LAW OFFICES
GRIFFIN, FARMER & MURPHY, LLP
1912 SUNDERLAND PLACE, N.W.
WASHINGTON, D.C. 20036-1608

TELEPHONE: (202) 429-9000
(800) 429-9003
FACSIMILE: (202) 232-7365
(202) 331-3803
WRITER'S DIRECT DIAL: (202) 530-7153
WRITER'S DIRECT EMAIL: Jfarmer@washlaw.com

MARK G. GRIFFIN (DC, MD)
JONATHAN L. FARMER (DC, MI)
BRIAN P. MURPHY (DC, MD)
ALEXANDER DJORDJEVICH (DC, MD)
DAVID K. McRAE (DC, MD)
JAMES T. HEISE (DC, MD)
OF COUNSEL
DALE L. JERNBERG (DC, MD)
PAUL M. GRIFFIN (DC, NJ)

703 GIDDINGS AVENUE
SUITE U6
ANNAPOLIS, MARYLAND 21401

6305 IVY LANE
SUITE 504
CAPITAL OFFICE PARK
GREENBELT, MARYLAND 20770

11860 SUNRISE VALLEY DRIVE
SUITE 101
RESTON, VIRGINIA 22046

August 2, 2002

Mr. Geoffrey H. Griffis
Chairperson
District of Columbia
Board of Zoning Adjustment
441 4th Street, N.W.
Suite 210
Washington, D.C. 20001

D.C. OFFICE OF ZONING
RECEIVED
2002 AUG -2 AM 10:54

Re: BZA Application No. 16869 of Kings Creek, LLC

Dear Mr. Griffis:

We are aware, through conversations with staff, of the continuing controversy over the issue of whether the requested height relief is a variance or a special exception under section 1403 of the Zoning Regulations (Reed-Cooke Overlay). We are particularly concerned because the applicant, as explained below, has specifically addressed these concerns as instructed by the Board at the close of the public hearing. The delay in the issuance of the appropriate order reflecting the Board's decision is affecting our effort to secure financing and begin this unique project in a timely manner. We offer the following information and suggestions to further expedite the issuance of the proper order. Attached for your convenience is a copy of the previously submitted proposed order as well as relevant portions of the transcript of the hearing and the public meeting.

At the end of the hearing on April 30, 2002, the issue of the variance versus special exception was addressed by the Board. We were asked to brief the issue and submit said brief for the Board's review. At that time we expressed our view that the proposed project met the standard for both a variance and a special exception and asked the Board if we could submit the proposed findings and conclusions in the alternative. We did so submit and explained how the proposed height met both standards. These findings were submitted as part of the public record, served on all other participating parties and were fully discussed by the Board prior to its decision. The brief noted that every overlay had special exception provisions and that the Zoning Commission, when asked to eliminate the special exception provision from the Reed-Cooke Overlay, specifically declined to exclude that provision from the regulations. Further, the Zoning Commission **did not imply** any limitations on the Board's ability to grant a special exception under the regulations. Rather, it established strict criteria for the granting of the special

BZA
Case No. 16869
Exhibit No. 35

Board of Zoning Adjustment
District of Columbia
CASE NO.16869
EXHIBIT NO.35

exception.

We believe that further delay in the issuance of the order can be avoided if the BZA would consider the alternative draft order which addressed the variance for height. While we still believe that the special exception for height was proper under the regulations, further delay in issuance of the order is extremely harmful to the success of the project. We would therefore request that the Board issue the appropriate order at its next public meeting rather than wait for September. Please contact the undersigned if we can be of further assistance.

Thank you for your time and consideration.

Respectfully submitted,

GRIFFIN, FARMER & MURPHY, LLP

By: _____
Jonathan L. Farmer,
On behalf of the Applicant, Kings Creek, LLC

BEFORE THE BOARD OF ZONING ADJUSTMENT

OF THE DISTRICT OF COLUMBIA

Applicant's Proposed Findings of Fact and Conclusions of Law

Application of King's Creek, LLC, pursuant to 11 DCMR §3103.2, for a variance from the floor area ratio requirements under Section 402, a variance from the lot occupancy requirements under Section 403, and a variance from the non-conforming structure provisions under Section 2001.3, and pursuant to 11 DCMR §3104.1, a special exception to exceed the height provisions (Section 1402) of the Reed-Cooke Overlay District under Section 1403, to construct an addition to an existing building for a mixed use (residential and retail) development in the Reed-Cooke/R-5-B District at premises 2329 Champlain Street, N.W. (Square 2563, Lot 103).

