILIAN: No, no questions.

20 CHAIRPERSON MILLER: Okay. Ms.
21 Bilik?

22 MS. BILIK: (No audible answer.)

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1 CHAIRPERSON MILLER: Okay. I'm
2 sorry, I went out of order for a minute. So
3 does the ANC have any questions for the
4 applicant?

5 CROSS EXAMINATION

6 MR. DIXON: Well, for the
7 applicant, I would like to ask -- I'm still
8 confused on what he is really trying to do.
9 And what the -- all these units are to me the
10 same as everything, as I go down the block and
11 look at every house. I'm trying to understand
12 what is he doing different or what is he
13 trying to do?

14 And you know to -- there is
15 single-family homes there. He wants to come
16 in with like an apartment, I thought. He
17 wants to get more in that little bit of space
18 that I'm trying to understand how is he going
19 to do it. I'm confused because is he trying
20 to get apartment building in there or is he
21 trying to get different apartments or, you
22 know, how many kitchens are you going to have?

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1 I mean, I don't hear nothing, but
2 two bedrooms, three bedrooms and four
3 bedrooms. And, you know, the place ain't that
4 big -- it's a real narrow building and I'm
5 trying to understand what is he trying to put
6 in that building.

7 CHAIRPERSON MILLER: Okay.

8 MR. DIXON: In that little bit of
9 space there.

10 CHAIRPERSON MILLER: Okay.

11 MR. DIXON: And it's confusing
12 what I'm hearing right now.

13 CHAIRPERSON MILLER: Okay. Mr.
14 Madden, did you get that? What are you going
15 to build there? What kind of units?

16 MR. MADDEN: They're one bedroom
17 units.

18 CHAIRPERSON MILLER: How many?

19 MR. MADDEN: Four.

20 CHAIRPERSON MILLER: Four? One
21 bedroom with what bathrooms?

22 MR. MADDEN: Oh, I believe it's

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1 two baths, kitchen a lot of closet space.
2 It's very, very spacious, one bedroom units.

3 CHAIRPERSON MILLER: Okay. And
4 Mr. Dixon, you have a copy of the plans,
5 right?

6 MR. DIXON: No, I don't.

7 CHAIRPERSON MILLER: Oh, you
8 don't? Oh.

9 MR. MADDEN: Yes, it's in the
10 file.

11 MR. DIXON: This one right here?

12 MR. MADDEN: Yes. You have a copy
13 of everything.

14 MR. DIXON: And this will fit --
15 you are saying that this will fit in there?

16 MR. MADDEN: Sir, I think you have
17 a copy of the existing and in that building
18 there's seven bedrooms that exist in there at
19 the present time. And all we are doing is
20 separating floors and putting one bedrooms as
21 proposed. So it's more than adequate space.

22 MR. DIXON: Okay.

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COMMISSIONER JEFFRIES:

Commissioner Dixon, you know, obviously, as an ANC, I mean, you get every right to speak and say anything you want. But obviously, I mean, you are sitting here and you are hearing the comments of the Board here and so forth. And so, you know, I mean, it seems as if perhaps the applicant, you know, might have to go back. I don't know, but, you know, so there might be other opportunities to have this kind of discussions with him.

I mean, if you want to, go right ahead. I mean, it's your right and, you know, we give great weight to the ANC. But just given the comments here, I mean, we are dealing with something well beyond just what's in the units. I mean, we are dealing with the very essence of the overall application.

CHAIRPERSON MILLER: That's true.

And you will have that opportunity tonight.

MR. DIXON: I will talk.

CHAIRPERSON MILLER: Yeah. I

1 think we are going to leave the record open
2 for the ANC report.

3 MR. DIXON: Okay.

4 CHAIRPERSON MILLER: Okay. But if
5 there was a question you needed to ask on the
6 record?

7 MR. DIXON: No.

8 CHAIRPERSON MILLER: Okay, okay.
9 How about the others, yes?

10 MS. KAILIAN: Yes, I do have a
11 couple of questions. With regard to the cost
12 justification, constructing four units versus
13 two units, Mr. Madden, when you did the
14 comparison of the revenue for rent for two
15 units versus four units, is that two one
16 bedroom units compared with four one bedroom
17 units of the same size?

18 MR. MADDEN: I'm not sure I
19 understand your question. What do you mean
20 the same size?

21 MS. KAILIAN: When you say rent
22 for two units would be \$2,036 monthly times 12

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1 months, \$28,032 annually and then four units
2 at \$4,678 monthly for 12 months at \$56,064
3 annually, it seems as though you are comparing
4 identical units. When you have a building and
5 your proposal is to expand that building, but
6 the proposal is not to double the size of the
7 building, correct?

8 MR. MADDEN: I'm not -- maybe let
9 me try to explain it. I thought I would try
10 to make it clear. But the four units that
11 price that you see --

12 MS. KAILIAN: Um-hum.

13 MR. MADDEN: -- is the \$4,678 is
14 divided by 4 for each unit.

15 MS. KAILIAN: Right. And how --

16 MR. MADDEN: And the same applies
17 for the two units is divided monthly by 2.

18 MS. KAILIAN: Right. But if you
19 have a house and you split it into two units
20 versus having a house and splitting it into
21 four units, wouldn't the house with two units
22 have larger units in it? Wouldn't they get

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1 more rent?

2 MR. MADDEN: Well, I'm renting
3 these under this Housing Voucher Program.

4 MS. KAILIAN: Right. I understand
5 that.

6 MR. MADDEN: It doesn't matter how
7 large or how roomy it is. If it's one
8 bedroom, you get the same price. You can have
9 three bathrooms, closets --

10 COMMISSIONER JEFFRIES: But I
11 think her question is why aren't you doing two
12 bedrooms?

13 MS. KAILIAN: If you say that the
14 house currently has seven bedrooms, then what
15 is your prevention from making a three bedroom
16 unit or a four bedroom unit or even two large
17 two bedroom units?

18 MR. MADDEN: That could be
19 possible, but it was calculated out from
20 construction and the plans --

21 MS. KAILIAN: Then why would you
22 calculate two one bedroom units? The

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1 assumption would be that you would construct
2 two huge one bedroom units and that's all you
3 could do?

4 MR. MADDEN: Well, you could
5 probably squeeze in possibly one more or make
6 the bedrooms large.

7 MS. KAILIAN: How many square feet
8 is the house?

9 MR. MADDEN: I'm not sure. It's
10 in the plans there.

11 MS. KAILIAN: I actually did not
12 see it in the plans. What page is it on?

13 MS. BILIK: He's referring to the
14 house --

15 MS. KAILIAN: I'm sorry? Repeat
16 that.

17 MR. MADDEN: 3,400.

18 MS. BILIK: I'm sorry, the house
19 we're talking about is 1238, which is the same
20 floor plan as mine, same height and
21 everything. I think it would be 3,400 square
22 feet.

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1 MS. KAILIAN: 3,400 square feet.

2 MS. BILIK: I think.

3 MS. KAILIAN: So if --

4 MS. BILIK: Actually, I'm sorry,
5 he doesn't have a finished basement. I'm
6 sorry, so it would be three-fourths of that,
7 I guess.

8 MR. MADDEN: And the full -- to
9 answer the question, to divide it in two
10 units, it would be easier to do it with two
11 units, rather than --

12 MS. KAILIAN: Right. But what I'm
13 saying is if you divide it into two units,
14 then they would be larger units and could
15 easily accommodate more bedrooms and therefore
16 have more revenue for rent, correct?

17 MR. MADDEN: If we decided to do
18 it.

19 MS. KAILIAN: Well, why don't your
20 cost estimate reflect that?

21 MR. MADDEN: Well, the cost
22 estimate reflects two bedrooms.

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1 MS. KAILIAN: I thought you said
2 it was one bedroom.

3 MR. MADDEN: Two units with one
4 bedroom.

5 MS. KAILIAN: Why would you make
6 it two units with one bedroom if you have room
7 for a lot more?

8 MR. MADDEN: That was the decision
9 that we made.

10 COMMISSIONER JEFFRIES: I think
11 you made your point.

12 MS. KAILIAN: Okay.

13 COMMISSIONER JEFFRIES: One other
14 question. The basement unit, that can be --
15 that's livable, correct? That will -- you
16 can't -- that's not --

17 MR. MADDEN: Yes, sir.

18 COMMISSIONER JEFFRIES: I mean,
19 was your plan to do a basement unit?

20 MR. MADDEN: Yes.

21 COMMISSIONER JEFFRIES: So you can
22 have a one bedroom basement unit, that's

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1 possible?

2 MR. MADDEN: Yes.

3 COMMISSIONER JEFFRIES: And then
4 you could potentially have a two bedroom or a
5 three bedroom on the first floor and then one
6 on the second? Is that possible?

7 MR. MADDEN: For a four unit is
8 what we're speaking of?

9 COMMISSIONER JEFFRIES: No. I'm
10 just really trying to take off from -- I'm
11 sorry.

12 MS. KAILIAN: You can call me Si.

13 COMMISSIONER JEFFRIES: Si. I'm
14 just taking off from Si's comments. I guess,
15 I think the point that is being made to you is
16 that perhaps you might want to go back and
17 reinvestigate your development program here
18 and look at exactly, you know, what you can do
19 within the envelope that would be accommodated
20 by the current zoning, unless you have done
21 that.

22 But it sounds to me that you might

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1 want to go back and look at, you know, your
2 development program. Because I'm trying to
3 understand if you have -- if you can build out
4 your basement unit, you know, and rent that
5 and then you can have two units above that
6 might be two bedrooms or three bedrooms, I
7 don't know, I mean, your revenue number would
8 look very different.

9 MR. MADDEN: Um-hum.

10 COMMISSIONER JEFFRIES: And that's
11 the point that Si is trying to make. And so
12 have you investigated that?

13 MR. MADDEN: Yes, sir.

14 COMMISSIONER JEFFRIES: And?

15 MR. MADDEN: If you look at the
16 cost factor for construction for a four
17 bedroom versus a two bedroom --

18 COMMISSIONER JEFFRIES: Go on.

19 MR. MADDEN: -- the four bedrooms
20 require fire escapes. I would love to show
21 you on there, but I think it's maybe in your
22 plans there. To build, to reach a level, you

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1 have to have four and that's where the cost
2 factor comes in. With the two units, that's
3 not required.

