

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

+ + + + +

BOARD OF ZONING ADJUSTMENT

+ + + + +

PUBLIC MEETING

+ + + + +

Tuesday

October 7, 2008

+ + + + +

The Public Meeting convened in Room 220 South, 441 4th Street, N.W., Washington, D.C. 20001, pursuant to notice at 10:25 a.m., Ruthanne G. Miller, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

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

ZONING COMMISSION MEMBER PRESENT:

- MICHAEL TURNBULL, FAIA, Commissioner (OAC)

OFFICE OF ZONING STAFF PRESENT:

- CLIFFORD MOY, Secretary
- BEVERLEY BAILEY, Sr. Zoning Specialist
- JOHN NYARKU, Zoning Specialist

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

LORI MONROE, ESQ.
SHERRY GLAZER, ESQ.

The transcript constitutes the minutes
from the Public Meeting held on October 7,
2008.

| <u>AGENDA ITEM</u> | <u>PAGE</u> |
|--|-------------|
| <u>CALL TO ORDER:</u> | |
| Ruthanne Miller | 4 |
| <u>DISTRICT-PROPERTIES.COM, LLC</u> <u>APPLICATION NO. 17774</u> | |
| <u>Withdrawn</u> | 5 |
| <u>M I C H A E L D . S E N D A R</u> | |
| <u>APPLICATION NO. 17816</u> | 6 |
| <u>Vote to approve</u> | 40 |
| <u>JAMES C. WORD</u> <u>APPLICATION NO. 17779</u> | 42 |
| <u>Vote to approve</u> | 114 |
| <u>ADJOURN</u> Ruthanne Miller | 116 |

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22

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

10:25 a.m.

CHAIRPERSON MILLER: This meeting will please come to order. Good morning, ladies and gentlemen. This is the October 7th public meeting of the Board of Zoning Adjustment of the District of Columbia. My name is Ruthanne Miller, I'm the Chair. Joining me today ia our Vice-Chair, Mr. Marc Loud, to my right.

Next to Mr. Loud is Mr. Michael Turnbull from the Zoning Commission. To my left are Mary Oates Walker and Shane Dettman, Board members. Then Mr. Cliff Moy from the Office of Zoning, Ms. Lori Monroe from the Office of Attorney General, and Ms. Beverley Bailey from the Office of Zoning.

Copies of today's meeting agenda are available to you and are located to my left in the wall bin near the door. We do not take any public testimony at our meetings

1 unless the Board asks someone to come forward.

2 Please be advised that this
3 proceeding is being recorded by a court
4 reporter and is also webcast live.
5 Accordingly, we must ask you to refrain from
6 any disruptive noises or actions in the
7 hearing room. Please turn off all beepers and
8 cell phones at this time.

9 Does the staff have any
10 preliminary matters?

11 MR. MOY: Yes, we do, Madam Chair,
12 but we'll take that up on a case-by-case
13 basis.

14 CHAIRPERSON MILLER: Okay. Thank
15 you, Mr. Moy. Would you call the first case
16 on our meeting agenda, please?

17 MR. MOY: Yes, Madam Chair. Good
18 morning and good morning to members of the
19 Board. First of all, Madam Chair, one of the
20 three cases for decision has been withdrawn.
21 Staff would like to announce that for the
22 record.

1 That is Application No. 17774 of
2 District-Properties.com. That filing was made
3 by the applicant in a letter dated September
4 14, 2008, received into Zoning Office on
5 September 15th which is Exhibit No. 29.

6 The first case for decision then
7 would be Application No. 17816 of Michael D.
8 Sendar pursuant to 11 DCMR 3103.2 for a
9 variance from the use provisions for a general
10 retail business under Subsection 330.5 in the
11 R-4 District. This is at premises 816 and 818
12 Rhode Island Avenue, N.W. and 819 and 821 Q
13 Street, N.W. This is in Square 396, Lots 28,
14 805, and 806.

15 On September 23, 2008 the Board
16 completed public testimony, closed the record
17 and scheduled its decision on October 7th.
18 The Board will allow the record to remain open
19 to receive an ANC-2C resolution. That filing
20 did come in to the record, Madam Chair, this
21 morning, October 7th. Certainly it's untimely
22 and would be recorded as Exhibit 37.

1 There are two other filings as
2 well, Madam Chair, that should be taken up as
3 a preliminary matter since the Board did not
4 request these two filings. One is a letter
5 dated October 2nd from the Convention Center
6 Community Association.

7 The second filing is a letter
8 dated October 3rd from Council Member Jack
9 Evans. The Board is to act on the merits of
10 the request for the variance relief in
11 Subsection 330.5. That completes the staff's
12 briefing, Madam Chair.

13 CHAIRPERSON MILLER: Thank you
14 very much, Mr. Moy. Why don't we just deal
15 with the issue of the late filings. I would
16 say our normal standard is that we consider
17 whether accepting would be prejudicial to any
18 party and whether there is good cause to
19 accept them.

20 I would suggest that we do waive
21 our rules on the timeliness of these filings
22 and accept them into the record. I don't see

1 any prejudice to any party and I think that
2 it's good cause for the record to reflect
3 these filings certainly from the ANC and the
4 council member and the other filing as well.

5 Others? Okay. Then by consensus
6 we are accepting those filings into the
7 record.

8 Okay. Moving onto the merits of
9 this application, this is an application for
10 a use variance from 330.5 of our regulations
11 from the uses allowed in the R-4 District as
12 a matter of right in order for the owner to
13 allow ground floor commercial activity on
14 these premises.

15 The applicant has proposed --
16 well, the Office of Planning proposed and the
17 applicant has agreed that such a variance
18 would be subjected to the following condition,
19 that the commercial activity would be limited
20 to the neighborhood shopping district uses
21 listed under Section 701 and that no bar or
22 cocktail lounge or off-premises alcoholic

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 beverage sales would be permitted.

2 The second floor would remain residential
3 consistent with the R-4 zoning.

4 This is a use variance and I'm
5 just going to remind the Board members of the
6 elements of our use variance and that it's the
7 first element that must be met as we must find
8 that there is a unique or exceptional
9 condition and that can be by the topography of
10 the property or any other type of
11 extraordinary exceptional situation or
12 condition that exist on the property or that
13 the property consist of.

14 In this case for a use variance we
15 need to find that exceptional condition leads
16 to an undue hardship for the owner to comply
17 with the zoning regulations. The strict
18 application of any regulation would result in
19 exceptional and undue hardship upon the owner
20 of such property.

21 Finally, we need to look at if we
22 were to grant the relief that such relief

1 would be granted without substantial detriment
2 to the public good and without substantially
3 impairing the intent, purpose, and integrity
4 of the zone plan as embodied in the zoning
5 regulations and map.

6 So exceptional condition if we
7 look at that factor first. In this case we
8 were presented with information that this is
9 an historic commercial -- this is a building
10 that is the contributing building to the Shaw
11 Historic District so there are limitations as
12 to the changes that can be made to it.

13 There has been an historic
14 commercial use of the building in our record.
15 There is evidence of a lot of certificate of
16 occupancies for various commercial uses. What
17 is so unusual about this building is that it's
18 four interconnected buildings and Office of
19 Planning described them as connected
20 internally like a zigsaw puzzle. We have in
21 the record with the respect to the various
22 buildings and different types of uses that

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 have been there.

2 At 818 Rhode Island Avenue there
3 is evidence that there was a variety store,
4 pretty parlor, grocery store, restaurant. At
5 816 Rhode Island Avenue there was a bookstore,
6 gift shop, tailoring shop. At 819 Q Street
7 there was refrigerator repair and sales,
8 storage and office.

9 At 821 Q Street there was laundry
10 business, barber shop, employment agency
11 office, refrigerator sales and repair. Then
12 we also have the most, I guess, recent
13 occupancy by a religious cult that raised many
14 concerns, I think, among the neighbors.

15 The property is taxed at a
16 commercial rate. Then other things I wanted
17 to note is there are design features that are
18 specifically suited to retail. They have
19 storefront windows along the facades at 816
20 and 818 Rhode Island and 821 Q Street.

21 The front doors of each building
22 near to the sidewalk level which is common for

1 retail entryways. Internally these buildings
2 don't contain any ground floor kitchen
3 facilities. They have little outdoor space
4 and no off-street parking which would be
5 something which would be amenable to
6 residential living.

7 Also it's located at the corner of
8 9th Street and Rhode Island Avenue which is
9 heavily trafficked. Office of Planning stated
10 that the applicant said the crowds tend to
11 gather at this corner.

12 These are all exceptional
13 conditions that were raised for our
14 consideration as to why this should be granted
15 a variance for commercial use. I don't
16 believe the ground floor has ever been used
17 residentially. I don't know if anyone else
18 wants to add to that part yet or I'll just go
19 through the second element. Okay.

20 Second element is whether there
21 would be an undue hardship for the applicant
22 to comply with the regulations. Another way

1 of saying that would be whether reasonable use
2 cannot be made of the property in a manner
3 consistent with the zoning regulations.

4 As of now based on the exceptional
5 circumstances that I described, I think that,
6 No. 1, the location seems to be not suited to
7 residential use. It is on that corner that is
8 highly trafficked and it has always been used
9 commercially. It's not designed for
10 residential use so, therefore, it would
11 require a great investment of funds to change
12 the infrastructure.

13 There is evidence in the record
14 the letter of the real estate broker and
15 testimony that there hasn't been any interest
16 in use of the buildings for residential
17 purposes but only for mixed use with the
18 ground floor being commercial. He said that
19 since April 2008 there were 12 interested
20 buyers but only in mixed use and none for
21 residential for the first floor.

22 Therefore, the grounds that there

1 would be an undue hardship that would require
2 all the investment to change and there is no
3 indication that there would be a market for
4 it.

5 Finally, the last prong is whether
6 relief can be granted without substantial
7 detriment to the public good and without
8 substantially impairing the intent, purpose,
9 and integrity of the zone plan as embodied in
10 the zoning regulations and map.

11 Office of Planning testified that
12 there wouldn't be a detriment to the public
13 good or impairment of intent or integrity of
14 the zone regulations and map provided that the
15 conditions that they suggested were attached
16 to the relief.

17 There's commercial use along 9th
18 Street and Rhode Island. In fact, this could
19 be a catalyst for redevelopment of vacant and
20 dilapidated buildings and for revitalization
21 of the area. The properties have been vacant
22 since 2002. We have support from Council

1 Member Evans, Jack Evans, and the ANC and the
2 Board of Directors of the Convention Center
3 Community Association.

4 We have a few individuals that
5 opposed the application. Mr. Malevsky
6 testified and there was an Arsine Kailian,
7 Vice President of Mt. Vernon Square, and the
8 ANC-2C executive assistance who sent in
9 letters about concern of basically how the
10 property has been kept over the last 10 years
11 and about the cult that was at the property
12 but it didn't really --

13 I mean, perhaps about the
14 broadness of the relief that was being sought
15 but I didn't see anything convincing to me of
16 any adverse impact that would result from
17 granting this relief. Why don't I open it up
18 to others at this point.

19 VICE CHAIRMAN LOUD: Madam Chair,
20 thank you. I thought that was a great
21 analysis and summary and walk-through of the
22 case. I would only add that I was prepared --

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 I had support for this case when it initially
2 came before us and just had some reservations
3 about the extent of community input in the
4 process and feedback, notwithstanding the fact
5 that single member district commissioner did
6 support it as well as Shaw Main Street's
7 group.

8 Whatever minor concerns I may have
9 had to me have been addressed by us allowing
10 for an additional period of time for the
11 community to weigh in and during that time
12 period we've heard back from the ANC and you
13 noted that in your summary so I'm not going to
14 repeat it but we've heard back from them.
15 They did vote to support.