Hearing Date: **April 30, 2002**
Decision Date: **June 4, 2002**

Summary of Evidence:

1. The subject property is located in the RC/R-5-B District on the east side of Champlain Street, N.W. north of its intersection with Kalorama Road, N.W.

2. The subject property is a 9,652 square feet lot occupied with a two story building with a footprint of 9,395 square feet. Lot occupancy is 97.3 percent. The height of the existing structure is 31.5 feet. The total existing building area is 18,401 square feet.

3. The subject site is improved with a stone, steel, concrete and brick structure that was erected as an automobile garage in 1924. The site is currently used as retail, office and storage space.

4. The subject site was originally zoned CM. The site was re-zoned by the Zoning Commission to R-5-B in 1987. The Zoning Commission created the Reed-Cooke Overlay in 1991 and the provisions of said overlay apply to the subject site.

5. The RC/R-5-B Zoning District permits developments of moderate height and density. This zone is designed to permit flexibility for all types of urban residential developments along with those institutional and semi-public buildings that are compatible with adjoining residential units. The Reed-Cooke Overlay District is designed to protect existing housing, provide for new residential development, and encourage small-scale business development that does not adversely affect the residential uses.

6. The RC/R-5-B Zoning District allows a lot occupancy of 60 percent, a floor area ratio of 1.8 and a maximum height of 40 feet. A total of 7 parking spaces would be required by the Applicant's proposal in this Zoning District.

7. The subject site is located in the Reed-Cooke neighborhood and is surrounded by a variety of uses but the area is predominantly residential. The area has a wide variety of buildings including auto repair shops, electroplating facilities, open parking lots, two story single family residential buildings and apartment houses, some of which are between five and seven stories. Directly to the west of the subject site is a mixed use development, known as the Lofts of Adams Morgan that contains 57 residential units, 4,000 square feet of retail space and has a height of 56 feet.

8. The Applicant proposes a mixed use development on the subject site. The existing building on the site will be retained in its entirety and four additional levels with 13 residential apartments will be added to the structure. The existing retail use on the first floor will be retained while the second floor will be renovated for parking and residential use. The Applicant has agreed with representatives of neighborhood interests to provide at least one "affordable" residential unit in the project.

9. The Applicant testified that, after due consideration of the requirements of the Reed-Cooke Overlay District, it was determined that the goals of the District would be best achieved by retaining the existing structure and its existing retail tenant. He stated that the existing structure, while not a designated landmark, was a unique architectural style that had substantial significance in the neighborhood. He further stated that one of his main goals was to ensure the continued presence of the Brass Knob in the Adams Morgan neighborhood because of its long time and much desired presence in the neighborhood. The Applicant indicated that the existing structure's unique physical construction provided an opportunity to add a significant amount of additional residential housing to the neighborhood. The Applicant explained that, in consultation with neighborhood representatives and organizations, the project was designed to avoid any possible adverse effects by providing parking for each unit and to provide additional outdoor space for each unit in a manner that added to the neighborhood aesthetic. The Applicant stated that the retention of the existing structure was a unique challenge that presented difficulties that could only be overcome by a special architectural design embodied in this project.

10. The project architect, Gregory Kearley, testified that the proposed structure represented an attempt to meet the challenges of the site and maximize the residential

character of the immediate neighborhood. He stated that the structure was designed with a series of setbacks that minimized the visual impact of the addition from the street while providing the maximum amount of light and air for both the residential units and the abutting street. He further testified that the height of the structure was compatible with the neighborhood and that it was specifically compatible with the height of the development immediately across the street to the west.

11. By memorandum dated April 23 and April 25, 2002 and by oral testimony at the April 30, 2002 public hearing, the D.C. Office of Planning stated that the subject application met all zoning requirements and recommended that it be approved. The memorandum noted that the proposed variances to increase the FAR and to address the lot occupancy issue and the special exception request to increase the height of the building meet the requirements of the Zoning Regulations. The Office of Planning further noted that the proposal to provide a mixed use development is a goal envisioned for the area covered by the Reed-Cooke Overlay. The Office of Planning noted the requests for relief would not cause any "substantial detriment to the public good" and "would not substantially impair the intent, purpose or integrity of the zone plan embodied in the Zoning Regulations or Map "because the proposal fulfilled the intent of increasing residential use and the height was mitigated by the setbacks

that allowed light to the street and the units themselves." In its testimony, the Office of Planning noted that the Applicant had met with community representatives and organizations and received their approval and agreed with their various proposals.