4 COMMISSIONER JEFFRIES: Okay.

5 MR. MADDEN: So that's -- this is
6 possible to redevelop the basement and make a
7 first and second floor unit and the other two
8 floors a unit. I think it could be done that
9 way. But without constructing, you know,
10 doing the basement, which is unfinished, you
11 know, cost factor would set in. And that's
12 why we were saying do two units, one bedroom
13 each.

14 But it's possible you could
15 squeeze another bedroom in and separate the
16 floors someway.

17 COMMISSIONER JEFFRIES: I mean, we
18 were cross examining here.

19 CHAIRPERSON MILLER: Okay. Yeah.
20 All right. Let's finish the cross exam. Ms.
21 Bilik, did you have any cross exam for the
22 applicant?

1 MS. BILIK: (No audible answer.)

2 CHAIRPERSON MILLER: Oh, did you
3 finish, Si?

4 MS. KAILIAN: I'm finished.

5 CHAIRPERSON MILLER: Okay. It's
6 not required.

7 MS. BILIK: I'm sorry, I have a
8 lot of questions. I just don't know if they
9 are appropriate.

10 MR. MADDEN: Could you pull the
11 mike closer? I can't hear you down here.

12 MS. BILIK: Sorry.

13 CHAIRPERSON MILLER: We'll let you
14 know.

15 MS. BILIK: Okay.

16 CHAIRPERSON MILLER: Okay.

17 MS. BILIK: Thank you.

18 CHAIRPERSON MILLER: All right.

19 MS. BILIK: We were just talking
20 about the basement of this property. I
21 purchased my home three and a half years ago.
22 I have never been inside the building, so I

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1 don't actually know what it looks like. Has
2 the basement already been dug out and -- has
3 the excavation been completed in that building
4 already?

5 MR. MADDEN: We dug out most of
6 the basement, yes.

7 MS. BILIK: And I'm very -- the
8 house that collapsed was not attached to mine.
9 The house that we're talking about now is
10 attached to mine.

11 CHAIRPERSON MILLER: That will be
12 attached to your's?

13 MS. BILIK: It is attached to
14 mine.

15 CHAIRPERSON MILLER: Oh, it is
16 attached to your's?

17 MS. BILIK: Yes. The house --

18 CHAIRPERSON MILLER: The house
19 that's there now?

20 MS. BILIK: The property at 1238,
21 I'm sorry, is attached to mine. And I'm
22 concerned about the structural integrity of my

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1 house as the digging is completed in order to
2 actually build the proposed four unit property
3 that Mr. Madden is requesting.

4 So I guess I would like to ask
5 what work has been done to ensure the
6 structural integrity of the property as that
7 work was undertaken and will be completed
8 should these variances be approved?

9 MR. MADDEN: Yes.

10 CHAIRPERSON MILLER: Huh?

11 MS. BILIK: That's not allowed?

12 CHAIRPERSON MILLER: No, it's just
13 we have to make a zoning decision based on
14 uniqueness, practical difficulty and adverse
15 impact. So what I would say --

16 MS. BILIK: The adverse impact
17 then.

18 CHAIRPERSON MILLER: -- it's
19 really to the Zone Plan and the Zoning
20 Regulations. But I don't know. I mean, I
21 kind of feel that --

22 MS. BILIK: Fair enough.

1 CHAIRPERSON MILLER: Well, what I
2 want to say is I want to try to keep this more
3 focused, also because I know there is going to
4 be this meeting tonight at the ANC in which I
5 would think there would be a lot of questions
6 that people would have about construction,
7 because we don't usually -- we don't get into
8 construction.

9 The construction is regulated.
10 You have to get a permit. DCRA has to approve
11 and so that's another agency. So that's why
12 I would say to you perhaps if you could save
13 those kind of questions for tonight, that
14 would be better.

15 MS. BILIK: Okay. Thank you.

16 CHAIRPERSON MILLER: Okay.

17 COMMISSIONER JEFFRIES: I mean, if
18 you had questions about, you know, uniqueness
19 or, you know, I mean, do you find his --

20 MS. BILIK: I was talking about
21 uniqueness.

22 COMMISSIONER JEFFRIES: Yeah,

1 yeah.

2 MS. BILIK: From the exact same
3 footprint.

4 CHAIRPERSON MILLER: Yeah, we're
5 going to get to you. You're going to get to
6 testify. Okay. Because we're not really
7 going to -- we don't have the expertise to
8 really determine the structural integrity
9 question, you know.

10 MS. BILIK: That's why I said I
11 don't know if it's appropriate.

12 CHAIRPERSON MILLER: Right, okay.

13 MR. MADDEN: That's addressed in
14 the file.

15 CHAIRPERSON MILLER: Okay. But
16 really, my point is that another agency does
17 and they will look at it, the structural
18 integrity questions.

19 MR. MADDEN: Yes, that's in the
20 file. You had permits and copy of the permits
21 and all in the file.

22 CHAIRPERSON MILLER: Right.

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1 MR. MADDEN: To prove approval.

2 CHAIRPERSON MILLER: Okay. So I
3 think we have gone through that. So now, I
4 would say it's now time for the ANC to
5 testify. But I do want to say that we give
6 great weight to the ANC report that is voted
7 on, so don't feel you have to say that much
8 necessarily right now before it is even
9 brought to the ANC.

10 We have said that we would be
11 accepting your report and then we will give
12 that great weight. But if there is something
13 you need to say, you know, right now, you can.

14 MR. DIXON: I'll try to wait until
15 tonight when we have our meeting and we have
16 more in our report to say, you know.

17 CHAIRPERSON MILLER: Okay.

18 MR. DIXON: But I just want him to
19 be more -- I hope his voice will be much
20 better tonight, that's all. I hope you get
21 rid of it.

22 CHAIRPERSON MILLER: Okay. Ms.

1 Kailian, do you have any testimony you want to
2 present?

3 MR. DIXON: Mount Vernon.

4 MS. KAILIAN: Well, I am concerned
5 with the lack of the neighborhood
6 participation. The neighborhood association
7 has not been contacted on this matter at all.

8 MR. MADDEN: Talk real loud, I
9 can't hear you.

10 MS. KAILIAN: Sorry. And you
11 know, with regard to the condition of the
12 property over the years, there has been a lot
13 of problem with neglect. Not cutting the
14 weeds, prostitutes getting in the back of --
15 I don't know if they are getting in the
16 building, because the weeds are so thick you
17 can't see.

18 But I'm actually quite disturbed
19 to hear that the basement is already dug out,
20 because of what happened to 1242 New Jersey
21 Avenue falling down. The structure collapsing
22 while occupants were inside. And I don't know

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1 if the property has been inspected to make
2 sure that it's structurally sound. You know,
3 if I did live next door, I would be extremely
4 concerned that that property would still stay
5 standing.

6 There has been no work done on the
7 property in years. Even when it was occupied,
8 it was not maintained. And those are very
9 huge concerns, especially given like the level
10 of confidence going forward if, you know,
11 these properties were to be developed.

12 But the lot and the property are
13 not really any different from the other ones
14 on the lot. They are all landlocked. They
15 are all pretty much in the same boat. And
16 this house is one of the larger houses on the
17 block. I mean, the house that I have is very
18 small. It's only 1,150 square feet and I just
19 -- I do just fine renting it out at a
20 reasonable price.

21 But -- and I did renovate it.
22 This house has substantial size and does have

1 the capacity to, you know, make a decent
2 income even within these HUD fair market
3 values and, you know, using the Section 8
4 Voucher Program, etcetera.

5 The way it is, it doesn't
6 necessarily need to be expanded. I don't see
7 the necessity for, you know, any special case
8 here. And I think that's pretty much it on
9 that one.

10 CHAIRPERSON MILLER: Thank you.

11 Does the applicant have any cross?

12 MR. MADDEN: Yes.

13 CROSS EXAMINATION

14 MR. MADDEN: When did you renovate
15 your house?

16 MS. KAILIAN: I renovated my house
17 between 2002 and 2005.

18 MR. MADDEN: You realize the
19 construction costs then compared to what it
20 would be now?

21 MS. KAILIAN: I'm not an expert on
22 construction costs.

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1 MR. MADDEN: Thank you very much.

2 CHAIRPERSON MILLER: Do Board
3 Members have any questions? Any of the other
4 parties have any questions? Okay. Ms. Bilik,
5 do you have testimony you want to present?

6 MS. BILIK: Briefly. The
7 footprint of the property in question here is
8 the same, well, besides the layout, I haven't
9 been inside, but the size of the property is
10 the same as mine. I don't see the property as
11 being unique in any particular way.

12 Quite the contrary, I think the
13 size of the building, if you were to try to
14 make a one bedroom apartment or four one
15 bedroom units would make the property over
16 densely packed.

17 I'm also concerned about having
18 the balconies overlooking the property. I
19 think that would be a little bit of an
20 invasion of privacy.

21 And for the record, in terms of
22 Mr. Madden's references to other buildings in

1 the neighborhood having three to seven units,
2 we're talking about buildings that are
3 significantly larger than ours. We're not
4 talking about the same size/shape house.

5 So I wanted to put those pieces of
6 information in for the record.

7 CHAIRPERSON MILLER: Thank you.
8 Any Board questions? Mr. Madden, any
9 questions?

10 MR. MADDEN: Yes.

11 CHAIRPERSON MILLER: Okay.

12 CROSS EXAMINATION

13 MR. MADDEN: Which property are
14 you speaking of that's the same size?

15 MS. BILIK: My house is the same
16 size as your's.

17 CHAIRPERSON MILLER: Are you on
18 the mike?

19 MS. BILIK: Yes.

20 CHAIRPERSON MILLER: Okay.

21 MS. BILIK: The house I live in is
22 the same as the 1238 property.

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1 MR. MADDEN: Okay. Any others
2 that you --

3 MS. BILIK: I'm sorry, what was
4 the question?

5 MR. MADDEN: You alluded to that
6 other properties was larger. Which property
7 are you speaking of that you made a comparison
8 with?

