BEFORE THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

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APPLICATION OF:	)	
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JPI APARTMENT DEVELOPMENT, LP	)	**BZA CASE NO. 17331**
	)	
SPECIAL EXCEPTION PURSUANT TO SECTION 223 FOR RELIEF FROM THE AREA REQUIREMENTS FOR A SIDE YARD AND OPEN COURT, AND TO ALLOW AN ADDITION TO AN EXISTING NON-CONFORMING STRUCTURE IN THE R-4 DISTRICT (SQ. 1019, LOT 816)	)	**ANC 6B**
	)	**DECISION DATE:**
	)	**JULY 5, 2005**

MEMORANDUM OF POINTS AND AUTHORITIES ON A TRELLIS CONSTITUTING A BUILDING UNDER THE ZONING REGULATIONS

I. INTRODUCTION

At the hearing held June 14, 2005, on the above-referenced application, the Board of Zoning Adjustment ("Board" or "BZA") requested JPI Apartment Development, LP (the "JPI" or "Applicant") to brief the issue of whether a trellis provides a sufficient connection between two buildings on a single lot so that they may be considered a single building for zoning purposes. At issue is whether a trellis meets the definition of "building" under the Zoning Regulations.

The term trellis is not defined in the Zoning Regulations. Thus, pursuant to section 199.2(g), the Board turns to the meaning ascribed in *Webster's Unabridged Dictionary*. The *Webster's Unbridged Dictionary* defines "trellis" as "a structure or frame of lattice-work used as a screen or a support for climbing plants" or "a construction (as a bower or summerhouse) chiefly or wholly of latticework." The proposed connection between the existing single-family dwelling and the proposed addition in this application will consist of columns supporting a lattice-work roof, which will be 60 percent solid, with approximately 40 percent of the roof open to the sky above.

In its report dated May 25, 2005, the Office of Planning ("OP") expressed concern about the Applicant's use of a trellis to connect the existing single-family dwelling with an addition at the

BZA
Case No. 17331
Exhibit No. 31

Board of Zoning Adjustment
District of Columbia
CASE NO. 17331
EXHIBIT NO. 31A1

rear of the property containing one residential unit (thus establishing a flat), in order to apply for relief under section 223. OP asserted that such an application does not meet the intent of section 233 and "will open the door for multiple buildings on a lot that should either not be approved, or when applicable should be considered under section 2516 as an exception to building lot control." Accordingly, OP recommended that the design be amended to remove the trellis and either (i) directly connect the two dwellings as one structure; or (ii) attach the two dwellings with a connection that meets the definition of building under section 199.1.

As set forth in greater detail below, the BZA has previously held that a trellis provides a sufficient connection between two buildings so that they may be considered one building for zoning purposes. Accordingly, the trellis proposed by the Applicant provides the necessary connection between the existing single-family dwelling and the addition so that they are one building for zoning purposes and allow the Applicant to seek relief under section 223.

II.
A TRELLIS CONSTITUTES A BUILDING WHEN ITS ROOF IS AT LEAST 51 PERCENT SOLID

The D.C. Zoning Administrator has consistently taken the position that two structures on a single record lot should be considered a single building under the District of Columbia Zoning Regulations if those structures are connected by a trellis-covered walkway. The Regulations define the term "building" as:

> a structure having a roof supported by columns or walls for the shelter, support, or enclosure of persons, animals, or chattel. When separated from the ground up or from the lowest floor up, each portion shall be deemed a separate building, except as provided elsewhere in this title. The existence of communication between separate portions of a structure below the main floor shall not be construed as making the structure one (1) building.

11 DCMR § 199.1. An "accessory building," on the other hand, is defined as "a subordinate building located on the same lot as the main building, the use of which is incidental to the use of the main building." *Id.* Two structures connected by a covered walkway or porch will be considered a single building if the connector is itself viewed as a building. If the connector is not

viewed as a building, however, one of the structures will be viewed as an accessory building to the other.

The Zoning Administrator and the Board have held the term "building" to include trellis-covered connectors, provided that the trellis roof is at least 51 percent solid and provides the necessary supporting columns. While the decisions of the Zoning Administrator have been made at the administrative level and thus are not easily researched, the Board rendered a decision in BZA Application No. 16863-A which directly dealt with this issue.

In November 2002, the Board approved an applicant's request for variance relief from the rear yard, lot occupancy, and nonconforming structure requirements of the Zoning Regulations. Corrected Summary Order of the D.C. Board of Zoning Adjustment, BZA No. 16863-A (November 7, 2002). The applicant proposed to convert a vacant single-family home and a two-story carriage house into a six-unit apartment building. The two structures were connected by a cinder block passage and were considered to be a single building under the Zoning Regulations. The applicant's proposal required the demolition of most of this connecting structure. The applicant sought to retain one wall of the cinder block connector and replace the roof of the connecting structure with a trellis. The Board concluded that this trellis-covered walkway provided a sufficient connection between the existing home and carriage house to warrant the treatment of all three structures as a single building. Consequently, the Board held that a rear yard variance was not necessary.

Although the Board's order was not accompanied by findings of fact or conclusions of law, the discussion of the trellis issue at the hearing on the applicant's variance requests is instructive. The applicant's architect, Greg Zahn, discussed the Zoning Administrator's interpretation of the term "building" in section 199.1 of the Zoning Regulations—i.e., that a connector covered by a 51-percent solid roof is a sufficient communication between two structures to constitute a single building. He then explained how an open trellis satisfies that requirement:

> [T]his is an interpretation that has come from the zoning administrator. If you have two-inch, let's just say two-inch, slats of treated wood and you space them every two inches and then you lay over that two-inch slats, actually, you're over 50 percent. Two-inch slats every two inches by themselves equals 50 percent.

Hearing Transcript, District of Columbia Board of Zoning Adjustment 43-44 (September 17, 2002). Chairman Griffis agreed that this was a permissible—if perhaps counterintuitive—

interpretation of the Zoning Regulations. *Id.* at 41. Consistent with this holding, the trellis connection proposed by the Applicant in the instant application is sufficient to meet the definition of a building and to have all three structures constitute a single building for zoning purposes.

III.
CONCLUSION

The Zoning Administrator's policy of considering two structures connected by a trellis-covered walkway to be a single building for zoning purposes is a reasonable interpretation of the Zoning Regulations. The BZA has upheld this interpretation and the Applicant is entitled to rely on this past precedent. In the event the Board determines to overturn its past decision, the Applicant will cover the trellis with canvas or, alternatively, plexiglass, to provide a solid roof.

Respectfully submitted,

HOLLAND & KNIGHT LLP

Norman M. Glasgow, Jr.
Mary Carolyn Brown
2099 Pennsylvania Ave., N.W., Suite 100
Washington, D.C. 20006
(202) 955-3000

June 27, 2005

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GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

★ ★ ★

Application No. 16863-A of S & P Properties, LLC, pursuant to 11 DCMR § 3103.2, for a variance from the lot occupancy requirements under section 403, and a variance from the nonconforming structure provisions under subsection 2001.3, to allow the conversion of a single-family dwelling and carriage house into a **six (6)** unit apartment house in the DD/R-5-B District at premises 420 M Street, N.W. (Square 514, Lot 863).

Note: The Board during the course of the public hearing concluded that variance relief from the rear yard requirements was not needed, and amended the application accordingly.

HEARING DATE(S): May 21, 2002, September 17, 2002
DECISION DATE: November 5, 2002 (Bench Decision)

CORRECTED SUMMARY ORDER*

* This order corrects BZA Order No. 16863, by changing the number of apartment house units considered and approved by the Board from five to six (6).

SELF-CERTIFIED

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR § 3113.2.

The Board provided proper and timely notice of public hearing on this application, by publication in the D.C. Register, and by mail to Advisory Neighborhood Commission (ANC) 2C, the Office of Planning (OP) and to owners of property within 200 feet of the site. The site of the application is located within the jurisdiction of ANC 2C. ANC 2C submitted a letter in support of the application. The OP submitted a report in support of the application.

