

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
ZONING COMMISSION  
PUBLIC HEARING

=====X

:  
IN THE MATTER OF: :

:  
TEXT AMENDMENTS - BOARD OF ZONING : CASE NO. 97-2  
ADJUSTMENT SPECIAL EXCEPTION :  
PROVISIONS FOR ADDITIONS TO SINGLE- :  
FAMILY DWELLINGS :  
:

=====X

Hearing Room 220 South  
441 4th Street, N.W.  
Washington, D.C.

Thursday,  
July 10, 1997

The above-entitled matter came on for hearing,  
pursuant to notice, at 7:00 p.m.

BEFORE:

MAYBELLE TAYLOR BENNETT, Chairperson  
HERBERT M. FRANKLIN, Commissioner  
JERRILY R. KRESS, Commissioner  
JOHN G. PARSONS, Commissioner

STAFF PRESENT:

MADELIENE H. DOBBINS, Office of Zoning  
NATE GROSS, Office of Planning



1                   This hearing will be conducted in accordance with the  
2 provisions of Section 3021 of the District of Columbia Municipal  
3 Regulations Title XI Zoning.

4                   The order of procedure will be as follows: preliminary  
5 matters, the Report of the Office of Planning, the report of other  
6 agencies, the report of the advisory neighborhood commissions,  
7 persons in support, persons in opposition. The Commission will  
8 adhere to this schedule as strictly as possible.

9                   Those presenting testimony should be brief and  
10 nonrepetitive. If you have a prepared statement, you should give  
11 copies to staff and orally summarize the highlights. Please, give your  
12 statement to us before summarizing. Each individual appearing  
13 before the Commission must complete two identification slips and  
14 present them to the reporter immediately prior to making a statement.  
15 If these guidelines are followed, an adequate record can be developed  
16 in a reasonable length of time.

17                   I'm going to now ask whether or not our staff has  
18 preliminary matters?

19                   MS. DOBBINS: Good evening, Madam Chairman,  
20 members of the Commission. The only preliminary matter I have is I  
21 think I've just passed to you the testimony of Susan Hinton, the  
22 Chairperson of the Board of Zoning Adjustment. She regrets that  
23 she'll be unable to be present in person tonight, so she's submitted  
24 this for the record.

25                   CHAIRPERSON BENNETT: Thank you. Why don't  
26 we move on then to the Report of the Office of Planning?

27                   Mr. Gross?

1 MR. GROSS: Thank you, Madam Chairman. I'm  
2 Nathan W. Gross of the Office of Planning. You have our --

3 CHAIRPERSON BENNETT: I'm having trouble  
4 hearing you. Are the mikes on?

5 MR. GROSS: Maybe I wasn't speaking loud enough.  
6 Our report of April 20th presents our rationale for the various  
7 provisions. Before going into it though, I want to make a few  
8 comments about general issues that have come up.

9 CHAIRPERSON BENNETT: So you have had a  
10 chance to look at the package?

11 MR. GROSS: Yes. Just this afternoon.

12 CHAIRPERSON BENNETT: Because there were  
13 good some comments in there.

14 MR. GROSS: Discretion, subjectivity, vagueness. I  
15 think there's going to be some subjectivity in this no matter what.

16 Obviously, we don't want subjectivity to be too great.  
17 Now this issue relates to the origin of the case. And the way this was  
18 drafted, as I understood it was two modifications where there was real  
19 consensus among the neighbors and the property owner and the BZA  
20 members involved that the addition should be approved, but there was  
21 not a variance situation. In other words, these were noncontroversial  
22 cases.

23 If, and I think you can modify these regulations to  
24 make a situation where either it's easier for the Board to approve more  
25 additions or make it fairly tough. The regulations are probably on the  
26 tough side, as written out, and that comes out of the background, as I  
27 understood it, that it's supposed to be mainly for consensus situations,

1 but it could be argued the other way also, that you want to make it --  
2 want to be more aggressive and make home owners have more  
3 chances to stay in their existing homes and come to the Board and  
4 make a case.

5 In line with all of that, my opening working assumption  
6 going back when we're discussing this with the BZA members was  
7 that if you have strict standards, the merits I think would be fairly clear.  
8 For example, if you have somebody in an R-1 zone who wants a very  
9 small side yard, let's say two feet instead of 8 feet as normally  
10 required, and his addition, his or her addition is going to extend -- well,  
11 let's say the rear wall of the house having the addition is more or less  
12 parallel with the rear wall of the adjacent house. If that person puts an  
13 addition extending back with only a two foot side yard and puts  
14 windows looking into the neighbors rear yard, that's going to be a  
15 problem. And it's going to be, I think, apparent to everybody in the  
16 hearing, even if the neighbor doesn't show up and so on.

17 On the other hand, if the house that is having that  
18 addition is on a fairly steep downward slope from the other house, it  
19 may not have such an impact, but anyway. I think there's a fair  
20 chance that a lot of these cases, after presentation by the architect,  
21 will be fairly clear to all concerned as to what is approvable and what's  
22 not. I could be wrong, but anyway.

23 Going into the comments on the specific provisions,  
24 223.1 simply enumerating the types of various standards from which  
25 deviations would be eligible under these rules. This is really just kind  
26 of administrative, just making it very clear what provisions can be  
27 varied.

1 I tend to be inclined to agree with Mr. Williams who is  
2 here tonight that in a case of substandard lots, those perhaps should  
3 be left to the variance process. I just say that individually. It's not that  
4 the Office of Planning hasn't analyzed that a lot, but I think it's a  
5 worthwhile comment that these lots are already more dense than the  
6 zone would normally allow and they have an arguable case for a  
7 variance going in, so maybe the variance process is adequate to deal  
8 with them.

9 Going to 223.2, there have been several comments  
10 on this about the matter of right addition being demonstrated to be  
11 inadequate or undesirable to achieve a suitable expansion of the  
12 dwelling or flat. Now some comments have been made that this is  
13 tantamount to a variance. I would say not necessarily because it refers  
14 only to the addition. Normally, the variance would come out of the  
15 property as a whole.

16 Another comment would be, well, for openers, I'm not  
17 going to live or die over this because I think this issue is inherently in  
18 the case, no matter where -- if somebody comes into this, why are  
19 you here, why didn't you just build a matter of right addition and that  
20 question is going to come up.

21 This could be deleted. On the other hand, Amy  
22 Weinstein made the comment that in the case of the addition an  
23 architect normally has already shown the client two or three ways of  
24 achieving the expansion and the matter of right alternatives has  
25 probably already been drawn.

26 COMMISSIONER KRESS: I think her point was  
27 graphically represented, rather than just verbally, if I recall?

1 MR. GROSS: That's right. So, I guess I would say,  
2 also in reading those comments thought that if you want to leave it in,  
3 it could be rewritten more in a way more like the following, that the  
4 applicant needs to show why he or she can't reasonably build a matter  
5 of right addition, but anyway, enough on that clause.

6 CHAIRPERSON BENNETT: You're saying the  
7 language could be --

8 MR. GROSS: Could be softened a little bit, that says  
9 more or less that the applicants show why a reasonable expansion  
10 can't be achieved as a matter of right. That says the same thing in a  
11 way that maybe in a little bit softer way.

12 Okay, 223.3, adverse impact clause, and here I think  
13 again, Amy Weinstein's comments I thought could be very helpful in  
14 addressing some of the citizen concerns and others that came in to try  
15 to introduce some design objectivity into the process.

16 COMMISSIONER FRANKLIN: How does one  
17 introduce design objectivity?

18 MR. GROSS: I don't know if it's exactly objectivity,  
19 but pulling out her comments, she is saying regarding the clause we're  
20 talking about now, since she's not here we might as well just go ahead  
21 and quote what she says: "I have often observed during design  
22 reviews that those projects which most impact on adjacent structures  
23 and properties are the very same presentations that are not  
24 accompanied by plan elevation section drawings showing the project  
25 in true relation to the adjacent elements. I would like to suggest that  
26 more specific language be added to clearly require the applicant to put  
27 forth in graphic form the dimensionally correct agencies."

1                   COMMISSIONER KRESS: I think this is a threat that  
2 runs through her letter and it deals with --

3                   CHAIRPERSON BENNETT: Graphics.

4                   COMMISSIONER KRESS: Graphics. And I do agree  
5 with that. When you're looking at an elevation, you can't just draw  
6 your building out of context. You can't look and she also brings it to  
7 the back of the building --

8                   CHAIRPERSON BENNETT: And on alleys.

9                   COMMISSIONER KRESS: And on alleys. That's  
10 where I was going. And I do think that is appropriate. I don't know  
11 that graphically is quite the word that we would use to describe  
12 something like that, but I do agree with her point, that we should have  
13 better representational material to help us evaluate the front sides and  
14 rear, past just the building itself, but to its environs, to the buildings on  
15 all sides of it.

16                   I think that's a point well made. I didn't mean to  
17 interrupt.

18                   CHAIRPERSON BENNETT: I think if you remember,  
19 Mr. Gross, our -- this is a small enough gathering, I guess, to jump in.  
20 Do you remember when we first talked about this, this is not our first  
21 hearing with this issue. Well, maybe our first hearing, but it was not  
22 the first time we discussed it and years ago we talked about it. We  
23 talked about being able to look down an alley where there was  
24 formerly light and air and open space and everybody now, if we were  
25 to look at the worse scenario possible and this is where her third issue  
26 comes in very handily as well as this one, you'd look down the alley  
27 and all of a sudden you might see all these sticks, you know, that all

1 different levels and sizes and shapes instead of seeing -- and all the  
2 things that go on those sticks. You know what I'm saying? Barbecue  
3 pits and chairs and goodness knows only what else will be out there,  
4 some flowers, some not -- so now you've got some clutter where you  
5 didn't have it before and even with her suggestion, if she only -- if an  
6 applicant only does it for themselves, do you know what I'm saying,  
7 then we see its relationship to the backyard, to the side yard and so  
8 on. We don't necessarily get at the end of that alley and have  
9 somebody take a picture so we can see the clutter. Even if we saw  
10 that, we would say to the twelfth person who is trying to build a deck  
11 that they shouldn't because there's already clutter there.