9 MS. BILIK: Well, which buildings
10 are you -- let me ask you the question. What
11 buildings are you referencing that have three
12 to seven units in them?

13 MR. MADDEN: They are in the
14 files. You made the statement. I'm just
15 asking did you see those buildings?

16 MS. BILIK: It's on M Street. I
17 think it's 457, I think, or in the
18 neighborhood. I don't -- I'm not very good
19 with addresses. I'm sorry.

20 MR. MADDEN: So you're not sure?

21 MS. BILIK: I'm sorry. I was
22 corrected. It's 456 M Street is one of the

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1 buildings that is larger that would
2 accommodate the number of units Mr. Madden was
3 referencing.

4 MR. MADDEN: Do you know how many
5 units are in that building?

6 MS. BILIK: Four.

7 MR. MADDEN: Four units. And are
8 you aware of any other with four units?

9 MS. BILIK: I'm not familiar with
10 every floor plan of every building. I know
11 that the buildings that you are referencing
12 are larger than the floor plan at 1238, sir.

13 MR. MADDEN: So that's the only
14 one you can testify to being larger?

15 MS. BILIK: Yes, sir.

16 MR. MADDEN: Okay. Thank you.

17 CHAIRPERSON MILLER: The larger
18 buildings that you are talking about, are they
19 matter-of-right buildings or why are you
20 mentioning them?

21 MS. BILIK: Mr. Madden was saying
22 that there are other buildings in the

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1 neighborhood that have three to seven units in
2 them. And my point is that the buildings that
3 have three to seven units are larger in terms
4 of footprint, height, depth, whatever square
5 footage than the building he is proposing to
6 put his four unit one bedroom -- four one
7 bedroom units into.

8 CHAIRPERSON MILLER: Okay. Any
9 other questions?

10 MR. MADDEN: Probably just a
11 comment. I guess that's not really correct.
12 The building --

13 CHAIRPERSON MILLER: Well, you
14 will get a chance to --

15 MR. MADDEN: Okay.

16 CHAIRPERSON MILLER: -- do your
17 closing, rebuttal closing. Any other
18 questions here? Not hearing any, is there
19 anybody in the audience who wishes to testify
20 in support of the application? Anybody wishes
21 to testify in opposition to the application?

22 Okay. Is there room at the table

1 or make room?

2 COMMISSIONER JEFFRIES: We will --
3 Mrs. Goring, are you here in opposition or
4 support?

5 MS. GORING: Opposition.

6 COMMISSIONER JEFFRIES: Oh, so you
7 are going to just sit there?

8 MS. GORING: Right.

9 COMMISSIONER JEFFRIES: Okay.

10 MS. GORING: Everybody had already
11 spoken, but I'm in opposition of the -- his --
12 hello?

13 CHAIRPERSON MILLER: Are you
14 choosing to testify now in opposition?

15 MS. GORING: Yes.

16 CHAIRPERSON MILLER: Okay.

17 MS. GORING: Uh-huh.

18 CHAIRPERSON MILLER: Everybody who
19 is going to testify, start off with your name
20 and address and then go.

21 MS. GORING: Lydia Goring, 400 M
22 Street, N.W., and I previously --

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1 MS. BAILEY: Madam Chair, is Mrs.
2 Goring and the other persons sworn in?

3 CHAIRPERSON MILLER: I don't know.
4 Were you sworn in?

5 MS. GORING: Yes.

6 CHAIRPERSON MILLER: Were you?

7 MR. AMOS: No.

8 CHAIRPERSON MILLER: Okay. Why
9 don't you stand and Ms. Bailey will swear you
10 in before you start. Thank you, Ms. Bailey.

11 COMMISSIONER JEFFRIES: Is there
12 anyone else here?

13 (Whereupon, the witness was
14 sworn.)

15 CHAIRPERSON MILLER: Okay. I said
16 this earlier and I don't think this should be
17 too restraining for you all. In general, we
18 give 3 minutes for individuals.

19 MS. GORING: I also don't see that
20 the property is unique in any way other than
21 the house next door. I have been in the
22 house, 1240 -- 1238. I have lived there for

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1 25 years and the houses are identical.

2 Nothing unusual about the lot or the house.

3 Secondly, that there are no other
4 houses in the neighborhood that have three to
5 seven units in them that are the same row
6 houses. The house is 18 feet wide and about
7 68 feet long. There are other houses and they
8 are 24 feet wide, which makes a big difference
9 and probably about 80 feet long.

10 Also, Mr. Madden has not been very
11 cooperative and he dug out his other house and
12 was lucky that it didn't fall. But, you know,
13 when one wants to have this many variances
14 and, obviously, we cannot figure out -- we
15 have not seen the papers. He doesn't seem to
16 know exactly what should be done. Obviously,
17 we are all very concerned of any variances
18 that would be given to this property.

19 It will have to be looked at very
20 carefully and also the construction of it.
21 I'm in opposition of it.

22 CHAIRPERSON MILLER: Thank you.

1 Any questions from Board Members? Okay.

2 Next?

3 MR. MADDEN: Do I wait until
4 everybody --

5 COMMISSIONER JEFFRIES: Wait.

6 MR. MADDEN: Okay.

7 MS. PEOPLES: My name is Barbara
8 Peoples. I live at 1252 New Jersey Avenue,
9 N.W. I think I need to piggyback on something
10 she was asking about the one bedroom, wouldn't
11 it be a big change. What you are not
12 understanding I have pictures of both her
13 house and his house. It's -- right now, his
14 is a three floor unit building. And the
15 basement that he evacuated, which would make
16 it four floors.

17 So if he put one bedroom on each
18 floor, an independent apartment for each
19 floor, that would be one floor, one bedroom.
20 What she is trying to let you know is that,
21 okay, then to keep the variance the way it is,
22 make it a two floor, two bedroom unit for each

1 and he will get comparable, because D.C.
2 Government do pay you differently for how many
3 bedrooms you have.

4 That's the thing I need to
5 piggyback. But I also need to let you know
6 that over the years, I'm one of the older --
7 I was there before she even moved there. And
8 I have watched these buildings, his property
9 go down, not being taken care of. I have
10 pictures here comparing even from the 29th
11 when I came here for the first hearing of the
12 way his property is and this is summertime.

13 Most people keep their properties
14 looking good, even if they are not -- the
15 building looks bad, they will keep the
16 property. I have the whole block showing the
17 difference in the way the yards are even taken
18 care of and how his is overgrown. I have
19 pictures of his other building that I will
20 testify at the next one, of the partition he
21 puts up.

22 When the building fell down, he

1 said as long as I meet D.C. standards, that's
2 fine. He has no regards for children who,
3 especially boys, see a little thing that they
4 can go in and he -- as long as -- that's
5 negligent in our neighborhood.

6 We have a neighborhood. This
7 isn't a commercial zone. This is the
8 neighborhood with children. New babies, she
9 has a new baby. New babies being there. They
10 are building us a new school. He said there
11 are schools and day care. There is no schools
12 in that block, but we are building a new one,
13 junior high school three blocks down.

14 There is no day cares in that
15 block, but we're going to get them, because
16 we're having babies now. He does not know
17 this neighborhood and he do things in there
18 that is dangerous to people who live there,
19 including her. It's dangerous. It's -- and
20 he has no regards for the people who live
21 there.

22 I don't know what else to say on

1 this one.

2 COMMISSIONER JEFFRIES: That's it.
3 You have said it. You have said a mouthful.

4 CHAIRPERSON MILLER: Thank you
5 very much. Yes, sir?

6 MR. AMOS: My name is Rob Amos.
7 I'm a resident of 206 M Street. Okay. My
8 name is Rob Amos, 206 M Street, N.W., also an
9 officer with the Mount Vernon Square
10 Neighborhood Association. I just want to make
11 a comment on a couple of things in opposition
12 to the application.

13 The first is a lack of public
14 notification in regard for following the
15 public process. I think you should have two
16 letters of evidence from me showing where the
17 property was not properly placarded for
18 notification of this. There has been no signs
19 of any placarding on those properties
20 whatsoever. I was watching the hearings
21 earlier today from the TV from work.

22 Before coming here, I stopped by

1 the property. There is no evidence of prior
2 placarding. He did placard the property --
3 one of the properties last week for the first
4 time. And I go by that property every morning
5 and every afternoon. Last week was the first
6 time any placarding had been done.

7 And I do have pictures of both
8 from the 23rd -- I'm sorry, the 15th and the
9 23rd of that.

10 The second is that he had been
11 told at the ANC meeting that he needed to come
12 and do the presentation. He was told to come
13 to the ANC meeting. He was showing us what he
14 was going to do, not asking permission for
15 approval. And at that time point, he was told
16 by the ANC Planning Committee to come back,
17 follow the process, get on the docket, the
18 billet to be approved, that has yet to happen.

19 He delayed the planning meeting
20 last week. He failed to attend. Again, we
21 had people that are going to discuss it in the
22 open ANC planning meeting for that.

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1 The last thing is that the
2 property has not been maintained. In my
3 evidence I have given you, also, there are
4 pictures of the holes in the fencing around
5 1242, which allows anyone and everyone to come
6 into the ruins of what was 1242.

7 CHAIRPERSON MILLER: Thank you.
8 Okay. Mr. Madden, did you have some
9 questions?

10 MR. MADDEN: Yes, quite a few.

11 CROSS EXAMINATION

12 MR. MADDEN: I guess you first.
13 I'll address -- in the files you will see a
14 contract for construction of a wall in front
15 of the property, that she mentioned. That's
16 been delayed.

17 CHAIRPERSON MILLER: Wait a
18 second. You don't have any questions? Is
19 this your rebuttal and closing? What are you
20 doing?

21 MR. MADDEN: Well, I'm addressing
22 some comments that were raised.

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1 CHAIRPERSON MILLER: You're
2 addressing. Okay. So you don't have any
3 questions for them. You are now going to
4 address their comments?