16 We heard testimony about how
17 difficult it is allegedly for that ANC to
18 develop a consensus around issues and, yet,
19 they have developed consensus and support for
20 this project.

21 That would have been the only
22 reservation I would have had about the project

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 even then and it just appears as if there is
2 tremendous community support for this moving
3 forward. At the appropriate time I'll be
4 voting to support it as well.

5 CHAIRPERSON MILLER: Thank you. I
6 just want to follow up and say, yeah, I did
7 fail to mention Shaw Main Street group being
8 in support and I'm glad that you brought that
9 up. Also I was impressed also that at the
10 hearing we heard that this ANC often splits
11 and it was somewhat described as
12 dysfunctional.

13 In any event, I think it then
14 gives their letter even more credence for the
15 fact that they state that they had four votes
16 in favor and none against and no abstentions.

17 Other comments?

18 MEMBER DETTMAN: Madam Chair, the
19 biggest hurdle for me to get over was just the
20 idea of the level of specificity and not
21 pinpointing a particular use that we could
22 analyze, especially with respect to the third

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 prong.

2 It's helpful to have a specific
3 use so we have what is going to be the traffic
4 in and out of this site, what is going to be
5 the foot traffic, how is this thing going to
6 operate. That was a hurdle for me to get
7 over.

8 I eventually got there -- I'll be
9 supporting this application. I eventually got
10 there simply by looking at the historic use
11 and the past certificates of occupancy that
12 have run with this property. Interestingly
13 enough the uses that we are looking at inside
14 701.4 a lot of the uses inside that provision
15 have already been there.

16 I don't remember hearing anything
17 during the hearing as to there have been
18 issues related to these uses at this property
19 over time. I think they operated there
20 successfully and not having any sort of undue
21 impact on the surrounding neighborhood. That
22 got me to the level of comfort that I needed

1 in order to support this.

2 CHAIRPERSON MILLER: Thank you.
3 That's a good point. That was the one area
4 that also gave me pause in that we were
5 granting a use variance not for a specific use
6 but for a range of uses that were set forth in
7 our regulations. We did a little bit of
8 research to see whether this was "rezoning" or
9 not. I'm convinced that it isn't because it
10 meets all the elements of a use variance.

11 Also, we have not -- we're
12 actually restricting it to exclude the bar or
13 cocktail lounge, the off-premises alcohol
14 beverage sale so it's not exactly the same as
15 what would have been allowed by rezoning.

16 I was also convinced that the
17 neighborhood shopping district uses that we
18 are allowing are all neighborhood friendly and
19 appropriate to this area, particularly with
20 the Office of Planning's recommendation.

21 Others? Yes, Mr. Turnbull.

22 MR. TURNBULL: Thank you, Madam

1 Chair. I would concur with all of the
2 comments made by all the previous members. I
3 guess I would only make one point that the
4 previous use, the bookshop or whatever it was,
5 was probably not the most neighborhood
6 friendly but I think that is probably an
7 exceptional use of a bookstore.

8 I'm just, again, in looking at
9 page 3 of the OP report and when you see the
10 configuration you basically have three streets
11 coming together so you have a very awkward
12 site at best. Probably not the most conducive
13 site for a residential use other than the
14 second floor.

15 I think it will be interesting and
16 we've seen a building that although it's a
17 contributing historic building, it's obviously
18 been adapted over the years. It will be
19 interesting to see how that building is
20 brought into historic context with the
21 commercial on the first floor but I think it
22 is still appropriate. I think from everything

1 that's been said in the previous records that
2 we've referred to it has definitely been a
3 commercial space. Again, I will be voting for
4 this also.

5 CHAIRPERSON MILLER: Yes.

6 MEMBER DETTMAN: I want to add
7 extra point and it goes to the potential for
8 setting a precedent. I was asking myself
9 granting this variance that has a range of
10 uses how many other buildings are out in the
11 city and in R-4 that we could potentially see
12 this type of request.

13 Again, I went back to the
14 historical use of the property. I think it's
15 that use in that you can look at the historic
16 C of Os and actually find those uses inside
17 701. That gives me comfort that this is a
18 unique property.

19 Also, going to Mr. Turnbull's
20 point about residential use at the ground
21 level and looking at the surrounding context,
22 I thought why couldn't you do residential on

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 top and dedicate the ground floor to common
2 space so you can have that physical separation
3 and not have to deal with the noise and the
4 crowds on the ground level.

5 Given the very small size of the
6 site and if you were to do an apartment
7 building, dedicating the entire first floor to
8 common space only gives you very, very little
9 space on the second floor. I don't think you
10 could even do a third floor because of this
11 900 square feet threshold that's necessary in
12 an R-4 for an apartment building.

13 I considered the residential use
14 of this building but I think it is
15 significantly constrained given what the regs
16 say about apartment buildings in R-4 and the
17 surrounding context of this building.

18 CHAIRPERSON MILLER: I think the
19 only other comment I want to make is just for
20 clarity. We discussed this at the hearing
21 whether or not the conditions where we are
22 going to exclude uses for bar or cocktail

1 lounge or off-premises alcoholic beverage
2 sales permitted that does not include alcohol
3 sold as an accessory or is incidental use to
4 any of the primary uses that are listed in
5 701.4 such as a restaurant or grocery store.

6 Other comments?

7 VICE CHAIRMAN LOUD: Just that I
8 would agree with that, Madam Chair. I think
9 there was a fairly long exchange regarding
10 that at the hearing and the single member
11 district commissioner, who also serves as the
12 executive director of the Shaw Main Street's
13 organization, had shared with us some survey
14 data that his group had compiled indicating a
15 variety of uses that the community was
16 supportive of.

17 I believe restaurants were on that
18 list. He went on to talk about the economics
19 of trying to operate a restaurant absent the
20 ability to serve, for example, wine or beer.
21 I think that is worth clarifying for all and
22 I definitely support the interpretation that

1 you've made on the record to clarify.

2 MEMBER DETTMAN: Madam Chair, I
3 wanted to raise a question. I'm looking at
4 Exhibit No. 35 which is the letter from the
5 Convention Center Community Association, as
6 well as the ANC's letter that was submitted on
7 October 7th.

8 They make mention of the exclusion
9 of a bar or cocktail lounge and a liquor
10 store. They also mention fast food operation.
11 That wasn't brought up at the hearing and it
12 definitely falls outside 701.4. That's not a
13 use in 701.4. I thought that might be
14 something we might want to address.

15 CHAIRPERSON MILLER: Okay. Thank
16 you. I would agree with you.

17 MS. MONROE: Can I also just one
18 clarification? I did not sit at the hearing
19 but you're talking about 701.4 which are
20 retail uses that are allowed as a matter of
21 right? 701.2 says there are certain service
22 establishments allowed as a matter of right

1 and 701.6 says other uses are allowed as a
2 matter of right.

3 I just want to make sure you guys
4 are aware. Are you limiting it only to the
5 701.4 retail uses? The only reason I ask is
6 because this is going to be a condition in the
7 order and we want to know how to write it.
8 All 701 uses or only 701.4?

9 CHAIRPERSON MILLER: I think we're
10 just going to take a moment and take a look at
11 that.

12 MEMBER DETTMAN: Madam Chair, the
13 OP report on the first page just makes
14 reference to the uses listed under 701. I
15 believe the request is for general retail use.
16 That's what they're looking for. I would be
17 inclined to limit it to the uses under 701.4.

18 CHAIRPERSON MILLER: Let's pause
19 for a moment because Office of Planning put in
20 cocktail lounge and excluded cocktail lounge
21 and I think that came from 701.1 so I just
22 want to take a minute. If they are excluding

1 -- are you saying they recommended broader and
2 we went narrower or you just thought they
3 recommended 701.4? I think we focused a lot
4 on 701.4 but I'm not sure we excluded all the
5 uses of 701.1.

6 MS. MONROE: 701.1 is service
7 uses.

8 CHAIRPERSON MILLER: Right.

9 MS. MONROE: That's the difference
10 and it includes bar and cocktail lounge.
11 701.4 doesn't. If you say you're only allowed
12 the uses in 701.4, you are automatically
13 excluding bar and cocktail lounge as well as
14 fast food restaurant which is also not allowed
15 in 701.4. I think where Shane is going to is
16 that is the retail uses that are being looked
17 for here more so than the entirety of 701.
18 That's all.

19 VICE CHAIRMAN LOUD: I'll just
20 chime in for me. As I participated in the
21 hearing, I deliberated with the understanding
22 that we were talking about 701 generally and

1 not the specific subparts.

2 Partially having not seen that in
3 OP's report and revisiting the single member
4 district commissioner's report at Exhibit 28
5 but I don't recall neither in the discussion
6 or the submissions a specific limitation to
7 retail. I thought it was broader than that.
8 I thought the specific concern that the
9 community had were these alcohol-related
10 problems.

11 MS. MONROE: And that's totally up
12 to the Board. It's not up to me. I'm just
13 pointing out that it's split into three
14 separate sections and how did you want it
15 addressed. 701.6 also has uses that are
16 allowed as a matter of right, library, office,
17 and other various things. I don't know how
18 picky you want to be. That's all.

19 CHAIRPERSON MILLER: Thank you for
20 raising this. I think we are talking about
21 neighborhood shop -- well, I thought when we
22 went through the different uses that we were

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 considering we looked at 701.4 and we said,
2 "Yeah, gift shop, hardware," whatever. We
3 didn't go into gas station which is listed in
4 701.1. I think we would have.

5 MEMBER WALKER: There are other
6 service establishments listed in 701.1 that
7 would not be problematic, however. I mean, I
8 don't think we should make this too narrow so
9 as to exclude a shoe repair shop or an
10 optician or an optometrist.

11 MS. MONROE: Probably the easier
12 way to do it to avoid that is to include all
13 701 and just list what you don't want.

14 MEMBER WALKER: I agree, Madam
15 Chair.

16 CHAIRPERSON MILLER: I just want
17 to take another moment and look at the filings
18 besides Office of Planning that the applicant
19 agreed to. I mean, we can always go further
20 but I just kind of want to see what was
21 presented to us. I mean, I don't know what
22 others have before them but, I mean, I'm just

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 looking at even Exhibit 3.

2 It says, "Application for use
3 variance. For a use variance to permit the
4 operation of a general retail business or
5 businesses not involving alcohol use on the
6 ground floor."

7 I mean, if this is really just --
8 if they are seeking relief for retail
9 businesses, I would just be hesitant to go
10 beyond what was considered but I want to
11 refresh my memory and maybe we did consider
12 more. I saw the cocktail lounge was mentioned
13 but I don't recall any other discussion about
14 the other services in 701.1.

15 Perhaps also in the past uses were
16 they just retail? I think we need to look at
17 that as well because we are somewhat relying
18 on the history of uses here as well.

19 MEMBER WALKER: Madam Chair, in
20 looking at the prior certificates of
21 occupancy, please note that there have been
22 beauty parlors, barber shops, offices, an

1 employment agency. Certainly other service
2 establishments, a tailoring shop, not just
3 retail establishments.

4 CHAIRPERSON MILLER: Okay. All
5 right. Well, we could -- if the Board would
6 like, we could go look at 701.1 and go through
7 them and actually exclude those that we don't
8 really think fall within the category of what
9 we think is appropriate for this area based on
10 the evidence we heard on the record.

11 For instance, a barber or beauty
12 shop, I believe, was one of the uses that had
13 already existed before and that seems to be a
14 neighborhood service unless there is another
15 regulation we need to look at for neighborhood
16 shopping. I know it's right here. I just
17 don't think something like gasoline service
18 station is what we contemplated.