As directed by 11 DCMR § 3119.2, the Board required the applicant to satisfy the burden of proving the elements that are necessary to establish the case for a variance pursuant to 11 DCMR § 3103.2. No person or entity appearing as a party to this case testified in opposition to the application. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

Based upon the record before the Board and having given great weight to the OP and ANC reports filed in this case, the Board concludes that the applicant has met the burden of proving under 11 DCMR §§ 3103.2, 403 and 2001.3, that there exists an exceptional or extraordinary situation or condition related to the property that creates a practical difficulty for the owner in complying with the Zoning Regulations, and that the relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map. It is therefore **ORDERED** that this application be **GRANTED**.

Pursuant to 11 DCMR § 3101.6, the Board has determined to waive the requirement of 11 DCMR § 3125.3 that the order of the Board be accompanied by findings of fact and conclusions of law. The waiver will not prejudice the rights of any party, and is not prohibited by law.

VOTE: **4-0-1** (Geoffrey H. Griffis, David A. Zaidain, Anne M. Renshaw, and James H. Hannaham to approve, the third mayoral appointee not present, not voting).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT
Each concurring Board member has approved the issuance of this order.

ATTESTED BY:
JERRILY R. KRESS, FAIA
Director, Office of Zoning

FINAL DATE OF ORDER: November 7, 2002

PURSUANT TO 11 DCMR § 3125.6, THIS ORDER WILL BECOME FINAL UPON ITS FILING IN THE RECORD AND SERVICE UPON THE PARTIES. UNDER 11 DCMR § 3125.9, THIS ORDER WILL BECOME EFFECTIVE TEN DAYS AFTER IT BECOMES FINAL.

PURSUANT TO 11 DCMR § 3130, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSES OF SECURING A BUILDING PERMIT.

PURSUANT TO 11 DCMR § 3125 APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION

FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE, UNLESS THE BOARD ORDERS OTHERWISE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD.

THE APPLICANT IS REQUIRED TO COMPLY FULLY WITH THE PROVISIONS OF THE HUMAN RIGHTS ACT OF 1977, D.C. LAW 2-38, AS AMENDED, AND THIS ORDER IS CONDITIONED UPON FULL COMPLIANCE WITH THOSE PROVISIONS. IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 ET SEQ., (ACT) THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS ALSO PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS ALSO PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION. THE FAILURE OR REFUSAL OF THE APPLICANT TO COMPLY SHALL FURNISH GROUNDS FOR THE DENIAL OR, IF ISSUED, REVOCATION OF ANY BUILDING PERMITS OR CERTIFICATES OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER. RSN

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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PUBLIC HEARING

+ + + + +

TUESDAY,
SEPTEMBER 17, 2002

The public hearing convened in Room 220 South, 441 4th Street, N.W., Washington, D.C. 20001, pursuant to notice, at 9:52 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

ZONING COMMISSION MEMBERS PRESENT:

JAMES HANNAHAM	Commissioner

COMMISSION STAFF PRESENT:

Sheri M. Pruitt, Secretary, BZA
Beverly Bailey, Office of Zoning
John Nyarku, Office of Zoning

OTHER AGENCY STAFF PRESENT:

Stephen Cochran, Office of Planning
John Moore, Office of Planning
David McGettigan, Office of Planning
Joel Lawson, Office of Planning
Karen Thomas, Office of Planning

D.C. OFFICE OF CORPORATION COUNSEL:

Marie Sansone, Esq.

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MS. BAILEY: Good morning, Mr. Chairman,

CHAIRPERSON GRIFFIS: Good morning.

MS. BAILEY: For each individual case, yes, but not at this point, Mr. Chairman. There are no requests for withdrawals or postponements.

CHAIRPERSON GRIFFIS: Very good. Are there any other preliminary matters that need to be heard by the Board at this time?

(No response.)

CHAIRPERSON GRIFFIS: Not seeing an indication that there is, let's move and call the first case in the morning.

MS. BAILEY: Application Number 16863 of S & P Properties, LLC, pursuant to 11 DCMR 3103.2, for a variance from the lot occupancy requirements under section 403, a variance from the rear yard requirements under section 404, and a variance from the nonconforming structure provisions under subsection 2001.3, to allow the conversion of a single-family dwelling and carriage house. The property is located in the DD/R-5-B district at premises 420 M Street, Northwest, Square 514, Lot 863.

Please stand to take the oath.

(Whereupon, witnesses in the case were duly sworn.)

MS. BAILEY: Thank you.

Mr. Chairman, a couple of brief notes. This property was initially advertised to become a five-unit apartment house, and the applicant is proposing or amending the application to indicate that it would be a six-unit apartment house.

There is correspondence in the file from someone in the neighborhood, from a resident in the neighborhood, requesting some clarification about the applicant's certificate of good standing. Those matters in this case are now before the Board, Mr. Chairman.

CHAIRPERSON GRIFFIS: Excellent. Thank you very much. In terms of the second issue, and that is we did have submission of a handwritten letter indicating that this was not a legitimate entity and, therefore, could not own property and put an application in, we have been given exhibit number 31, which indicates that S & P Properties is an LLC and organized under the laws in the State of Maryland.

I don't think we need to have any other information at this time unless Board members have any concerns. Is that correct?

(No response.)

CHAIRPERSON GRIFFIS: Very well. Second

issue, which was five units, if I'm not mistaken, that was said that it was a typographical error. But, be that as it may, I do not believe -- well, I think the issue, frankly, is for us to discern whether the advertising of this case would be substantially misinterpreted by that change.

MS. GIORDANO: Mr. Chair, can I speak to that issue for a moment?

CHAIRPERSON GRIFFIS: Yes, very briefly.

MS. GIORDANO: Okay. Cynthia Giordano from the Arnold and Porter law firm for the applicant.

I just wanted to note that the mistake was because there are five units in the main building and a carriage house in the back, which has an additional unit.

So we just didn't really add the two together, but it's always been clear I think from the notice standpoint that there were the five units in the building and an additional unit in the carriage house. And that was clearly presented to the ANC, which has a letter of support in the record of the case.

CHAIRPERSON GRIFFIS: Okay. Board members, any questions, clarifications?

(No response.)

CHAIRPERSON GRIFFIS: Is the Board able to proceed with this? Let me hear any objections to proceeding.

(No response.)

CHAIRPERSON GRIFFIS: Do we have applications for party status in this case? I'm not seeing any indication. Is that correct?

MS. BAILEY: No, Mr. Chairman, I did not see a request for party status. And when you get to the Office of Planning, there is clarification with their report. But you'll get to that point.

CHAIRPERSON GRIFFIS: Okay. Are you prepared to proceed, then?

MS. GIORDANO: Yes.

CHAIRPERSON GRIFFIS: Okay. Board members, not seeing any, I can take that as a consensus that we're able to proceed with this. So let us do so. I will turn it over to you, Ms. Giordano, to present the case.

MS. GIORDANO: Thank you.

First of all, I just want to say I was surprised to learn about Ms. Sansone's plans. I didn't know that she was leaving. And I just want to share the Board's thoughts about missing her. She was a great resource to I think applicants as well as

community people, very available and very responsive. I will miss her also.

CHAIRPERSON GRIFFIS: She hasn't provided us with her forwarding number, but we'll get that. Not to worry. Okay.

MS. GIORDANO: One other issue that I just wanted to raise about the notice is that the notice speaks to three different kinds of variances that are requested in this case, but we're deleting one at this time. They are a variance from the lot occupancy requirements, a variance from the rear yard requirements, and also a variance from the provisions that do not allow additions to nonconforming structures, which exacerbate a nonconforming condition.

That last one was put in the notice and was something that we thought we would need initially, but with the modifications of the plans we no longer need. I think that we will explain that some more in detail.