12. Darnell Bradford El, Chairman of the Reed-Cooke Neighborhood Association testified that he did not have a position on the application but that he was concerned with the "process". He requested that the matter be continued to allow further review by community residents. Under cross examination, Mr. Bradford El stated that he had not attended any of the previously held meetings between the community and the Applicant. In response, this Board left the record open for the Reed-Cooke Neighborhood Association to provide comments, however no additional comments were received from Mr. Bradford El or the Neighborhood Association.

13. The Board also left the record open for the Applicant to provide a memorandum on whether the height relief requested was a special exception or a variance under the Zoning Regulations. This memorandum was submitted and received in timely manner. Applicant concluded in this memorandum that the relief from the height restrictions of the Zoning Regulations is a special exception under Section 1403 of the Regulations.

14. ANC 1C filed a report in timely manner on the Applicant's proposal. In this report the ANC recommended approval of the application as requested and supported rapid development of the project. The ANC stated that the project was a welcome addition to the neighborhood and in their opinion met the expressed goals of the Reed-Cooke Overlay. The ANC further noted Applicant's efforts to solicit neighborhood comment on the project. The ANC supported the effort to provide additional light, air and outdoor space in the neighborhood.

15. Councilmember Jim Graham, in a letter dated March 8, 2002, urged this Board to approve this application, noting that the application met the expressed goals of the Reed-Cooke Overlay. The Councilmember also stated that the project would enhance the ambiance and reduce heat effects in his recommendation for approval. He noted that the Applicant had incorporated his suggestion for setbacks to avoid the creation of a "canyon" effect on Champlain Street.

16. There was no opposition to the application at the public hearing or in the record. No other persons or parties appeared at the hearing to testify in support of or in opposition to the application.

Findings of Fact:

Based on the evidence of record, the Board finds as follows:

1. The shape of the site, its topography and the existing non-conforming conditions of the structure thereon create "an extraordinary or exceptional situation or condition as to lot occupancy:"

   (a) The site is burdened with an architecturally significant and unique structure of neighborhood value whose continued existence is important to all involved. The property is unique due to an exceptional situation because it was originally developed under the requirements of the then imposed commercial and industrial zones. As a result of re-zoning, the structure became non-conforming in so far as the lot occupancy and FAR requirements of the RC/R-5-B zones.

   (b) Strict application of the Zoning Regulations in this instance would result in peculiar and exceptional practical difficulties for the Applicant. Compliance with the current regulation would require demolition of the existing structure in whole or part thus destroying the architecturally significant structure. The structure is sound and adds to the variety of

architectural styles in the Reed-Cooke area. Applicant's proposed addition does not increase the non-conformity of the structure as to lot occupancy.

(c) The variance requested by the Applicant as to lot occupancy will not cause detriment to the public nor will it impair the zone plan in any way. The retention of the existing building will not impair light and air and Applicant's proposal, through setbacks, will only enhance the public benefits. Full lot occupancy is common in the Reed-Cooke area. Retention of the existing business is consistent with both the Comprehensive Plan and the stated purposes of the Reed-Cooke Overlay.

2. The non-conforming conditions of the site as to building and to FAR require variance relief from the maximum FAR in the R-5-B District and for increasing a non-conforming structure as required under Section 2001.3 of the Zoning Regulations. The existing structure has a FAR of 1.9 and the maximum allowable FAR in the R-5-B District is 1.8. The building became non-conforming as to FAR when the zoning was changed under the Reed-Cooke Overlay. Applicant's proposal to retain the existing structure and uses naturally increases the FAR through the addition of the residential units.

(a) The subject site is unique because the Applicant's proposal retains the whole of the existing architecturally significant building. This is an extraordinary or exceptional condition that shapes the Applicant's proposal.

(b) Strict application of the Zoning Regulations in this instance would result in the loss of the existing structure thus creating a practical difficulty for the Applicant and imposing an undue hardship for the owners of the existing business. Demolition of the structure would be a loss to the community at large because of the loss of the historic character and elimination of architectural variety in the area.