5 MR. MADDEN: Right.

6 CHAIRPERSON MILLER: Okay.

7 COMMISSIONER JEFFRIES: Madam
8 Chair, just one thing. I mean, it's fine to
9 address their comments, but many of the
10 comments really have no bearing on the
11 application that's in front of us today. So
12 there might be another venue in which like
13 this evening that you can address a lot of
14 these issues.

15 If you want to address them now,
16 you can, but it really has no bearing, no
17 relevance in terms of what we are looking at
18 here this afternoon.

19 MR. MADDEN: Okay.

20 COMMISSIONER JEFFRIES: So --

21 MR. MADDEN: I'll just make this
22 statement.

1 COMMISSIONER JEFFRIES: Okay.

2 MR. MADDEN: If you review the
3 record, the comments that they made here,
4 those have been addressed and placed in the
5 record. And as I testified before and the
6 neighbor testified that those placards were
7 posted to the comments there. But inside the
8 records, when I went before the ANC Committee,
9 those same things came up. And as a result of
10 that, you will find in the files where I
11 addressed each and every one of those.

12 There are such things as not
13 having permits to construct, all that is in
14 the file. The lady here signed off on it when
15 she was living in that house.

16 COMMISSIONER JEFFRIES: What's her
17 name?

18 MR. MADDEN: She authorized me.
19 Ms. Goring.

20 COMMISSIONER JEFFRIES: Okay.

21 MS. GORING: If we're going to be
22 legally --

1 MR. MADDEN: When she signed off
2 for me to -- on the property and there was --
3 the permit was granted and that's in the file.
4 So the wall that was addressed is under
5 contract. Again, we are going through a delay
6 to get permits to put up the wall there,
7 that's why it hasn't been constructed. It is
8 already contracted by insurance companies
9 paying for it.

10 CHAIRPERSON MILLER: Okay. Any
11 other closing remarks? Is that it? This is
12 the end of the hearing where, you know, you
13 get a chance to do closing. If that was your
14 closing or do you have any other remarks?

15 MR. MADDEN: Just a quick one,
16 just a quick one.

17 CHAIRPERSON MILLER: Okay.

18 MR. MADDEN: I would appreciate if
19 the Board would consider all the factors that
20 I presented and hopefully granting approval.
21 And if you keep the record open, I'll be able
22 to try and justify any other concerns that was

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1 addressed here today that I wasn't fully, I
2 guess, clarified for the Board.

3 CHAIRPERSON MILLER: Okay. Thank
4 you. What we are going to do is keep the
5 record open for the ANC report. I don't know
6 that there is anything else that we need to
7 keep the record open for, is there?

8 COMMISSIONER JEFFRIES: No, but
9 Mr. Madden, please, please, I'm trying to
10 manage expectations here. Okay. I don't want
11 you to walk out of here thinking that this is
12 some -- I mean, you -- I don't think you have
13 met your burden here today. And I understand
14 you're going to go back and you're going to
15 work with the community and so forth, but I
16 just want you to understand that you have a
17 lot of ground to cover, particularly around
18 the variances, which is really effectively all
19 we are looking at here.

20 Okay. You really need to focus on
21 making your case for uniqueness. And you
22 haven't, to me, this one Board member, done

1 that. So when you leave here today, you need
2 to sort of figure out, you know, one, how you
3 working with your neighbors here, but more
4 importantly, getting through that variance
5 test. Okay?

6 So I just want to make certain
7 that you have a clear understanding about
8 that. I mean, the record is going to be open,
9 but I just wanted to make certain that you
10 were clear.

11 MR. MADDEN: Right. Okay.

12 CHAIRPERSON MILLER: Now --

13 COMMISSIONER JEFFRIES: You're
14 swimming upstream like a salmon, okay?

15 MR. MADDEN: Well, I'm aware of
16 that. Thank you.

17 CHAIRPERSON MILLER: You know
18 what, this is what I would like to say. First
19 of all, we need to break for the Court
20 Reporter, so I think we need to take 15
21 minutes. Will that be enough? Okay. A 15
22 minute break. And when we come back, what I

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1 want to do is decide what we are going to do
2 on this case. What we are going to leave the
3 record open for or not. And then pick up with
4 the other case, since you are all here on both
5 cases, I assume.

6 Yes, do you have a question?

7 MS. BILIK: Thanks. I have a
8 procedural question, because I'm not really
9 familiar with this at all. And you can
10 address it when we get back, because I
11 understand he needs a break. What exactly
12 does it mean when you leave the record open?
13 And then if it's open, do we all need to come
14 back here again? We all have jobs. We all --
15 so if you could let us know what we can expect
16 as a follow on, that would be helpful.

17 CHAIRPERSON MILLER: All right.
18 I'll just say this, that's not a difficult
19 question for me to answer right now. When we
20 say we're going to leave the record open, we
21 usually say for only specific things, because
22 when we leave the record open for all types of

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1 things, then it creates an unfairness and the
2 one party doesn't get to respond to what was
3 filed by another party.

4 And we are not going to have
5 another hearing and you are not going to come
6 back for another hearing on this case, at
7 least. So therefore, if we decide to leave
8 the record open, it's usually for something
9 very finite, like the ANC report. And then
10 perhaps if we were to decide to do that, then
11 we might say well, the applicant could have an
12 opportunity to respond to that report or
13 whatever.

14 But that would be it. Not like
15 wide open, you all can keep filing things.
16 Okay.

17 MEMBER WALKER: Madam Chair is
18 referring to submissions. So it's not the
19 case that there is additional testimony. It's
20 only documents that individuals are able to
21 file, because the record is left open to
22 receive them.

1 MS. BILIK: And how would we find
2 out about the decision, if there isn't a
3 subsequent Public Hearing?

4 CHAIRPERSON MILLER: And I am
5 going to come back and address this in a less
6 rushed manner. But before we end the case
7 today, we will set it for a decision date.
8 And we don't take any testimony on those
9 dates. We come out here and we deliberate and
10 it's on the Internet. Sometimes we deliberate
11 the same day. If you were here on the
12 previous, for the previous two cases, we were
13 ready to deliberate. It was done right then
14 and there.

15 Okay. So we will be back in --

16 MR. DIXON: Can I ask you a
17 question?

18 CHAIRPERSON MILLER: Yes, sir.

19 MR. DIXON: If the community wants
20 to say something else, they need to come to
21 the ANC meeting and express themselves there
22 and that will go in our ANC report, too. So

1 if you've got some more to say or anyone
2 listening on the TV or radio, please, come out
3 to the ANC meeting.

4 CHAIRPERSON MILLER: Okay. So we
5 are going to now break for 15 minutes.

6 MR. MADDEN: Putting a shout out,
7 huh?

8 (Whereupon, at 5:00 p.m. the
9 Public Hearing continued into the evening
10 session.)

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1 E-V-E-N-I-N-G S-E-S-S-I-O-N

2 5:08 p.m.

3 CHAIRPERSON MILLER: We're back on
4 the record. Did we lose Mr. Dixon from the
5 ANC?

6 COMMISSIONER JEFFRIES: Like I'm
7 sorry, I do not see him, but anyway, okay.

8 CHAIRPERSON MILLER: Okay. I
9 guess we will proceed. Before we broke, we
10 said that we would come back here and then let
11 you all know how we were going to proceed on
12 this case. We were kind of rushed with
13 answering some questions.

14 We had some time to reflect and
15 before when I was saying that we leave the
16 record open sometimes for certain finite
17 pieces of information, that is for information
18 that, you know, we determine would be helpful
19 to our deciding the case.

20 And I had stated that we were
21 going to leave the record open for the ANC
22 report in this case earlier. And I think that

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1 -- and I want to discuss this with the Board,
2 but we may be of the view that that really
3 wouldn't serve a purpose, because what we
4 heard today and as you probably heard from our
5 comments and our questions was that this is a
6 specific test under the law.

7 It's a three prong test for a
8 variance. And we didn't hear any evidence of
9 uniqueness. And we don't think that that's
10 something that the ANC report would address
11 differently from the evidence in the record
12 that it's a factual piece of evidence, so that
13 we might be able to just proceed today, based
14 on evaluating the variance test.

15 And I just want to make sure that
16 that's the consensus of the Board Members, at
17 this point, to proceed with deliberation and
18 not wait for the ANC report.

19 Okay. Basically, I think the
20 variance fails, as we were stating earlier in
21 searching for information, because there just
22 is no evidence whatsoever of uniqueness to the

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1 property or the circumstances on the property
2 in this case.

3 Office of Planning has given us a
4 full report on the property. The neighbors
5 have. The applicant, himself, in describing
6 the property said it was landlocked, that it
7 was small, all of the properties, I guess, in
8 that block are of the same quality.

9 So there really isn't absence of a
10 fact showing that there is something unique
11 about this piece of property. And if you
12 don't have uniqueness or exceptional condition
13 in a variance case, it's really dead on
14 arrival, basically. We don't go into the
15 other areas.

16 I know that the, or I would
17 suspect that, ANC report might address, you
18 know, the other prongs of the test and adverse
19 impacts, but we don't need that to make our
20 decision. Even if there were no adverse
21 impacts, if there is nothing unique, we're not
22 authorized to grant a variance.

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1 So why don't I make a motion and
2 then see if others have more to add. And that
3 would be to disapprove or deny Application No.
4 17814 of DRM & Associates, Inc.

5 Now, there were a lot of variances
6 that were mentioned, but it's pursuant to 11
7 DCMR section 3103.2, and there were variances
8 from 401.3 minimum lot area, 404.1 minimum
9 rear yard setback, 2001.3 to allow an addition
10 to a nonconforming structure and I believe
11 also 403.2 from lot occupancy.

12 COMMISSIONER JEFFRIES: Second.

13 CHAIRPERSON MILLER: Further
14 comments on this?

15 MEMBER LOUD: Madam Chair, I just
16 want to say that I will be voting along in
17 support of your motion. That does not take
18 anything away from the project. I think the
19 project has a lot of social good in it. You
20 could stop at the fact that we're talking
21 about affordable housing. You could go beyond
22 that and talk about housing for seniors.