19 I think what happened at the
20 hearing was we actually looked at 701.4 and
21 said, "Yes, all these things are fine," at the
22 hearing. At the hearing we did not look at

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 701.1 but there is no reason why we can't do
2 it right now. The evidence is in the record.

3 MS. MONROE: Can I -- oh, I'm
4 sorry. Go ahead.

5 MEMBER DETTMAN: As I stated, I'm
6 most comfortable keeping it to 701.4. To open
7 it up to all of the uses under 701 gives me a
8 little discomfort for two reasons. One is
9 that it makes it feel much, much more like a
10 rezoning.

11 Two is that especially when you
12 get to 701.6 uses like a chancery, like an
13 office, like a library, these are uses that
14 have very, very specific parking requirements
15 and issues related to traffic coming in and
16 out of the site. I'm not sure that the Board
17 on the dias can accurately assess the impacts of
18 each of these uses to determine whether or not
19 one should be in or one should be out.

20 CHAIRPERSON MILLER: No, I
21 certainly wouldn't go there. I was only
22 looking at 701.1. I'm really not sure about

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 going there or not. It's kind of gray.

2 MS. MONROE: Can I just offer a
3 word of advice maybe you want to look at.
4 This is a little bit far afield but it isn't
5 when you look at it. 1302.2 lists the uses
6 that are allowed in a neighborhood commercial
7 overlay which is what you're after, a
8 neighborhood commercial shopping district, and
9 it says, "Any use that is permitted under
10 701.1 or 701.4," and then lists a bunch of
11 other stuff.

12 You could well say the same thing
13 but just take out whatever in 701.1, for
14 example gasoline service station, you don't
15 like. I understand Mr. Dettman's point about
16 more of rezoning but it's up to you. 1302.2
17 might just help you think about it.

18 CHAIRPERSON MILLER: Okay. I
19 don't know if you all are still looking over
20 the regulations and the papers. I think the
21 way the Office of Planning's report was
22 phrased would include uses in 701.1 because

1 they particularly excluded bar or cocktail
2 lounge. I would just -- I don't know.

3 Perhaps we could consider just
4 picking a few that we think would not have an
5 adverse impact or are so similar to the types
6 of uses in 701.4. I mean, distinguish between
7 a barber, a beauty shop, and a gasoline
8 station. That's one option.

9 VICE CHAIRMAN LOUD: Madam Chair,
10 let me tell you where I am if it's at all
11 helpful. As I said, when we went through the
12 hearing and deliberated, my understanding was
13 that the applicant was asking for the uses in
14 701 and also 701.4. I did not think then, nor
15 do I now think that it extended to 701.6 at
16 all because of the tenor of the dialogue.

17 The submission is talking about
18 retail, using the word retail specifically,
19 and that would not include, for example,
20 library or something like that. For purposes
21 of moving us along, when I look at 701.1 and
22 then when I look at 701.4 the only use that

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 would give me some degree of pause about me
2 voting to approve would be the gas station.

3 I think everything else that is
4 included in 701.1 and 701.4 was within what
5 the applicant and the community support that
6 he brought to the hearing contemplated. I can
7 remember specifically myself making a comment
8 at the hearing about when I look at these
9 uses, the only ones that are scary to me in
10 terms of the community would be off sale
11 premises of alcohol or something like that.

12 To move us along, I'm just
13 wondering if we could focus on the one or two
14 uses that we think the applicant did not have
15 in mind and highlight those and maybe pinpoint
16 that our vote of approval is not approving
17 those uses like a gasoline station and see
18 where that leads us.

19 MEMBER WALKER: All right. Madam
20 Chair, let me just point out that 701.1(h)
21 refers to a gasoline service station that is
22 in existence on May 12, 1958. Because no

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 service station exist at that location now,
2 then it would necessarily be excluded.

3 Then 701.1(i) refers to a gasoline
4 service station as an accessory use to a
5 parking garage or a public storage garage,
6 neither of which exist at this location now.
7 I really don't think that we should be
8 concerns about the fact that a service station
9 is included in this enumerated list of 701.1.

10 CHAIRPERSON MILLER: Okay. Good
11 point. I think I agree that they go kind of
12 hand in hand, the 701.1 and 701.4 as being
13 neighborhood friendly.

14 MR. TURNBULL: Madam Chair, I have
15 one question.

16 CHAIRPERSON MILLER: Yes.

17 MR. TURNBULL: In 701.1(m) I'm
18 thinking that's basically -- that doesn't do
19 much for the neighborhood retail. It's
20 basically an area where papers are delivered
21 and they bind them up or whatever to
22 distribute them. It could basically be a

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 bricked-up wall building. I'm just
2 questioning what the value of that is to
3 commercial and retail in the area. I'm not
4 opposed to it but, I mean, it would be
5 something that could go in there.

6
7 I'm just wondering what it really
8 does from the standpoint of what they are
9 looking at for commercial and retain in
10 livening the street. I don't want to nit pick
11 this but I'm fine to let it go but I don't
12 know if it's really doing all that everybody
13 wants. Well, they don't have to put it in.

14 MR. TURNBULL: They don't have to,
15 no.

16 CHAIRPERSON MILLER: I don't know.
17 I think at this point I would probably only
18 want to pick out something that really
19 screamed out as possibly having an adverse
20 impact here like the gas station did but then
21 we saw that really isn't going to go here
22 unless you feel strongly about something.

1 MR. TURNBULL: I was just
2 questioning the original. When you look at
3 701.4 it has fairly benign activities related
4 to commercial ventures in a neighborhood and
5 now we are getting into something a little bit
6 bigger that could be delivery trucks for
7 newspapers. I'm just questioning that. I'm
8 fine with it if you want to leave it in.

9 CHAIRPERSON MILLER: Do others
10 have comments on that? I mean, I think a
11 frozen food locker is kind of weird, too, but
12 I think these are old regulations as well. We
13 didn't have any evidence in the record
14 addressing any adverse impacts in particular
15 with respect to these except the cocktail
16 lounge and bar.

17 Okay. What's the sentiment here
18 with respect to conditioning this to uses
19 except within 701.1 and 701.4 except for the
20 bar or cocktail lounge and off-premises sales
21 of alcohol?

22 VICE CHAIRMAN LOUD: Madam Chair

1 -- and thank you, Commissioner Walker, for
2 your clarification but I think with the
3 Commissioner's clarification I'm very
4 comfortable moving forward with the 701.1 and
5 701.4 uses limiting the specific ones that the
6 applicant requested both at the hearing and in
7 its submission.

8 CHAIRPERSON MILLER: Because we
9 were not looking, I don't think, at all of
10 these provisions, I think we have to be
11 cautious with respect to our limitations now
12 because I'm just noticing 701.5 talks about
13 similar uses. You might want to keep that in.
14 Let's look at 701 carefully.

15 Okay, yeah. 701.5 also contains
16 the incidental language that we were talking
17 about as being permissible. I think it would
18 be conditioned to uses set forth in 701.1,
19 701.4, and 701.5.

20 What do you all think? 701.5 just
21 includes that language that we were stating
22 anyway that incidental uses were not excluded.

1 I guess in our previous conversation we were
2 talking about alcoholic beverage in connection
3 with grocery stores and restaurants so this
4 would be a little bit broader.

5 MEMBER WALKER: Madam Chair, in
6 light of what Commissioner Turnbull said about
7 the newspaper distribution station and what we
8 know about this property not having any
9 parking, then perhaps we should exclude
10 701.1(m) as well.

11 CHAIRPERSON MILLER: I don't have
12 a problem with that really. I think that this
13 variance is giving the applicant a wide range
14 of uses that are appropriate to the area and
15 that the evidence on the parking could lead to
16 the conclusion that this could have an adverse
17 impact on it so I don't see any reason that we
18 couldn't take that out.

19 Okay. Anything else? Okay. In
20 which case to move this on then I'm going to
21 make a motion and then if there is further
22 deliberation we can do it under motion and

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 that would be to approve Application No. 17816
2 of Michael Sendar pursuant to 11 DCMR 3103.2
3 for a variance from the use provisions for
4 general retail business under Subsection 330.5
5 in the R-4 District at premises 816 and 818
6 Rhode Island Avenue, N.W., and 819 and 821 Q
7 Street, N.W. subject to the following
8 conditions:

9 The commercial activity would be
10 limited to the neighborhood shopping district
11 uses listed under Section 701.1, 701.4, and
12 701.5, and no bar or cocktail lounge or off-
13 premises alcoholic beverage sales would be
14 permitted and no newspaper distribution
15 station permitted. Do I have a second?

16 VICE CHAIRMAN LOUD: Second, Madam
17 Chair.

18 CHAIRPERSON MILLER: Further
19 deliberation? Okay. Not hearing any. All
20 those in favor, say aye.

21 ALL: Aye.

22 CHAIRPERSON MILLER: All those

1 opposed? All those abstaining? Would you
2 call the vote, please.

3 MR. MOY: Yes, Madam Chair. Staff
4 would record the vote as five to zero to zero.
5 This is on the motion of the Chair Ms. Miller
6 to approve the application as a condition that
7 would allow commercial activities limited to
8 neighborhood shopping district uses under
9 Section 701.1, 701.4, and 701.5 except for
10 premises alcoholic beverage sales, bar or
11 cocktail lounge, and newspaper distribution
12 station. For the motion Ms. Walker, Mr.
13 Dettman, and Mr. Turnbull. Again, the vote is
14 five to zero to zero.

15 CHAIRPERSON MILLER: Thank you,
16 Mr. Moy. I believe this can be a summary
17 order if there is no party in opposition.

18 MR. MOY: Very good.

19 CHAIRPERSON MILLER: Thank you.
20 We don't take testimony during our meetings.
21 The decision is over. Do you have a question
22 about the logistics afterwards? Okay. Why

1 don't you go see Mr. Moy and he'll see whether
2 it's appropriate to address here.

3 MR. MOY: The next case for
4 decision then, and the final case for
5 decision, Madam Chair, is Application No.
6 17779 of the James C. Word pursuant to 11 DCMR
7 3103.2 for a variance from the lot area
8 requirements under Subsection 401.3 to convert
9 a church building into a eight-unit apartment
10 house in the R-4 District.

11 This is at premises 3408 Sherman
12 Avenue, N.W. in Square 2841, Lot 115. Staff
13 notes for the Board that at the hearing on
14 June 10th there was discussion about amending
15 to add an additional variance relief under
16 Section 401.11 and that was held in abeyance.

17 On July 29, 2008 the Board
18 convened the application for decision making.
19 The Board requested that the applicant submit
20 additional information to further supplement
21 the record.

22 That filing was made into the

1 record by the applicant dated September 30,
2 2008, identified as Exhibit 35. It's
3 untimely. It was one-day late. Other than
4 that, Madam Chair, the Board is to act on the
5 merits of the requested variance relief. That
6 completes the staff's briefing, Madam Chair.

7 CHAIRPERSON MILLER: Thank you.
8 With respect to the preliminary matter I would
9 suggest that we waive the regulation and
10 accept the filing that was one-day late. I
11 don't think there is any prejudice to any
12 party. Any problem? Okay.

13 All right. I think we should
14 start with what relief is appropriate in this
15 case. Applicant filed for an area variance
16 under 401.3 of our regulation and that governs
17 conversion to an apartment house and limiting
18 it to 900 square feet per unit.