(c) The requested variances will not be a detriment to the public good because they allow the retention of a building that contributes to the architectural character in the neighborhood. It will also allow the existing retail use to remain and the addition of residential uses in accordance with the stated purpose of the Reed-Cooke Overlay. The proposed increase in FAR allows the Applicant to create additional housing units in a manner that minimizes the visual impact along Champlain Street by setting back each additional level from the parapet line. This allows additional light to reach the street and the new residential units. This

enhances the quality of life in the area without detriment to the public good or impairment of the zone plan.

3. Section 1403 of the Regulations provides that relief from the specific requirements of the Reed-Cooke Overlay District may be granted by the Board if specific criteria are met. The Applicant's proposal meets these criteria in full:

(a) **The use, building or feature at the proposed site, intensity and location substantially advance the stated purposes of the Reed-Cooke Overlay District**

The Reed-Cooke Overlay was intended to provide new housing, protect existing housing, maintain appropriate heights and densities, encourage small-scale business development, protect nearby residences and ensure that non-residential uses serve the local community. The Applicant's proposal is completely compatible with these express purposes. Applicant's proposal provides thirteen new housing units. The height and density of the proposed project is, due to topography and the existing structures compatible with the heights and densities of other buildings and developments in the immediate area. The proposal also provides for retention of the Brass Knob, a long serving local business that provides for the needs of

housing renovators in the immediate area. The project will be developed by a local construction company which employs local residents and thus addresses the employment needs of the local communities. The project is designed to be self-sufficient in construction staging, thus protecting local residences from any undue harm or adverse impacts.

(b) **Vehicular egress and access is designed to minimize pedestrian conflict and creates no objectionable traffic conditions**

The proposed project will utilize the existing rear entrance to the building as its primary means of parking access. thus there will be no interference with pedestrian traffic. Only thirteen cars will utilize the garage space and will have no appreciable effect on traffic conditions in the area. The alley way ensures that most traffic will not utilize Champlain Street as egress to the site.

(c) **Adequate Off-Street Parking is Provided for the Users**

One parking space is provided for each new housing unit created by this project. There is existing parking for the use of the Brass Knob. Most customers, however, arrive by foot as is typical for a truly local retail business.

(d) **There is no noise associated with the operation of the proposed uses that will adversely affect the neighbors**

The existing structure was built as an automotive garage and has brick and masonry walls surrounding concrete slabs. No particular noise will be generated by the retail or housing uses that would adversely affect the quality of life in the neighborhood. Construction of the addition will be in accordance with applicable law and regulation and will not produce any adverse effect. Construction will occur primarily within the existing structure, thus minimizing most associated noise.

(e) **There is no associated storage of materials, or outdoor processing, fabricating, or repair associated with the project**

As previously stated, the bulk of the construction will occur within the building. There is no outdoor processing or storage associated with the existing retail use or planned housing units.

(f) **The use, building, or features of the proposed project will not adversely affect adjacent property nor will it be detrimental to the public health, safety or welfare**

This project is designed to complement the Reed-Cooke neighborhood by increasing the available housing stock without detracting from that already available. Applicant has worked hard to contact its neighbors and incorporate their views and concerns into the design of the project. ANC 1C has voted unanimously to support this application at its public forum on April 16, 2002. It is inherent in the nature of the project that it will produce no detrimental or otherwise adverse effects in its own environs. For these reasons, this proposal qualifies for the grant of the requested special exception.

Conclusions of Law and Opinion

Based on the evidence of record, the Board concludes that the Applicant is seeking area variances to allow an increase in the floor area requirements under Section 402, to allow continued non-conforming lot occupancy under Section 403 and allow an increase to the non-conforming structure under Section 2001.3 of the Regulations. The Board further concludes that the Applicant is seeking a special exception to exceed the height provisions of the Reed-Cooke Overlay District under Section 1403 of the Regulations.

Granting such variances requires a showing through substantial evidence of a practical difficulty upon the Applicant arising out of some

unique or exceptional condition of the property such as exceptional narrowness, shape or topographical condition. The Board must find that the application will not be of substantial detriment to the public good and will not substantially impair the intent, purpose and integrity of the zone plan.

The Board concludes that the Applicant has met the burden of proof in this application. The Applicant has submitted evidence that demonstrates a unique, extraordinary and exceptional condition in the existing non-conforming structure that creates a practical difficulty for the Applicant in further developing the property.

The Board further concludes that increase in FAR, height, and lot occupancy to produce additional housing and retain the existing retail business will be accomplished through this proposal without substantial detriment to the public good.