We're looking for two variances in this case, one from the lot occupancy requirements and one from the rear yard requirements.

CHAIRPERSON GRIFFIS: Are you going to show us plans that are different from what we

reviewed?

MR. ZAHN: Only slightly.

MS. BAILEY: I'm sorry. Can I let the architect respond to that? Thank you.

In introduction, basically we have one witness. And that is the architect. We also have two supporting witnesses who can answer questions about the case, if there is a need.

The owner is with us from S & P Properties. I don't think that his testimony is needed to support the variance, and I know that the Board is trying to make up for a little bit of lost time. So we'll not ask him to make a statement. But if there are any questions about how he came to purchase this property or what his intentions are that the architect can't cover, then we would be happy to let the Board address him directly.

Then Mr. Jim Smith, who really is intimately familiar with all the details of this case and prepared most of the case, is here if there are any questions that I can't answer or the architect can't answer.

We will basically proceed with the architect's testimony. I am going to just make some brief introductory remarks and address the variance

criteria here.

The property is unique.

CHAIRPERSON GRIFFIS: Before you start on that, don't worry about our time. I want you to be able to present the case. I think it is expeditious for you to have him available for questioning, but don't preclude your case --

MS. GIORDANO: All right.

MS. BAILEY: Excuse me, Mr. Griffis.

CHAIRPERSON GRIFFIS: Yes?

MS. BAILEY: That last statement, your mike wasn't on. And I'm not sure we picked that up.

CHAIRPERSON GRIFFIS: I will restate for the record, then, clearly you need to do what is in your opinion the best to present your case. So do not preclude any testimony based on the fact that we due to technical difficulties started late today. But I think having the owner available for questions at this point seems to be appropriate.

MS. GIORDANO: Okay. I don't think his testimony is necessary. The uniqueness argument, the practical difficulty in conforming with the zoning regulations, and the adverse impacts issue can all be covered by the architect.

But just let me say for the record that

the owner purchased this property out of foreclosure. It was a distressed property. It was not the most marketable property in the block. That's part of our uniqueness issue, actually.

It is primarily a block of brick, three-story Victorian-style brownstones. This property is a two-story, 21-foot high frame building that is protected by the historic district. It is attached to a two-story carriage house in the rear, which is also in a unique condition in this block. So it is one structure.

The two-story carriage house is also protected from a historic standpoint. The developer and the architect have been to the review board twice with plans to -- initially the developer's intention I think was to demolish the building.

And it became clear after going to the review board that that was not going to be permitted, that despite the fact that the building is not really compatible with the character of the rest of the historic district, I think that uniqueness led the review board to want to preserve it, the fact that it is a two-story frame house. The carriage house was also deemed significant individually. So both of those structures have to remain.

Plans were presented to the review board, also to build additional height, to build an addition on top of the two-story frame house, and that was not permitted.

So what we have is a very low structure, 21 feet in height, in a 50-foot height district, no ability to go up above the structure. There is space on the lot. These were two separate lots initially but were subdivided to consolidate into one lot prior to the purchase of the property. So there is ability to build --

CHAIRPERSON GRIFFIS: Can you say that again?

MS. GIORDANO: Yes. These were initially two lots.

CHAIRPERSON GRIFFIS: Correct.

MS. GIORDANO: I think there was another probably matching building next door. Mr. Smith actually may know better than me as to what existed before this. I just didn't want to leave the impression that the building didn't have open space adjacent to it on the lot. It does. And that is where we're proposing to do the addition.

There were definite constraints from the review board in terms of cantilevering over this

building or building on top of existing --

CHAIRPERSON GRIFFIS: The current lot configuration was through an assembly of two lots, was purchased out of foreclosure. Is that correct?

MS. GIORDANO: Yes.

CHAIRPERSON GRIFFIS: Okay.

MS. GIORDANO: So, in any event, what we have is a unique structure in the size of the structure, the fact that the structure goes all the way to the back with a two-story carriage house, instead of a one-story carriage house, which is what really is permitted in terms of a garage in this zoned district. They are connected by a cinder block structure.

What we are proposing to do is to basically keep that existing configuration of linking the carriage house to the main building, building an addition to the main building.

So we would end up with one structure on the lot. That structure would go into the rear yard but not any more than it does now. That is the rear yard variance. There is some question as to whether we even need that rear yard variance, but we are rebuilding that connecting structure and really converting it into a Trellis.

So because we are demolishing the existing connector, which makes it one building and allows the building to -- and also extends the building into the rear yard, because we're demolishing it pretty much and starting from scratch, adding a new addition, we're asking for that variance, that rear yard variance. But it's no difference than the existing connection and the existing condition, which is that --

CHAIRPERSON GRIFFIS: To ask what?

MS. GIORDANO: Just to be sure that when we demolish it and build anew, that we're not losing that vesting of that situation. And Ms. Hicks, Gladys Hicks, who was formerly with the Zoning Administrator's office, was involved with Mr. Smith in formulating this case from the beginning. She thought that that was a good assurance policy in case a reviewer questioned demolishing and then reconstructing it.

I just wanted to make clear that it's not a new rear yard variance or a new intrusion into that rear yard. It's the exact condition that exists today. And, in fact, we are really opening up the space in that existing connection by making a trellis, instead of a solid structure.

So, with that, the practical difficulty created by the restrictions, the historic restrictions, on adding onto the two-story structure vertically, are that we need a little bit of relief from the lot occupancy in order to make the layout of the buildings work.

Also, the building code requires that access to the carriage house, which is going to be habitable space. The second floor of it is going to be a residential unit. The building code requires that that carriage house be accessed from the front of the lot, rather than from the alley.

So the design has to also incorporate a passageway through the structure on the front of the lot, all the way through to the back, which also takes up space on the ground floor of this addition, which creates a need to try and recoup some of that lost space through an increased lot occupancy, which is really minimal.

So, with that, I hope I haven't confused you too much. I would like the architect to --

CHAIRPERSON GRIFFIS: Although it's easy to do, you haven't. You have just stated the building code requires access. Is that the local D.C. or is it BOCA?

MS. GIORDANO: Can I defer to Mr. Smith on that?

CHAIRPERSON GRIFFIS: Okay.

MR. SMITH: I'm not sure of the exact code citation, but I have had a number of cases with carriage houses in the past that were art galleries and what have you.

Mr. Noble has told me that for emergency egress, fire protection services, and stuff like that, you have to get to every apartment unit from the front of the lot or if it's a side yard, you can walk through the side yard, but because of emergency procedures, police, and fire protection, every single unit has to be available to the front of the lot, whatever that is.

MS. GIORDANO: I would venture to guess it's probably because that is the address is taken off the street so the emergency vehicles aren't going to know to go to the alley.

CHAIRPERSON GRIFFIS: Right. And obviously that's not part of our jurisdiction. My point is that if it is used and presented to us as one of the pieces of the case that's put together that is requiring certain things to happen, it would be advantageous for the presentation to cite the specific

regulation. But we can get that.

MS. GIORDANO: We can provide that.

CHAIRPERSON GRIFFIS: Yes. All right.

MS. GIORDANO: At this point I would like the architect to introduce himself and to make his presentation.

MR. ZAHN: I'm Greg Zahn, Zahn Design Architects, address 1727 21st Street, Northwest.

CHAIRPERSON GRIFFIS: Before you say anything, we are going to have to get you a mike closed to you turned on. If you wouldn't mind just focusing your voice into that?

MR. ZAHN: We're going to present a compromise to the original proposal. So the handout that is going by currently will address that. I will start.

I will speak briefly about the existing conditions, briefly about what HPRB, more of the intricacies, and then a little bit about our design in order to try to utilize most of the matter-of-right FAR on this site while respecting historic preservation requirements and the zoning light and air requirements.

CHAIRPERSON GRIFFIS: Can you first give us an indication? Ms. Giordano had indicated that the

variance for nonconforming structure provision under 2001.3 was not required in this. Do you want to walk us through what was the initial need and why, then, it is not needed so we can dispense with that?

