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February 16, 2007

VIA HAND-DELIVERY

Mr. Geoffrey H. Griffis
Chairperson
Board of Zoning Adjustment
441 4th Street, N.W.
Room 200
Washington, D.C. 20001

Re: Minor Modification/Clarification of Approved Plans
For BZA Order No. 17364

Dear Mr. Griffis:

This firm is counsel, for the Applicant, CIH/VMS Restoration, LLC, in the above-referenced BZA Application which was approved by the Board by Bench Decision and Summary Order dated October 13, 2005.

The Applicant through counsel respectfully requests a Minor Modification of BZA Order No. 17364 (attached) pursuant to 11 DCMR 3129 to clarify for the Zoning Administrator that the approved plans establish the applicable lot width and lot area requirements, including street frontage, for the Subdivision required to implement this important affordable housing project. The Skyland Terrace project is part of the DC government Home Again initiative to transform government-owned vacant lots and properties into affordable housing for first-time home buyers.

To facilitate this minor modification/clarification for the Zoning Administrator, the Applicant also requests the Board to waive the six-month time period under 11 DCMR 3129.3 for good cause shown. Specifically, the Applicant did not become aware of the Zoning Administrator's basis for refusal to approve the Subdivision in contradiction of the Board's approval until February 12, 2007. The requested minor modification/clarification makes no change to the approved plans and does not involve any change in the material Board relied upon by the Board in its approval.

BOARD OF ZONING ADJUSTMENT
District of Columbia
Board of Zoning Adjustment
District of Columbia
CASE NO. 17364
EXHIBIT NO. 33A1

Mr. Geoffrey Griffis
February 16, 2007
Page 2

In BZA Application No. 17364, the Board unanimously approved: a) a special exception under Section 353 to allow construction of five (5) single-family row dwellings and two (2) single-family semi-detached dwellings; and b) a variance from Section 2116.2 to allow one parking space in the front yard of each dwelling in the R-5-A District. In the R-5-A District, all new residential developments must be approved by special exception under Section 353. The Board is also fully aware that in the R-5-A zone, the minimum lot width and lot area requirements are established through the approved special exception. 11 DCMR 401.3.

In this case, the Board's approval specifically includes, under Section 3125.7, the attached Site Plan marked as BZA Exhibit 9-B which shows the approved lot width and lot area, including street frontage, for each of the seven dwelling lots and the large "outparcel" lot which make up the project site. The Site Plan which was approved by the Board was specifically submitted as part of the special exception application as required under Section 353.5.

The attached Subdivision Plat was prepared by the D.C. Surveyor's Office in accordance with the BZA approved Site Plan. The Subdivision Plat was submitted for routine approval to the Zoning Administrator on December 18, 2006, but it took the Zoning Administrator eight (8) weeks to conclude that the BZA approval was not sufficient to allow him to approve the Subdivision without additional zoning relief under 401.6 for Lots 1, 2 and the "outparcel" lot on the BZA approved Site Plan.

The Zoning Administrator's refusal to approve the pending Subdivision is directly contrary to Board's approval of the Site Plan, showing the requirements for lot width and lot area, including minimum street frontage. Further, the Zoning Administrator's action is inconsistent with longstanding practices in interpreting the Zoning Regulations and BZA approvals under Sections 353 and 401.3, as established by the attached letter from Mr. Olutoye Bello, the former Zoning Administrator.

For the foregoing reasons, the Applicant requests prompt approval of the minor modification to clarify for the Zoning Administrator that the BZA Order No. 17364, including the approved plans marked as BZA Exhibit 9-B, establish the applicable lot width and lot area, including street frontage, requirements and that the pending Subdivision is in compliance with the Board's Order and the applicable Zoning Regulations and should be approved.

Under the Board's Rules, Section 3129.4, this request for a minor modification/clarification can be taken up at the Public Meetings scheduled for February 27 or March 6, 2007. Prompt resolution of this matter is critical to the continued viability of this Home Again project which has already been unnecessarily delayed by the Zoning Administrator.

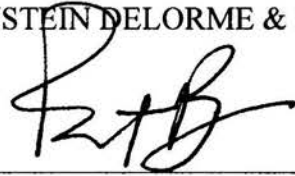
GREENSTEIN DELORME & LUCHS, P.C.

Mr. Geoffrey Griffis
February 16, 2007
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Thank you for your assistance and cooperation in this matter. If I can provide any additional information, please do not hesitate to contact me.

Sincerely,

GREENSTEIN DELORME & LUCHS, P.C.

By: 
John Patrick Brown, Jr.