19 Office of Planning suggested that
20 the applicant perhaps should have filed under
21 401.11, 401.11 reads, "An apartment house in
22 an R-4 District whether converted from a

1 building or structure pursuant to 330.5 or
2 existing before May 12, 1958, may not be
3 renovated or expanded so as to increase the
4 number of dwelling units unless there are 900
5 square feet of lot area for each dwelling unit
6 both existing and new."

7 In this case the applicant is
8 seeking eight units providing a lot area of
9 4,017 square feet and what would be required
10 would be 7,200 square feet. With respect to
11 401.11 I think it came to light that the
12 building did exist before May 12, 1958.

13 However, it wasn't an apartment
14 house before May 12, 1958. Therefore, I don't
15 think this application should come under
16 401.11 in that the applicant was correct in
17 bringing it under 401.3. Do others want to
18 express an opinion on that?

19 It's the same relief in general.
20 It's still the problem of the 900 square feet
21 requirement. However, they are different
22 regulations. Do you all agree with that?

1 Okay. All right. So the consensus is that
2 the 401.3 is the appropriate regulation to be
3 seeking variance relief from and that's what
4 we're considering.

5 All right. I'm just going to give
6 a little background before we get into the
7 meat of this variance which is an area
8 variance. This property is located in
9 Columbia Heights at the intersection of
10 Sherman Avenue and Park Road.

11 It was developed with a two-story
12 plus cellar, brick building, and it also has
13 on it a temporary wooden structure forming a
14 third floor. The applicant wants to add a
15 permanent third floor and convert the building
16 into an apartment building with eight units.

17 It was built prior to 1958. It
18 was initially occupied by a gas station/tire
19 store on the ground floor with the residents
20 on the second floor. It has contaminated
21 soil. Soil was contaminated by gas and oil.

22 In the 1990's it was converted to

1 a church and we heard evidence that the church
2 was unable to afford the cleanup cost and it
3 was taken over by a second congregation that
4 also had difficulties financing the cleanup.
5 In 1998 the applicant purchased the property
6 and operated a church at the property.

7 According to the filings on the
8 record the church ceased operations in 2000.
9 In 2001 contamination was discovered in the
10 soil and we got a lot of information about
11 the cleanup of that including underpinnings of
12 the building being replaced due to soil
13 contamination.

14 There is a long period of
15 reconstruction. The applicant submitted
16 permits and some other documents and finally
17 the certificate of occupancy for the church
18 was issued June 14, 2006. The third floor was
19 added sometime in 2007 or 2008.

20 I think there is evidence in the
21 record that neither the owner nor the church
22 knew the extent of the contamination in the

1 soil. I'm sure there was evidence that they
2 knew there was a gas station there before but
3 I don't think they knew how much the soil was
4 contaminated.

5 We will be going through a lot of
6 the documents that were submitted in the last
7 filing. I have in my records that the total
8 cost of the renovation and cleanup was
9 \$930,250. That is set forth in the affidavit
10 of the architect James Collette although there
11 are a lot of other documents that specifically
12 show cost.

13 I think the essence here is that
14 the applicant claims that the church is no
15 longer economically feasible and he seeks to
16 convert it to residential use and he needs the
17 variance from 401.3 to make it economically
18 feasible.

19 There were two things going on
20 with this church one, the cost of renovating
21 it but also apparently the congregation has
22 left the church because of concerns about the

1 contamination. During the whole period of
2 reconstruction I think they went to other
3 places.

4 What we need to do with respect to
5 analyzing this case is look to what may be
6 unique or exceptional about the property or
7 the circumstances of the property and then
8 whether that leads to a practical difficulty
9 and the applicant complying with the
10 regulations.

11 Then if relief is granted whether
12 there would be substantial detriment to the
13 zoning regulations of the zone plan.

14 I'm just going to start with a few of the
15 factors that I think the applicant is
16 presenting as exceptional and then I think
17 maybe open it up here.

18 No. 1, I think, is the
19 contaminated soil as an exceptional factor
20 that leads to the expense in renovating it and
21 that great expense also leads to the
22 difficulty in complying with the regulation

1 limiting the apartment building to four units
2 if that wouldn't be economically feasible.

3 Another unique situation here I
4 guess is this was a church and the people have
5 left the church and that according to the
6 applicant they cannot use it anymore as a
7 church. They say the congregants won't come
8 back so they are forced to change it to
9 another use.

10 I think these are lesser factors
11 but they also talked about the size and shape
12 of the building, that it wasn't practical to
13 configurate it into four condominiums of the
14 location at an intersection of streets. They
15 said it would also make it less marketable to
16 larger units serving families.

17 Anyway, I think I want to open it
18 up because some of this does depend on the
19 numbers that were submitted to us and what the
20 Board thinks about that with respect to the
21 practical difficulty of building four units as
22 opposed to eight because basically there are

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 two steps.

2 One is that they couldn't use it
3 as a church anymore so they then are
4 converting it for residential use but then the
5 question is why they can't do it within the
6 regulations which would be limiting it to four
7 units. I'm going to open it up now for others
8 to address that.

9 VICE CHAIRMAN LOUD: Thank you,
10 Madam Chair. Very briefly, as I am prone to
11 do, I am going to support the application.
12 I'll share the reasons why I'm going to
13 support it. Yes, I struggled with it at
14 different points of my review of the record
15 because of a lack of comfort with some of the
16 numbers being presented.

17 Much of that was resolved when we
18 received the MA Associates Report for the last
19 couple of weeks but there was still some level
20 of looking at the numbers and maybe wanting a
21 little bit more information. At the end of
22 the day I decided to support this under the

1 variance test.

2 First of all in terms of the
3 uniqueness of the situation, I do believe that
4 the record establishes that there was soil
5 contamination. That was both the applicant's
6 testimony. Separately the architect submitted
7 an affidavit, sworn affidavit.

8 There were the pictures in
9 addition to which there were the multiple
10 contract/invoices that spoke to soil
11 contamination and different costs that were
12 associated with removing soil, etc. The
13 combination of all of that testimony from
14 different sources suggest to me that there was
15 soil contamination. That is not really an
16 issue and I think it's a unique situation that
17 is associated with this particular property.

18 In addition to the soil
19 contamination there is some testimony
20 regarding perhaps some sort of underground
21 spring or some source of constant flooding at
22 the property which resulted in a number of

1 measures being taken which sort of merged with
2 the soil remediation measures at different
3 points in the process but, nonetheless, ring
4 out very clearly as problems that either are
5 connected somehow to the contamination or
6 perhaps they exist independently but working
7 together to me make the property a unique
8 property for the applicant to have control
9 over.

10 In terms of the practical
11 difficulty, it's very clear to me that a
12 congregation would not want to meet in a
13 setting like that. I can imagine a young
14 family that has minor children would not want
15 to put those children inside of a facility
16 like this basically as sitting ducks for
17 three, four hours every Sunday.

18 You don't want your children
19 breathing something like that. Whether that
20 was real, and I think it was real because of
21 the record, or whether it was imagined I think
22 it created a practical difficulty for trying

1 to operate a church in that setting,
2 particularly because in many congregations,
3 this is not part of the record but sort of
4 inferences drawn into it, you don't have
5 windows open during service.

6 These are very closed settings
7 where the circulation of air is not optimum.
8 Again, I can just visualize that being a real
9 problem for members of the congregation to do
10 that so I do think there is a practical
11 difficulty in terms of allowing a congregation
12 there. I think in terms of a four-unit
13 residential structure the evidence gets to be
14 a little more nuanced in terms of practical
15 difficulty.

16 But, again, at the end of the day
17 I'm persuaded that the costs that are
18 forwarded by the applicant, particularly as
19 prepared by MA and Associates, suggest that
20 trying to construct a four-unit condominium
21 where the units would sell even at the top
22 projected market rate would still result in a

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 loss of, I believe, \$635,000 to the applicant.

2 I accept those cost projections
3 for the project to be valid and accurate
4 because they were submitted by a firm which is
5 placing its reputation and its credibility
6 before us as being valid and legitimate.

7 Now, some of the remediation costs
8 are also backed up by these invoices and
9 backed up by pictures. While it's not totally
10 definitive that there were \$800,000 worth of
11 remediation costs, I'm not convinced anyway
12 that the remediation costs are insignificant
13 at this site because of what the record does
14 reveal about the various levels of remediation
15 already attempted and presumably paid for.

16 Even with those there is no
17 indication that it has come to an end. There
18 is no, for example, clearance from EPA or any
19 of the agencies that would certify Brownfield
20 that the applicant is through remediating the
21 soil.

22 In my mind there is significant

1 cost associated with that which make the MA
2 Associates Report a legitimate report, a
3 vetted report, a thought-out report. I take
4 the report at its word that under the
5 different scenarios the only point at which
6 you begin to see profitability is at the
7 eight-unit scenario.

8 With respect to the substantial
9 detriment element, lack of substantial
10 detriment to the public good, there is in the
11 record, I think it's one of our exhibits,
12 Exhibit 21, there's a petition that supports
13 the applicant. There are over 40 signatures
14 on that petition.

15 Some of those signatures are
16 trustees of the church so if you discount
17 those signatures, you still have about 35 or
18 so adjacent property owners it looks like who
19 are all saying, "We support this project at
20 the eight-unit level of development."

21 There was some hearsay testimony
22 by the Office of Planning that the ANC had met

1 and voted to support it but I don't believe we
2 ever got an ANC report in the record so I'm
3 not going to rely on that hearsay in terms of
4 formulating my conclusion on this.

5 I do think if you have five
6 neighbors saying it and no ANC report and no
7 opposition, maybe the applicant was capable of
8 being very aggressive in lobbying those five
9 neighbors but when you have 30 neighbors
10 saying it, that to me is evidence of whether
11 or not there is public detriment. It's not the
12 only evidence but it's evidence that I am
13 looking at and crediting in terms of whether
14 I think there is substantial detriment to the
15 public good.

16 With respect to the substantial
17 impairment of the intent of the zone plan and
18 regs, I'm going to defer on that a little bit
19 to hear more of the views of other commission
20 members but in the main I'm prepared to vote
21 approval for the various relief from our
22 Section 401.3 for the applicant. Thank you.

1 CHAIRPERSON MILLER: I'm just
2 going to say while there is a pause here, I
3 hadn't gotten to the substantial detriment
4 question but I certainly want to reflect that
5 Office of Planning is of the opinion that it
6 is contrary to the zone plan to grant a
7 variance here for the eight units.

8 It has been their consistent
9 position in almost every case, certainly under
10 401.11 and it's similar here under 401.3 that
11 the intent of the regulations and the zone
12 plan is to limit conversion like this and to
13 stabilize rowhouses in the R-4 District.

14 I think we need to certainly
15 recognize that but the Board is taking the
16 position that doesn't mean that a variance can
17 never be granted from this regulation like
18 every other regulation when we look at the
19 total context of the first two prongs and then
20 whether there is any other adverse impact on
21 the neighborhood or the zone there.

22 I think in this case it meets the

1 other area requirements. It's not like it's
2 out of scale with respect to height or any
3 other area requirement. It's just the density
4 of the units. I'm not saying I agree with
5 Office of Planning but I want to put it on the
6 table that has been their position.

7 That is their position in this
8 case, though they didn't respond to the last
9 filing of the applicant and we left the record
10 open for a response from them and they didn't.

11 MEMBER DETTMAN: I'll just put
12 into the record that I'm in agreement with
13 everything that Mr. Loud said in terms of his
14 analysis and his comfort level with the
15 numbers that have been submitted.