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1 But this is not the right location
2 for this project. If you look at 3103 in our
3 regs, and I'm just going to read it very, very
4 briefly, it says "Whereby reason of
5 exceptional narrowness, shallowness or shape
6 of a specific piece of property at the time of
7 the original adoption of the regulations or by
8 reason of exceptional topographical conditions
9 or other extraordinary or exceptional
10 situation or condition of a specific piece of
11 property."

12 And then in the context of this
13 hearing, we never got beyond that. So again,
14 I thought the information pulled together by
15 the applicant was organized fairly well and
16 presented fairly well, but there is no
17 prospect that anything that comes from the ANC
18 tonight will get us beyond the whole issue of
19 making the uniqueness part of the test.

20 And I think it's in everybody's
21 best interest to be candid about it and not
22 have -- not send the applicant there tonight

1 making this huge presentation for the result
2 to be reached later that we can reach right
3 now on this record. So that's where I am.

4 CHAIRPERSON MILLER: Others?
5 Thank you. Thank you. I think that was
6 really well put and that was, you know, one of
7 our considerations where we can either decide,
8 you know, the day of or we can set it off.
9 And in setting it off, once we realized, you
10 know, that there isn't anything that would
11 change this uniqueness issue that would come
12 from the ANC, then, in fact, it just might be
13 worse for the community and the applicant to
14 go through those hoops.

15 So okay. Other comments? All
16 right. Then there is a motion that has been
17 seconded to deny Application No. 17814.

18 All those in favor say aye.

19 ALL: Aye.

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

1 MS. BAILEY: Madam Chair, the vote
2 is recorded as 5-0-0 to deny the application
3 of DRM & Associates, Inc. for 17814. The
4 motion was made by Mrs. Miller, seconded by
5 Mr. Jeffries. Mr. Dettman, Mr. Loud and Mrs.
6 Walker support the motion.

7 CHAIRPERSON MILLER: Okay. Thank
8 you. And that will result in a written order,
9 which will take a while for the Office of
10 Attorney General to write. Okay. I think
11 that concludes this case. And you can call
12 the next case, Ms. Bailey, when you are ready.

13 MS. BAILEY: Application No. 17813
14 of DRM & Associates, Inc., pursuant to 11 DCMR
15 3103.2, for a variance from the lot area
16 requirements under subsection 401.3, a
17 variance from the rear yard requirements under
18 section 404, a variance from the open court
19 requirements under section 406, a variance
20 from the nonconforming structure provisions
21 under subsection 2001.3(b) and a variance from
22 the parking requirements under subsection

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1 2101.1, to allow the conversion of a one-
2 family dwelling to a four unit apartment
3 building for the elderly at premises 1242 New
4 Jersey Avenue, N.W. The property is located
5 in Square 523 on Lot 850. And it is Zoned R-
6 4.

7 Similar to the previous project,
8 there are some concerns. It has to do with
9 the posting of the property. Additionally,
10 there are two requests for party status. And
11 lastly, the applicant did amend this
12 application to delete the variance from the
13 parking requirement and also no longer wish to
14 consider elderly development at the site or
15 housing for elderly at the site.

16 CHAIRPERSON MILLER: Ms. Bailey,
17 is the posting the same, the two days?

18 MS. BAILEY: Exactly the same.

19 CHAIRPERSON MILLER: Okay. And
20 the party status, are they different
21 applicants in this case than the previous
22 case?

1 MS. BAILEY: No, the applicants
2 for party status are the same. One was filed
3 ahead of time, Arsine Kailian and then the one
4 that came in today from Ana Bilik.

5 CHAIRPERSON MILLER: Okay. Why
6 don't we do the party status first. Well, why
7 doesn't the applicant introduce himself for
8 the record first?

9 MR. MADDEN: I'm Donald Madden,
10 President of DRM & Associates, Inc., owner of
11 the property of 1242 New Jersey Avenue, N.W.

12 CHAIRPERSON MILLER: Okay. I
13 can't imagine that the Board has any concerns
14 with granting party status in this case,
15 different from the other case we just heard.
16 Any objections, Mr. Madden?

17 MR. MADDEN: No objection.

18 CHAIRPERSON MILLER: Okay. So Ms.
19 Kailian and Ms. Bilik are granted party status
20 in this case. Okay. Then we get to the
21 posting issue. Quickly, in the previous case,
22 Mr. Amos, you weren't here I don't think when

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1 we discussed this, but I think the consensus
2 was that there was enough notice that we
3 should -- we could proceed today on the case.
4 And that if we needed something, we would
5 leave the record open for that, such as from
6 the ANC.

7 Is there any objection to
8 proceeding today on this case? Does the Board
9 have any concerns? Okay. Okay. So those two
10 preliminary matters then are resolved. We
11 will waive the rules with respect to time for
12 posting and also Ms. Bilik's party status
13 application was filed late, but we will waive
14 the rules for that as well finding no
15 prejudice to any party and nobody objects and
16 I believe the good cause that was stated in
17 the previous case was that there was a lot
18 going on, just mothers work, etcetera, and
19 didn't realize she had to file it 14 days a
20 head of time.

21 Okay. That being said, let's go
22 on to the merits of this application. So

1 having gone through the previous application,
2 I guess I would ask you, Mr. Madden, is there
3 something unique about this property?

4 MR. MADDEN: Well, yes and no.
5 This property is different from the other one,
6 because it's, basically, non-existent. It's
7 only a portion of the structure remaining.
8 And this lot is smaller than the other lot
9 that we presented. And I don't know if I will
10 be able to satisfy the uniqueness test on this
11 from my discussing with Planning.

12 I don't know if it's appropriate
13 for this time to -- since this is a
14 reconstruction versus the one from, you know,
15 rehabbing, is it appropriate to ask for the
16 Board or does the Board have authority to
17 grant building back the property at the same
18 level as the one next door? Is that something
19 the Board may address? Should I address it
20 here?

21 CHAIRPERSON MILLER: Well, I would
22 say that that's not before us in your filings.

1 What you have filed and what you put on notice
2 to the community and everybody is the
3 variance. You -- if you don't want to go --
4 you could withdraw your variance application,
5 if you don't want to proceed with that or, you
6 know, you can file another application dealing
7 with your concern.

8 I really don't know, based on what
9 you said, if you would need -- what kind of
10 relief you would need from the Board. So we
11 couldn't do that today.

12 MR. MADDEN: I understand.

13 CHAIRPERSON MILLER: Okay. I have
14 no problem with withdrawing at this time and
15 I'll resubmit.

16 CHAIRPERSON MILLER: What you are
17 saying is you want to withdraw your
18 application for the variances and then take a
19 look and see if there is something, another
20 filing you might make for the property? Is
21 that it?

22 MR. MADDEN: Well, that's

1 partially what I asked for. However, from the
2 time period that it has taken me two and a
3 half years to get here before you, I don't
4 know, you know, if it's a wise thing to ask to
5 go back through and wait another two years or
6 more to get approval to do something on the
7 property.

8 I would hate the property to set
9 there for another two and a half years and I
10 know the neighbors don't want it sitting there
11 like that for another two and a half years and
12 it's not cost effective for me to let it sit
13 there. I am -- I don't know. At this point,
14 I'm not -- it's just something I thought about
15 as I was reading through the report here
16 whether that process and the way things are
17 going now to just get a fence put up in front
18 of it is taking nearly six months.

19 And I don't know where the end of
20 that is to just get a permit to put a wall up
21 there to make the structure look presentable.
22 And it's -- you know, the insurance company is

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1 trying to get pressure to build, the person
2 with the contract is trying to get pressure on
3 zoning to allow it, so we can do it. I'm sure
4 the neighbors are, you know, concerned about
5 it. And I promised to do it, but I can't get
6 past the hurdle of getting a permit.

7 And I do want to build the
8 structure, but I realize here now with the
9 variance and the uniqueness that was explained
10 in the previous one, I don't think, at this
11 point, I have enough data in the record so I
12 can present to you enough data to justify
13 uniqueness.

14 You know, this lot is different
15 from the other is and there's no structure on
16 this one and structure on the other one. I'm
17 lost for direction as to what approach to take
18 on this.

19 CHAIRPERSON MILLER: You know, we
20 don't give out legal advice necessarily, but,
21 I mean, basic options, you know, one was if
22 you don't think you have the case here and you

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1 want to withdraw, you may. If you think that
2 you need to go back and look at your case,
3 based on what we said earlier, and that you
4 actually may have a case here and you want to
5 ask for a postponement, that's another option.

6 I don't, you know --

7 MR. MADDEN: Right.

8 CHAIRPERSON MILLER: -- know your
9 case really. I know we heard the previous
10 case.

11 MR. MADDEN: Right. It's
12 basically similar and I would ask for a
13 postponement, so that I can go back and
14 readjust, amend to come back before the Board,
15 rather than the possibility of waiting another
16 two and a half years to get back before the
17 Board. I would like time to be able to make
18 those adjustments.

19 COMMISSIONER JEFFRIES: But, Mr.
20 Madden --

21 MR. MADDEN: If it's at all
22 possible.

1 COMMISSIONER JEFFRIES: -- I just
2 again, going back to managing expectations and
3 so forth, just, you know, I mean, you should
4 really again spend some time with the Office
5 of Planning, because it's not just about you
6 presenting data, as you said, but it has to be
7 the right data to make your case.

8 And what I have read in this file,
9 you know, there are a lot of similarities to
10 the previous case.

11 MR. MADDEN: Right.

12 COMMISSIONER JEFFRIES: And so
13 again, you know, I don't think you need to
14 spend a lot of time, you know, with the
15 community and the ANC if the basic tenets of
16 your case are not there. You know, because
17 again the variance test is pure and it's
18 straightforward.

19 MR. MADDEN: Right.

20 COMMISSIONER JEFFRIES: And it's
21 not a lot of wiggle room. And I would really
22 strongly suggest that you sit down with the

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1 Office of Planning. Madam Chair said if that
2 we don't give advice. You may want to talk to
3 a land use attorney, but you just, you know,
4 need to rethink what you are doing here.