12 COMMISSIONER KRESS: My only problem with her  
13 letter is it's very well intentioned and I agree with her completely.  
14 Adding the word "graphically" isn't going to do it. I think we're going to  
15 need to find some other descriptive words that talk about putting the  
16 building that we're reviewing and the addition or whatever it is, being  
17 viewed in the context of the buildings on either side of it. I don't have  
18 the words, I didn't expect us to vote tonight. I will play with some of  
19 those words. I just don't think adding a few of the words she puts forth  
20 are going to quite do it for us, while I do think her point is absolutely  
21 well taken.

22 CHAIRPERSON BENNETT: I think so too, but all  
23 we've got to do though is somewhere say that the applicant shall  
24 provide and then we list the kinds of plans and so on that we want.

25 COMMISSIONER KRESS: That takes in the  
26 streetscape and the alleyscape.

27 COMMISSIONER FRANKLIN: She has provided

1 some language which I think can be the core. In 223.3, her  
2 suggestion was that the applicant provide a representation of plan  
3 elevation section drawings showing the project in true relation to  
4 adjacent elements, she calls them. I don't know whether she calls  
5 them elements.

6 COMMISSIONER KRESS: No, I don't think she  
7 called them that.

8 COMMISSIONER FRANKLIN: But something,  
9 generally saying we want plans and elevations, what have you, that  
10 demonstrate the relationship of the project to adjacent property.

11 COMMISSIONER KRESS: I would say two adjacent  
12 properties if I were to write this in. I am sorry, I didn't craft the words.  
13 I didn't -- but I would say that considers at least both two adjacent  
14 properties on either side and one behind. I'd get more specific,  
15 adjacent elements.

16 COMMISSIONER FRANKLIN: In effect, I think what  
17 we are going to do without saying it, just say you've got to have an  
18 architect.

19 CHAIRPERSON BENNETT: That's the other thing.

20 COMMISSIONER KRESS: Not necessarily, I just  
21 think that you have to put it in context. And you know I'm an architect,  
22 but I don't think you need that. I just think you have to put your  
23 building in context. When you come to us with something, I think we  
24 have to be able to see what's on either side of it from a front elevation,  
25 from a side elevation, both sides and what's behind it. And I don't  
26 think that's unreasonable.

27 COMMISSIONER FRANKLIN: No, the question is --

1                   COMMISSIONER KRESS: I think you can do it by  
2 photographs. I don't think you necessarily have to do it all graphically,  
3 depending on what you have going on. Graphic to me means  
4 drawing. To me, I think a photographic scan with a -- with your  
5 addition drawn input into it is perhaps fine. I'm not sure the whole  
6 thing has to be graphic.

7                   I would like to just think about it a little. I'm sorry. I  
8 just like to think --

9                   CHAIRPERSON BENNETT: You've got give me a  
10 space though.

11                  COMMISSIONER PARSONS: This presentation is  
12 going to cost more than the deck.

13                  COMMISSIONER KRESS: I'm trying to avoid that,  
14 truly I am.

15                  COMMISSIONER PARSONS: Most people who are  
16 trying to build a deck on the back of their house are not graphic artists.

17                  COMMISSIONER KRESS: But they can take -- they  
18 all have home cameras and they can take a picture.

19                  COMMISSIONER PARSONS: A picture, yes, but to  
20 simulate or etch in what their addition is going to look like in that  
21 context. It requires computers that your office is full of.

22                  COMMISSIONER KRESS: See, I am actually with  
23 you. No. I'm actually speaking against architects --

24                  COMMISSIONER PARSONS: Good.

25                  COMMISSIONER KRESS: Because I think the small  
26 homeowner shouldn't have to have to deal with that.

27                  COMMISSIONER PARSONS: Right.

1                   COMMISSIONER KRESS: But I think there should  
2                   be a sense of the whole space. All of us have served on BZA and I'm  
3                   quite well informed by photographs and by a little drawing. I can sit  
4                   here and visually put that little drawing in my head on the photograph,  
5                   but we haven't specifically required of applications all the surrounds.  
6                   That's why I particularly am objecting to her word "graphically" --

7                   COMMISSIONER PARSONS: Yes.

8                   COMMISSIONER KRESS: Because I don't think that  
9                   says what we really want. We want an understanding of the  
10                  environment in which this is happening.

11                 COMMISSIONER PARSONS: That's good.  
12                 Otherwise it implies original water colors by a local artist at \$1500 a  
13                 clip.

14                 COMMISSIONER KRESS: More than the cost of the  
15                 deck if you were doing it. Absolutely.

16                 COMMISSIONER FRANKLIN: Well, I guess the  
17                 applicants should provide materials sufficient to demonstrate to the  
18                 most obtuse member of the board --

19                 (Laughter.)

20                 COMMISSIONER KRESS: I've probably got a friend  
21                 on the other side. Hopefully, nobody will read the transcript --

22                 COMMISSIONER PARSONS: What the relationship  
23                 is between the proposed project and adjacent properties, etcetera.

24                 COMMISSIONER FRANKLIN: I think we all agree on  
25                 the drift and it's a question of how to draft it in such a way as John  
26                 says, it doesn't become more expensive than the project itself.

27                 I recall I sat on a BZA matter several months ago

1 where the matter was before the Board because the zoning  
2 administrator had found some discrepancy and I'm trying to  
3 remember. It was a little less than an inch.

4 COMMISSIONER KRESS: That's right. I remember  
5 that.

6 COMMISSIONER FRANKLIN: And they were there  
7 with a lawyer and an architect.

8 COMMISSIONER KRESS: That breaks my heart.  
9 We shouldn't be doing that to people who are an inch. That's  
10 ridiculous.

11 COMMISSIONER FRANKLIN: Two inches, but not  
12 an inch.

13 (Laughter.)

14 COMMISSIONER KRESS: I don't know where my cut  
15 off is. I think it's 8 inches. I don't think it's 2. I think it's 2. It may be 8.

16 COMMISSIONER FRANKLIN: Nate, are you  
17 through?

18 COMMISSIONER KRESS: We interrupted.

19 CHAIRPERSON BENNETT: Moving right along, we  
20 jumped right on in there.

21 COMMISSIONER KRESS: Luckily, we're being  
22 informal today.

23 MR. GROSS: I think it's good to have comments  
24 since they're not here to dialogue in person.

25 I've referred the proposal to another architect, Robert  
26 Bell, who like Ms. Weinstein, is also known to do high quality  
27 residential work, has appeared at the Board a number of times also.

1 He did not have time to do anything in writing. He did not have time to  
2 do anything in writing, but he just called me and asked me to orally  
3 pass on his comments.

4 His view was more on the side of flexibility. He felt  
5 that paragraphs A, B and C really provided too many opportunities for  
6 opponents to pick on the proposal and just defeat it too easily and he  
7 would kind of merge, don't chuckle too much -- Mr. Bell is more on the  
8 DCBIA side. Flexibility will encourage more additions. He would kind  
9 of stick with the main clause there, 23.3 and add neighborhood  
10 character in it and make it a more generalized review.

11 COMMISSIONER FRANKLIN: Where would he add  
12 "neighborhood character"?

13 MR. GROSS: Under the introductory part of 23.3.

14 CHAIRPERSON BENNETT: Shall not adversely  
15 impact neighborhood character?

16 MR. GROSS: Well, shall not adversely impact user  
17 enjoyment of abutting or adjacent property and shall not adversely  
18 impact established neighborhood character. He would just leave it a  
19 little more open-ended like that and let people judge it without saying  
20 light and air, privacy and so on.

21 COMMISSIONER KRESS: Instead of light and air  
22 and privacy?

23 MR. GROSS: He wouldn't --

24 COMMISSIONER KRESS: Use neighborhood  
25 character instead of light, air.

26 MR. GROSS: He would just subsume all of it under  
27 "unduly affect neighboring property or neighborhood character" and

1 not have the details in A, B and C.

2 COMMISSIONER FRANKLIN: So he wouldn't have  
3 any A, B and C?

4 MR. GROSS: He wouldn't have any A, B and C. He  
5 would just leave it at 23.3 with neighborhood characteristic.

6 One other comment I would make and I may go  
7 through a little bit, the DCBIA submission. I think one of the places I  
8 disagree with is on paragraph C, David Briggs makes a comment  
9 about corner lots. Okay, yes, on page 4, paragraph 2.

10 And to me, paragraph C is kind of right on point as to  
11 corner lots and the various anomalies that can occur on corner lots. I  
12 think that point of his is covered.

13 COMMISSIONER PARSONS: Subjection C?

14 MR. GROSS: Yes.

15 COMMISSIONER PARSONS: Okay.

16 MR. GROSS: In other words, I think what they're  
17 concerned about if the Board looks at the scale and rhythm of houses  
18 along the subject streets, I think they'd get at their concern.

19 COMMISSIONER FRANKLIN: I've seen some  
20 ordinances that have said that the use of material, building materials  
21 scale called for whatever you want to call it, shall not be too dissimilar  
22 to the area or something of that sort.

23 How do you feel about that? I don't think we've  
24 addressed building materials as such. I don't know whether you feel  
25 we should add something of that nature?

26 MR. GROSS: I'd be very comfortable with it in historic  
27 districts, but of course, the Preservation Review Board already deals

1 with that. I'd worry a little bit elsewhere where we have so many  
2 eclectic situations around the city.

3 COMMISSIONER FRANKLIN: Let me ask you this  
4 question, if somebody were to let's say introduce a block of very  
5 traditional architecture, an ultra modern or futuristic kind of house  
6 which in and of itself does not intrude on somebody's privacy or other  
7 standards, but clearly was out of character -- I guess we do cover  
8 character?

9 MR. GROSS: I think that might be enough to deal  
10 with --

11 COMMISSIONER FRANKLIN: Is not out of character  
12 with the scale and pattern sense. What do we mean by "pattern"?

13 MR. GROSS: My thought was, let's say, you figure if  
14 we get side yard deviations out of these and you have in an R-1 zone  
15 kind of a regular spacing of houses along the -- and then somebody  
16 doesn't have a side yard and it's a fairly shallow house and it's a big  
17 addition and it just kind of looks back from the street, but I think we've  
18 got partial coverage there. Maybe we could work with the wording on  
19 something a little more aesthetic being included or implied also.