16 That was for me the biggest thing,
17 trying to look at these numbers and make sense
18 of them and make sure that the amount that was
19 dedicated to remediation was an amount wasn't
20 unduly excessive. Unnecessarily, I should
21 say. I'm there. I'm ready to support the
22 project. Your point about trying to protect

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 the R-4 from conversion to apartment houses
2 and DCOP has been very, very strong in their
3 position with that so I agree.

4 I think that the regulations that
5 were recently passed should be difficult to
6 get over in terms of granting a variance for
7 an apartment house and should be analyzed very
8 carefully. I think in this case the practical
9 difficulties are substantial enough that
10 approving eight units in this location is
11 appropriate.

12 CHAIRPERSON MILLER: I just want
13 to bring up one other point under the no
14 substantial detriment prong and that is that
15 the applicant made the argument that this
16 would be actually a conversion from an
17 institutional use to a residential use and
18 that is actually in furtherance of the
19 comprehensive plan. This may be a little bit
20 different from some other conversions that
21 we've seen as well.

22 MR. TURNBULL: Madam Chair, I

1 guess I'm going to be in the camp of the
2 Office of Planning. The 401.3, 401.1, the
3 change, was presented to the Zoning Commission
4 and it was there because we had a lot of
5 issues that came before us before the BZA. I
6 think it's a regulation we ought to keep.

7 More than that I'm really not
8 convinced in this case. I'm confused by the
9 numbers. The history is convoluted. The
10 tanks were taken out years before the current
11 applicant, I believe, had the property. If
12 you go through the numbers, in a lot of the
13 numbers the total cost of construction is
14 added into the burden that he says he has to
15 bear, whereas the remediation actually by
16 itself is about a quarter of that overall
17 price.

18 I don't see a connection yet to
19 what -- they've already built the third floor
20 for the church. They've already done this
21 other work, all the other problems they found
22 for the church. That would have happened no

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 matter what on this property, not just the
2 remediation.

3 The remediation cost is a real
4 factor but I can't see burdening everything
5 else and lumping that in one lump sum and
6 saying, "Here's my cost. This is based upon
7 my profit." If you look at this, there is a
8 certain cost the church would have had to bear
9 and for whatever reasons they are afraid to
10 use the site.

11 As Mr. Loud said, you know,
12 there's no certification that the site has
13 been cleared. There is no paperwork submitted
14 that it was handled by a proper waste handler.
15 There is no certification or paperwork that
16 shows that the guy that did it was certified
17 and can do it.

18 The cost is -- you know, we have
19 an attested document here signed that says
20 that the remediation was \$223,000. Okay. We
21 are assuming that's right. It's been sworn
22 testimony here. I guess I'm looking at the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 cost of what the church would have had to --
2 what they would bear and what a matter-of-
3 right four-unit building would cost.

4 My feeling is when looking at
5 these costs they are a little bit convoluted.
6 I don't see apples to apples that shows me a
7 four-unit building versus what the church
8 would have had to bear in the first place and
9 not including reconstruction of the first and
10 second floor. You've got to do that no matter
11 what.

12 If you are doing the church you
13 would have that cost. That's something he
14 would have had. The soil contamination is
15 about the only figure that really strikes me
16 as something that could be an open that is
17 unexpected they didn't realize the full
18 implication of. Even then they got this
19 property for a song.

20 I can't see why from a zoning
21 standpoint we are here to make whole an
22 applicant who is already going to expend money

1 for the church and it's not complete yet for
2 a church. He would have still had to spend
3 more money.

4 I don't see the comparison
5 tradeoff, an accurate tradeoff that would have
6 showed what the church would have cost when he
7 was done not counting the remediation versus
8 what an apartment building or a building would
9 have cost by itself. I think there is going
10 to be a slim line between there. I'm not
11 sure.

12 Maybe I'm wrong but I just have a
13 feeling that the numbers don't convince me.
14 I think they are slanted a certain way, they
15 are presented a certain way to show that the
16 only way they could make a profit and come out
17 ahead is having an eight-unit building.

18 That's because they've already got
19 the third floor which I feel like I'm sort of
20 being pressured into approving. "Oh, we've
21 got a third floor. We can make eight
22 apartments with this." That's not the intent

1 of the zoning regulations. The zoning
2 regulations don't allow for your mistakes.

3 I think overburdening the R-4 zone
4 with this kind of density is too much so I'm
5 not convinced. I'm really not convinced that
6 what I've seen in all these documents really
7 tell me a true story of the impact of what has
8 happened on this building. I stand with the
9 Office of Planning. I think that the density
10 is too much.

11 VICE CHAIRMAN LOUD: I'll just say
12 that the density issue was raised by
13 Commissioner Dettman as well as something that
14 he had been very carefully reflective over.
15 It's something that I thought about, too.

16 At least for me when I take a look
17 at the building itself and think about the
18 regulation that we're talking about, 401.3,
19 and I'm not saying this is a total
20 interpretation of 401.3 but at least in some
21 of the instances I think part of it has been
22 driven by the fact that you have residential

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 property owners who will go into residential
2 -- basically single-family residential
3 dwelling and then just chop it up into a bunch
4 of different subunits that they then turn
5 around and sell as condos.

6 They have clear single-family
7 dwellings that were always intended to be
8 single-family dwellings on a lot area of a
9 certain size and then they turn around --
10 because at that point the market was allowing
11 them to turn around and carve five or six
12 units out of it or whatever and make a buck.

13 Here you have a fairly
14 significantly sized physical structure that,
15 at least to my mind, would not probably have
16 been a single-family dwelling at some point.
17 It looks to have the size of something that
18 could have been multiple family from the very
19 beginning.

20 Now, the lot area is definitely
21 small for purposes of 401.3. I think it's a
22 little over 4,000 square feet and they need

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 about 7,200 under 401.3 to do eight units.
2 I'm looking at it and I don't see where it's
3 that big of a inconvenience in the area.

4 Again, I'm looking at the
5 surrounding neighbor saying, "Hey, you know,
6 I know about this. I'm on board with it. It
7 makes sense to me." Yes, it's something that
8 I paused and thought about.

9 I don't want the fellow Board
10 members to think that I just sort of gave the
11 applicant a pass on that element of the test
12 but all things being considered it appears to
13 me, anyway, that the best hope for their to be
14 some productive use of this property would be
15 allowing the applicant to do eight units.

16 Otherwise, I think it's just going
17 to be a property that will sit there and never
18 be returned to any kind of productive use
19 whatsoever.

20 CHAIRPERSON MILLER: Why do you
21 think that? I think that's an important
22 point.

1 VICE CHAIRMAN LOUD: Well, because
2 he submitted some evidentiary information that
3 suggest that he's got to be able to produce a
4 certain number of units to return
5 profitability.

6 I know this is not in our record
7 but we also have seen the results of what's
8 happening in the marketplace the last 30 days
9 in terms of the tightening of the credit
10 market and the difficulty that these types of
11 projects are going to have anyway getting off
12 the ground.

13 I absolutely find credible the
14 idea that this place is probably never going
15 to be a church. Even if there is no soil
16 contamination found just the psychological
17 experience of thinking that you're placing
18 your loved one in harm's way every single week
19 keeping them there on top of what had been a
20 gas station and they are breathing this mess
21 and you really have no clear sense the
22 contamination was ever really remediated.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 Certainly not from the record
2 before us. I don't think the site would work
3 at a church. Certainly not right now for this
4 applicant because these people have lived with
5 him through this 10-year period and I think
6 any future applicant would want to know, "Did
7 this guy really clean this place up or am I
8 sitting in these pews smelling this stuff from
9 decades and decades ago."

10 Again, those are some of the
11 reasons why I think the practical difficulty
12 is long and it's deep and it's deep and it's
13 going to be enduring. The report from MA
14 Associates, which seem very, very credible to
15 me would suggest that profitability is reached
16 maybe at seven units.

17 Maybe it's reached at six units if
18 some of Mr. Turnbull's concerns are true in
19 terms of the numbers being inflated on the
20 remediation but they are not reached at four
21 units. They are not reached matter-of-right
22 and all of those suggest to me some relief is

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 needed by us.

2 MEMBER WALKER: Mr. Loud, I'm just
3 trying to follow your analysis here. You
4 raise the issue about members of the
5 congregation not being comfortable with just
6 having had some soil contamination at the
7 site. Why isn't that also a concern for
8 individuals who would be living there in
9 residences?

10 VICE CHAIRMAN LOUD: I think it
11 probably would be a concern. To be honest
12 with you I think it really would be a concern.
13 I think a lot of Brownfields are converted
14 more to commercial uses as opposed to
15 residential for that very reason, that the
16 intensity of use of a lot less on commercial
17 properties because you go home every evening
18 and you don't bathe in the water there and
19 things like that.

20 I think if this applicant goes
21 through the process, and I'm by no means an
22 expert on what that process is, but there is

1 a pretty established process. If this
2 applicant goes through the process
3 transitioning a Brownfield for residential use
4 and is able to show his funding instruments
5 and is able to show his market that he's gone
6 through that, it is so carefully calibrated
7 and vetted that market will have a comfort
8 level in responding to the product that he is
9 bringing online.

10 With the church there is nothing
11 in the record that suggest anything like that
12 ever happened. I think they are so close to
13 it that it's a different kind of experience.
14 The residential market is not part of what's
15 happening right now. They are not in on it.
16 They are not walking through the different
17 pictures, for example, that we saw in part of
18 the record.

19 All of that is a different psychic
20 experience, I think, for purchasers in the out
21 years, but these folks have kind of lived
22 through all of that and I think it makes it a

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 different psychic experience.

2 MEMBER WALKER: Okay. So you're
3 saying that efforts, remediation, soil
4 contamination are different when there's a
5 residential use that is being considered and
6 that if it is the case that this site will be
7 converted to a residential use, that perhaps
8 additional work will have to be done in terms
9 of the remediation.

10 VICE CHAIRMAN LOUD: Yeah. I
11 mean, the process that I have some familiarity
12 with is that there are engineering tests and
13 there are soil tests and soil samples taken
14 and tested at laboratories and what not and
15 you get the reports back and you review them
16 and it sort of outlines for you the level of
17 remediation you have to do.

18 Long before this would be allowed
19 by EPA as a residential development, there
20 would have to be a process of going through
21 those and getting these test results that show
22 that people could have at that plot of land.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 MR. TURNBULL: Why couldn't you
2 give those papers to the parishioners?

3 VICE CHAIRMAN LOUD: I think we're
4 getting far afield but --

5 MR. TURNBULL: No, I think we're
6 all right.

7 VICE CHAIRMAN LOUD: For me,
8 again, I don't think they have them right now
9 but --

10 MR. TURNBULL: I don't think so
11 either.

12 VICE CHAIRMAN LOUD: -- because
13 they have lived through this, I think there is
14 a psychological factor where I'm a parent of
15 small children so even if you gave me that
16 piece of paper and I've sort of lived through
17 this, I'm not going to bring them there every
18 Sunday and let them sit in the worship hall
19 for two hours and breathe this stuff.

20 I'm just fearful worst-case
21 scenario that the accumulation of this
22 experience for my kids over the years is going

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 to work to their detriment.

2 MR. TURNBULL: You had made one
3 comment earlier, Mr. Loud, about the market
4 being the way it is. My feeling is these
5 probably will not be condos. These may end up
6 being rental units so how that compares to
7 what their costs are is another factor.

8 That's why I just think the whole
9 cost issue is a little convoluted. That was
10 my reason why I really can't look at this in
11 a clear-cut way and say, "Yes, there has been
12 a really severe factor and you can't make it
13 with four units," just to clarify the way I'm
14 looking at it right now.