5 MR. MADDEN: Right. That's my
6 reason for asking, so that I can go back and
7 restructure, rather than withdrawing and going
8 through refiling and taking another two and a
9 half years, that's my concern.

10 COMMISSIONER JEFFRIES: But I'm
11 just telling you I'm talking about refiling
12 with a variance. I mean, I'm just -- that's
13 what I'm saying.

14 MR. MADDEN: Right, right. No, I
15 understand. I'll go to Planning and see what
16 approach --

17 COMMISSIONER JEFFRIES: Okay.

18 MR. MADDEN: -- that I can come
19 back before the Board without going through
20 another two and a half years delay. Do you
21 under -- does that make sense?

22 CHAIRPERSON MILLER: I think, you

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1 know, you are in an unusual situation where
2 you hear a case decided that's very much like
3 the next case you are going to present. Okay.
4 You haven't had much time to think about this.
5 So if you want a postponement, the Board would
6 have to talk about it, you know, whether we
7 want to postpone it.

8 But we don't want to do it
9 encouraging you in the sense that if this case
10 is really like the other case, it may not be
11 unique and that means don't -- we wouldn't
12 want you to try to pursue it by, you know, I
13 don't know, whatever kind of data you are
14 talking about.

15 But maybe it is unique and I don't
16 know, but it would just be to give you an
17 opportunity to take another look at your
18 property and maybe there is something you can
19 do as a matter-of-right and you would
20 withdraw, you know, because you didn't think
21 you could meet the variance test and you could
22 do something matter-of-right.

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1 But if you think that based on
2 what you have heard, there is something
3 different about this property and you want to
4 present your argument better and look at it
5 more carefully, then that extra time would
6 give you that opportunity to do that.

7 MR. MADDEN: I would appreciate
8 that.

9 COMMISSIONER JEFFRIES: Board
10 Member Loud, he read the regulation to you, so
11 you need to adhere to that very, very closely.
12 I mean, you know, so again, this is about
13 managing expectations.

14 MR. MADDEN: Right.

15 COMMISSIONER JEFFRIES: And you
16 know, so you might want to go back and look at
17 a different development program that might be
18 a matter-of-right program and something that
19 you can work with your neighbors on, which is
20 absolutely key.

21 So, Madam Chair -- are you saying
22 you want postponement or are you --

1 MR. MADDEN: Yes.

2 COMMISSIONER JEFFRIES: You want a
3 postponement?

4 MR. MADDEN: Right. In order to
5 look at those options that I could have to
6 present to the Board or make a decision
7 whether or not to come back before the Board
8 after I talk to zoning. And since Mr. Moore
9 is retired, I want to try to get in touch with
10 him to make some discussions. He helped me on
11 another case, so I think the uniqueness he may
12 be able to help me maybe with this one. I'm
13 not sure. So I would like to have that
14 opportunity.

15 CHAIRPERSON MILLER: Well, why
16 don't we hear from the other parties on this
17 before the Board discusses it. Mr. Dixon, do
18 you have a comment?

19 MR. DIXON: No comment, because I
20 would really like to go back and talk to my
21 Commission, too. But I really think it -- I
22 would just rather make no comment right now.

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1 I would just rather go talk to my Commission.

2 CHAIRPERSON MILLER: Okay.

3 MR. DIXON: And get a feel how
4 they feel.

5 CHAIRPERSON MILLER: Do the other
6 parties have a comment on the postponement,
7 the request for postponement?

8 MS. KAILIAN: I guess my
9 preference would be for this case to be
10 decided today. I don't think it's that much
11 different than the previous case. The only
12 major difference is that there is no house
13 there any more. The house that was previously
14 there was a two story house and I believe that
15 Mr. Madden alluded to his desire to build a
16 three story house. And correct me if I'm
17 wrong.

18 MR. MADDEN: Wrong.

19 MS. KAILIAN: You wish to build a
20 two story house?

21 MR. MADDEN: No. In the plans --
22 shall I answer directly? Okay. In the plans,

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1 the four units are both buildings.

2 MS. KAILIAN: Right. But for 1242
3 New Jersey Avenue, would it be a two story
4 house or a three story house?

5 MR. MADDEN: It would be identical
6 to 1238.

7 MS. KAILIAN: Then it would be a
8 three story house, which is not what was there
9 previously. Is that addressed in your zoning
10 variance application?

11 MR. MADDEN: It addresses
12 basically the same addressed for the other,
13 because that's basically what we were
14 intending to do is identical.

15 MS. KAILIAN: Okay. I'm a bit
16 confused, but then there would be no
17 difference between this and the previous
18 application.

19 MR. MADDEN: Yes.

20 COMMISSIONER JEFFRIES: You said
21 that this site, this site is more shallow by,
22 you said, 6 feet?

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1 MR. MADDEN: Yes, yes.

2 COMMISSIONER JEFFRIES: But that's
3 the only difference really.

4 MR. MADDEN: Well, it's shallower
5 and it's a little narrower in the back. So
6 it's a little different.

7 COMMISSIONER JEFFRIES: Ms.
8 Goring, you are actually not a party in the
9 case, I don't think. If Ms. Bilik wants to
10 speak?

11 MS. BILIK: Yeah. I respect Mr.
12 Madden's desire to postpone, because it has
13 been a long time. He has made, what I
14 understand, to be a lot of effort to get in
15 front of you folks today.

16 However, I don't -- this case is
17 not in any significant way any different from
18 the previous one, so I don't think the
19 variances that he is requesting here are going
20 to change at all. Unless he is planning on
21 going and talking to folks and then coming in
22 and deleting all kinds of variances and adding

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1 all kinds of new ones, in which case, it would
2 be a different case.

3 So I do respect that and if
4 anybody wants this property rebuilt, it would
5 be me. It's an eyesore. It's a garbage dump.
6 It's right next to my house. But I don't
7 really feel like we need to come back here two
8 weeks from now, a month from now to hear the
9 same case. Take time off from work, take your
10 time and then deny it at that point.

11 So I don't see this being -- I
12 would encourage the Board, the Zoning Board to
13 make a decision on this case today, if you
14 can.

15 MR. MADDEN: Your -- I think the
16 record shows that this is a different case.
17 This is non-existent structure, basically.
18 The other one, the structure already existed.
19 And there is some differences. And that's why
20 I wanted to get with zoning and see what
21 possibilities, if we could leave it open to
22 make that discussion.

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1 And if we can't, I wouldn't come
2 back before the Board. If we can't resolve it
3 then, I would just send a notice in to
4 withdraw it at that time.

5 COMMISSIONER JEFFRIES: So you
6 just want to hold a space, that's effectively
7 what you want to do?

8 MR. MADDEN: Yes, rather than
9 waiting two years, sir, to go through the
10 process again.

11 CHAIRPERSON MILLER: Are we ready
12 to deliberate or do you all have more
13 questions for the parties?

14 MEMBER LOUD: To deliberate?

15 CHAIRPERSON MILLER: Just the
16 postponement. I mean, I think --

17 MEMBER LOUD: Okay.

18 CHAIRPERSON MILLER: You know, I
19 mean, I think it was a good idea to explore.
20 I guess I'm of the view, at this point, when
21 we usually grant a postponement, it's because,
22 you know, an applicant may be changing plans

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1 or whatever to accommodate the community or
2 whatever things will be changing.

3 And I'm thinking in this case it's
4 very similar to what we considered before with
5 respect to the uniqueness. Nothing is going
6 to change on that and either the property is
7 unique or it isn't. So it seems to me that
8 it's not a good idea to postpone necessarily,
9 if that's not going to change.

10 That if the applicant is going to
11 come up with a different plan, it can't be for
12 a variance if the property is not unique. And
13 that's what this is all about. So I guess, at
14 this point, I would not be inclined to
15 postpone. How about what do others think?

16 MR. MADDEN: May I?

17 CHAIRPERSON MILLER: No, this is
18 deliberation.

19 MR. MADDEN: Oh.

20 CHAIRPERSON MILLER: This is just
21 the Board.

22 MEMBER LOUD: Madam Chair and

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1 colleagues, I don't personally see any harm in
2 the request for the postponement. I think the
3 case is very similar to the previous case, but
4 there are some differences. One difference is
5 that the Office of Planning, in this case,
6 when they discussed the uniqueness element,
7 they conclude that although there isn't
8 uniqueness, that there is an exceptional
9 circumstance, which was not the scenario in
10 the first case.

11 Now, that's not dispositive of the
12 entire test, but what I hear the applicant
13 saying is look, let me go back. Let me review
14 all of my options in a sincere way and perhaps
15 I didn't do that in the first case. And let
16 me do all of that without this specter over my
17 head of losing my place in line. And once I
18 find out in sincerity whether or not there is
19 a case to push forward, I'm going to make a
20 good faith and proper decision on this.

21 I'm not going to push it forward,
22 if there is no variance case to be made, but

1 I do want the opportunity to speak to --
2 consult with some expertise. He mentioned Mr.
3 Moore. Commissioner Jeffries suggested to him
4 of talking to a land use attorney.

5 And I just don't see the harm in
6 us doing that, if we put a time limit on this
7 postponement, so that this property doesn't
8 stand in that state for sort of like an
9 indefinite period of time, if we're talking
10 about 30 days or something like that.

11 But I think when I listen to him,
12 I'm hearing something different than perhaps
13 what others are hearing. I'm hearing a good
14 faith desire to find out what all of his
15 options are and to be willing to listen, to be
16 willing to receive the information this time.
17 Perhaps he wasn't willing before. And then
18 come back and live with the consequences of
19 that new information.

20 COMMISSIONER JEFFRIES: So but let
21 me understand something, Board Member Loud.
22 So yeah he could actually opt to just withdraw

1 the case after he, you know, reviews a
2 program, but he could also come back with the
3 variance case again. And if we're saying
4 right now that we don't see any uniqueness
5 here, that's not going to change.

6 Then, you know, we would be going
7 through a process, you know, if he opts to go
8 forward with some sort of variance case. You
9 know, we would be making a decision then that
10 we could make today. So I understand what
11 you're saying, but I just -- if we are on the
12 page of variance, a variance, I don't --
13 that's what it is today and what it is going
14 to be next week or next month or whenever this
15 happens, you know.