JPB/prm
Enclosures (4)

Electronically (except as noted)
cc: The Honorable Neil O. Albert, Deputy Mayor
Mr. Gregory O'Dell, EOM
Mr. Konrad Schlater, EOM
The Honorable Marion Barry, Council Member, Ward 8
Mr. David Brewer, Chairperson, ANC 8B (by hand)
Mr. Ahmad Braxton-Jones, ANC 8B01 (by hand)
Ms. Harriet Tregoning, Director, Office of Planning
Ms. Jennifer Steingasser, Office of Planning
Ms. Lisa Marie Morgan, Interim Director, DCRA
Jill Stern, Esq., General Counsel, DCRA
Mr. Bill Crews, Zoning Administrator
Mr. Erik Johnson, Home Again
Mr. Michael Huke, CIH
Mr. Kevin O'Malley, CIH
Richard W. Luchs, Esq.
Jacques B. DePuy, Esq.
Jeffrey H. Gelman, Esq.

**Bello, Bello & Associates, LLC***Zoning, Land Use & Development Consultants*

February 16, 2007

Mr. Geoffrey H. Griffis
Chairperson
Board of Zoning Adjustment
441 4th Street, N.W.
Suite 200
Washington, D.C. 20001

Re: BZA Order No. 17364

Dear Mr. Griffis:

I am pleased to provide this assistance to the Board in considering the requested minor modification/clarification to the Zoning Administrator of the approved plans in BZA Order No. 17364.

At the request of the Applicant, I have reviewed BZA Order No. 17364, the approved plans marked as Exhibit 9-B, and the pending Subdivision Plat. Based on my more than seventeen (17) years' experience in interpreting and applying the D.C. Zoning Regulations both in various roles in the Zoning Administrator's Office and at the Office of Zoning, I have concluded that the pending Subdivision Plat complies with the Zoning Regulations and the BZA Order No. 17364 and no additional zoning relief is required.

Briefly, under Section 401.3, the plans approved by the Board establish the applicable minimum requirements for lot width and lot area, including street frontage. As a result, the Subdivision Plat which was drawn in accordance with the BZA approved plans complies with all applicable zoning restrictions and the Board's Order and should be approved by the Zoning Administrator. Section 401.6 which requires a minimum street frontage of fourteen (14) feet is only applicable to a matter-of-right subdivision, not a subdivision based on a special exception approval under Section 353 for a new residential project in the R-5-A zone. Under Section 353.5, the Applicant was required to submit four (4) copies of the Site Plan for review and approval by the Board.

900 Second Street N.E., Suite 6 - Washington, D.C. 20002

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Cell: 240-350-7199

Fax: 202-350-9488

Email: bello&bello@comcast.net

**Bello, Bello & Associates, LLC***Zoning, Land Use & Development Consultants*

Mr. Geoffrey H. Griffis

February 16, 2007

Page 2

Notwithstanding my guidance on this matter, in order to expedite the approval of the Subdivision Plat by the Zoning Administrator, I recommend the Board approve the Applicant's request for a Minor Modification/Clarification.

Thank you for your cooperation in this matter. If I can provide any further assistance to the Board, please do not hesitate to contact me.

Sincerely,

Olutoye Bello

cc: John Patrice Brown, Jr., Esq.

307545v1

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Cell: 240-350-7199

eFax: 202-350-9488

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**GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT**

★ ★ ★
[REDACTED]
[REDACTED]

Application No. 17364 of CIH/VMS Restorations LLC, pursuant to 11 DCMR § 3104.1, for a special exception to allow the construction of five (5) single-family row dwellings and two (2) single-family semi-detached dwellings under section 353, and pursuant to 11 DCMR § 3103.2, for a variance to allow one parking space in the front yard of each dwelling under subsection 2116.2, in the R-5-A District at premises 2300 block of Skyland Terrace, S.E. (Square 5740, Lot 852).

HEARING DATE: October 11, 2005
DECISION DATE: October 11, 2005 (Bench Decision)

SUMMARY ORDER

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 the public hearing on this application by publication in the D.C. Register, and by mail to Advisory Neighborhood Commission (ANC) 8B and to owners of property within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 8B, which is automatically a party to this application. ANC 8B did not participate in the hearing. The Office of Planning (OP) also submitted a report in support of the application.

As directed by 11 DCMR § 3119.2, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case pursuant to § 3104.1, for a special exception under section 353, and a variance pursuant to § 3103.2 from the requirements of subsection 2116.2. No parties appeared at the public hearing in opposition to this 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 report, the Board concludes that the Applicant has met the burden of proof, pursuant to 11 DCMR §§ 3104.1 and 353, that the requested relief can be granted, being in harmony with the general purpose and intent of the Zoning Regulations and Map. The Board further concludes that granting the requested relief will not

tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map.

Based upon the record before the Board, the Board further concludes that the applicant has met the burden of proving under 11 DCMR §§ 3103.2 and 2116.2, 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.