15 MEMBER DETTMAN: I think this is
16 definitely not the ideal project. It is too
17 dense. Eight units is too dense. It probably
18 would have been advisable to ask the
19 parishioners, the congregation, "If we clean
20 this up will you come back?" That would have
21 been a good first question to find out after
22 the fact of this cleanup being done and they

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 are not coming back.

2 Just to address the third story
3 addition because at one time I felt the same
4 way Mr. Turnbull did. Looking at the latest
5 submission, this third story addition was
6 erected legally. It was legally permitted for
7 the expansion of the church.

8 When the applicant did find out
9 that the congregation wasn't going to return,
10 we had a three story building and we have to
11 put this three-story building back to
12 productive use. We could have inquired about
13 what the economics would be to take down this
14 third-story addition and do four units on two
15 floors instead of four units on four floors
16 like four huge units.

17 I would have to go back to the
18 transcript but I think we did inquire about
19 that and I don't quite remember the answer we
20 got. When I found out that third-story
21 addition was put up there legally, at that
22 point in time I wasn't looking at a two-story

1 structure that had this third thing thrown up
2 just before we came to get a BZA approval for
3 eight units. It was legally erected. To me
4 we have a three-story building in front of us
5 that needs to be put back to productive use.

6 CHAIRPERSON MILLER: I just want
7 to throw out this question to my Board
8 members. I found also all the numbers that
9 were presented in these filings which is often
10 the case with economic substantiation to be
11 somewhat not that clear.

12 I guess my question is do the
13 numbers show -- I see that seven units is
14 maybe the breaking point but for this owner
15 seven units is the breaking point but
16 otherwise he wouldn't break even.

17 Do these translate to someone else
18 having to also have eight units for it to
19 break even or are these numbers just the
20 result of the remediation costs that have gone
21 into the building and other costs? Do you all
22 have a feel for that?

1 VICE CHAIRMAN LOUD: I think in a
2 perfect world you might say that these costs
3 relate just to this applicant but this
4 applicant having -- and we're crediting the
5 testimony.

6 This applicant having absorbed
7 those costs is going to try to pass those
8 costs on to whoever would purchase it. The
9 subsequent purchaser would not in the real
10 world not be able to disregard all of that and
11 start from scratch with the adjusted per
12 square foot redevelopment cost.

13 CHAIRPERSON MILLER: Right.
14 That's helpful. Thank you. That's very
15 helpful. I mean, I guess the reason I raised
16 it I think Mr. Turnbull might have been
17 getting at this and I think other Board
18 members may have a similar concern that if you
19 have a situation where an applicant makes some
20 unwise choices, for instance, buyer beware or
21 whatever it is and, therefore, are we making
22 up for that mistake.

1 I don't know that is exactly the
2 case here anyway that the evidence doesn't
3 show that they knew the extent of the cleanup.
4 I think what you're saying anybody would have
5 to clean up the contamination.

6 MEMBER WALKER: Well, to that
7 point, Madam Chair, my issue here is that the
8 applicant was aware of the prior use of this
9 site as a gas station and, indeed, was able to
10 purchase this structure at a significantly
11 reduced cost of \$32,000.

12 I'm struggling a little bit with
13 your statement that it's not the case here
14 that the buyer was aware. I mean, the buyer
15 may not have known the extent of the problems
16 that existed but certainly, you know, got a
17 significant break on the cost of this site
18 because of the unknown.

19 Further, in the record -- I mean,
20 we spent a lot of time talking about the
21 remediation of the soil contamination but in
22 going through and looking at the invoices from

1 the contractor who did the work, it seems that
2 the problems related to the groundwater were
3 just as significant, if not more significant,
4 in terms of cost as the soil remediation.

5 I think in looking at what this
6 unique condition is I think the Board has to
7 be careful about saying this is just about the
8 soil contamination because, indeed, much of
9 the cost related to the construction had to do
10 with the groundwater.

11 CHAIRPERSON MILLER: I think it's
12 useful then to get back into the framework of
13 the variance analysis because these issues are
14 difficult but if we plug them into the prongs,
15 I think it will help us.

16 For instance, if we're looking at
17 what is the exceptional and is there an
18 exceptional situation here. One aspect is the
19 contamination and I think your point is,
20 "Well, it wasn't just the contamination."
21 Then we are looking at ground water problems
22 and do we want to recognize that also as an

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 exceptional situation.

2 Then do we also -- well, I think
3 that's what we have to do. We have to put it
4 in the variance analysis. Is it an
5 exceptional situation that it's also a church
6 where the congregants left and, according to
7 the applicant, I believe they won't be back.

8 I think that is the first thing we
9 have to do is do we except that there is an
10 exceptional condition and then maybe we can
11 then see whether we think there is a practical
12 difficulty that is related to that.

13 Mr. Turnbull, do you think it's an
14 exceptional condition, at least? I know you
15 don't like the -- I don't think you put much
16 weight in the numbers but if we could go
17 through the variance test, I think it might be
18 helpful. Do you think there is an exceptional
19 -- there was an exceptional condition here at
20 all or no?

21 MR. TURNBULL: Well, I guess I
22 don't really -- it sounds like they still have

1 a water problem like they wouldn't want to
2 rent or buy one of those basement units.
3 Looking on page 7 on Exhibit No. 35 he says,
4 "The sump pumps and the PVC finally stopped
5 the flow of water through the bricks.

6 Nonetheless, a flash flood can
7 still lower the patio at the back of the
8 building and lead to a foot of water inside
9 the basement area." Maybe it is. I don't
10 know. I don't know if they hit a water main
11 or what. Obviously there is something they
12 haven't done right or there is some problem.
13 It's hard to really determine exactly what
14 their issue is there.

15 CHAIRPERSON MILLER: What does
16 that go to, adverse impact if we were to grant
17 the regulation -- grant the variance because
18 of the --

19 MR. TURNBULL: I don't know. Or
20 is it sloppy construction work that's just not
21 solving the problem? I don't know. I don't
22 know how well -- I mean, you would almost have

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 to be a construction inspector to go out and
2 look to see what the issues are for us to
3 theorize.

4 What the problem is I don't know.
5 Is it just a bad job of remediation? Is it
6 something that they've hit in construction
7 that they haven't addressed? Is it a water
8 main? If it's a water main or has to do with
9 a sewer line outside in the street, it's not
10 an adverse impact in the sense that it's
11 really a city issue that they ought to be
12 involved with.

13 I guess it depends where the water
14 is coming from and what is causing it. If
15 it's just drainage, yes, I could say that
16 might be an adverse input, but it sounds like
17 the amount of water they are getting is either
18 a sewer or water problem. I'm not sure. It
19 obviously needs some study. Maybe it's just
20 work that has been done that hasn't been done
21 right. I'm not sure.

22 CHAIRPERSON MILLER: I think there

1 are a lot of problems and issues in this case
2 so what I thought I would try to do is see if
3 we can get them into our variance analysis to
4 make our decision. I was starting at -- I
5 recognized that as a problem. I don't know
6 what we want to do with it.

7 I was trying to see at least if
8 Board members thought there was an exceptional
9 condition as the first prong in this case and
10 then move from there. I had identified what
11 the applicant was claiming as exceptional
12 conditions, the contamination, and then Ms.
13 Walker was talking about the ground water
14 problems. I guess the issue that this was a
15 church that has lost its congregants.

16 MR. TURNBULL: I guess getting
17 back to the issue is the groundwater an
18 exceptional condition. I don't know if it
19 really is. I don't know if the design
20 solution they've come up with is the
21 appropriate one for what may be a very common
22 problem that can be easily addressed. They

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 just haven't done it right.

2 I don't know. If they were in the
3 bottom of a swale or something that was coming
4 down and there's -- we don't know. I don't
5 know what the site conditions are to look at
6 the topography and see what is actually wrong
7 or if there is an underground condition, if
8 there is an old underground creek.

9 We don't know that so it could be
10 exceptional but it may not. It may be a very
11 simple solution that just hasn't been done
12 right. They may not have from an engineering
13 standpoint looked at it and put the right
14 remedy in place. It might be a very simple
15 solution.

16 As I said, it could be a broken
17 sewer line that backs up every time. It could
18 be an old line that is there. Does that
19 qualify as exceptional? I don't know. I
20 guess it really wouldn't. I think an
21 exceptional condition would be something
22 existing, preexisting with the site that

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 either the slope, or if it's an underground
2 creek, yes.

3 If there was an underground -- if
4 it's like a missing link of Tiber Creek or
5 something, yes, I would say that is an
6 exceptional condition but here we don't know.
7 I can't give that great weight unless I have
8 more information to base a decision upon.

9 CHAIRPERSON MILLER: What do you
10 think about the contamination as being an
11 exceptional condition?

12 MR. TURNBULL: Again, as we were
13 talking before, it can be an exceptional
14 condition at a certain level but if you know
15 about that with going into the site, you
16 obviously know that you are going to do
17 remediation so I'm assuming you are going to
18 carry a cost for that.

19 If the cost is -- if it's far
20 beyond what they exceed, yes, you could say
21 that would be an exceptional condition. Here
22 I'm not sure. They seem to be able to address

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 this and go ahead and build a third floor on
2 the church feeling that they could cover this.

3 Now, as Mr. Loud got into, that
4 the congregation suddenly said, "Ye gads, I'm
5 not going to go in there," does that cross
6 that over into the threshold of an exceptional
7 condition? Yes, it might. I guess I don't
8 know if I'm not totally convinced on that.

9 Some of the other Board members
10 may be convinced of that. That's fine. I
11 just don't know at this point looking at what
12 we have seen so far if that classifies it as
13 exceptional. Obviously it's very noteworthy.

14 Obviously it's expensive. They
15 pay 200 and some thousand dollars for it but
16 is it exceptional for what they want it to do?
17 I'm not sure knowing there was a gas station
18 there before,

19
20 CHAIRPERSON MILLER: I just want
21 to clarify. I thought that the third floor
22 wasn't finished, it was just plywood. Okay.

1 So they don't have a complete third floor.

2 Okay, just for the record.

3 MR. TURNBULL: Yeah. Just for the
4 record they put a third floor on but they
5 hadn't finished it as far as I understand.

6 MEMBER DETTMAN: I'd consider the
7 contamination an extraordinary circumstance.
8 If we had two situations, we had two of the
9 same buildings, one sits on a contaminated
10 site, one sits on a noncontaminated site,
11 clearly it's going to -- and they are both
12 nonconforming buildings in terms of their use,
13 in order to get them back to a conforming use,
14 a residential use, it's going to cost more
15 money to put the contaminated site back to a
16 conforming use than the nonconforming which in
17 that situation might lead to an applicant
18 having to justify the additional third floor
19 and the eight units.

20 In that respect I think it's an
21 extraordinary circumstance. I think it's the
22 additional cost associated with putting this

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 nonconforming building back to a conforming
2 use that is driving the need for these -- that
3 is driving the practical difficulty in meeting
4 the 900 square feet per unit. In that respect
5 I think it's probably in my mind the No. 1
6 extraordinary circumstance if not the only
7 extraordinary circumstance.

8 MEMBER WALKER: Well, I think that
9 both the soil contamination and the ground
10 water are exceptional circumstances. I do not
11 think, however, that the soil contamination
12 gives rise to a practical difficulty in light
13 of the fact that the fact that the acquisition
14 cost was only \$32,000 and that the we have
15 evidence in the record that the remediation of
16 the soil only cost 200 and some odd thousand
17 dollars.

18 That is why for me the question of
19 the ground water becomes so important because
20 I can't get to practical difficulty when just
21 looking at the soil contamination.

22 CHAIRPERSON MILLER: I think maybe

1 the contamination doesn't directly lead to
2 seeking the variance for the eight units. It
3 led to the congregants leaving the church
4 which then led to the church having to look
5 for another use. I don't think it's exactly
6 a straight line.