MS. GIORDANO: While the architect is looking for a plan, Mr. Smith would like to start to address that issue since he basically prepared the original variance relief.

CHAIRPERSON GRIFFIS: Okay.

MR. SMITH: Mr. Chairman, my name is Jim Smith, for the record. I live at Six Logan Circle, Northwest.

When we first went over the case, Ms. Hicks was concerned about the fact that we have a two-story carriage house. And, even though the citation in the chapter talks about the percentage of lot occupancy relating to that, she was concerned that a reviewer in the Zoning Office might have an issue with using the carriage house as a second story for something because the zoning regulations hold you down to 15 feet. So she told me that we should put that in again as a safety valve because if she were the reviewer as a zoning administrator, she probably would have questioned that and sent it over here.

CHAIRPERSON GRIFFIS: Even though the

carriage house is attached physically to the main structure?

MR. SMITH: Yes, because the intention of our case, as Ms. Giordano explained, was to demolish the existing connector.

CHAIRPERSON GRIFFIS: I understand that. All right.

MR. SMITH: So all of that stuff sort of came out of that issue that if we were destroying a nonconforming element, we can't reconstruct it.

CHAIRPERSON GRIFFIS: I am not sure I would see the same direction, but Ms. --

MS. GIORDANO: I think that we felt that it really muddies the issue and that it's best deleted at this point.

CHAIRPERSON GRIFFIS: Okay. Well, we'll keep it under our thoughts.

MR. ZAHN: Okay. Existing conditions. We have here the two-story frame house; a series of later brick additions; the connector, which is actually just a very unfinished cinder block shed; and then the historic townhouse at the rear.

Note that at one point I think the initial submission, the land survey incorrectly represented the area footprint of the existing townhouse. So this

complete lot, as purchased originally by Mr. Sligh, already covered 43 percent of the lot.

The original configuration was twin houses, twin frame houses, that were connected by a passage. So the property line would have divided the property equally in frontage to approximately 15 feet and 15 feet.

Now, already the frame house has been a little bit bastardized, if you will, because the original demising wall has been removed and a new wall has been built to accommodate the passage that went through. So they tore down one side of the house. Then they extended this wall about 18 inches to line up with the edge of the passage because the common passage still exists.

As you can see from the photos, the house is in terrible condition. It has really been stripped of any of its historic detailing. There are no historic events or people that have taken place or occupied this property.

The exterior, the original frame house, would have most likely had wooden clapboard. We have been able to find pieces of that under three layers of more contemporary siding. Parts of the building had been covered with metal siding and then over that

asphalt shingle.

And then, finally, what you see now is the asbestos, the riddle asbestos, shingle, which will have to be removed by an environmental company.

CHAIRPERSON GRIFFIS: You don't have to preserve that. Before you go through, you have gotten through a lot of things. The first question is, does the shed have a roof on it?

MR. ZAHN: Yes.

CHAIRPERSON GRIFFIS: Okay. Secondly, talk to me about this passage you just indicated. Is that actually open under the structure? Do you go into the structure like the old access?

MR. ZAHN: Here it is. Can you see that?

MS. GIORDANO: Can we pass the photos out?

CHAIRPERSON GRIFFIS: Yes. That would be grand.

MR. ZAHN: This is the block shed. Here's the house with the old passage.

CHAIRPERSON GRIFFIS: Indeed. And the passage, when you go in through that door, -- and I'll pass it down for everybody -- you don't access the house at all, the structure from it. That passes you from the front to the rear.

MR. ZAHN: Yes.

CHAIRPERSON GRIFFIS: It's just one little tunnel.

MR. ZAHN: Right.

CHAIRPERSON GRIFFIS: Right. Is that clear to everybody? I figure that might not have been clear.

VICE CHAIRPERSON RENSHAW: Mr. Zahn, just a question on the block shed. Can you walk from the back of the house through the block shed into the garage.

MR. ZAHN: I don't know. I don't believe you can.

VICE CHAIRPERSON RENSHAW: So that's not really a passageway?

MR. ZAHN: No. It's a connector.

MS. GIORDANO: I wish Ms. Hicks were there, but I don't think there's a requirement under the zoning regs to actually have to be able to walk through a connector.

VICE CHAIRPERSON RENSHAW: I thought that was the case.

CHAIRPERSON GRIFFIS: Actually, if I'm not mistaken, it's a connection by a ground-level wall. It's not occupiable space that's spoken of, but we can get further edification on that if needed.

All right. Where did our pictures go? Oh, good.

MR. ZAHN: This drawing speaks a little bit to this passage, --

CHAIRPERSON GRIFFIS: Indeed.

MR. ZAHN: -- where the original property line was here. There would have been a mirror image house. Now, in a split vote with HPRB, they did agree to allow us to get rid of the passage.

Since the original wall doesn't exist, they agreed that this was kind of uncomfortable, lopsided, didn't help. So we did get them to agree to allow the building to be modified to the existing inside wall of the passage.

CHAIRPERSON GRIFFIS: Okay. Now, this is a masonry structure with a wood frame facade, primary facade?

MR. ZAHN: No. I suspect originally the house -- this was the original house.

CHAIRPERSON GRIFFIS: I see. Okay.

MR. ZAHN: Then later brick additions and block additions were made.

CHAIRPERSON GRIFFIS: I see. That makes sense.

MR. ZAHN: So, kind of moving forward to

further requirements, the historic preservation, the people wanted to keep the existing structure. Okay. Fine.

So we proceeded. Our first scheme proposed a four-story, three-story with basement, apartment with some addition, some three-story addition, onto the existing townhouse.

The initial reading was, "No. We don't want any. We don't want a three-story addition." So we reduced that. Also, the height limitation --

CHAIRPERSON GRIFFIS: You mean a third story addition, correct, --

MR. ZAHN: Set back.

CHAIRPERSON GRIFFIS: -- not a three-story addition?

MR. ZAHN: Well, the proposal was to remove this and regularize.

CHAIRPERSON GRIFFIS: I see. So it would be three-story new in the rear?

MR. ZAHN: In the rear.

CHAIRPERSON GRIFFIS: I see. Okay.

MR. ZAHN: The other constraint, the other major constraint, was that HPRB didn't want to see our facade taller than roughly 40 feet, which is decidedly the limit, the average limit, on the block.

What we proposed was kind of a traditional federal flat front adjacent to the existing structure, nothing in the rear. We had proposed some bay projections on the side of this building to try to incorporate a little bit more of the matter-of-right FAR. HPRB did not want that. So our 50-foot kind of got squished down to 42 feet. I think we are. across the front.

We are adjacent to a higher zoning that faces New York Avenue, These were the proposed Yale Laundry buildings that were approximately 110 feet as they were approved and proposed.

CHAIRPERSON GRIFFIS: Approved by who?

MR. ZAHN: Were they --

MS. GIORDANO: I think there was some kind of zoning case on that, but --

CHAIRPERSON GRIFFIS: I asked a question I can answer, but you can move on.

MS. GIORDANO: I think it might have been a PUD.

MR. ZAHN: You can't answer it?

CHAIRPERSON GRIFFIS: Let's go ahead.

MR. ZAHN: It's a denser zone.

CHAIRPERSON GRIFFIS: Indeed, indeed. Are Board members clear on that, the address in the New

York Avenue frontage and then where this is? Okay.

MS. GIORDANO: You want to go back to your context plan. I think it would be helpful to just sort of back up to the very front and show the building and how it sits compared to the other buildings in the block.

MR. ZAHN: This is the best. The photograph, Cynthia? Is that what you'd like to see?

MS. GIORDANO: I just thought maybe you would point that out while you had the plan up there, the one that you just had up there.

CHAIRPERSON GRIFFIS: The elevation for clarification that you just have shown that gave the entire streetscape height variance, that is actually what was approved in elevation or approved in concept by HPRB. Is that correct?