The Board further concludes that the requested variances may be granted without substantially impairing the intent, purpose and integrity of the zone plan for the RC/R-5-B District.

Finally, the Board concludes that the Applicant has fully addressed and met the criteria for an increase in height as a special exception under Section 1403 of the Zoning Regulations as shown in the Findings of Fact.

In light of the foregoing it is hereby ordered that the application is **granted**.

Vote:

By Order of the D.C. Board of Zoning Adjustment

Attested by: _____
Jerilee Kress
Director

Final Date of Order: _____

GOVERNMENT

OF

THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

+ + + + +

PUBLIC HEARING

+ + + + +

TUESDAY

APRIL 30, 2002

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RECEIVED
D.C. OFFICE OF ZONING
2002 MAY 13 AM 5:02

ORIGINAL

The Public Meeting convened in Room 200 South, 441 Fourth Street, Northwest, Washington, D.C. 20001, pursuant to notice at 9:30 a.m., Geoffrey H. Griffis, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

GEOFFREY H. GRIFFIS	Chairperson
ANNE MOHNKERN RENSHAW	Vice Chairperson
CURTIS ETHERLY, JR.	Board Member
DAVID LEVY	Board Member (NCPC)

ZONING COMMISSION MEMBER PRESENT:

CAROL J. MITTEN (Case Nos. 16871 and 16861)	Commissioner
PETER MAY (Case Nos. 16832 and 16869)	Commissioner

STAFF PRESENT:

SHERI M. PRUITT	Secretary, BZA
BEVERLY BAILEY	Office of Zoning
PAUL O. HART	Office of Zoning
JOHN NYARKU	Office of Zoning

STAFF PRESENT: (CONT.)

JOHN FONDERSMITH	Office of Planning
MAXINE BROWN-ROBERTS	Office of Planning
KAREN THOMAS	Office of Planning
DAVID McGHETTIGAN	Office of Planning

D.C. OFFICE OF CORPORATION COUNSEL:

MARIE SANSONE, ESQ.

Association give us in writing their decision on any decision making that they have done as an association.

We would also ask, as we ask of all of our associations, just to give, as you've indicated, the breakdown of the association and, you know, the size, the members, what's a quorum, the date that notice of the meeting and also the vote that was upheld; very similar to what the ANC is required.

We would like to ask the applicant to submit findings of fact and conclusion of law on this.

We would also like to have a briefing, and this is new that has come to light by one of the Board Members. We need to have a briefing on why the height relief is a special exception and not a variance.

And let me give you a quick indication of the fact of one interpretation can be in the Reed-Cooke overlay that it's a - not its interpretation, its strict reading of it is the special exception of the height limitation, but there is an - there could be an interpretation that says that special exception allows you to go to 50 feet, which would be a matter of right within the R-5-B, and then a variance would need to take you beyond 50 feet.

So, that is the issue that we'd like addressed, whether that's true or not, in terms of

your interpretation.

MR. FARMER: Let me - can I just phrase a question?

CHAIRPERSON GRIFFIS: Yes.

MR. FARMER: Looking at the language in the zoning regulations themselves, and I believe in the special exceptions, which is 1403, it speaks to the requirements of this chapter as - and I think is that the question you're really asking?

CHAIRPERSON GRIFFIS: Yes.

MR. FARMER: Okay.

CHAIRPERSON GRIFFIS: I mean, I guess we could go further. Ms. Sansone, if you want to-

MS. SANSONE: Yes, Mr. Chairman, I think that's the issue. It's - that provision talks about the requirements of this chapter, meaning the Reed-Cooke chapter.

However, there's an earlier provision that says that the more restrictive of the underlying or overlaying zoning regulations apply, and the underlying zoning regulations would be the R-5-B. So, that's the issue.

CHAIRPERSON GRIFFIS: That's the crux of it, is the special exception 40 to 50 feet and then you need to go to the more restrictive regulation

where the more restrictive regulation is a variance that takes you above 50 feet.

Again, just a briefing on that would, I think, be very helpful in the deliberation. Now, that is going to need to be expedited in terms of - I see the indications of - let me not forget, but we'll see if there's an opportunity for that.

Anyway, that's going to need to be expedited because obviously that goes to findings of fact and conclusions of law and the test that you're going to be putting together before the decision making.