7 Then because of all the costs the
8 church -- all the expenses the church had laid
9 out for remediation for a variety of reasons,
10 this is the only way for the owner to break
11 even if we accept the numbers. I think this
12 is a very difficult case and that is why I
13 think it's good that everybody is expressing
14 the different concerns.

15 Again, I always try to get back
16 into the variance analysis and that is why I
17 was trying to see is there an exceptional
18 condition here or was their a preexisting one.

19 I think that there was
20 contaminated soil and that is not common and
21 I think that did give rise to this applicant's
22 practical difficulties in using the property

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 consistent with the zoning regulation. I
2 mean, this particular owner does have
3 practical difficulties that we see.

4 I was trying to assess is it
5 reasonable to look at because maybe he bought
6 it at a certain price or whatever. I don't
7 know. I think if you plug the facts into the
8 elements it does seem to fit that there was
9 contamination which was exceptional that lead
10 to practical difficulties that the applicant
11 has now if you buy those numbers that now the
12 applicant can't do a four-unit building.

13 That's why I was asking Mr. Loud
14 about, gee, somebody else could do it. Then
15 what are we doing? Actually I think Mr. Loud
16 is accurate that you probably couldn't buy --
17 we don't want to get too speculative as to
18 what they can buy the property for.

19 Then you get into the third prong
20 about is there substantial detriment, you
21 know, and the suggestion we were addressing.
22 I think that one is a little bit easier but we

1 may file differently. Mr. Turnbull believes
2 that is a very important regulation and
3 perhaps the facts in this case don't justify
4 granting a variance from it.

5 I guess I would look at this case
6 more like Mr. Loud, I think, in the context of
7 this building where it is in this neighborhood
8 and don't see an adverse impact on the
9 neighborhood where it sits for giving this
10 weight against the burden that the applicant
11 has.

12 MEMBER DETTMAN: I think Ms.
13 Walker raises some very good points in terms
14 of the low acquisition cost and the cleanup
15 being only \$223,000 according to Exhibit C.
16 Going further with Exhibit C, its total is
17 \$930,000. A large portion of that cost are
18 the two lines, the reconstruction of the
19 basement and the first and second floors.

20 After this contamination was
21 cleaned up there is still a very long,
22 probably expensive, process of just getting

1 this building back to neutral. Just
2 underpinning and laying down another concrete
3 floor in the basement you are basically just
4 getting this building back to zero so then you
5 can move forward with the construction of
6 whatever needs to be constructed for
7 residential purposes.

8 Those last two lines are roughly
9 \$497,000. There's probably some room in there
10 where you need to look at your itemized
11 construction costs for going forward to do a
12 residential and say, "Are we double dipping
13 anywhere here? Are we driving up our costs
14 anywhere?"

15 My look at those number is that I
16 couldn't find any glaring evidence where we
17 are double dipping. The reconstruction of the
18 basement and first floors is being accounted
19 in Exhibit C and it's being accounted for in
20 a further exhibit. I was specifically looking
21 for interior demolition.

22 I thought, "Well, you've already

1 done that. Why would you be doing it again?"
2 Not being an expert in any of this, I was
3 looking for what I could find where we might
4 be double counting somewhere and I really
5 couldn't find anything.

6 CHAIRPERSON MILLER: Would you say
7 a lot of the costs are not related to the
8 contamination or a lot of the costs were
9 inevitable anyway? Are they related to the
10 ground water?

11 MEMBER DETTMAN: I think if you
12 look at Exhibit C, and let me get back there,
13 we have the cost to acquire the property and
14 then we have a \$20,000 line item in there for
15 getting parking approval for the BZA which
16 probably in my mind shouldn't be in there. I
17 had a question mark next to it but \$20,000
18 isn't going to blow out the economics of this
19 project, it isn't going to sway me.

20 But then going forward you had
21 demolition and mediation. They had to
22 excavate significantly in the basement to get

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 rid of the proper amount of soil so you had to
2 underpin the building. New water and sewer
3 lines had to go in in order to just make the
4 building serviceable as a church or a
5 residential building.

6 We had the ground water issue so
7 we had to put in a water proofing collection
8 system. I'll note that in the evidence it
9 does mention that even with the new basement
10 there's moisture down there.

11 We had to put in a water proofing
12 system and then we had to reconstruct the
13 basement and first and second floors so
14 essentially pouring a new concrete floor,
15 putting in additional footings in the
16 building, again just getting it back to a
17 level where we can start to move forward with
18 any use and, in this case, it's now a
19 residential use.

20 MR. TURNBULL: But wouldn't you
21 have to do that just for the church? You had
22 to do that for the church anyways.

1 MEMBER DETTMAN: You would but
2 just pretending for a second that this thing
3 was never a church, the applicant didn't go
4 forward with this remediation with the intent
5 of keeping it a church, these are costs that
6 would have to be incurred anyways.

7 If the owner bought the property
8 yesterday and then came to the BZA to say,
9 "I'm going to take this nonconforming
10 building, this church use in an R-4, and I
11 want to turn it back to a conforming use.
12 Given the design, the size of the building,
13 the location on a prominent corner, I want to
14 make it an apartment building. I can't do
15 four units because we found this
16 contamination.

17 We found this ground water. It's
18 going to cost me more money to make this an
19 apartment building at this location than it
20 otherwise would be at a different location.
21 I just think that some of these costs are
22 things that were going to have to be done

1 anyways.

2 MR. TURNBULL: But the
3 construction cost, the reconstruction of the
4 basement and the first floor and everything,
5 that's normal work. That's included no matter
6 what. That's not part of the practical
7 difficulty of building it unless you are
8 saying that the building is a practical
9 difficulty.

10 MEMBER DETTMAN: Well, I go back
11 to what we are going to be granting relief
12 from. We are going to be granting relief from
13 401.3 which says in order to do an apartment
14 building in a pre-1958 structure in an R-4 you
15 need to have 400 square feet of land area per
16 unit.

17 This contamination to me as the
18 extraordinary circumstance is the factor that
19 leads to the applicant's difficulty in
20 providing 900 square feet of land area for
21 only four units. He needs more units in order
22 to make the project economically feasible.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 The problem is there is not enough land area.

2 MR. TURNBULL: I guess I don't
3 agree with that analysis. I go back to Ms.
4 Walker's comment is that he bought this
5 property for \$32,000 which may have gone for
6 a couple of hundred thousand maybe. I don't
7 know what the cost would have gone to.

8 The money that he saved by buying
9 this, I mean, you had to figure he had to know
10 there was something wrong if he only got it
11 for \$32,000. The money he's saving can go in
12 for the remediation. I guess I don't quite
13 see it as a practical difficulty myself.
14 That's just me looking at it.

15 CHAIRPERSON MILLER: I think the
16 money -- oh, sorry. I was going to say I
17 think the money that you think you're saving
18 is reflected in the summary of costs perhaps
19 because it has the acquisition cost, which was
20 the \$32,000, and it has the remediation of
21 soil contamination cost which was \$223,000.

22 It's in that affidavit, James

1 Collette. It includes what I assume -- let's
2 say that we don't know what the land would
3 have sold for otherwise. These are the costs
4 and they are all here, though. I mean, that
5 \$223,000 is here but it all adds up to
6 \$930,000.

7 MR. TURNBULL: So what's your
8 point?

9 CHAIRPERSON MILLER: My point is
10 there isn't anything else, I don't think, that
11 he's saving.

12 MR. TURNBULL: I'm saying that if
13 he did it no matter what he would still have
14 all those other costs. The \$223,000 is the
15 only cost that he got for remediation but that
16 would have -- he's saving -- he's buying it
17 for \$32,000 and he's making up for getting the
18 remediation done for what he would have bought
19 for a purchase price if the land had been
20 clean. Those other costs fixing the ground
21 floor and the first floor to me are part of
22 normal construction. You would add those no

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 matter what.

2 CHAIRPERSON MILLER: I agree with
3 you.

4 MR. TURNBULL: It probably wasn't
5 suited for what he intended for even as a
6 church so he had to upgrade the sewer lines.
7 You often have to do that. To me the other
8 costs are normal business but that is just my
9 way of looking at it.

10 It's just the normal cost that you
11 would have accrued no matter what. The only
12 incidental cost I saw was the \$223,000 for the
13 remediation but he saved a bundle on the land
14 so to me there is a makeup. If you added that
15 together, you are making up on your cost.

16 CHAIRPERSON MILLER: Okay. I
17 think it's hard because isn't it speculative
18 that we don't really know?

19 MR. TURNBULL: It's all
20 speculative.

21 CHAIRPERSON MILLER: There was no
22 remediation required. I don't know whether

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 the land would have been \$100,000, \$200,000.
2 We don't know.

3 MR. TURNBULL: This is all
4 speculative. We are sort of delving off on
5 different things here. We are assuming
6 things. Just as Mr. Dettman was talking
7 about, well, if you had clean land and
8 property and you had the other property, I
9 guess looking at that I would probably be
10 selling you the dirty property for a lot less
11 and selling you the clean property for a lot
12 more. It's all theoretical. It's all
13 conjectural at this point.

14 MEMBER DETTMAN: But your position
15 is if the site was clean, the applicant would
16 have -- there's chance -- we'll speculate for
17 a second -- that he would have had to spend
18 \$930,000 just because there is no
19 contamination which makes the building value
20 higher.

21 MR. TURNBULL: Maybe.

22 MEMBER DETTMAN: Okay.

1 MR. TURNBULL: Yeah, maybe. I'm
2 not sure what the number is. I don't have
3 that in front of me to compare it but my
4 feeling is it may have been up there just the
5 same.

6 CHAIRPERSON MILLER: So does that
7 mean in this analysis that the building was
8 clean and he spent \$930,000 for it? The
9 building was clean assuming the congregants
10 wouldn't have left and he wouldn't have then
11 wanted to convert to residential use.

12 If he did want to convert to
13 residential use, obviously it's the same
14 problem at \$930,000 and he wouldn't get it
15 back from the four units. Right? It's not
16 until he gets to seven or eight.

17 MEMBER DETTMAN: I think the key
18 question is what would the applicant have to
19 pay for this building on a clean site and what
20 is the difference in cost between what he paid
21 and cleaned up with the soil contamination.
22 We know that he paid for purchase and cleanup

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 and then rehabilitation, whatever those two
2 line items are, \$930,000.

3 If it was sitting on a clean site,
4 would the building have sold for \$640,000 and
5 there's a gap of \$300,000. Is it that
6 \$300,000 of additional cost that is making the
7 applicant say, "I need to do eight units in
8 order to at least turn a small profit."

9 I'm more inclined to say that it
10 is the dirty site. It is the cost of cleanup
11 and it is the cost of rebuilding the basement
12 and first and second floors. That gap between
13 that and a clean site building is substantial
14 enough to justify the eight units.

15 CHAIRPERSON MILLER: I think if
16 you accept the numbers you accept that the
17 applicant has a practical difficulty in
18 complying with the regulations because they
19 don't work for the four units. Right?

20 MR. TURNBULL: I don't accept it.
21 You can accept it.

22 CHAIRPERSON MILLER: No, I'm

1 posing the question. You don't accept that
2 premise that if they submitted numbers to us
3 and they seem to show that --

4 MR. TURNBULL: If you accept the
5 numbers in your reasoning then, yes, but don't
6 tell me to accept it.

7 CHAIRPERSON MILLER: No, but I'm
8 trying to say if you accept the numbers here,
9 that means that the applicant has a practical
10 difficulty in complying with the regulation.