MR. ZAHN: We are completely approved.

CHAIRPERSON GRIFFIS: Oh, you are? Okay.

MR. ZAHN: So let me go back to point out the additional measures we took to try to incorporate and make use of the matter-of-right FAR.

The proposed structure has very tall ceiling heights in the front of the building in order to give it the historic character. What we have done is we have kind of slipped in some additional floors

at the rear in order to come up with enough area to make a viable, comfortable apartment.

So this is actually I think four stories in the basement in the rear, as opposed to three. So every little piece of lot coverage that we can take advantage of kind of in this area plays very strongly towards making use of the matter-of-right FAR.

Now, I will speak briefly to I guess if we call it a -- is it a compromise? -- a compromise. The original connector was four feet, nine inches wide. That's been reduced to three feet. Also, the depth of this existing building or the addition to the existing building has been reduced by three feet.

So what we ultimately end up with, we end up with -- granted, we end up with a three-story plus space, plus mezzanine, four-unit apartment, which covers 30 percent of the lot. Then we've got two-story and trellis connector that take up the rest of the approximately 30-some percent. Then the rest of the space is open space.

We have proposed in detail a concrete paver block that allows grass to grow up through it so that this backyard, not only will it absorb moisture, reduce runoff, keep temperature down, aesthetically everything will be cooler, more --

CHAIRPERSON GRIFFIS: What's the dimension of that green space from the garage structure to the property line?

MR. ZAHN: This dimension is approximately 15 feet and this dimension is 58 feet.

CHAIRPERSON GRIFFIS: Is that your understanding of an allowable access into a garage?

MR. ZAHN: There is no requirement because this is an historic district.

CHAIRPERSON GRIFFIS: Well, it's an interesting question, but if parking is required --

MS. GIORDANO: I think if it's provided.

CHAIRPERSON GRIFFIS: I mean, if it's provided, whether it has to accommodate. I think it's something we need to briefly look at but not necessarily delay at this point.

MR. ZAHN: The parking requirement for a two-way --

CHAIRPERSON GRIFFIS: Right, for a single access.

MR. ZAHN: Two-way I just reviewed the other day is 15 feet. So a single passage is certainly less than that.

CHAIRPERSON GRIFFIS: Okay.

MR. ZAHN: We have plenty of ten-foot

alleys in Washington.

CHAIRPERSON GRIFFIS: Right. We also have zoning that doesn't reflect existing conditions.

I think what we'll do, if I'm not mistaken, you're taking that as a driveway. A driveway has specific dimensions in our regulations that I think would accommodate 15 feet.

Does anyone else have their finger on that? If not, we'll just take a look at it. I don't anticipate a problem, but I just want a clarification on that dimension.

MS. GIORDANO: We will also take a look at that with Ms. Hicks, who is a consultant on this project.

MR. ZAHN: And the question would be, is this a two-way or is it a one-way?

CHAIRPERSON GRIFFIS: It's one way.

MR. ZAHN: Right. So it would be certainly less than ten feet if 15 feet is the two-way requirement.

CHAIRPERSON GRIFFIS: Well, I think when you're talking about one-way and two-way, you're talking about drive aisles. In my understanding of what you are proposing here, this is a driveway, which is different than the drive aisle, for instance, in a

parking lot.

MR. ZAHN: All right.

CHAIRPERSON GRIFFIS: Sorry to interrupt the flow.

MR. ZAHN: No. I think I covered everything that I wanted to cover.

CHAIRPERSON GRIFFIS: Okay. You're showing an overhang on the garage, some sort of trellis work. Is that what the dashed lines are indicating?

MR. ZAHN: Right. We're proposing a rolled-up metal garage door that would sit on the exterior and then be covered by the trellis.

CHAIRPERSON GRIFFIS: I see. So those dashed lines are actually indicating the extent of where the door would drop. Is that correct?

MR. ZAHN: No. The door will drop at the face of the building.

CHAIRPERSON GRIFFIS: So the dark procheted area?

MR. ZAHN: Yes.

CHAIRPERSON GRIFFIS: Okay. So the dashed lines are showing something above the ground level, which is the trellis?

MR. ZAHN: Right.

CHAIRPERSON GRIFFIS: Okay.

MS. GIORDANO: Okay. If I could just ask the architect to just comment briefly on how this additional lot occupancy affects light and air for the project and to the adjacent properties.

MR. ZAHN: Okay. I think we should look at the proposed three-plus basement apartment building because this area of the lot remains essentially very close to where it has been a two-story.

It's relatively low density compared to the rest of the street the block, the neighborhood. This proposed apartment is also in keeping with the density of the neighborhood.

As far as affecting light and air, the depth of the apartment building is not unreasonable given a typical lot, a typical lot without the additional lot occupancy of this carriage house. In a typical lot, this apartment building would probably be much longer. Without the historic constraints, this apartment building would be much taller.

So, therefore, I think what we have done and particularly by introducing these mezzanines at the rear and the extra levels is we have used the matter-of-right FAR in a very compact manner.

These proposed apartments will have

windows essentially on three sides. This building will not adversely affect either building to the side because those buildings are built on the property line and, therefore, aren't able to have any windows. For example, any shadowing from this building, the shadow is falling on a blank brick wall adjacent.

So there isn't any adverse negative resultant aspect of light and air to adjacent properties.

CHAIRPERSON GRIFFIS: You made a statement that this is keeping with the density of the neighborhood. Are you offering testimony that there are multi-unit structures on this block or are you saying that it's keeping with the massing?

MR. ZAHN: There are quite a number of apartment buildings. The Mohawk covers --

MS. GIORDANO: It's a 16-unit building, I believe.

MR. ZAHN: This is the Mohawk, which is on the south side of the street towards 5th. This is an apartment building directly across the street, which is 16 or 18 units.

CHAIRPERSON GRIFFIS: Is that occupied?

MR. ZAHN: It's under renovation.

CHAIRPERSON GRIFFIS: Not that that makes

a difference, but that picture shows, if I'm not mistaken, something that looks to be vacant.

MR. ZAHN: Well, these photos actually were taken close to a year ago.

CHAIRPERSON GRIFFIS: Right. Okay. As I say, it doesn't --

MR. ZAHN: Many of the large townhouses have been converted into four-unit apartments.

MS. GIORDANO: I just want to add that it's an R-5 zone.

CHAIRPERSON GRIFFIS: Right, which means we don't have to track those homeowners down is what you're saying, right? Okay.

MS. GIORDANO: It's an apartment district. I also wanted to add on the light and air issue that the trellis, which, of course, is counted in lot occupancy, is actually open. So if you remove the trellis from the equation, it would really even further reduce the lot occupancy issue.

CHAIRPERSON GRIFFIS: Can you give me a brief opinion about why a trellis would go to lot occupancy?

MS. GIORDANO: Well, it's considered a structure.

CHAIRPERSON GRIFFIS: Is it?

MS. GIORDANO: Yes, because it has a roof on it.

CHAIRPERSON GRIFFIS: You're putting a roof on the trellis?

MS. GIORDANO: This whole trellis issue is a real curious one, but there has been at least one BZA case on whether this kind of structure is sufficient to connect buildings and, therefore, make them one building.

This is just something that has been adopted over the years as being an accepted structure to connect two buildings like this and make them one building. It's considered a structure like any other part of the building.

MR. ZAHN: With the provision that it's 51 percent solid.

CHAIRPERSON GRIFFIS: It looks pretty close together if that's 51 percent.

Ms. Renshaw?

VICE CHAIRPERSON RENSHAW: Mr. Chairman, I just wanted to be clear if this has a solid roof on it. Is that what makes it 51 percent solid?

MR. ZAHN: No. It would be a lattice. There will be wooden members going in both directions. So they're equally spaced to both directions. That's

50 percent.

VICE CHAIRPERSON RENSHAW: But this is not really a breezeway.