16 So I'm -- I can -- I won't -- I'm
17 somewhere between you two, but I'm just sort
18 of trying to -- I'm just concerned about
19 encouraging Mr. Madden around this whole
20 variance issue, because I think it's a
21 slippery slope.

22 CHAIRPERSON MILLER: I want to

1 step in here, just because I want to backtrack
2 a little bit, because Mr. Loud pointed to the
3 Office of Planning report, which I hadn't
4 noticed when I made my statement about
5 uniqueness. And they seem to indicate that
6 there may be a uniqueness here with respect to
7 a confluence of factors.

8 Let's see, it says -- they say
9 "While these factors may not constitute
10 uniqueness in and of themselves, the building
11 collapsed, the owner's desire to retain the
12 existing structure, the property's location
13 within a Historic District, and the size of
14 the lot have created an exceptional situation
15 with regard to constructing a building
16 addition."

17 So to me, when I look at that,
18 it's like not as clear cut a case that there
19 is just no uniqueness here. Like there might
20 be an exceptional situation. It does meet the
21 first prong. It has to then give rise to a
22 practical difficulty.

1 COMMISSIONER JEFFRIES: But with
2 the exception of the Historic District, I
3 mean, I could see that being, you know, an
4 exceptional situation. I mean, did the house
5 being torn down or what's the --

6 CHAIRPERSON MILLER: What I'm
7 saying is we haven't heard any evidence in
8 this case yet. Okay. We haven't started the
9 case. When I started the conversation, I
10 guess I was under the impression it was
11 similar to the other one and that, you know,
12 we were looking at the law, didn't know what
13 was on it, and there was nothing that anybody
14 could say was unique or exceptional.

15 COMMISSIONER JEFFRIES: Well,
16 we're just right now deliberating on
17 postponement, right?

18 CHAIRPERSON MILLER: Right.

19 COMMISSIONER JEFFRIES: Okay. So
20 if we determine that we're not going to
21 postpone this case and then either -- you
22 know, I mean, we're going to hear it today and

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1 go through this, you know, and have these
2 discussions. Because I did look at some of
3 this and I might have a couple of differences
4 with Office of Planning on this.

5 But well, let's just hear from the
6 other Board Members.

7 CHAIRPERSON MILLER: Okay. It's
8 like what will we be waiting for then, besides
9 just holding a place? Yeah, what do you all
10 think?

11 MEMBER DETTMAN: I was in favor of
12 the withdrawal, but -- because a four unit
13 apartment building in an R-4 on this site is,
14 to me, doubtful that it will ever happen.
15 It's doubtful. And I think the applicant
16 needs to walk away knowing that.

17 But if the applicant is going to
18 go back and reassess this case and decide
19 whether or not it's worth going forward or not
20 or change the plans and say the only viable
21 option here is a two unit building, then he --

22 COMMISSIONER JEFFRIES: But that's

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1 a whole new --

2 MEMBER DETTMAN: -- just withdraws
3 his case, because a two unit is a matter-of-
4 right.

5 COMMISSIONER JEFFRIES: Yeah,
6 right.

7 MEMBER DETTMAN: So I think in
8 past cases the Board has been patient with
9 applicants and we have provided an opportunity
10 to go back and rework their application. I'm
11 doubtful that 30 days is enough time. You had
12 mentioned 30 days, no?

13 COMMISSIONER JEFFRIES: No.

14 MEMBER DETTMAN: Oh, I'm sorry, I
15 thought I heard 30 days. I'm willing to
16 extend that opportunity.

17 CHAIRPERSON MILLER: I don't know
18 that we have time for a hearing on our
19 schedule in 30 days.

20 MEMBER WALKER: I don't know.
21 Madam Chair, I tend to agree with Ms. Bilik.
22 I think if this application is going to

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1 succeed, it's going to have to change
2 dramatically. I think it's ultimately going
3 to be a different case. It's going to require
4 notice and, you know, we should not circumvent
5 the process, you know, just so that, you know,
6 it will be a little more convenient for the
7 applicant.

8 I mean, I think we have to think
9 about the neighbors. We have to think about
10 the community and their ability to participate
11 here. So I am leaning toward favoring
12 withdrawal.

13 CHAIRPERSON MILLER: Well, we
14 can't -- that's a voluntary act though on the
15 part of the applicant. Okay, yeah.

16 MEMBER WALKER: Okay.

17 MEMBER DETTMAN: I'm not exactly
18 sure what you mean by that this needs to
19 change dramatically. If the applicant just
20 wants a postponement to look at his case and
21 build a stronger case, the nature of the
22 relief doesn't change. It's still a four unit

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1 apartment building, as it's advertised. It
2 would just stay the same. And at such a date,
3 we would hear that case, but hopefully with a
4 stronger argument.

5 The second option is that it is
6 going to dramatically change and then it's
7 going to go down to two units and then in that
8 case, we don't hear the case at all. It just
9 goes matter-of-right and the case is
10 withdrawn. So I'm not sure from a notice
11 perspective, from a community input
12 perspective, which you are going to need to
13 work on that, but from a notice perspective,
14 I'm not seeing the case change at all.

15 MEMBER WALKER: Well, I think I
16 was trying to agree with you that if the case
17 were to --

18 MEMBER DETTMAN: I'll take that.

19 MEMBER WALKER: -- come back, if
20 it were to be successful as a four unit
21 project, that it would have to be
22 significantly different than what we see here.

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1 But I mean, you know, I'm not -- I don't feel
2 strongly about this either way. I mean, I
3 think if the Board is inclined to allow a
4 postponement, I mean, that's fine.

5 CHAIRPERSON MILLER: Okay. What I
6 want to say, I don't want us to, you know,
7 pre-judge the case. We have read the file,
8 but we haven't had the hearing yet. So I
9 think we have to consider his prejudice to any
10 of the parties if we postpone it. And if
11 there is good cause to postpone it, basically.

12 And I guess I hear the good cause
13 from Mr. Madden just to give him time to take
14 another look at this case, given our decision
15 in the previous case. And I guess I hear
16 maybe from Ms. Bilik that, you know, it takes
17 time to come to the hearings. It's an
18 inconvenience and they are here.

19 And also, maybe this would delay
20 other action on the property. I don't know.
21 So I think we weigh those things.

22 I guess we usually do give the

1 applicant a chance though if they want to take
2 an opportunity to reassess.

3 COMMISSIONER JEFFRIES: Okay. I
4 just want to be clear. So in terms of
5 reassess, it will be the option of either
6 going back looking at the case and determining
7 that they can put a stronger argument up for
8 a variance, one, that's one option, or, two,
9 you know, I can't make the -- the applicant
10 cannot make the variance case, makes that
11 determination and decides to withdraw the
12 case. Those are the options to the applicant?
13 Is there a three?

14 CHAIRPERSON MILLER: I guess the
15 three is just we hear the case in its present
16 form, either now or later, if he made no
17 changes and we postponed it.

18 COMMISSIONER JEFFRIES: Oh, okay.

19 CHAIRPERSON MILLER: And --

20 COMMISSIONER JEFFRIES: And the
21 applicant is not in favor of going today. I
22 mean, he -- you would like to postpone?

1 MR. MADDEN: Can I speak?

2 COMMISSIONER JEFFRIES: Yes.

3 MR. MADDEN: I don't think it
4 would be in the best interest of all those who
5 sit here and go through it, at this point.
6 And that's why I was asking for the
7 postponement. And hear me out, if I don't
8 succeed with Planning and getting the right
9 advice and so forth to come back before you,
10 I'm not going to waste your time nor mine to
11 come back here.

12 COMMISSIONER JEFFRIES: Okay.

13 MR. MADDEN: I'll send in a
14 withdrawal and I'll go from there to do a two
15 unit then.

16 COMMISSIONER JEFFRIES: Okay.

17 CHAIRPERSON MILLER: And would you
18 be attending the ANC meeting tonight?

19 MR. MADDEN: If they want me.

20 CHAIRPERSON MILLER: I guess we
21 don't necessarily need to know that. But I --

22 COMMISSIONER JEFFRIES: I really

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1 get a sense, I mean, that your neighbors
2 really want a development here. I mean, they
3 really want -- say you be successful here, I
4 mean, it's just, you know.

5 MR. MADDEN: I --

6 COMMISSIONER JEFFRIES: Yeah, I
7 understand the construction issues. I
8 understand your --

9 MR. MADDEN: -- want --

10 COMMISSIONER JEFFRIES: Yeah.

11 MR. MADDEN: -- to develop it,
12 sir.

13 COMMISSIONER JEFFRIES: Yeah.

14 MR. MADDEN: The delay is to get
15 before you. It has taken me two and a half
16 years to get before you to even -- you know,
17 that's --

18 COMMISSIONER JEFFRIES: Did it
19 really take two and a half years to get before
20 us?

21 MR. MADDEN: Beg your pardon?

22 COMMISSIONER JEFFRIES: Did it

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1 really take two and a half years?

2 MR. MADDEN: Two and a half years.

3 COMMISSIONER JEFFRIES: Okay.

4 MR. MADDEN: June of '06, sir.

5 May or June, whatever. of '06. May 16 she
6 said. So it's longer than that. So that's
7 what it has taken and believe me and now we
8 put in an application to put a fence up that's
9 been almost six months. That's in your file.
10 I mean, I want to build it. Believe me,
11 there's no advantage for me to let it sit
12 there.

13 My livelihood depends on it.
14 That's what I do for a living. So, you know,
15 we fought. We have been fighting for two and
16 a half years. And I was promised when that
17 building collapsed by everybody and his
18 brother that came out that they would expedite
19 the application. That's what I was told. Two
20 and a half years later, plus, here we are. We
21 are here.

22 MS. BAILEY: Mr. Jeffries, for the

1 record, Mr. Madden filed his application on
2 April 9, 2008 with the D.C. Office of Zoning.