20 COMMISSIONER FRANKLIN: I don't know how my  
21 colleagues feel about that, but I know that I do not live on a street  
22 that's declared a historic street by any means, but the houses all have,  
23 they were built from 1910 to 1915, 1916, they all have a character that  
24 is derived from not only the rhythm of the houses' demonstration, but  
25 the building materials and it would be I think a very jarring thing for  
26 somebody to come in there and as a matter of fact, they're all stucco  
27 or frame or wood construction, even brick would be rather jarring on

1 that street and I don't know whether we want to really get into that or  
2 not.

3 MR. GROSS: You see a fair number of additions to  
4 what we call in Washington "colonials" in which the addition is wood  
5 siding. And it doesn't look the greatest. On the other hand, if we're  
6 real restrictive aesthetically, we're making an economic --

7 COMMISSIONER FRANKLIN: I think --

8 MR. GROSS: We don't want uniformity by any  
9 means.

10 COMMISSIONER FRANKLIN: People probably did  
11 that because they didn't feel like they could afford the brick addition  
12 which is the probably preferred --

13 COMMISSIONER KRESS: How much does BZA  
14 comment on materials? I can't think of one myself that I've served on.  
15 How much does BZA comment on materials and appropriateness of  
16 aesthetics.

17 MR. GROSS: Not much. I don't believe we have  
18 much in the regulations that gets into that. There's always the visual  
19 screening and that type of thing.

20 COMMISSIONER FRANKLIN: The law is not too  
21 sympathetic to restrictions based solely on aesthetic standards.

22 COMMISSIONER KRESS: I've never thought of  
23 zoning as being an aesthetic except for PUD, having any aesthetic  
24 say.

25 I'm not saying -- hey, as an architect, I'd love us to  
26 have a little more aesthetics, but I'm just not sure that that's the way it  
27 was ever intended.

1                   You long-term zoning folks, what do you have to say?

2                   CHAIRPERSON BENNETT: Oh, you know, I was  
3 looking for one. You were talking -- I was looking for the reference to  
4 the corner lot. I went through here and I numbered the issues that  
5 DCBIA raised because Nate was saying he felt that item C, 223.3(c)  
6 deals with that and I was looking for it and I can't find it to save my life.

7                   MR. GROSS: Oh, you mean in the DCBIA piece?

8                   COMMISSIONER KRESS: Yes. It's on page 4 of  
9 paragraph 2. Number 7.

10                  CHAIRPERSON BENNETT: Okay, I've got it.

11                  COMMISSIONER KRESS: Could I just ask you,  
12 since we're looking at the DCBIA piece? What did you think they were  
13 proposing or they put forth at least under administrative variances,  
14 which of course, we wouldn't do it that way. But I thought there were  
15 some interesting points.

16                  What did you think about that?

17                  MR. GROSS: Yes. That's an extremely interesting  
18 regulation. I actually got a copy of that in the 1980s when it was being  
19 considered for adoption. Partly because of their interest in sequence  
20 on special exceptions. I think our Administrative Procedures Act  
21 probably precludes exactly what as in there.

22                  COMMISSIONER KRESS: Okay.

23                  MR. GROSS: Because it does have the Planning  
24 Director exercising a lot of discretion.

25                  COMMISSIONER KRESS: A lot of discretion. Why  
26 the Planning Director?

27                  COMMISSIONER FRANKLIN: But the BZA.

1                   CHAIRPERSON BENNETT: That discretion,  
2                   however, is clipped a little by the requirement that there be the  
3                   consent of all the owners of adjacent or abutting lots, you know, and  
4                   the consent of the owner from across the street.

5                   He or she can go in and use all the discretion they  
6                   want, but if they don't have those consent letters --

7                   MR. GROSS: You've got a very popular addition.

8                   COMMISSIONER KRESS: That's not bad though,  
9                   actually in theory. If you can get all your neighbors to agree, who are  
10                  we to say no, you can't do that? It depends on how much money --

11                  COMMISSIONER FRANKLIN: You cannot delegate  
12                  your police power to -- or vote --

13                  COMMISSIONER KRESS: I just felt some of the  
14                  issues they were dealing with and I didn't mean it as an administrative  
15                  variance, but as some of the issues as we might look at and give a  
16                  little discretion to.

17                  I was asking a very serious question here, how much  
18                  do we get into architecture. This is coming out of Commissioner  
19                  Franklin's point.

20                  CHAIRPERSON BENNETT: We don't really, at least  
21                  historically, and Mr. Parsons will correct me if I'm wrong, we don't  
22                  really get into design specifics outside of -- ZBA doesn't, and there  
23                  because it's supposed to be exceptional, it's really supposed to be  
24                  way above what you could achieve as a matter of right and we feel as  
25                  though we have the right to kind of step over that, those bounds.

26                  The other thing that we do do more of that gets close  
27                  to it, but really isn't designed, related, is in buffering, lighting,

1 landscaping and all that. We do, as the BZA anyway, get our hands  
2 more into that which has some design consequences, but not so much  
3 building materials and the like and then we deal with buffering and  
4 landscaping and lighting and such, not as much because of its  
5 handsomeness or the lack thereof, but because we're trying to keep  
6 adverse impacts from spilling over which I indicated the light pointed  
7 down at what it's supposed to be showing and not all up in the  
8 people's bedrooms and we're trying to make sure that the operations  
9 of a business are so that it does not interfere with a reasonable use of  
10 properties that are adjacent to whatever it is we're looking at. So  
11 there it's really about impacts, more so than it is about design  
12 pleasantness, for lack of a better word.

13 I don't know. What do you think?

14 COMMISSIONER PARSONS: Doesn't the language -  
15 - here it says that it's not out of character with the adjacent property  
16 and so forth cover that?

17 CHAIRPERSON BENNETT: That's the character  
18 language.

19 COMMISSIONER FRANKLIN: As Nate interpreted  
20 that, how it's in character with the scale and pattern, it doesn't really  
21 get to --

22 COMMISSIONER PARSONS: It gives you the  
23 license to stray and authority to stray and to the ridiculous.

24 COMMISSIONER FRANKLIN: It may not be the  
25 ridiculous.

26 COMMISSIONER PARSONS: That may be so, but if  
27 it's absolutely ridiculous nobody is going to challenge you that you

1 don't have the right --

2 CHAIRPERSON BENNETT: I mean scale and  
3 pattern still wouldn't address stucco or brick.

4 It could be the same height and same size as  
5 everything else --

6 COMMISSIONER KRESS: Scale could, if you think  
7 about as an architect, scale of a modular unit that creates the wall  
8 versus a stucco is a different scale, meaning a brick versus a stucco.  
9 It can be a scale issue.

10 COMMISSIONER PARSONS: Certainly different  
11 character.

12 CHAIRPERSON BENNETT: Do we have character in  
13 the language.

14 COMMISSIONER KRESS: No, but we have been  
15 advised to add character in.

16 CHAIRPERSON BENNETT: Oh yes, out of character  
17 with and then scale and pattern.

18 MR. GROSS: You need the word "character".

19 CHAIRPERSON BENNETT: Out of character, scale  
20 and pattern.

21 MR. GROSS: There's another word we use for  
22 character, "unsuitable." I was going to shift it to "not unsuitable" with  
23 the character, scale and pattern of houses.

24 CHAIRPERSON BENNETT: I like that. I like that.

25 MR. GROSS: We need another word.

26 CHAIRPERSON BENNETT: I like that. Not  
27 unsuitable.

1 COMMISSIONER FRANKLIN: Is not unsuitable --

2 COMMISSIONER KRESS: That's a double negative.

3 We've got to do that better than a double negative.

4 MR. GROSS: In keeping with --

5 COMMISSIONER KRESS: I like suitable.

6 COMMISSIONER FRANKLIN: In keeping with the  
7 character, scale and --

8 CHAIRPERSON BENNETT: I like that with character,  
9 scale and pattern.

10 MR. GROSS: Are we through on 223.3.

11 COMMISSIONER KRESS: I am not sure we're  
12 through with anything.

13 COMMISSIONER FRANKLIN: We haven't heard  
14 from Mr. Williams yet. I have a feeling --

15 MR. GROSS: 223.4, okay, this definitely brought out  
16 some negative comments and actually in reading the comments this  
17 afternoon, well, basically, we had ANC 6B(2)(b) and a couple of  
18 others. I think Mr. Williams also -- in reading those comments I  
19 thought of a couple of things by way of factual background that I had  
20 forgotten about. One was that some years ago, maybe two years ago  
21 for a particular thing we were doing, we did a random sample of 75  
22 single family detached houses from around the city for a certain study  
23 and did some computations on them and the average lot occupancy  
24 was something like 23.5 percent. It was between 22 and 24. And so  
25 it's perhaps true that the 40 percent is pretty flexible already in our 1  
26 zones.

27 Let me go to the row house zones with a lot of older,

1 pre-zoning buildings where I think we commented in the report. A lot  
2 of these are already over. Sixty percent imposed in 1958, I think,  
3 created a large number of nonconformance structures in those zones.  
4 The Georgetown ANC objected pretty strongly to going from 50 to 75  
5 percent.

6 Leaving it at 60 percent would not necessarily be all  
7 that bad. Basically, it would say if you have an older house that's  
8 already at 75 percent lot occupancy, you shouldn't be in this special  
9 exception process at all. You either have a variance or you have  
10 nothing, whereas if you happen to have a smaller house that's 50, 55  
11 percent, maybe you're eligible. So I'm just saying that OP is not  
12 closed to the notion of saying maybe we don't need to deviate from all  
13 that, but perhaps instead of the 10 percent or even the 15 percent  
14 alternative advertised, it could be 5 percent.

15 COMMISSIONER KRESS: That doesn't work though  
16 on these very tight rowhouses on the small properties. I mean I hear  
17 what's happening here, but there are other instances where if we just  
18 said if you're already at 75 percent, whatever, no. There are  
19 instances in what are more like rowhouses where they have very little  
20 land and almost all the land is their house and if they want a piece of  
21 deck. Unless we start breaking out parts of the city, I'm not sure we  
22 can do it.