11 MR. TURNBULL: If you agree with
12 that.

13 CHAIRPERSON MILLER: If you agree
14 with the numbers. But, again, that doesn't
15 mean, what I'm trying to get at, you then have
16 to -- your point was it wasn't necessarily the
17 contamination that got him to the position
18 where it created the practical difficulty.

19 MR. TURNBULL: I guess my feeling
20 is there is no practical difficulty with the
21 contamination. Again, I'm getting back --
22 repeating myself, getting back to the purchase

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 price, he knew about it going into it so he's
2 getting a lot at a bargain price and that the
3 money that he had to pay for remediation was
4 either thought about ahead of time. I mean,
5 he knew he had to do some remediation and that
6 should be included. That's part of your
7 purchase price. That's your buying the
8 property.

9 CHAIRPERSON MILLER: But he has --
10 okay. But he did this and he lost his
11 congregants. He can't use the property as a
12 church. Doesn't he have a practical
13 difficulty now how to use the property
14 consistent with the regulation?

15 MR. TURNBULL: Yes, but I'm not
16 going to give the zoning -- I'm not going to
17 give land use away because of a perceived
18 practical difficulty. I mean, if you want to
19 make that argument, go right ahead.

20 CHAIRPERSON MILLER: I'm just
21 trying to isolate where you thought the issue
22 was. I think it's where --

1 MR. TURNBULL: I'm opposed to this
2 and this is the way I'm voting.

3 CHAIRPERSON MILLER: Okay.

4 MR. TURNBULL: It's the way I'm
5 voting.

6 CHAIRPERSON MILLER: Okay.

7 VICE CHAIRMAN LOUD: I'm
8 wondering, and not to speed us along
9 unnecessarily. We need to go through a full
10 deliberation but having us look at each
11 particular element to see where we are on each
12 particular element versus just looking at the
13 case to be made as a whole and whether we
14 think individually because some of us are
15 where we are and we're probably not going to
16 move from that position, might yield a little
17 more fruit because we may all agree on a
18 particular element and get to another element
19 30 minutes down the road and disagree on that
20 element, whereas I think we need to take a
21 step back and see on the whole do we think
22 this applicant has met its burden and, if so,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 why.

2 I think we've gone through each
3 element fairly richly. All of us, I think,
4 are struggling with one or more elements. I
5 struggled a lot with the third element. I
6 don't struggle at all with the first element.
7 I struggle less so with the second element.

8 I'm just wondering we could kind
9 of just go around and around maybe longer and
10 would prove fruitful if we were at least to
11 step back and consider looking at the evidence
12 and everything as a whole and seeing where we
13 come out.

14 Do you know what I'm saying, Madam
15 Chair? If we keep -- if we are trying to
16 convince me to reconsider whether it's
17 exceptional and then we'll move on to whether
18 it's a practical difficulty, we may be at it
19 for a while.

20 CHAIRPERSON MILLER: I think I --
21 you know, I went back to that point at one
22 point and then we got off again. That's fine.

1 Exceptional condition is very interrelated
2 with practical difficulty.

3 Are you suggesting -- I think this
4 is a difficult case and that's what I was
5 trying to do, like okay, let's try to go
6 through the elements and see if there is
7 consensus that there is an exceptional
8 condition or what did you want to do?
9 Everybody just decide where they are in the
10 whole case?

11 VICE CHAIRMAN LOUD: Well, I'm
12 just sort of listening to all of us and myself
13 included. At this point all I would do is
14 repeat myself. You know what I mean? There
15 is nothing new that I would add. I would just
16 repeat where I was maybe about 45 minutes ago
17 and say I liked when Commissioner Dettman
18 agreed with me.

19 I don't like when Commissioner
20 Turnbull had his own opinion on it but there's
21 nothing new I would say. I happen to agree
22 with myself and then when Commissioner Dettman

1 followed me and said, "Hey, I think there is
2 an exceptional situation as well.

3 Every piece of property is not
4 going to have a former gas station on it. If
5 it does, that gas station is not going to have
6 leaky tanks and contamination. In my opinion,
7 that makes it exceptional."

8 So, yeah, I like what Commissioner
9 Dettman said but I don't like what
10 Commissioner Turnbull said because he
11 disagrees with me. I'm just wondering if we
12 are at that point where we are just going to
13 start repeating ourselves ad infinitum and
14 maybe we should just move it forward. I know
15 that I am. There is nothing new that I would
16 add.

17 CHAIRPERSON MILLER: I just want
18 to add one point before I forget it even
19 though it's not within the structure maybe
20 that we're talking about. I think that Mr.
21 Turnbull might be getting at self-created
22 hardship in that they bought it at a certain

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 point and it is that kind of buyer beware
2 thing.

3 That is not under our rules of the
4 court's analysis a factor in an area variance
5 which this is. We are really looking at -- I
6 understand where Mr. Turnbull is certainly
7 coming from because there are a lot of issues
8 in this case we need to carefully consider.

9 Okay. Do you think we are ready
10 to move on this? Are there other comments?
11 We could put it under motion and deliberate
12 further if there are. Anybody have any
13 comments they want to make right now before we
14 move into a motion?

15 VICE CHAIRMAN LOUD: I'm sorry. I
16 didn't hear the last part of what you said.

17 CHAIRPERSON MILLER: Do you want
18 to make a motion?

19 VICE CHAIRMAN LOUD: Sure, I would
20 be happy to make a motion, Madam Chair. Madam
21 Chair, I would like to move approval of BZA
22 Application No. 17779 by the applicant at 3408

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 Sherman Avenue for variance relief from our
2 Section 401.3 to allow eight units of
3 development in the R-4 where our regulations
4 would only allow four as a matter of right and
5 particular variance from the provision that
6 would only allow more than, I believe, two
7 units if the land area is 900 square feet per
8 unit. Did I botch that up sufficiently? Bear
9 with me as I get the actual --

10 MEMBER DETTMAN: Nine hundred
11 square feet of land area --

12 VICE CHAIRMAN LOUD: Per unit.

13 MEMBER DETTMAN: -- per unit.

14 VICE CHAIRMAN LOUD: Per unit of
15 development. Our applicant seeks relief from
16 that under 401.3. That's correct. Do I need
17 to repeat that?

18 CHAIRPERSON MILLER: I'll second
19 it.

20 VICE CHAIRMAN LOUD: Well, yeah.
21 I think, at least from my vantage point, I can
22 certainly just summarize where I was earlier

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 on the matter. It's an application for
2 variance relief under Section 3103. We've
3 talked a lot about this.

4 The applicant seeks conversion of
5 an existing vacant three-story church in the
6 R-4 which, among other things, had been a gas
7 station which, among other things, underwent
8 an extensive and costly five-year effort to
9 both renovate the contaminated soil but also
10 to stop a basement flooding problem. The
11 applicant wants to convert it into eight units
12 with each unit selling at roughly the market
13 rate.

14 From my vantage point neither the
15 matter of right use as a church is feasible
16 because of the history of contamination at the
17 site, the specific history of this particular
18 congregation refusing to worship at this site
19 and choosing to worship at sites elsewhere in
20 the city.

21 Neither is it feasible as a four-
22 unit condominium which would also be matter of

1 right because of the cost associated with
2 trying to do a four-unit as indicated in the
3 report of MA and Associates which I think had
4 those costs ranging from a loss of \$635,000 to
5 \$875,000 depending on the sale price.

6 I do think there has been a
7 showing that the property is unique because of
8 its soil contamination, because of the
9 congregation's refusal to worship there.
10 There is a practical difficulty for this
11 applicant trying to continue use as a church
12 or create a four-unit condo development there
13 because of the cost of doing that.

14 I don't think there has been a
15 showing that there is substantial detriment to
16 the public good. In fact, about 30 or more of
17 the applicant's neighbors have submitted a
18 petition for the record indicating they have
19 no opposition to it. We don't have anything
20 from the ANC, for example, saying that they
21 are in opposition to it.

22 There is a report from the Office

1 of Planning. The Office of Planning in their
2 report is opposed to it essentially not
3 finding in their analysis a sufficient nexus
4 between elements of the property that are
5 unique and the purported practical difficulty.

6 I disagree personally with the
7 Office of Planning's analysis on this. I do
8 think this very, very professionalized report
9 that has come from MA Associates goes through
10 in really clear line-item detail what the
11 redevelopment cost for the property will be.

12 I think between the various
13 invoices that were submitted documenting
14 various aspects of the soil contamination
15 cost, the affidavit of Mr. Kittle or Mr.
16 Little regarding what some of the remediation
17 cost on the site have been.

18 I'll speak to a very substantial
19 remediation cost even if we can't put an exact
20 figure on whether it's \$300,000, \$700,000 if
21 we include \$400,000 of construction cost that
22 were, in my mind, kind of related to the soil

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 contamination. The point is the remediation
2 is substantial.

3 It's been built into as a line
4 item in the MA Associates report for our
5 review. I'm crediting that. I think they are
6 a credible firm and they have done a good job
7 of delineating these costs so I'm prepared to
8 vote in favor of it.

9 CHAIRPERSON MILLER: That was
10 excellent. I hesitate because I don't want to
11 be too repetitive. I mean, I agree with you.
12 This was somewhat of a struggle but I think
13 there was a unique situation here, exceptional
14 situation being primarily the contaminated
15 soil which led to the congregants leaving the
16 church and lead to practical difficulty of the
17 applicant using it as a church or as a four-
18 unit apartment building in light of all the
19 cost related to contamination as well as other
20 costs.

21 I agree that weighing everything
22 with respect to the zoning regulations and the

1 zone plan that I think it's in favor of the
2 applicant that converting the institutional
3 use to residential use is a plus under the
4 comp plan and in the neighborhood where it is
5 on that commercial street and stuff.

6 It seems to fit. I don't need to
7 go through it. I said all the things earlier.
8 Is there anything else someone wants to say on
9 this that hasn't been said earlier or you want
10 to emphasize? Mr. Turnbull, you want to say
11 anything more? Okay. Not hearing anything,
12 then why don't we vote on the motion that has
13 been seconded. All those in favor say aye.

14 BOARD MEMBERS: Aye.

15 CHAIRPERSON MILLER: All those
16 opposed?

17 MR. TURNBULL: Opposed.

18 CHAIRPERSON MILLER: Would you
19 call the vote, please?

20 MR. MOY: I don't think staff got
21 the full vote on that. I thought I heard
22 three to zero to two. This is on the motion

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 of Mr. Loud to approve the application. No?
2 Okay. My correction then. The vote would be
3 four to zero to one.

4 Correct? Four to zero to one.
5 Sorry. Good day today. Four, one, zero.
6 This is Mr. Loud to approve the application
7 seconded by Ms. Miller. In support of the
8 motion Mr. Dettman and Ms. Walker. Opposed
9 Mr. Turnbull. Again, four, one, zero.

10 CHAIRPERSON MILLER: Okay. Thank
11 you very much. Do we have anything else on
12 this morning's agenda?

13 MS. GLAZER: Madam Chair, is that
14 going to be a summary order? There was no
15 party in opposition.

16 CHAIRPERSON MILLER: Right, yeah.
17 It would be a summary order.

18 MR. MOY: At this point, Madam
19 Chair, you may want to get a status for the
20 public where the Board is.

21 CHAIRPERSON MILLER: Okay. For
22 those of you who are here for our afternoon

1 hearing, which normally started at 1:00, we'll
2 be starting at 1:45 because we are ending our
3 morning session just now. We'll be back at
4 1:45. This meeting is adjourned.

5 (Whereupon, at 12:43 p.m. the
6 morning session was adjourned.)

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

1

2