3 COMMISSIONER JEFFRIES: What are
4 you -- did you hear that?

5 MR. MADDEN: No. Yes.

6 COMMISSIONER JEFFRIES: I mean, we
7 don't have to go back and forth on this.

8 MR. MADDEN: Okay.

9 COMMISSIONER JEFFRIES: But in
10 terms of -- I mean, you seem to be saying in
11 terms of us that it has taken this long. I
12 just --

13 MR. MADDEN: Well, right after the
14 building collapsed, and she said May 16th, we
15 started the process of dealing with Zoning at
16 that time, sir.

17 COMMISSIONER JEFFRIES: But that's
18 not with the Board of Zoning. But anyway --

19 MR. MADDEN: Believe me, I swear,
20 you know, before the Board on that.

21 COMMISSIONER JEFFRIES: Okay.

22 MR. MADDEN: Because I wanted to

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1 build right away.

2 COMMISSIONER JEFFRIES: Well, we
3 just -- again, you know, we're being recorded
4 here and when an applicant sort of says this
5 takes two and a half years to get before us,
6 you know --

7 MR. MADDEN: Right.

8 COMMISSIONER JEFFRIES: --
9 hopefully someone up here will go well, no,
10 you -- and that's what happened. So we have
11 to -- we don't want that to be out in the
12 universe, if it's not quite accurate.

13 MR. MADDEN: Right.

14 CHAIRPERSON MILLER: I just want
15 to also comment that from our point of view up
16 here, usually the developers that are most
17 successful in moving their projects along more
18 quickly are those that work with the
19 community, that go to the ANC meetings and
20 then they don't have community opposition and
21 they end up developing something that fits
22 well within the community.

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1 MR. MADDEN: Right.

2 COMMISSIONER JEFFRIES: And work
3 very closely with the adjacent neighbor.

4 MR. MADDEN: Yes, sir.

5 COMMISSIONER JEFFRIES: Right,
6 right. You know this.

7 MR. MADDEN: I know that. I've
8 been doing it for 30 years --

9 COMMISSIONER JEFFRIES: Yeah.

10 MR. MADDEN: -- here in the
11 District. So, you know, I have dealt with all
12 of the ANCs, so it's not -- you know, and I
13 think if you see my notes in there, I
14 explained what happened in this case.

15 CHAIRPERSON MILLER: Okay. So we
16 have the request for postponement, correct?

17 MR. MADDEN: Yes.

18 CHAIRPERSON MILLER: You would
19 like us to postpone?

20 MR. MADDEN: I would appreciate
21 it.

22 CHAIRPERSON MILLER: I guess, I --

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1 COMMISSIONER JEFFRIES: I'm going
2 to --

3 CHAIRPERSON MILLER: -- could go
4 with that.

5 COMMISSIONER JEFFRIES: I'm
6 deferring to Board Member Loud. You know, he
7 wants to postpone.

8 CHAIRPERSON MILLER: Mr. Loud?

9 COMMISSIONER JEFFRIES: I'm going
10 to go along with him.

11 MEMBER LOUD: A motion or --

12 CHAIRPERSON MILLER: Oh, you can,
13 sure. We just have to decide whether we're
14 going to grant the request. You can make it
15 a motion.

16 MEMBER LOUD: It's not a vote? I
17 mean, it's --

18 CHAIRPERSON MILLER: It is a vote
19 though. We do need a vote, basically, yes.
20 So did you want to move to grant it?

21 MEMBER LOUD: I move that we
22 approve the applicant's request for a

1 postponement and that we set the -- if
2 approved -- well, I guess that part will take
3 care of itself. Yeah, I just move that we
4 approve the applicant's request for
5 postponement.

6 MEMBER DETTMAN: Second.

7 CHAIRPERSON MILLER: Okay. Any
8 other comments on this? All right.

9 All those in favor say aye.

10 ALL: Aye.

11 CHAIRPERSON MILLER: Opposed?
12 Okay. Abstaining? And would you call the
13 vote on that, please?

14 MS. BAILEY: The vote is recorded
15 as 5-0-0. The motion was to request --
16 approval of the applicant's request for
17 postponement. Mr. Loud made the motion, Mr.
18 Dettman seconded, Mrs. Miller, Mrs. Walker and
19 Mr. Jeffries support the motion.

20 CHAIRPERSON MILLER: Okay. And,
21 Mr. Madden, how much time do you think you
22 need and then we'll look at our calendar to

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1 see where we can reschedule this, in the event
2 it does go forward?

3 MR. MADDEN: No more than 60 days,
4 Your Honor, will be fine or Ms. -- Madam
5 Chair, for the holidays and all coming up.
6 Your Honor, may I? That's a request for the
7 max period. If I can get with the people that
8 I need to get with in two to three weeks, I'll
9 make the decision.

10 CHAIRPERSON MILLER: Well, you can
11 always send in a withdraw if you do that.

12 MR. MADDEN: Right.

13 CHAIRPERSON MILLER: That's not a
14 problem.

15 MR. MADDEN: Right.

16 CHAIRPERSON MILLER: But what I'm
17 looking at is where we would fit you in on the
18 calendar again for the hearing, if this goes
19 forward. So that's what it is depending on
20 where we have a space.

21 MR. MADDEN: May I make another
22 comment?

1 CHAIRPERSON MILLER: Yes.

2 MR. MADDEN: The reason for that
3 is to give me time to get with the ANC and the
4 community and Zoning, that's why I asked for
5 60 days.

6 CHAIRPERSON MILLER: Okay. No,
7 that's fine. We're having trouble finding a
8 date, you know, even beyond 60 days, I think.

9 COMMISSIONER JEFFRIES: That was a
10 beautiful house that fell.

11 MR. MADDEN: It's the first one I
12 bought in the District 30 some years ago.

13 COMMISSIONER JEFFRIES: Did it
14 have a basement unit? Have a basement unit?

15 MR. MADDEN: So the insurance
16 company is taking care of it.

17 CHAIRPERSON MILLER: All right.
18 We have a really full calendar all the way up
19 to January. So what we are doing is looking
20 where we might fit you in that doesn't look
21 too heavy. So we're going to fit you in, if
22 it goes forward, November 25th in the

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1 afternoon.

2 MR. MADDEN: Thanksgiving?

3 CHAIRPERSON MILLER: Thanksgiving?

4 I don't -- I doubt it. That's a Tuesday.

5 MR. MADDEN: Oh, no, no, no.

6 CHAIRPERSON MILLER: Oh.

7 MR. MADDEN: I'm looking at -- I'm
8 sorry. I'm sorry. I was looking at --

9 CHAIRPERSON MILLER: Is it the
10 Tuesday before Thanksgiving? Okay. In the
11 afternoon, um-hum.

12 MR. MADDEN: Afternoon on the 25th?

13 CHAIRPERSON MILLER: Yes, that's
14 correct. If it goes forward, and that would
15 also mean that, you know, the same kind of
16 regulations apply that if there is an
17 additional -- a different filing, it be filed
18 at least 14 days in advance of the hearing.
19 And you serve the ANC and actually there are
20 parties in this case now, so they would all
21 need to be served with anything you were going
22 to put in the record for us.

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1 COMMISSIONER JEFFRIES: You know--

2 MR. MADDEN: Those addresses of --
3 they present it to me? Okay.

4 COMMISSIONER JEFFRIES: Mr.
5 Madden, the other thing I want to, you know,
6 make certain that you are clear on, you know,
7 for the last case we were talking about
8 uniqueness. But there are still two other
9 prongs --

10 MR. MADDEN: Right.

11 COMMISSIONER JEFFRIES: -- to that
12 test. And so you get through one, then you've
13 got another one. Then you've got a third one.
14 And just, you know, focus on what Board Member
15 Dettman said about, you know, the R-4 Zone and
16 four units. You know, we really are trying to
17 preserve, you know, the R-4 District and, you
18 know, keep the character, you know, preserve
19 that character and so forth. Particularly,
20 the Shaw area.

21 I mean, you know, we just -- in
22 the city, we really don't have a lot of those

1 R-4 Zones and we're really trying to protect
2 them. So I just want you to keep a lot of
3 that in mind as relates to -- now, you've got
4 a lot of hurdles here. So I just again --

5 MR. MADDEN: Right.

6 COMMISSIONER JEFFRIES: Yeah.

7 Look at the first page of the OP report and
8 look at all those bullet points, but then
9 again, you've got to move from the first prong
10 to the second to the third.

11 MR. MADDEN: Right. I appreciate
12 that.

13 COMMISSIONER JEFFRIES: Okay.

14 MR. MADDEN: But I need to make a
15 shorter comment. What I'm proposing to do is
16 not, you know, something out of the ordinary
17 for the neighborhood. On the corner in the
18 same block is a six unit, you know --

19 CHAIRPERSON MILLER: You know
20 what, we don't want to hear the case today.

21 COMMISSIONER JEFFRIES: No, we're
22 not hearing the case today.

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1 CHAIRPERSON MILLER: At all. Mr.
2 Jeffries is just -- he really wants you to --
3 we're giving you this time to take a hard look
4 at your application.

5 MR. MADDEN: I appreciate it.

6 CHAIRPERSON MILLER: And remember,
7 these are -- it's a variance. It's a tough
8 test. And, you know, you've got to make sure
9 you really think you are meeting it before we
10 have another hearing on this.

11 COMMISSIONER JEFFRIES: All the
12 prongs.

13 MR. MADDEN: Right.

14 COMMISSIONER JEFFRIES: Not just
15 uniqueness. Okay. You get past that, you've
16 got some other things to deal with, too.

17 MR. MADDEN: Okay.

18 COMMISSIONER JEFFRIES: Okay.

19 Thank you.

20 MR. MADDEN: Thank you.

21 CHAIRPERSON MILLER: Okay. So,
22 Ms. Bailey, you have it down as November 25th

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1 in the afternoon?

2 MS. BAILEY: Yes, ma'am.

3 CHAIRPERSON MILLER: Okay. Are
4 there any other questions? Have a good
5 meeting tonight.

6 MR. MADDEN: Thank you.

7 CHAIRPERSON MILLER: Okay. Thank
8 you.

9 (Whereupon, the Public Hearing was
10 concluded at 6:02 p.m.)

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