23 MR. GROSS: If they want a deck and they're already  
24 at a high coverage, maybe that deck should be less than 4 feet, it  
25 goes way back by the alley.

26 COMMISSIONER KRESS: So maybe decks become  
27 a different piece of this. We were trying to write something to pull

1 everything out.

2 MR. GROSS: Yes, as drafted now, decks 4 feet and  
3 above would be the same as an addition.

4 COMMISSIONER FRANKLIN: Wouldn't the  
5 standards in 223.3 tend to handle those situations? It seems to me  
6 when you're in that tightly packed condition, you're more likely than  
7 not to run afoul of A, B or C.

8 MR. GROSS: Yes, that's very truly also. And  
9 perhaps that was in the background of drafting this, that thought.

10 COMMISSIONER KRESS: I'm just bothered that all  
11 the ANCs, for one reason or another, that bothered to write to us, are  
12 all against it.

13 MR. GROSS: All but one.

14 COMMISSIONER KRESS: All but one.

15 COMMISSIONER FRANKLIN: Many did not  
16 understand what it was all about.

17 MR. GROSS: I happened to be invited to go out and  
18 give a presentation. I don't know if they -- they seemed amenable  
19 even before, but I think it helped. There was something --

20 COMMISSIONER FRANKLIN: For example, a  
21 comment that the standards are too vague is to me just totally  
22 unacceptable when you look at all of the standards that are applied in  
23 the regulations. Look at the standard, the language for a variance  
24 itself. What is the definition of undue hardship?

25 We're not talking about any standards that are more  
26 vague than, if you want to use that word, are found throughout the  
27 entire regulations. I'm not deterred at all by that. I think some of

1 those letters are written by people who just didn't understand it was  
2 being proposed.

3 It seems to me that under the text as presented, if you  
4 come in with your application and you're surrounded by neighbors on  
5 all sides who are upset by it, I don't think --

6 MR. GROSS: You're toast.

7 COMMISSIONER FRANKLIN: Absolutely.

8 MR. GROSS: I think that was persuasive. I put that  
9 in a somewhat similar way to ANC3E that evening that I thought the  
10 Board and the Commission and all of us were thinking of this, as the  
11 situation where probably the merits would be fairly clear and that an  
12 applicant who proceeded to hearing with an unpopular addition was  
13 wasting time and money. I think they found that -- that was part of the  
14 consideration and support.

15 Let's see, now on the subject of decks, I've got this  
16 OP note that we don't have any further comment on the issue at the  
17 time. I have only one additional comment of -- based on a  
18 conversation with somebody. I forget who was the staff or a  
19 telephone call and that was the point that additions should be handled  
20 carefully and no more leniently -- I'm sorry, decks should be handled  
21 no more leniently than a regular addition, partly because it's very easy  
22 to enclose them. Once you have the deck, thinking you'll put a porch  
23 over it or something and then enclosing it --

24 COMMISSIONER KRESS: You mean put a roof over  
25 it and then it becomes --

26 MR. GROSS: You're kind of halfway toward an  
27 enclosure and then of course -- yes, all of those possible open doors.

1 Right now, we would tend to stick with the notion that it's probably  
2 reasonable the way the regulations are now that if you're four feet or  
3 more above grade, you consider it an addition under these rules.

4 It reminds me of the story of how the terrace, realistic  
5 Gothic terrace at the Capitol was funded and built. When Senator  
6 Morrell got to legislation initially, that finance an approach to the  
7 Capitol from the west. I think was sort of regarded like a stairwell. It  
8 turned out to be the first stage of the terrace.

9 (Laughter.)

10 COMMISSIONER KRESS: That's interesting history.

11 COMMISSIONER FRANKLIN: Fortunately, it was  
12 completed.

13 MR. GROSS: Let's see now. We are on the flexibility  
14 issue. We're generally supportive. I don't have anything specific to  
15 add. I think I am going to run through at least the VIA memo and say  
16 just a few things to flesh out the record, nothing beyond that.

17 We have the fairly standard clause on the board being  
18 able to enforce screening and so on.

19 COMMISSIONER FRANKLIN: There's your building  
20 materials.

21 COMMISSIONER KRESS: Notice only what it is for  
22 though. It's limited.

23 COMMISSIONER FRANKLIN: It says the Board may  
24 require special treatment of design.

25 COMMISSIONER KRESS: Design, okay.

26 COMMISSIONER FRANKLIN: Screening, exterior or  
27 interior lighting and building materials are other features I had

1 forgotten of for the protection of adjacent and nearby properties.

2 COMMISSIONER KRESS: But I still think adding that  
3 earlier piece that was proposed by Nate, that had to do -- or  
4 whomever proposed it -- that had to do with the -- in keeping with the  
5 character -- I still think that is important.

6 CHAIRPERSON BENNETT: Sounds like we all agree  
7 to it.

8 MR. GROSS: One other little comment on the  
9 flexibility thing. Somebody made the comment and maybe it was Amy  
10 Weinstein, it may have been a phone conversation about flexibility can  
11 be important on the wall check required after the addition, after the  
12 foundation is out of the ground. If there happens to be -- I think  
13 actually it was Gladys Hicks, who was the Administrator, who we met  
14 with. She wasn't able to provide written comments, but she said  
15 sometimes they'll have a wall check that's 2 inches off and the  
16 architect and everybody may have measured it, but if the inspector  
17 goes out and it's 2 inches off, they have to send it to the Board. That's  
18 flexibility there.

19 COMMISSIONER FRANKLIN: That's the case I sat  
20 on.

21 MR. GROSS: Oh really?

22 COMMISSIONER FRANKLIN: Yes.

23 MR. GROSS: You would think they would just pull  
24 hard on the paper. I'm probably too flexible to be an inspector.

25 Well, let's see. I just have made a few margin notes  
26 on the DCBIA --

27 CHAIRPERSON BENNETT: Are you on page 2?

1 MR. GROSS: Yes, just starting on page 2. I think  
2 obviously their suggested terminology of one family dwelling instead of  
3 single family, that's standard in the regulations. That's fine. That's a  
4 worthwhile change.

5 CHAIRPERSON BENNETT: Single family?

6 MR. GROSS: Yes. I hadn't really focused on that.  
7 And further up in that paragraph the word "flat", since that appears  
8 first in the R-1 and it would carry over to the R-4 and R-5. Maybe  
9 something needs to be inserted in the R-4. I don't know if it's okay, for  
10 example, just to add -- I guess it would be in 223.1 where it says in  
11 addition to a single family dwelling or a flat. Basically they're saying  
12 since a flat is not allowed in an R-1 zone, you shouldn't do that here.  
13 I don't know if it's ever okay to say a flat in zones where a flat is  
14 permitted or a flat in R-4 and less restricted zones or if we need to do  
15 something, just take out flat here and add in a reference in R-4 that  
16 the provisions of Section 223 shall apply to flats in R-4 and less  
17 restricted zones.

18 COMMISSIONER FRANKLIN: I think your first  
19 suggestion was most clear and simple.

20 CHAIRPERSON BENNETT: That is to eliminate it  
21 from 223.1?

22 COMMISSIONER FRANKLIN: No, just to saying flats  
23 in zones where those are permitted.

24 MR. GROSS: Okay, that would be my preference too  
25 unless there's some legal --

26 CHAIRPERSON BENNETT: Okay.

27 MR. GROSS: They do raise the question and I don't

1 have a personal opinion, I think Mr. Williams will comment on this. It's  
2 a question of whether to allow an extension of an existing  
3 nonconformity or what to do about nonconforming structures. If  
4 they're already nonconforming structures, should they be eligible for  
5 this or should they have to just go through the variance process. I  
6 don't have any particular analysis --

7 CHAIRPERSON BENNETT: Excuse me, Nate.

8 MR. GROSS: It's a little bit confusing to me.

9 CHAIRPERSON BENNETT: Before you get into that,  
10 did you say you were in agreement with the change of the language to  
11 one family housing?

12 MR. GROSS: Yes.

13 CHAIRPERSON BENNETT: Why?

14 MR. GROSS: I didn't specifically double check that  
15 that's uniformly used in the regulations, but I think it probably is.

16 CHAIRPERSON BENNETT: Okay, I'm sorry. Then  
17 you were talking about nonconforming.

18 MR. GROSS: Yes. DCBIA raises the issue. They  
19 would like to be very flexible of nonconforming structures of which  
20 they would say there's quite a few in the city and I think there probably  
21 are. But there should be flexibility. I read this kind of quickly, late this  
22 afternoon.

23 CHAIRPERSON BENNETT: But you know, I thought  
24 we said and I think 3C was the one that started out saying that that's  
25 why they didn't care for these.

26 MR. GROSS: But you shouldn't take --

27 CHAIRPERSON BENNETT: But I thought we said

1 that since -- I can't find it. Here it is. These revisions will permit  
2 nonconforming -- oh. I'm sorry, it says it would permit nonconforming  
3 additions to single family dwellings. Okay, I'm sorry. I saw the word  
4 nonconforming and a bell rang off.

5 I thought what we were saying earlier is that where  
6 you have an already existing nonconforming structure, don't you  
7 already have -- haven't you already met in some instances the area  
8 variance test?

9 MR. GROSS: You may have.

10 CHAIRPERSON BENNETT: You've got an existing  
11 dwelling, that it's nonconforming and it's one of the things that makes  
12 your building -- helps your building or helps the construction that  
13 you're working on meet one of the ten.

14 MR. GROSS: I think that --

15 COMMISSIONER FRANKLIN: So we would take that  
16 from the special exception.

17 MR. GROSS: Without rereading it carefully --

18 COMMISSIONER FRANKLIN: Under the variance --

19 MR. GROSS: It may be ambiguous now, but I think  
20 the regulation may be silent on it. Whether there's a rule of  
21 interpretation that would cover it, the issue would be whether to add a  
22 clause that says the nonconforming structure is not eligible.