MS. GIORDANO: I don't know what the definition -- why don't you just describe it?

MR. ZAHN: The --

CHAIRPERSON GRIFFIS: I think Ms. Renshaw is getting to, can you walk under this and have some provision of shelter or sun shading?

VICE CHAIRPERSON RENSHAW: If it's a connection.

CHAIRPERSON GRIFFIS: Right.

MR. ZAHN: Yes.

MS. GIORDANO: Sun but not rain.

CHAIRPERSON GRIFFIS: Right, right. I don't know.

VICE CHAIRPERSON RENSHAW: Well, I always --

MS. GIORDANO: I know it's curious, but there have been --

CHAIRPERSON GRIFFIS: Well, I'm concerned in which direction --

MS. GIORDANO: This has been really debated.

CHAIRPERSON GRIFFIS: -- it takes us

because I don't buy that. What it seems to me in looking at this is that there was a structural modification to the shed that maintained the connection from the main structure to the carriage house.

If I'm not mistaken, that is allowable under our regulations, but to say that one is substituting a trellis as a structure is just a little difficult. But I don't think it's going to impede us.

VICE CHAIRPERSON RENSHAW: Mr. Chairman?

CHAIRPERSON GRIFFIS: Yes?

VICE CHAIRPERSON RENSHAW: I have another question. In the drawings, it shows a car that is outside of the two-story brick carriage house, where underneath you would be parking several cars. If that has to be left open for fire, correct, because the carriage house has to take its address from the front of the building, then you would not be able to park a car there? Am I right?

MR. ZAHN: This is the front door. The dotted line shows the passage. Then this is the entrance. The entrance to the unit above the parking is right here.

VICE CHAIRPERSON RENSHAW: But it is on the other side of the car?

MR. ZAHN: Right.

VICE CHAIRPERSON RENSHAW: It's right here.

MR. ZAHN: It's here.

VICE CHAIRPERSON RENSHAW: But I thought that it would have to be from this way.

CHAIRPERSON GRIFFIS: I don't think the direction on the entrance makes any difference. It's coming in from the front. What you need to do is have access. What the testimony today is indicating they need to have access from the street front and street through to this area.

VICE CHAIRPERSON RENSHAW: And it's going this way?

CHAIRPERSON GRIFFIS: Correct.

VICE CHAIRPERSON RENSHAW: Thank you.

MS. GIORDANO: Mr. Griffis, on the issue of the connector, there have been a couple of BZA cases on these kinds of connectors, which I can provide to the Board. Also, Mr. Bello, who is on your staff, might be a good resource on that issue as well because I know he is very familiar with the interpretations on that.

It is a very curious interpretation, but it is one that is well-established.

MR. ZAHN: Might I throw out, is there any reason why? In my opinion, there isn't any reason why it couldn't be solid. What we were trying to accommodate is a little bit more of the light, the air, green space, and mitigate the impact of the structure.

So since there is precedence for the trellis, that is how the trellis arrived.

CHAIRPERSON GRIFFIS: Too bad for that homeowner who wants to add a trellis and they're maxxed out on lot occupancy. That's not our case today. So let us move ahead. I think unless there are other questions on that, I am clear on what is happening in this situation. So I think we can move ahead.

Anything else on the drawings, any other questions from Board members? Does everyone understand exactly what is being proposed here?

VICE CHAIRPERSON RENSHAW: Would you explain, Mr. Zahn, how a trellis becomes solid if it's 51 percent? How do you measure that?

MR. ZAHN: Again, this is an interpretation that has come from the zoning administrator. If you have two-inch, let's just say two-inch, slats of treated wood and you space them

every two inches and then you lay over that two-inch slats, actually, you're over 50 percent.

Two-inch slats every two inches by themselves equal 50 percent. If you introduce two-inch slats in the opposite direction spaced at two inches, I don't know. I don't know if you're at 75 percent or 67.6 percent, but that's how it works. A detail, simple detail, of how the trellis works can illustrate that it's 51 percent.

VICE CHAIRPERSON RENSHAW: And how do the length and width factor into that 51 percent?

MR. ZAHN: The length and width.

VICE CHAIRPERSON RENSHAW: Of the trellis.

CHAIRPERSON GRIFFIS: It wouldn't matter.

VICE CHAIRPERSON RENSHAW: It wouldn't matter.

MR. ZAHN: It can be as big as --

CHAIRPERSON GRIFFIS: You can look at a square foot, Ms. Renshaw, and that would be replicated across, no matter what the dimension of the trellis would be, if I'm not mistaken.

VICE CHAIRPERSON RENSHAW: All right. Interesting.

MR. ZAHN: Right.

CHAIRPERSON GRIFFIS: See, who knew that

normal-day applications of simple math would be important in one's life.

MS. GIORDANO: There actually was a BZA case where a homeowner wanted to build a trellis to get from his house to his garage so he could get there without getting rained on. He came in for a rear yard variance.

He had a hard time making a variance case based on uniqueness and whatever. So I remember the staff actually worked with him to open it up so that he wouldn't need the rear yard variance.

CHAIRPERSON GRIFFIS: And so he'd get rained on.

MS. GIORDANO: But not too much.

CHAIRPERSON GRIFFIS: Without digressing terribly --

MS. GIORDANO: There was an opening in the middle, I think it was.

CHAIRPERSON GRIFFIS: I see.

MS. GIORDANO: And part of it remained covered.

CHAIRPERSON GRIFFIS: I see.

MS. GIORDANO: Do you recall that?

MS. BAILEY: Sort of.

MS. GIORDANO: I can provide the Board

with that decision because I used it for research purposes.

VICE CHAIRPERSON RENSHAW: I think we should accept Ms. Giordano's offer to give the Board a couple of cases that establish this in greater detail.

CHAIRPERSON GRIFFIS: Okay. Let me also just get clarification that as far as your investigation of the history of this building, this was developed as a row dwelling. Is that correct?

MR. ZAHN: The existing structure?

CHAIRPERSON GRIFFIS: Yes.

MR. ZAHN: Again, the most information we have to go on is the fact that it's relatively typical, even in Victorian houses, that two townhouses share a passage to the rear yard.

So it is apparent from the inside of the house that the house has been extended 18 inches to match the current. So there is evidence of what was previously a dividing wall.

CHAIRPERSON GRIFFIS: A common wall.

MR. ZAHN: A common wall.

CHAIRPERSON GRIFFIS: Which would indicate that there was a structure on the other side also, which would have been also a row dwelling. Is that correct?

MR. ZAHN: Right, probably a matching, a twin, --

CHAIRPERSON GRIFFIS: Right.

MR. ZAHN: -- that was built as two units with the passage.

CHAIRPERSON GRIFFIS: Okay. Is that clear, Board members?

VICE CHAIRPERSON RENSHAW: Yes.

CHAIRPERSON GRIFFIS: Very well. What is next?

MS. GIORDANO: I just wanted to pass to the Board the staff report, the HPRB staff report, which mentions that -- it says, "The existing frame house was constructed in 1873 as one of a matching pair."

CHAIRPERSON GRIFFIS: Oh, indeed. I do recall that. I think we have that submitted.

MS. GIORDANO: Right.

CHAIRPERSON GRIFFIS: Isn't that in the record?

MS. GIORDANO: Right.

MS. BAILEY: Yes.

CHAIRPERSON GRIFFIS: All right. So we'll just highlight that. You need to pass it to staff, if you would, but if it's in the record, there is no

reason to resubmit that. But we will highlight it and bring it to the Board's attention.

Let me get clarification. Exhibit Number 8, which I am going to hold up for you to look at, is a prospective rendering. This is essentially what is proposed at this point. Is that correct? Okay.

MS. GIORDANO: Okay. I just wanted to note at this point that the ANC has voted to support this application. There is a letter, a report from the ANC in the record.

I am also submitting now an additional letter from the SMD ANC representative, who lives in this block. She lives at 400 M Street. The address is 420.