So, I'm going to ask you to give me an idea of when you could. We would obviously love to have that middle of next week, end of next week.

MR. FARMER: You want it, you get it.

CHAIRPERSON GRIFFIS: I mean, be realistic, because I mean - this is not everything. I'm just asking on the briefing of the issue of the variance and/or special exception on the height.

MR. FARMER: I think I can do that, Your Honor.

CHAIRPERSON GRIFFIS: Okay. I think that would just be helpful for everybody involved, so, if we can do that.

SECRETARY PRUITT: I'm sorry, Mr. Farmer, what date did you say?

MR. FARMER: You're looking for the middle of next week, which was May-

SECRETARY PRUITT: May 1st is the middle of the week.

MR. FARMER: May 1st is tomorrow. So, you're looking at May 7th, May 8th.

CHAIRPERSON GRIFFIS: May 8th is a Wednesday. I mean, I think-

SECRETARY PRUITT: Yes, May 8th is a Wednesday.

CHAIRPERSON GRIFFIS: I think if May 8th is submitted, would be great. I think if it's by the end of next week, that's fine. I'll give you some, you know, wiggle room on that, but I think clearly by the end of next week.

SECRETARY PRUITT: Because we actually do - even to allow for everything to come in, it's going to be a little tight at least - my understanding is you want to leave the record open for the Reed-Cooke organization to submit information and anyone else who did not submit any information is allowed to submit into the record written testimony, but that would be due by May 10th, and the applicant has a week to the

and that then turns - opens the door back up to opportunity for party status.

CHAIRPERSON GRIFFIS: It does and it doesn't.

MR. BRADFORD-EL: Oh, okay.

CHAIRPERSON GRIFFIS: The Board did deliberate on that, because that was our big issue, and we have in the past, and we are currently look at the application in terms of the notification and the announcement of the relief sought, in the fact and the specifics of this case that there were three variances - I should probably read that in front of me before I waiver off in this late afternoon and lose specifics.

SECRETARY PRUITT: Three variances.

CHAIRPERSON GRIFFIS: There were three variances-

SECRETARY PRUITT: FAR, lot occupancy and non-conforming.

CHAIRPERSON GRIFFIS: -identified in special exceptions, but the point is all the notification clearly signified that there was a variance going to this and a special exception.

If the special exception goes away, and a variance is added, it is not this board's opinion that that changes the application so dramatically that it

would have influenced any public testimony or public opinion or involvement in this case and so, therefore, we're not asking for a re-notification and a re-announcement of this application, nor are we continuing the public hearing. Anything else?

MR. BRADFORD-EL: No, that's fine.

CHAIRPERSON GRIFFIS: Okay.

SECRETARY PRUITT: However, sir, the brief will be available in the folder, so you're more than welcome to - it's part of the public record, so you will have access to it.

CHAIRPERSON GRIFFIS: Okay. And the applicant has indicated that they'll provide a copy also, so we love that good faith stuff, so we'll keep that going.

MR. FARMER: I guess as far as having my cake and eating it too, should I address both standards in the brief?

CHAIRPERSON GRIFFIS: Both - you mean the findings of fact?

MR. FARMER: Special - well, yes.

SECRETARY PRUITT: In the brief or findings of fact?

MR. FARMER: Actually, I was thinking initially of the brief.

CHAIRPERSON GRIFFIS: Well, the brief, what I want you to do is just look to brief us whether you think it is a variance or special exception. The findings of fact will be based on what we decide on it. That's why there's a rush to get that brief in.

MR. FARMER: Right. Okay.

CHAIRPERSON GRIFFIS: Does that make sense. I mean-

MR. FARMER: Well, let me real plain about what my concern is. That notice was reviewed with the zoning staff and the zoning administrator as well, so I'm kind of thinking it would probably be best for me to consult with them as well before I put forth this brief.

I don't think that's a problem time wise, but I just wanted you to be aware of that. I'm thinking in terms of the actual content of the brief itself to the extent that not any more addressing strictly the legal issue, but I think I will also be addressing how it affects this case.

CHAIRPERSON GRIFFIS: Right. I don't

MS. SANSONE: Mr. Chairman, since the proposed findings of fact and conclusions of law are due before the Board makes the decision, it would probably be to the applicant's advantage to address

both standards and put them in the alternative. That way, he's covered both ways.

CHAIRPERSON GRIFFIS: And that's where you were going with, right?