23 COMMISSIONER KRESS: I don't know. I'm not so  
24 sure it should. It is ineligible.

25 CHAIRPERSON BENNETT: It's usually  
26 nonconforming. Maybe I'm getting confused. Wouldn't it usually be  
27 nonconforming vis-a-vis one of the -- it would be nonconforming vis-a-

1 vis one of the requirements set forth in -- for one, for three, all of those  
2 things that we say -- all those sections that we list in 223.1.

3 MR. GROSS: Right.

4 COMMISSIONER KRESS: Can't we put the rule in?

5 (Laughter.)

6 COMMISSIONER KRESS: He's ready to go home.

7 CHAIRPERSON BENNETT: No, we're being  
8 recorded. I guess there wouldn't be -- I guess my question is and it's  
9 one that they ask, are we saying that in 223.1 that the thing that is out  
10 of sync here would be the addition and not the structure on to which  
11 we would put it. So what we're grappling with now is whether or not a  
12 structure on to which the addition is placed --

13 MR. GROSS: Must be conforming.

14 CHAIRPERSON BENNETT: Must be conforming.

15 Okay, all right.

16 MR. GROSS: Since 3C brought it up, Cleveland Park  
17 probably illustrates an adverse situation on this. There are -- despite it  
18 being a very nice neighborhood, there are a lot of houses there that sit  
19 heavy on the lot and have extremely substandard size yards with  
20 maybe 2 or 3 or 4 feet and windows looking right at each other and so  
21 I can understand why 3C would say, you know, we think  
22 nonconforming structures shouldn't -- and they're conservative on this  
23 generally.

24 COMMISSIONER FRANKLIN: Of course, it seems to  
25 me that that situation is itself to a large degree handled by the  
26 standards in .3.

27 MR. GROSS: I think that's true. And then you also

1 have the further issue though that do you -- if you don't close the door  
2 do you invite somewhat naive applicants to come in and waste their  
3 time and then get shot down at the hearing. Of course, if they meet  
4 their neighbors about it, which they should, they'll know well in  
5 advance that it might be a waste of their time.

6 Anyway, it's somewhat confusing.

7 CHAIRPERSON BENNETT: So I guess I'm getting  
8 confused. Not conforming principal structures, we're saying could be  
9 excluded from these because they mostly meet the test.

10 COMMISSIONER KRESS: Now wait a minute.  
11 Now I'm not following you. So you're saying nonconforming structures  
12 are excluded because they already meet the test?

13 COMMISSIONER FRANKLIN: They have one leg up  
14 on the variance test.

15 CHAIRPERSON BENNETT: That's right.

16 COMMISSIONER KRESS: Why exclude them?

17 CHAIRPERSON BENNETT: What we're trying to do  
18 is make the property owner who doesn't have a nonconforming  
19 structure already, but is trying to build an addition that would not be in  
20 compliance with 401, 403, 404, etcetera, able to do so without our  
21 trying to help him along and find something that's --

22 COMMISSIONER KRESS: So every  
23 nonconformance structure --

24 CHAIRPERSON BENNETT: Unique or  
25 topographically different or some such thing.

26 COMMISSIONER KRESS: So therefore, every  
27 nonconforming structure then by your mind is excluded. There can't

1 be a nonconforming structure that could be included in this?

2 CHAIRPERSON BENNETT: I won't say there can't  
3 be because the minute I do, someone will think of --

4 COMMISSIONER KRESS: That's where I am. They  
5 can be missing one small, especially corner lots are -- well, of course,  
6 that's covered differently, but they could be missing one small piece  
7 and be nonconforming and fit all of the other criteria.

8 COMMISSIONER FRANKLIN: I am inclined to  
9 --

10 COMMISSIONER KRESS: That's not a structure.  
11 That's a nonconforming lot.

12 CHAIRPERSON BENNETT: No, that's a  
13 nonconforming structure on the lot. But does that -- that structure  
14 should have that side yard of X, so it's a nonconforming structure.

15 COMMISSIONER KRESS: That's the structure.

16 CHAIRPERSON BENNETT: Okay, I see what you're  
17 saying.

18 COMMISSIONER FRANKLIN: I am inclined at this  
19 point to allow these standards to apply to nonconforming structures,  
20 simply on the ground that I think that properly applied to 223.3  
21 standards will prevent an exacerbation of the nonconformity, if that's  
22 the right way to express it.

23 We've got standards in here that probably under, in a  
24 nonconforming structural context are harder to meet than otherwise  
25 because you're more likely than not to have an issue regarding  
26 privacy or light and air, etcetera. That's where I am at the moment,  
27 anyway.

1 COMMISSIONER KRESS: That's where I am too.

2 CHAIRPERSON BENNETT: Okay. That's the  
3 discussion. What we were doing, if you recall, was having Nate go  
4 through -- let's go back to what in the world we were doing. Nate was  
5 marching through the DCBIA thing and we got to paragraph 3. In  
6 paragraph 1, we said okay to one family dwelling. Paragraph 3, we  
7 have at least two of us who are feeling that maybe nonconforming  
8 structures to be included under here because 223.3 would require that  
9 they not make a nuisance of themselves.

10 COMMISSIONER KRESS: I think you said paragraph  
11 3, using your numbering. It's paragraph 3 in the letter, number 3 here.

12 CHAIRPERSON BENNETT: That's right. It's second  
13 paragraph.

14 COMMISSIONER KRESS: I didn't mean to correct  
15 you.

16 CHAIRPERSON BENNETT: That's all right. Okay.

17 Nate, did you want to opine about the need for the --  
18 they go on to talk about the need for the property owner in their  
19 judgment to argue two cases.

20 MR. GROSS: Oh yeah. I think I commented enough  
21 on that that OP doesn't say that that clause about showing the matter  
22 of right addition is not reasonably done. That could be left out, if you  
23 want, but we don't see it as so burdensome. We think it invites a  
24 comparison rather than a variant standard because the focus is on the  
25 addition and not the property as a whole.

26 COMMISSIONER FRANKLIN: The language should  
27 be recrafted to make it plain that we are inviting comparisons, rather

1 than creating a hurdle that is insurmountable.

2 MR. GROSS: Right, we can do that. I think the last  
3 part of DZB's -- would be the bottom paragraph on page 4, kind of the  
4 last half of it. They're talking about the flexibility for design  
5 administrator.

6 CHAIRPERSON BENNETT: Where are you now?  
7 I'm sorry.

8 MR. GROSS: Bottom of page 4. The last half of that  
9 long paragraph. To me, they made an interesting point there that they  
10 would not grant that 1 or 2 percent flexibility for new construction of a  
11 whole building, but only to additions.

12 COMMISSIONER FRANKLIN: All of this is for  
13 additions, isn't it?

14 MR. GROSS: But the other one, the flexibility of the  
15 design administrator was kind of an open-ended invitation for  
16 testimony. I can understand if it applied to your construction that  
17 could be controversial, but in effect, it would raise the FAR limit in  
18 commercial zones and apartment zones. I mean it isn't that much, but  
19 it could be.

20 COMMISSIONER KRESS: I go back to the page that  
21 Mr. Franklin was just talking about.

22 MR. GROSS: That was new construction.

23 COMMISSIONER KRESS: That was new  
24 construction and not that we want to encourage that, but having lived  
25 in, worked in this profession for 30 some years, those things happen.  
26 I'm telling you we've even had an inspector from DC stand there and  
27 look through the surveyor's thing and say yeah, that's right, and it was

1 wrong.

2 I mean what are we really -- are we really hurting  
3 something by giving? Is one percent so big? I mean I guess on a  
4 huge building it's huge, but on a small building it's very small.

5 I am just making the point.

6 MR. GROSS: I can relate to that, too, yes.

7 COMMISSIONER KRESS: See, I just don't want  
8 everybody doing it on purpose because they know we're going to look  
9 the other way, but if they did it by accident, why make them go  
10 through all the hassle and stop construction in the middle and not be  
11 able to do anything for 6 and 8 and 9 months because somebody  
12 made a mistake and it cost too much to rip it down.

13 COMMISSIONER FRANKLIN: I am actually  
14 astonished that this suggestion is coming from BZIA. It doesn't seem  
15 to be in their interest.

16 COMMISSIONER KRESS: Maybe they're trying to  
17 give us a gift or something.

18 MR. GROSS: Now that very last sentence in that  
19 paragraph --

20 COMMISSIONER FRANKLIN: I didn't understand  
21 that.

22 MR. GROSS: They are basically saying if you  
23 already have a building more or less nonconforming in a side yard,  
24 you ought to be able to extend it. I don't know if they mean as of right  
25 or just in this review.

26 COMMISSIONER KRESS: We specifically talked  
27 about that and the ability, rather than having to make this funny jog.

1           When we were talking about doing this, I remember specifically talking  
2           about being able to extend that nonconforming wall, all the way out  
3           rather than making the back of the building have to draw again to be  
4           conforming. So maybe I read this wrong, but I read it as exactly what  
5           our intention was.

6                           MR. GROSS: Okay. As drafted now, the Board  
7           obviously could approve the extension of that wall, that could be part  
8           of the flexibility, extending that same nonconforming wall.

9                           COMMISSIONER KRESS: That six inches that is to  
10          stay six inches as it goes off in the rear yard, yes.

11                          MR. GROSS: Basically, that's all the comments we  
12          had in our report, Madam Chair. We recommend approval with  
13          whatever modifications appear justified from the testimony in the  
14          hearing and your own deliberations.

15                          CHAIRPERSON BENNETT: All right. Thank you. I  
16          would ask colleagues if you have any questions.

17                          COMMISSIONER KRESS: I think we did. I did  
18          anyway.

19                          CHAIRPERSON BENNETT: All right.

20                          COMMISSIONER FRANKLIN: This was all an  
21          overture to Mr. Williams.

22                          CHAIRPERSON BENNETT: Oh, it was. And I take it  
23          then any reports of other agencies, although it might have been  
24          interesting to have BZA come down here.

25                          MR. GROSS: Right and they at various points, Ed  
26          Nunnally was working on these comments and Gladys was and I  
27          guess when we were in a meeting with them maybe six weeks ago,

1 asked them to go ahead and write them up. I think they were probably  
2 so swamped they didn't get them written up.