Do you want to just point out which house that is?

MR. ZAHN: It would be this one right here. It's larger than our proposed structure.

MS. GIORDANO: I just also wanted to note that we have been working with the Office of Planning. Their initial report was a negative recommendation. That was really our fault because we hadn't really -- first of all, we have that additional variance, which was kind of a red herring. And we hadn't really organized the facts in a way that addressed the

variance criteria. Since then, we have attempted to do that.

We're hopeful that we have satisfied the Office of Planning that those facts do support a variance at this point.

CHAIRPERSON GRIFFIS: Good. Well, we're going to hear from them.

Anything else?

MS. GIORDANO: That's it.

CHAIRPERSON GRIFFIS: Very well. Then let us move quickly on. Let us go to Office of Planning. Yes, indeed. Let us go to the Office of Planning and welcome you. Why don't you present your report for us as you introduce yourself?

MR. McGETTIGAN: Thank you. Mr. Chair. My name is David McGettigan from the Office of Planning.

As the applicant indicated, in the initial report that the Office of Planning provided, there wasn't enough information to make the case for the applicant. We had, therefore, recommended denial of the application.

Since the additional information and the case has proceeded has been provided, we haven't had an opportunity to file a supplemental report because

of the short time frame in which we received the information.

But basically several things are additional information that make it important. One, the existing shed connection was not readily apparent in the first submission, that there actually was an existing connection to the carriage house of a shed.

That changes the rear yard case, I think, significantly. It also provides some comfort that the impact of this design is not going to be substantially different from what was there before, particularly in regards to the carriage house that could possibly have been used as a dwelling at some prior point in time because it was connected to the main structure and, therefore, are restoring it to residential uses not impacting the neighborhood. In fact, the restoring of it will help since the building is abandoned currently.

In addition, I think the other concern of the Office of Planning was that there be enough space in the open space for people to re-create their living in there to enjoy the outdoors.

I think the reduction of the addition to the first house to add I think three feet more space -- is that correct? -- helps provide some more open

space in the back. Also, the paver and grass driveway I think makes the driveway dual purpose. You can use it as a driveway, and you can also use it as some open space on the lot.

So between those two changes and the further justification of their case that they have gone through today, I think we can be comfortable in supporting the application.

CHAIRPERSON GRIFFIS: Can be or are?

MR. McGETTIGAN: We are.

CHAIRPERSON GRIFFIS: Okay. Board members, questions for Office of Planning?

VICE CHAIRPERSON RENSHAW: Just to request, Mr. Chairman, a written update of Mr. McGettigan's testimony so that we have that for the record.

CHAIRPERSON GRIFFIS: I would agree. Mr. McGettigan, how much time do you think you need to resubmit? It's your intention you're resubmitting an updated memo. Is that correct?

MR. McGETTIGAN: Yes. I can submit one in probably a week to ten days.

CHAIRPERSON GRIFFIS: Are there any other questions for Office of Planning by the Board members?

(No response.)

CHAIRPERSON GRIFFIS: Okay. Mr. McGettigan, we appreciate your update on that. For my clarification, you have, in fact, strongly reversed your decision and find that there is an exceptional situation and practical difficulty in developing this lot and that this proposed development does fall in line with your analysis of the regulations.

And you have, therefore, changed your opinion and are, in fact, in support of this applicant. Is that correct?

MR. McGETTIGAN: That's correct.

CHAIRPERSON GRIFFIS: Okay. Does the applicant have any questions for the Office of Planning?

(No response.)

CHAIRPERSON GRIFFIS: Okay. Let's move on. Other government reports. I don't have an indication of other government reports. So let us move to the ANC report.

Oh, outside, let's just take note that it's obviously been referenced, HPRB's memos. They are attached, and we have reviewed those. Clearly there has been testimony on that.

Let's go to the ANC-2C, which did unanimously support the application. It is Exhibit

Number 22. We do have the supplemental letter also, dated May 28th, by Lydia Goring, who is the SMD member of 2C-04.

Is there is other additional information we need to reiterate on that? It was all properly filed and timely. And there was a quorum present, as stated in the requirements and in the note. Do Board members have clarification they need on that? Does the applicant have clarifications?

(No response.)

CHAIRPERSON GRIFFIS: Very well. Let's move on, then. Are you calling any other? Well, you wouldn't be at this point. Is anyone else here to testify in response to this case, either in support or in opposition?

(No response.)

CHAIRPERSON GRIFFIS: Very well. Then let us go to the last questions from the Board members and closing remarks. I'll allow you to have closing remarks at this point. Then we may have follow-up questions.

MS. GIORDANO: Yes. In closing, I just wanted to say that I think that we have clearly met the variance standards. The property is unique. It is very different from all of the other properties in

the square and the immediate vicinity in that it is a very short building and it's a frame building and it's not a likely candidate to be one of the first to be renovated in this block.

It's kind of the ugly duckling in the block, despite its historic merit, I guess. It cries out for some more height, but it's not permitted by the historic preservation laws.

So the addition had to be configured in a way that it expanded the base of the building and exceeded the lot occupancy to make for a viable project.

We think that the end result is a building that works. It's intended to be a condominium building, which will bring additional residents to this block. This block is sorely in need of additional residents and revitalization. And we think that the public interest is served by granting this variance.

We're happy to provide some additional information to the Board supporting our testimony on the building code issue and to give the Board a better sense of how these connectors have been interpreted in the past. We can do that within the time frame of the Office of Planning supplemental even before that,

within a week to ten days.

Thank you.

CHAIRPERSON GRIFFIS: Thank you very much. So it's my understanding, as you have just stated, that based on the fact that this is short and unrepresentative of the height and mass of the rest of the block, there is clearly uniqueness in terms of I think it was stated in one of the submissions curb appeal. I am not sure that goes directly to uniqueness, but clearly the state of the property we have entertained.

I think the strongest piece that you're saying is that we have this shortness issue in terms of the structure with the requirements from HPRB and their understanding additional height that might be a matter of right now is not allowable. Therefore, the building has to become larger in terms of its lot occupancy, which goes to the variances being requested today and the practical difficulty of not being able to go up to make liveable units but, rather, to go deeper.

Now, perhaps I'm unclear. Maybe other Board members are not. What are we doing with the rear yard, then? Are we looking at the rear yard variance?

MS. GIORDANO: We would prefer that the rear yard variance be granted as part of this application so it's clear to the zoning administrator that we --

CHAIRPERSON GRIFFIS: Okay, in which case I need a restatement of actually what we're looking at in terms of how much we're granting or not granting in terms of variances.

MS. GIORDANO: In terms of the rear yard? The rear yard is that we're allowed to have this carriage house or the extension of this building into the rear yard, not any more so than exists now but that this carriage house can remain in place with the connector.

The issue there is, of course, you know, it is a unique situation in that this is a two-story carriage house. The second story, it doesn't make sense not to use it. That's why it has to be part of the other structure so that it's useable space. Otherwise, you would be restricted to using it as a garage.

So there is no public interest in not allowing this connection and not allowing the use of the second floor. Leaving it vacant certainly is not really is anybody's interest in terms of --

CHAIRPERSON GRIFFIS: An empty lot, what is the rear yard requirement that's calculated?

MS. GIORDANO: I think it's 25 feet. Fifteen. I'm sorry. I stand corrected.

CHAIRPERSON GRIFFIS: Okay. In this case, what we're looking at here is just you're not changing, in fact, the rear yard --

MS. GIORDANO: The footprint, right.

CHAIRPERSON GRIFFIS: -- as it exists but, rather, that it is actually a nonconformity. You're asking for a variance to make it allowable for an existing condition?

MS. GIORDANO: Yes, so that we can reconstruct that connector and continue to maintain this extension of this building into the rear yard.

CHAIRPERSON GRIFFIS: I see. Okay. Everyone clear on that? Comments? Questions?