MR. FARMER: Exactly.

CHAIRPERSON GRIFFIS: And that - you know, I'm not going to stop you from doing more work, but trying to get it down to a little less, but that's fine.

MR. FARMER: Okay.

CHAIRPERSON GRIFFIS: Okay. Take a deep breath, and we'll turn it over to you when you're ready, sir, to-

MR. FARMER: If I could have Mr. Kostelac join me at the table.

Mr. Chairman, in summation, I'd like to address some of the issues that were raised by Mr. Bradford-El, just in terms of notice and the process and what's going on here, just so the Board is clear as to exactly how we got to this particular point today.

I think it's very important to understand that we've started this process in developing this building at the site very early.

We've made numerous community contacts

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

+ + + + +

PUBLIC MEETING

+ + + + +

TUESDAY

JUNE 4, 2002

+ + + + +

RECEIVED
D.C. OFFICE OF ZONING
2002 JUN 18 AM 8:43

ORIGINAL

The Public Meeting convened in Room 220 South, 441 4th Street, N.W., Washington, D.C. 20001, pursuant to notice at 9:30 a.m., Geoffrey H. Griffis, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

GEOFFREY H. GRIFFIS	Chairperson
ANNE MOHNKERN RENSHAW	Vice Chairperson
DAVID ZAIDAIN	Board Member
CURTIS ETHERLY, JR.	Board Member

ZONING COMMISSION MEMBER PRESENT:

JAMES HANNAHAM
PETER MAY

C-O-N-T-E-N-T-S

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Let me first state I think we were all a little taken aback on paper looking at the fact of the height increased that was requested. And it is one issue that we need to bring up immediately and that is whether we were looking at this as a variance or a special exception and we have a submission to that. Actually, let's take that up and then I'll get into the substance of the height itself.

I felt that the submission was very strong in making its case that, in fact, the Reed-Cooke Overlay is the provision of which we should be following and that is because it speaks directly to and I'd note 1403.1A that it clearly spells out the use of the building, the features at the size, intensity, location proposed, my point saying they're outlying all of these in the overlay clearly taking understanding that this should regulate any sort of project that comes through and also lays out the fact that it is a special exception.

Based on the fact that this overlay specifically goes to size and states building as if they're talking about the massing of the structure, I don't see any reason and I'm not compelled to move beyond the overlay into the further text of the R-5-B District.

And additionally, I should point out also going down to G, the use building, feature, size, intensity, location, looks to how all that fits into and actually the special exception case and there is also provisions within the Overlay that speak directly to height and the regulation of that height.

So I would be inclined to continue as advertised that we look at the variance in the height. I should not use that word. The increase in the height to be a special exception.

Yes, Mr. May?

MR. MAY: Mr. Chairman, I read over the submission from the Applicant and I have to say I did not find their argument as persuasive with regard to the variance versus the special exception and -- but I think that given all of the other tests that are involved, the variances that are requested, the special exception that's requested, that when we evaluate the project as a whole, I don't see that there's any essential difficulty to evaluating the height issue as a special exception.

I would interpret the regulations to require it be considered as a variance, but we have other variance tests being applied here, so I don't -- I think that the -- that we are well covered in

considering the case as a whole and considering the height issue as a special exception.

CHAIRPERSON GRIFFIS: I think we ought to be careful though because, well, we ought to be clear. I think what I can glean from what you've just stated and I would concur with is the fact that the variance tests that are being made for the application could easily be applied to a variance for the height, but in total clarity, I think it is fairly persuasive, the fact that the Reed-Cooke Overlay was to -- and as submitted, it was really to speak to somehow, however we would define it, but good design and how design, massing and use and intensity and buildings would fit into this area and it was specific enough to make its own overlay and I think that the requirements within that overlay are the most restrictive in terms of the larger picture of really what is looking to be accomplished in this specific neighborhood and I think that the special exception goes to that and -- but I don't know that we need to belabor too much more. If there's consensus, we can pursue on special exception, but Mr. May, did you want to say something else?

MR. MAY: I think that the -- your sense that the intention of the Reed-Cooke Overlay is I think absolutely on target and I think there is a

particular concern with building height and I think, however, that where I part on this is simply that it's what we're considering is whether -- is our ability to make exceptions to that overlay as opposed to the extent by which we abide by it. I just think that we're -- as I said, I'm not uncomfortable with pursuing it as a special exception, particularly considering that what we have to evaluate here in the case of the height in some ways may be the more stringent standard which is no adverse impact.