3 COMMISSIONER KRESS: What was your general  
4 sense?

5 MR. GROSS: I didn't get it. I did sense that Ed and  
6 Gladys had some disagreements about it.

7 COMMISSIONER KRESS: Oh, they did have some  
8 disagreements.

9 MR. GROSS: Yes, and they were going to submit  
10 separate comments. Maybe it made them uncomfortable. I'm not  
11 sure.

12 I suppose, I don't know -- I know you don't want to  
13 have another hearing to have you come over --

14 CHAIRPERSON BENNETT: No, no.

15 COMMISSIONER FRANKLIN: I wouldn't mind  
16 leaving the record open for just that, a short period of time, if we could  
17 possibly get it.

18 Madam Chair, do you have any views on that?

19 COMMISSIONER KRESS: Well, after our meeting  
20 yesterday --

21 MR. GROSS: I am not certain that we will -- we'll be  
22 sharing that with you, on Monday at our joint meeting. Remember, if  
23 you recall last time we said that the chairs of BZA and DC would sit  
24 down and talk to CA and try to find out how we can help them move  
25 through certain difficulties and we did do that, so that we'd have  
26 something to report back to you and they are pretty swamped, but  
27 what would be a shame was if they had already started working on

1 remarks and it's just a matter of getting them typed up.

2 I don't know. Maybe a call into them to ask them to --  
3 that we welcome their remarks and then just be real clear about when  
4 the date is closed.

5 COMMISSIONER KRESS: And back to  
6 Commissioner Franklin, we can leave the record only open for that  
7 and only open for a limited time and if they get us something, fine, and  
8 if they don't, fine. That's probably the way to handle it.

9 MR. GROSS: Okay, are you asking Madeleine or  
10 who will make the call?

11 CHAIRPERSON BENNETT: You were talking to  
12 them, right?

13 MR. GROSS: Yes, I guess it's probably --

14 CHAIRPERSON BENNETT: I would ask you.

15 MR. GROSS: I'll make the call again, sure.

16 CHAIRPERSON BENNETT: We did have the  
17 submission of a short testimony from Susan Morgan Hinton. She  
18 asked that -- well, she says that she's grateful that we have taken this  
19 up. She talks about them being many applications that came before  
20 the Board that are requesting home owners to make modest additions  
21 and while the additions seem reasonable and attractive, there are  
22 often no legal bases for granting the variance approval and it seemed  
23 that the construction of additions would cause no harm and this goes  
24 back to something that Nate said. They're pretty uncontested kinds of  
25 additions and would afford an improved living environment for the  
26 residents. The Board believes that the residents of the District of  
27 Columbia would be better served by a change to the zoning

1 regulations which would provide a little flexibility in this area. Under  
2 special exception review, these requests would still be reviewed on a  
3 case by case basis. The Board would be able to allow additions which  
4 meet specific criteria and would also be able to deny additions that  
5 would tend to adversely impact the surroundings. She regrets that  
6 she could not be with us this evening to deliver the testimony in  
7 person and to hear from others. She believes she's going to be at  
8 work.

9 COMMISSIONER KRESS: But didn't you also say,  
10 am I not -- am I incorrect, that this really originated back with Kerry  
11 Thornhill and this dates back years. This is something that is not new  
12 or capricious. This is something that people have been thinking about  
13 for years as a way to help expedite BZA's work and the ZA's work too.

14 COMMISSIONER FRANKLIN: And I must say,  
15 Madam Chair, that I give great weight to Ms. Hinton's testimony  
16 because she really is a master of these regulations and is very  
17 diligent, rigorous in applying them and the fact that she feels that --  
18 I've been on many cases where I would like to have been flexible. In  
19 fact, I think I probably voted for flexibility and she did not and I think  
20 this testimony from her is something we ought to really give great  
21 weight to.

22 CHAIRPERSON BENNETT: All right. That takes  
23 care of other agencies. We will ask OP to call for ZA comments. We  
24 don't want it to be burdensome, but if they have something already or  
25 if they communicated to you over the phone and you can  
26 communicate it to us, whatever we can do to make it easier for them.

27 COMMISSIONER KRESS: I absolutely agree. When

1 we get to voting we always ask for OP and comments, even if it's just  
2 verbal, sometimes to require things in writing takes that additional time  
3 to sit down, write, edit, rewrite. I'd be happy just to get a sense,  
4 wouldn't you, Madam Chair, just get a sense of what their concerns  
5 are, if there are any and what they feel good about.

6 CHAIRPERSON BENNETT: All right, thank you.  
7 Next is the report of Advisory Neighborhood Commissions and I don't  
8 see any here. We do have their comments in hand and we have  
9 talked about quite a few of them. I think it's fair to summarize by  
10 saying that ANC3(e) is in support and ANC3(f) has asked for further  
11 studies. AN3C(2)(e), (3)(d) and (6)(b) are all opposed. And their  
12 reasons are again in the letters that they've submitted and we've  
13 talked about quite a few of them. They will stand, they are in the  
14 record and stand on their own.

15 Next we have persons in support. Are you in  
16 support?

17 Come on up, Lindsley Williams.

18 COMMISSIONER KRESS: He can testify twice.

19 (Laughter.)

20 MR. WILLIAMS: Some people oppose 10 to support  
21 with what, modifications, reservations --

22 COMMISSIONER KRESS: Right, modifications.

23 CHAIRPERSON BENNETT: Now, Mr. Williams, We  
24 allow 70 seconds, one minute and 10 seconds. I'm just messing with  
25 you.

26 MR. WILLIAMS: These lights are not working.

27 CHAIRPERSON BENNETT: I need to be out by 9

1 o'clock. So I'm hoping to be able to stay for most of this. We do have  
2 a quorum, so even if I have to leave, you're in good shape.

3 COMMISSIONER KRESS: You're giving him a  
4 couple of hours to testify?

5 MR. WILLIAMS: I do hope we can finish the case  
6 tonight, ladies and gentlemen.

7 (Laughter.)

8 CHAIRPERSON BENNETT: Go right ahead. Good  
9 to see you.

10 MR. WILLIAMS: Good evening, everybody. It's been  
11 really nice to be down here in this hearing room again and to think  
12 about the dilemmas that you're facing. As you know, I've sat where  
13 you've sat, including sitting on the BZA and part of that was what  
14 brought me to write the letter that I did because of the dilemmas that I  
15 saw the applicants having, I saw the city having and the residents  
16 having. So what I'm going to do is turn to the letter that I have  
17 prepared and tied to the earlier hearing and sort of go through that  
18 with you. Essentially it recommends that you go forward with the case  
19 as it has been drafted, but as Nate has nicely put it, with modifications.

20 In the second sentence of my letter, the third  
21 sentence, I suggest that you may want to give me some expert status  
22 in this case, if it would help in your deliberations. I wanted to thank  
23 you for setting the case down for hearing and as Ms. Kress indicated,  
24 it does go back to Kerry Thornhill and maybe even earlier. It also saw  
25 some light during the deliberations and report of the Mayor's transition  
26 task force several years ago which recommended themes that are  
27 totally consistent with what this is, this case is all about and I believe

1 that with this case that the Zoning Commission has now considered  
2 virtually all of the things that we're able to be considered in the list of  
3 things that that transition task force recommended.

4 I did want to take a moment and this is in the middle  
5 paragraph on the first page, to sort of pause and think about why we  
6 have to have these zoning regulations in the first place and to remind  
7 ourselves in the course of this record that we're not only trying to keep  
8 bad things from happening, but to allow the good to proceed and the  
9 balancing question we always have is how do give enough flexibility  
10 without being, writing so many details that everybody finds themselves  
11 hemmed in by all the regulations and essentially what this case is  
12 about is trying to find a way to provide additional flexibilities to a class  
13 of people right now who find themselves on the horns of a dilemma  
14 because the situation they find themselves in forces them to go to a  
15 variance and strictly speaking, the way and the law and the  
16 Constitution and all that has been interpreted about variances, they  
17 can't read it and so by drafting that language that talks about  
18 flexibilities the way you have, I think you can come a long way to  
19 provide an avenue for relief for individuals so that they can have some  
20 reasonable shot with reasonable plans of gaining approvals and that's,  
21 I think, in the city's interest because it means that people who want to  
22 invest and stay in the city can actually think about doing so instead of  
23 being told you're going to need a variance and one thing leads to  
24 another and they can just imagine that that's not going to be worth the  
25 trip at all because the difficulty isn't in many of the cases arising out of  
26 the land, it's arising out of where the structure is placed on the land  
27 and I guess I want to send a cautionary note to say that I'm not sure

1 that's a real good first leg up. It is a little leg up, but it's not a terrific  
2 first leg and so creating language that would say there is room for  
3 flexibility to some of these standards, giving a BZA review, I think has  
4 merit on its own and is justified on that basis and you should proceed  
5 to strike some reasonable set of rules.

6 Chapter 4 of the Zoning Regulations actually does a  
7 couple of different things and they're outlined again on page 1. The  
8 first couple of them, 40401 really related to the land itself, the size of  
9 the lot, the area of the lot, the frontage of the lot and things like that  
10 and a lot may become nonconforming just because it doesn't meet the  
11 area requirements or have the frontage. The rest of the chapter  
12 loosely speaking, deals with how much building you can put on to the  
13 land and you can also find that there are situations that get into  
14 conflict because there isn't enough side yard, it's too close to this or  
15 that, there's too much building. There's a series of things that are out  
16 of sync. The point of all this is under current rules an addition can  
17 only be made if an owner demonstrates that the case can be made --  
18 that the case meets the requirements of an area variance which is  
19 designed to meet constitutional and other needs to make sure that  
20 people can find relief when there is something inherent in the land that  
21 limits its use unreasonably. Well, it isn't always coming out of the land  
22 and that is what the case is all about.