MEMBER ZAIDAIN: Just to make sure I am clear, in terms of the carriage house, you're not extending the encroachment of the rear yard or the lack of the rear yard? The reason why we're discussing this is because of the conversion. Is that my understanding?

MS. GIORDANO: Because of the reconstruction of the connector. I think if the Board

is uncomfortable with granting a variance for that, the Board simply just stated that they don't think a variance is necessary to reconstruct that connector and continue to allow the carriage house as an extension of the building in the front into the rear yard. That would probably suffice.

MR. ZAHN: There's really no alternative. We can't provide the rear yard because we can't tear it down.

CHAIRPERSON GRIFFIS: Right. I understand the whole piece. I think there are a lot of different ways that this could have been approached that may have been actually cleaner, but what we have in front of us, I am pausing because I want to make sure that we get this correct with any way that we proceed.

It seems strange to have -- are we required, Ms. Sansone, to grant variances for existing conditions?

MS. SANSONE: Mr. Chairman, what I understand the applicant to be saying is if you have a nonconforming building or structure and you remove that structure, you are not allowed to rebuild it in a nonconforming manner.

CHAIRPERSON GRIFFIS: Right. This I understand.

MS. SANSONE: And that's why to cover the situation, --

CHAIRPERSON GRIFFIS: I see.

MS. SANSONE: -- they would like the variance to make it clear that they can -- because with the connection, the building will extend the full extent of the yard. So it's going to occupy. It is occupying now, and the addition will occupy the entire rear yard here. So they would like the variance to clarify that that is acceptable.

CHAIRPERSON GRIFFIS: Are you maintaining any part of the shed; for instance, the lot line wall, the back wall?

MR. ZAHN: Currently as proposed, no. However, it is certainly possible. That's the connecting wall, the masonry wall.

CHAIRPERSON GRIFFIS: What is it becoming? Is that open also?

MR. ZAHN: It can become whatever you want it to become. I'm sorry. We have a little bit of a dissention.

MS. GIORDANO: Do you need to caucus?

(Pause.)

MS. GIORDANO: Mr. Chairman, we have a response.

CHAIRPERSON GRIFFIS: Okay.

MR. ZAHN: I hesitated a little bit because we represented essentially the property line as a fence. The intent was to kind of minimize the building in that yard. I mean, however, maintaining the existing cinder block, we can stucco it, probably would provide better privacy with the adjacent property. From a design standpoint, there isn't any adverse impact to the masonry wall.

Again, in the respect of privacy, it's probably better.

CHAIRPERSON GRIFFIS: Okay. So the black shed, there are portions of it which are being maintained and aesthetically modified, but, bottom line, the entire area is going to be structurally modified and updated in order to accommodate the new configuration of the rear yard.

All right. We have in our own analysis a couple of additional things that I think we need to discuss. One is the parking. Clearly the existing structure is waived, its parking requirements, which would be one if I'm not incorrect, as a flat so that there be a credit of one. However, we do have --

MS. GIORDANO: A credit of two probably. There were two structures.

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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PUBLIC MEETING

+ + + + +

TUESDAY

NOVEMBER 5, 2002

+ + + + +

The Public Meeting was convened in Room 220 South, 441 4th Street, N.W., Washington, D.C. 20001, pursuant to notice at 11:00 a.m., Geoffrey H. Griffis, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

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

ZONING COMMISSION MEMBER PRESENT:

JOHN G. PARSONS	Commissioner

COMMISSION STAFF PRESENT:

Sheri M. Pruitt, Secretary, BZA
Beverly Bailey, Office of Zoning
Clifford Moy, Office of Zoning

D.C. OFFICE OF CORPORATION COUNSEL:

Lori Monroe, Esq.

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

16880 - Endale Terefa..... 4

16863 - S&P Properties..... 23

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

11:20 a.m.

CHAIRMAN GRIFFIS: Good morning, ladies and gentlemen. I'd like to call to order the public meeting of the 5th November 2002.

On the Board this morning -- I am Jeff Griffis. I am Chairman. With me also is Ann Renshaw, Vice Chair. Mr. Curtis Etherly; Mr. Zaidain, on my left, representing National Capital Planning Commission. And on my far right, Mr. Hannaham, representing the Zoning Commission for our public meeting today.

We are ably assisted by the Office of Zoning staff that's with us -- Ms. Bailey, Ms. Pruitt and Mr. Moy. With that, let us get down to business.

MR. MOY: Good morning, Mr. Chair, members of the Board. The first application of the public meeting is application number 16880 of Endale Terefa, pursuant to 11 D.C.M.R. 3104.1 for a special exception to allow a change of non-conforming use from retail grocery to retail grocery and deli -- no seats -- under Section 2003 in an R-4 district at premises 434 Shepard Street, N.W., Square 3237, lot 79.

We also have -- the Board may consider waiver of deadlines for the following items -- requested information from the Office of Planning because it contains a proposed list of conditions that the Office of Zoning received late. And number 2, information from the application, that is a motion to waive filing time for findings of fact and conclusions of law, which the office received on November 4.

The last three items, the Board may consider reopening for the record to include additional items, which was not requested by the Board. The first one are the attachments to the applicant's evidentiary submission, which includes statement by two neighbors, a police officer and a businessman.

Number two, a statement of a meeting between the application and Mr. Ron Austin, who represents the council member Adrian Fenty's office.

And third, finally, attachments to the Council member Fenty's letter, which includes two letters from residents of Randolph.

That completes my report, sir.

MR. GRIFFIS: Thank you, Mr. Moy. Okay,

Board members, first, I would like to hear any objections to waiving -- or for opening the record to waive acceptance of the listed items that Mr. Moy went through. One is the Office of Planning, of course, information from the applicant. We also had additional statements and a letter from Council member Fenty's office.

(No response.)

CHAIRMAN GRIFFIS: Not hearing any objections, then I would take it as a consensus of the Board. We can waive our rules and accept those into the record.

Board members, I'm certain we all recall this case and have reviewed the additional and the entire record in preparation for today. There was substantial community input on this application that is to increase the -- I would say; clearly it's advertised as changing the use. But it's to add to an existing non-conforming use.

What's before us is this special exception to be able to serve what is defined as deli products to an existing retail grocery store. I think the record clearly substantiates for the Board that this is a neighborhood-serving facility. It has

been in this location for some time period, and perhaps even documented a use that pre-dates the '58 zoning regulations.

Its location is clearly serviced for the neighborhood and the adjacent residents. There was no evidence, nor would it give me an indication, that this was a destination shopping spot, which again, I believe, goes to establishing as a neighborhood servicing facility. To that, though, in servicing the neighborhood, a lot of the input that we heard went to the negative or detrimental impact of this facility.

I think there's an important point, in my looking at this. I do not believe, first of all -- a lot of testimony revolved the illegal drug sales on that corner. And what I would say in my words is the facilitating and essentially making it more convenient for drug dealers on the corner to pop into a store if there was, in fact, some police presence, or to feed them and keep them warm in the cold weather -- what was, I think -- a moving point for me is when the police officers who came to testify were asked, if this store closed or didn't serve hot food, would the drug activity leave? And they said no.

Clearly, they also talked about other areas in the neighborhood that had the same type of activity.

So, I have taken under great consideration that the community has raised, and I do believe that this Board, and full jurisdiction in 2003.7, has the oversight of design, and any issues that would mitigate the adverse impacts that have been very strictly and specifically raised by the community -- and I do believe that we should go to that level and address those issues.

I do not believe, however, that we're prepared to make a final decision on this today, and I would like to defer it. I would like to defer it for this reason. I would like to lay out the conditions that we can specifically define at this point. Give the applicant time because I do believe there will be additional submissions that will be required in that, and have an opportunity for the community to respond. I would like to somehow define how the community responds so this can be an efficient and expedited process.

With that, I'd like to open discussion, Board members, of certain conditions that arose out of the testimony in the record in terms of the