CHAIRPERSON GRIFFIS: Exactly. And that's where -- I note your point and maybe this will be the last piece said on it, but the Reed-Cooke Overlay outlines very specifically how one takes exception to the requirements and I think it is more productive for us and I think it perhaps can be more difficult for Applicants, but more productive for us to follow 1403 in its exceptions.

So with that, let us talk and we'll come back to the height issue, but let us talk about the variance from the floor-area ration requirements, also the variance from the lot occupancy requirements, the variance from nonconforming structure provisions under 2001.3.

And I think we can get through the pretty

the specifics of it and also to go through, of course, all of the tests for all the variances which again were stated and I think clearly the special exception as we have outlined comes in full compliance with the 1403 and I will leave it at that.

Others, discussion, questions on the motion?

MR. MAY: Mr. Chairman?

CHAIRPERSON GRIFFIS: Yes.

MR. MAY: I would like to suggest that we vote separately on the height issue because the objection that I have and I still have with this is the special exception for the height.

Can we vote separately on the variances versus the special exception?

CHAIRPERSON GRIFFIS: I'm inclined not to, actually, because I don't see how we'd take away the height special exception and remove it from the project itself that's in front of us, unless we don't -- to me, that's tantamount to us sending it back to the Applicant and say redesign it and if we need to do that, then I would say the motion would probably fail.

I see them all too intertwined and connected to really separate them out and I don't see us and I don't want us, although others can give their

opinions, I don't want us to establish a height either, if we start looking at conditions that there can only be a certain amount that's beyond our purview at this point and I don't think that would be the thing to do.

MR. MAY: I wouldn't suggest that, but what does concern me is that while I find that I can support the variances for the reasons that are stated in the case, I do not find that I can support the height.

CHAIRPERSON GRIFFIS: But the basis of this case is that in order to maintain the existing structure, and actually keep it occupied while it's constructed and provide parking within the existing structure, there has to be an addition on top and that addition on top has to -- is presented before us. So I don't see how we disconnect the two.

MR. MAY: It's the height as proposed. There's no doubt that they would need a special exception in order to increase the height, but I mean -- if this were a case where the height being proposed were 50 feet or even 60 feet, it would be much easier to vote in favor, but at nearly 70 feet it's still highly problematic for me.

MEMBER ETHERLY: If I understand where

you're coming from, Mr. Chairman, I think what you're saying is you can't -- if you don't buy the height, then you can't buy the variances.

CHAIRPERSON GRIFFIS: Absolutely. I think I can, but that's what I'm asking. That's what I'm asking you to sell me.

MEMBER ETHERLY: I understand what you're talking about Mr. May and to me, my point, it's a different application and I'd rather -- if it fails, then -- I think it was strong in its testimony. You look at the base fact that the existing structure with parapet is over 30 feet high. There's not a lot of height within the limits of 40 feet to add on to this building to actually make it conforming with the intent of the Reed-Cooke in terms of providing the housing or actually which is -- I think what the Reed-Cooke Overlay is looking to do is create these urban structures which are mixed use structures. How do you do that if you really can't in any way add on to this and that's where I think special exception is appropriate at this point and the height also.

VICE CHAIR RENSHAW: Mr. Chairman, would you address the point of the precedent that this may be setting for height in the Reed-Cooke Overlay?

CHAIRPERSON GRIFFIS: I think the

precedent that this sets will be that the height and any variance from the height in the Reed-Cooke Overlay would be a special exception case before this Board.

MEMBER ETHERLY: And I would note also through you, Mr. Chairman, to Ms. Renshaw, that one of the things that gave me comfort was the topography that we discussed here and you're not necessarily going to see that with every additional property in this particular area, so I see that as a unique enough circumstance such that the potential for setting a precedent here isn't one that I think is one that's going to be easily followed in subsequent cases.

MR. ZAIDAIN: I was going to say. I think the point that you brought up, Mr. Chair, is that the special exception process kind of keeps it from setting a precedent where each individual case that is over and above what is allowed as a matter of right comes to this Board for its assessment of impacts, etcetera, etcetera, so and that being said each individual case is going to have its own different impacts. It's going to be in different locations and it's going to have different development parameters and as they come in at special exceptions, they ought to be evaluated on their own merits in that way.

CHAIRPERSON GRIFFIS: I would agree with