23 Now, when an addition is proposed that would not  
24 comply with the applicable provisions, the difficulty may not arise from  
25 the condition of the land, but under the current or proposed structure.  
26 Then there's no explicit path the owner can take other than  
27 maintaining and improving what already exist without additional

1 development. Rehab, revamp, but don't expand is the message of the  
2 current rules. So the dwelling can be used for that purpose, but it  
3 can't be expanded in a manner that the owner seeks due to various  
4 limitations in Chapter 4. So we have the case and then I list at the top  
5 of page 2, the synopsis of the three conditions that you would impose  
6 and then I try to chart out the various zone districts, the uses, the  
7 current percentage of lot occupancy that is being considered and the  
8 proposed special exception standard and the alternate special  
9 exception standard. You may remember that you thought about  
10 changing the lot occupancy percentages as part of this case, but I  
11 don't know that I'm going to recommend that you go with those  
12 changes, at least as it relates to certain of the uses.

13 I believe, point number one, that you should limit the  
14 flexibility enacted under the full case 97-2 to projects on lots that are  
15 conforming as to area requirements in 401.3. However, the  
16 improvements are now or would be situated on them. The reason is  
17 simple. Substandard lots have a difficulty inherently arising in the land  
18 and can be reasonably considered as a variance case. If the lot is too  
19 small, if it's under the size that's required, they have a classic variance  
20 case coming right in the door. To my way of thinking, it ought to be  
21 heard as a variance and this case should not apply to them at all in  
22 part because there's only one determination the zoning administrator  
23 needs to make. It's too small a lot, go to BZA. You don't need to have  
24 filing requirements under this, that and the other provision. It just is  
25 you want to do something, you got to come here, BZA, come to this  
26 room, go to BZA, make your case and proceed as they may permit.

27 I would retain the current lot occupancy limits rather

1 than imposing ratios and the reason for this, particularly as it relates to  
2 single family dwellings is that if you look at what -- if you look a  
3 conforming lot for single family, you begin to have huge, huge  
4 structures that seem like they might emerge in this case and I'm not  
5 sure that the problem is found for those situations in the percentage of  
6 lot occupancy as it relates to a single family dwelling. If you run down  
7 through the chart, you can see that the achievable 2-floor area for a  
8 house can be upwards of 6,000 square feet. That's colossal. I'm not  
9 saying there aren't some in this city, but to me, that's not where the  
10 case is at.

11 And what I've done through here in that column of  
12 uses, SF stands for single family. One half SD is one family semi-  
13 detached, which to me is still the same thing as a single family, but  
14 that's the way your case has been advertised, Nate.

15 In R-3, there's a situation where you're going to need  
16 to deal with the problem of how you want to interpret the row dwelling  
17 and I think the word "flat" even appears in the regulations as it is  
18 currently drafted, which is why I put down the question mark there and  
19 then in R-4, you've already been through that discussion.

20 In my view, the case has not been made to allow such  
21 substantial potential developments as the proposed regulations might  
22 allow, even if protected by special exception type review, particularly  
23 in the 2-R-1 districts or for single family detached dwellings. Rather,  
24 the proposed standards might be conveyed to the Board for their  
25 consideration a guideline for the Board to consider when hearing a  
26 case from a substandard lot, when density limits could be a problem,  
27 the Board should address in the context of the variance case as I've

1 discussed them, but before. If you concur with these sentiments, one  
2 way to achieve them would be to remove the references to 401 in its  
3 entirety and all the relevant portions of 403 from the list of sections  
4 now appearing in 223.1 and eliminate 223.4. For example, if flexibility  
5 is to be considered for lot occupancy and certain zone districts or type  
6 of residential use at a specific provision to accomplish just that. And  
7 as I stated earlier, in my sense, few single family dwellings are  
8 conforming lots would ever need relief from the percentage of lot  
9 occupancy standards in the current regulations and zone districts are  
10 1-A through R-5.

11 I have similar doubts, as I note, with respect to flats  
12 that I just can't make a professional recommendation about that. I  
13 haven't studied it enough.

14 The third point. I would maintain the proposed  
15 flexibility for relief from the applicability of Sections 404, 405 and 406  
16 with consideration by a special exception process for conforming lots  
17 and conforming uses. Owners should be able to seek approval for  
18 reviewed deviations from normal, rear yard, side yard and court  
19 requirements, particularly if the existing structure has a nonconformity  
20 in one or more of these attributes.

21 In a sense, the development problem faced by the  
22 owner arises not from the land so much, as the placement of the  
23 current building. While arguably usable as is, improvements in the  
24 nature of an addition would presumably make for greater enjoyment of  
25 the use, promoting retention of current residents and investment in city  
26 properties. Given that, the owners should have to meet the test of  
27 proposed Section 223.3 along with normal special exception

1 standards. However, it does not make sense to me to have the Board  
2 be obligated to explore any of the provisions of 223.2, the language of  
3 which and I side myself here with DCBIA, seems to feel to me  
4 something like a variance test. I feel that provision should be  
5 eliminated forthwith.

6 The purpose of this whole review, in this case, is to  
7 provide a means to encourage investment and retain current  
8 residence while protecting neighbors and the public. I looked at the  
9 language of that section which we've been discussing or you had  
10 been discussing this evening with the term variance in it and I've been  
11 trying to think about how with some community groups and in some  
12 neighborhood debates where if there is a need to prove exactly why  
13 you had to have this plan and not another plan and not another plan,  
14 you begin to have the Board being dragged through a very, very long  
15 process which is difficult and complex. It also doesn't help answer the  
16 fundamental question, is the plan that is being proposed something  
17 which has an adverse impact on the neighborhood or not and it's not  
18 necessary to know whether there's a second plan or a third plan or a  
19 fourth plan which might have been considered. Does this plan rise or  
20 fall on that question? And yes, you may be able to see or the Board  
21 may be able to see a way by changing the pitch of a roof, the  
22 overhang of a roof, any number of things, ways further mitigating the  
23 effect, but to have the applicant have to show why some other plan  
24 couldn't have been, it just gets into the conjectural and will take the  
25 Board an endless length of time, particularly if there is -- well, let's put  
26 it this way, some of the neighborhood activists are very good at asking  
27 lots of questions.

1 (Laughter.)

2 I know. And indeed, I was thinking one of my  
3 colleagues and neighbors might have been down here and I was  
4 going to present him as Exhibit A.

5 (Laughter.)

6 He's very good at it. There's no question about it.  
7 But really, the question is, how decent is this plan relative to the test  
8 and that's why I feel that with the other flexibilities and powers that the  
9 rest of the section discusses, the Board doesn't need 223.2 in order to  
10 do its work.

11 Regarding decks, it would seem to be appropriate  
12 allow special exception process in which the deck alone would propel  
13 the overall development over lot occupancy standards in which case  
14 the test could be the same as that proposed, minus the troublesome  
15 suitability standard.

16 However, if you are inclined to do this, then consider  
17 adding language distinguishing this lower impact form of lot  
18 occupancy from that involving a roof structure, sounds like a  
19 discussion you all had earlier, about decks and how they could come  
20 to be enclosed, so that the same or subsequent owner doesn't later  
21 come back and claim pre-existing situation and allowed lot occupancy  
22 with a plan to then enclose it and start occupying it year round.

23 Flexibility, I recommend retention of the current  
24 flexibility rules as they are clearly a matter of right. However, I also  
25 recommend that a means be found for additional flexibility with  
26 suitable protective arrangements. For example, the zoning  
27 administrator might be allowed to grant higher levels of flexibility when

1 in his or her judgment, the matter could reasonably be granted if either  
2 of the following were in effect and I give two tests: the applicant  
3 demonstrates by letters of concurrence, approval of abutting and  
4 adjacent owners or boards of cooperatives and condominium regimes  
5 because trying to get them, there are situations where there are  
6 hundreds of people behind one thing. You can look at your notice  
7 requirements from time to time and you just see that a notice has  
8 gone out to hundreds of people who are -- whose interests are in a  
9 certain sense often remote, and possibly ANCs. Or, I say, if the  
10 applicant is prepared to give the Zoning Administrator pre-addressed  
11 envelopes, let the Zoning Administrator send out some plans, see  
12 what you can find out from others as to whether there's an objection or  
13 not.

14                   The sixth thing that I wanted to talk about and the last  
15 thing, Madam Chair, has to do with reviewing the rules that are  
16 currently applicable to additions to pre-1958 structures that do not  
17 meet the normal requirements as to rear yards and side yards. Right  
18 now, these two areas have special provisions so that, for example,  
19 while the general side yard requirement is 8 feet for pre-1958 structure  
20 that was in existence, there's a 5 foot rule and there's a corresponding  
21 rule with respect to the rear yards. And it would seem to me  
22 consistent with what you've been trying to achieve. The regulations  
23 might want to be recrafted to provide that the former rights would be  
24 restricted to situations involving lots that are conforming to size,  
25 perhaps frontage. That's why that's why circled there. I'm not certain  
26 about that. But if you've got a large sized lot and so the whole thing is  
27 conforming, the house spreads over a little bit more, it doesn't seem to

1 me that it's a problem with allowing that to just continue as a matter of  
2 right and that other situations could then pursue a variance case. In  
3 addition, the current rights of pre-1958 developments might be  
4 restricted to insure that the addition did not take place on a matter of  
5 right basis if the resulting addition would have one of any of these five  
6 conditions that are listed there come up. But if those should arise,  
7 then you'd have the special exception processing that you've been  
8 debating, otherwise as a means by which that could be evaluated.  
9 What those five conditions are is to say it would neither make the  
10 existing nonconformity greater nor create a new one. The addition  
11 would be with the principal building, not accessory buildings or  
12 structures. It would not reduce the existing front yard, that is to say, it  
13 would be located to the rear of one or more parts of the existing  
14 building from which the existing nonconformity arises. It does not  
15 include any otherwise normally allowed projection such as bay  
16 windows or chimneys that would further reduce the effective resulting  
17 yard requirement. And if it were a corner lot, you would have it so that  
18 it would involve the side that's away from both the streets or if a  
19 through lot it would not try to have it do -- it would involve neither the  
20 front nor the rear yard as a matter of right.

21 That's the testimony that I have in this case, ladies  
22 and gentlemen. If you have any questions, I'll try to answer them. I  
23 probably ran on more than 70 seconds.

24 (Laughter.)

25 CHAIRPERSON BENNETT: Thank you, Mr.  
26 Williams. As usual, your comments are detailed and informative.

27 Colleagues, questions?

1                   COMMISSIONER FRANKLIN: I think Mr. Williams'  
2 point about 223.2 is very well taken. And I think he has illuminated for  
3 me because I think it just would become a quagmire for the Board to  
4 act as a committee to redesign the addition and I don't think we should  
5 venture into that swamp.               So I find that very, very helpful.

6                   I'm not so sure I fully understood your point about  
7 substandard lots being limited to variance treatment. Maybe I heard  
8 you saying two different things. I thought you said that they would  
9 have a major leg up on getting variance treatment and then on  
10 another point, I thought I heard you say they wouldn't. Would you  
11 restate that point for me?

12                   It's your point 1, I guess.

13                   CHAIRPERSON BENNETT: He's saying he would  
14 limit the flexibility that we're providing to only those lots that are  
15 conforming because nonconforming lots, you've already met test 1 for  
16 the variance standard.

17                   MR. WILLIAMS: And let's emphasize that my  
18 testimony here was about the lot characteristics, the frontage of the lot  
19 and the area of the lot. Not about how the building sits, how much of  
20 the building there is or would be. We're not dealing with anything  
21 other than the area requirement and the frontage. And my sense is  
22 that if the situation is such that the lot in question doesn't meet the  
23 standard, then they can come in for a variance request and can  
24 probably be entertained very simply and an easy determination can be  
25 made by the Zoning Administrator that they're on a substandard lot  
26 and they need to come in and be heard. Now I may be wrong on this  
27 point, but at least to me, I felt that they would have a good, clear -- an

1 arguable case of a difficulty that arises out of the land.

2 CHAIRPERSON BENNETT: Right, but they still have  
3 to meet the other two tests. They can't adversely impact.

4 MR. WILLIAMS: True.

5 CHAIRPERSON BENNETT: And they can't undo the  
6 zone plan.

7 MR. WILLIAMS: That's right.

8 COMMISSIONER FRANKLIN: They have to meet  
9 under those circumstances undue hardship standards. Is that  
10 correct?

11 MR. WILLIAMS: No, it's a practical difficulty standard  
12 for an area --

13 CHAIRPERSON BENNETT: Undue hardship is for  
14 use.

15 COMMISSIONER FRANKLIN: Oh, okay. Now, to me  
16 this is -- I agree with -- I'm thinking out loud at this point and that's  
17 always an embarrassing thing to do.

18 MR. WILLIAMS: I'm responding out loud and that  
19 may be an embarrassing on the record too.

20 COMMISSIONER FRANKLIN: Why doesn't that get  
21 you potentially into the same kind of quagmire that you noted with  
22 regard to point 2? What's the practical difficulty under those  
23 circumstances? Somebody wants to have, let's say, an addition for a  
24 family room off the kitchen and they want to make it 15 by 20 feet.

25 CHAIRPERSON BENNETT: Well, if it's on a  
26 nonconforming lot anything they put on there will be

27 --

1 COMMISSIONER FRANKLIN: Lot -- does anything  
2 go?

3 CHAIRPERSON BENNETT: A problem.

4 COMMISSIONER FRANKLIN: Yes, anything they  
5 want to do is exacerbating the nonconformity. So what's the practical  
6 difficulty standard? How does the Board decide? Does the Board say  
7 well, we really would be happier if your family room were 10 by 10.  
8 Can they do that?

9 MR. WILLIAMS: They have.

10 (Laughter.)

11 COMMISSIONER FRANKLIN: Should they do that?  
12 Is that what we're inviting? Maybe we're talking about a distinction  
13 without a difference. Let the record there's a pregnant silence.

14 (Laughter.)

15 MR. WILLIAMS: And there should be. This is not a  
16 question that is easily answered.

17 CHAIRPERSON BENNETT: A lot of times you can't  
18 foresee and that's the purpose for having the BZA in the first place.  
19 We make these things in some kind of a theoretical. With having had  
20 some experience on the BZA, but when we're crafting this stuff, we  
21 don't have a case in front of us and then when it hits the ground is  
22 when we see what the drawbacks were in the drafting in the first  
23 place.

24 MR. WILLIAMS: On reflection, if other provisions  
25 remained pretty much like the discussion has been going tonight, I  
26 could see disagreeing with point 1 here, in effect, agreeing with the  
27 basis of your question.

1 COMMISSIONER FRANKLIN: The reason I am  
2 uneasy is that what we are proposing to add are some standards of a  
3 little bit more -- provide a little more guidance to the Board than is  
4 found under 3107.2.

5 MR. WILLIAMS: You're right.

6 COMMISSIONER FRANKLIN: I just register that. I  
7 don't know where I am at that point, but I think --

8 MR. WILLIAMS: I guess I was so focused on the  
9 problem that the people couldn't get in to be heard except as a  
10 variance and then they couldn't meet it that it seemed to me that if  
11 they could show that they had a difficulty that arose from the land it  
12 really didn't need -- it wasn't a problem to get in to be heard. But then  
13 what do you do with it?

14 Since I felt, since I was focusing on the fact that the  
15 people couldn't even get in the door, so to speak, it seemed to me that  
16 we didn't necessarily have to address it. But I think maybe you're  
17 right, that you could bring it in and shouldn't deny them a benefit, they  
18 shouldn't be penalized for having a nonconforming lot when there's a  
19 regulation that can adequately tide the development.

20 COMMISSIONER FRANKLIN: Your second point is  
21 to retain the current lot occupancy limits?

22 MR. WILLIAMS: Yes.

23 CHAIRPERSON BENNETT: Don't give the flexibility  
24 to go up to --

25 MR. WILLIAMS: And particularly as a single family  
26 house --

27 COMMISSIONER FRANKLIN: Okay, now let's -- and

1           you seem to think that the proposed standards in subsection 3 don't  
2           protect us sufficiently on that score.

3                         MR. WILLIAMS: Bear in mind that the earlier points  
4           said let's keep this for lots that are already conforming. Okay?

5                         COMMISSIONER FRANKLIN: Right.

6                         MR. WILLIAMS: Given that, we're already dealing  
7           with lots of a certain minimum size. Given that there are lots of that  
8           minimum size, which may evaporate as a result of the discussion we  
9           just had, but given that, my sense was that with the current lot  
10          occupancy ratio and just a standard two-story development, you could  
11          then start achieving with single family usages rather huge structures  
12          on a minimal size lot given the additional percentages. I just felt that  
13          the existing percentages were adequate on the conforming lots. Now  
14          where you have a nonconforming lot, then I think a case could be  
15          made for bringing it back down because if you have a lot that's only  
16          half the size that it's supposed to be, you just haven't got the footprint  
17          of land on which to achieve the space that you need to have a  
18          contemporary dwelling.

19                        CHAIRPERSON BENNETT: But your nonconforming  
20          lots wouldn't be -- under your scenario, your nonconforming lot  
21          wouldn't come in under this.

22                        MR. WILLIAMS: You're right, under my scenario, but  
23          then by our discussion, particularly the discourse between Mr. Franklin  
24          and myself, I'm saying maybe that should come out, but --

25                        COMMISSIONER FRANKLIN: You still say you're  
26          uneasy about --

27                        MR. WILLIAMS: I'm concerned about something

1 turning into an airplane hanger.

2 COMMISSIONER FRANKLIN: I don't understand  
3 why you feel that way, if you look at the standards in 223.3. If the  
4 addition is out of scale with the pattern of the houses along the street,  
5 why wouldn't that knock what you're concerned about, right out of the  
6 ballpark?

7 MR. WILLIAMS: I think the character of the area is  
8 not something that was in 223.3 as advertised. You've just added that  
9 through tonight's discussion and I was dealing with it --

10 COMMISSIONER FRANKLIN: Out of character with  
11 the scale.

12 Your point, as I'm hearing it, is that you're concerned  
13 about something that's really out of scale.

14 MR. WILLIAMS: I think I could agree. That might  
15 work.

16 COMMISSIONER FRANKLIN: Madam Chair, that's  
17 all I have at the moment.

18 CHAIRPERSON BENNETT: Okay. Further  
19 questions of Mr. Williams?

20 None? All right. Thank you. I'm sorry that you had to  
21 come down twice.

22 MR. WILLIAMS: I didn't. The first time I got called at  
23 home you said "don't come."

24 CHAIRPERSON BENNETT: Okay.

25 COMMISSIONER FRANKLIN: Mr. Williams, I hope  
26 that you'll provide us with your comments frequently because I find  
27 them very helpful.

1 MR. WILLIAMS: Thank you.

2 MS. DOBBINS: What is the time period for leaving  
3 the record open?

4 CHAIRPERSON BENNETT: We are going to recess  
5 in the month of August anyhow. Let's see if the ZA can give us some  
6 written comments or some comments through OPO over the phone by  
7 some time in September.

8 MS. DOBBINS: In time for the September meeting?

9 CHAIRPERSON BENNETT: That would be good  
10 because I don't think this is going -- I would hope that this isn't going  
11 to take that long.

12 COMMISSIONER KRESS: I would as well.

13 CHAIRPERSON BENNETT: All right, ladies and  
14 gentlemen, the other members of the Commission and I wish to thank  
15 you for your testimony and assistance in this hearing.

16 The record in this case will be kept open until  
17 September 2, 1997 for submissions of any additional information. Any  
18 special information or reports specifically requested by the  
19 Commission must be filed no later than the close of business of 4:45  
20 p.m. on September 2, 1997 in Suite 210 of this building, 441 4th  
21 Street, N.W. The Commission will make a decision in this case in one  
22 of its regular monthly meetings following the close of the record.  
23 These meetings are held at 1:30 p.m. on the second Monday of each  
24 month with some exceptions and are open to the public. If any  
25 individual is interested in following this case further, I suggest that you  
26 contact staff to determine whether this case is on the agenda of a  
27 particular meeting. You should also be aware that if the Commission

1 proposes affirmative action, the proposed action must be referred to  
2 the National Capital Planning Commission for federal impact review.  
3 The Zoning Commission will take final action at a public meeting  
4 following receipt of the NCPC comments after which a written order  
5 will be published and I now declare this hearing closed.

6 (Whereupon, at 8:51 p.m., the hearing was  
7 concluded.)

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