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. It is therefore **ORDERED** that this application be **GRANTED** subject to the following **CONDITION**:

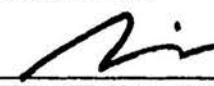
1. The out parcel shall be retained in its natural state and shall preclude the sale of timber, cutting of trees (other than dead, diseased or downed trees), alteration of the topography, or construction of any kind.

VOTE: **5-0-0** (Geoffrey H. Griffis, Curtis L. Etherly, Jr., Ruthanne G. Miller, John A. Mann II, and John G. Parsons to approve).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

Each concurring member approved the issuance of this order.

ATTESTED BY:


JERRILY R. KRESS, FAIA

Director, Office of Zoning 

FINAL DATE OF ORDER: OCT 13 2005

UNDER 11 DCMR 3125.9, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE FOR THE BOARD OF ZONING ADJUSTMENT."

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 § 3205, FAILURE TO ABIDE BY THE CONDITIONS IN THIS ORDER, IN WHOLE OR IN PART, SHALL BE GROUNDS FOR THE REVOCATION OF ANY BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER.

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.

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
BOARD OF ZONING ADJUSTMENT



BZA APPLICATION NO. 17364

As Director of the Office of Zoning, I hereby certify and attest that on **OCT 13 2005** a copy of the order entered on that date in this matter was mailed first class, postage prepaid or delivered via inter-agency mail, to each party and public agency who appeared and participated in the public hearing concerning the matter, and who is listed below:

Jacques B. DePuy, Esq.
Stephanie A. Baldwin, Esq.
Greenstein DeLorme & Luchs, PC
1620 L Street, N.W., Suite 900
Washington, D.C. 20036

Chairperson
Advisory Neighborhood Commission 8B
2455 Alabama Avenue, S.E.
Washington, D.C. 20020

Single Member District Commissioner 8B
Advisory Neighborhood Commission 8B01
2455 Alabama Avenue, S.E.
Washington, D.C. 20020

Marion Barry, City Councilmember
Ward Eight
1350 Pennsylvania Avenue, N.W.
Suite 400
Washington, D.C. 20004

Bill Crews, Zoning Administrator
Building and Land Regulation Administration
Department of Consumer and Regulatory Affairs
941 N. Capitol Street, N.E.
Washington, D.C. 20002

Ellen McCarthy, Interim Director
Office of Planning

BZA APPLICATION NO. 17364

PAGE NO. 2

801 North Capitol Street, N.E.

4th Floor

Washington, D.C. 20002

Julie Lee, Esq.

General Counsel

DCRA

941 North Capitol Street, N.E., Suite 9400

Washington, D.C. 20002

Alan Bergstein, Esq.

Office of the Attorney General

441 4th Street, N.W., 6th Floor

Washington, D.C. 20001

rsn

ATTESTED BY:


JERRILY R. KRESS, FAIA
Director, Office of Zoning 

The undersigned certify that they are owners in fee simple of the property to be subdivided and are in peaceful occupation thereof; that there are no pending suits or claims that affect title to the property; that parties to any deeds of trust have hereon indicated their assent; and that there are no interests or claims affecting title to the property other than such deeds of trust. The undersigned hereby subdivides Lot 852, Square 5740 into eight Lots and Square 5740 and requests that this subdivision be recorded in the Office of the Surveyor of the District of Columbia.

WITNESSES

OWNERS

GOVERNMENT OF THE DISTRICT
OF COLUMBIA

DRAFT

ERIK JOHNSON
INTERIM DIRECTOR, HOME AGAIN INITIATIVE

Subscribed and sworn before me this _____ day of _____, 2006.

DRAFT

Notary Public

DRAFT

My Commission Expires

NUMBER OF TRUSTS: _____

ASSENT BY TRUSTEES:

SURVEYOR'S OFFICE, D.C.

Made for: ERIK JOHNSON

Drawn by: L.E.S. Checked by: _____

Record and computations by: B. MYERS

Recorded at: _____

Recorded in Book _____ Page _____ S.O. 00597

Scale: 1 inch = 40 feet

File No. 06-1722

OFFICE OF TAX AND REVENUE

_____, 2006

I certify that the following statements relating to this subdivision are correct.

1. Ownership agrees with our records: _____

2. Real estate taxes are paid to: _____

3. There are no unpaid assessments: _____

Chief Assessor, Assessment Division

I acknowledge for the owners that this is not a tax certificate as intended by D.C. Code Section 47-405.

DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS

_____, 2006

I certify that this subdivision complies with all applicable provisions of DCMR11, Zoning Regulation of the District of Columbia.

Zoning District: _____

Zoning Administrator

HISTORIC PRESERVATION

OFFICE OF THE SURVEYOR

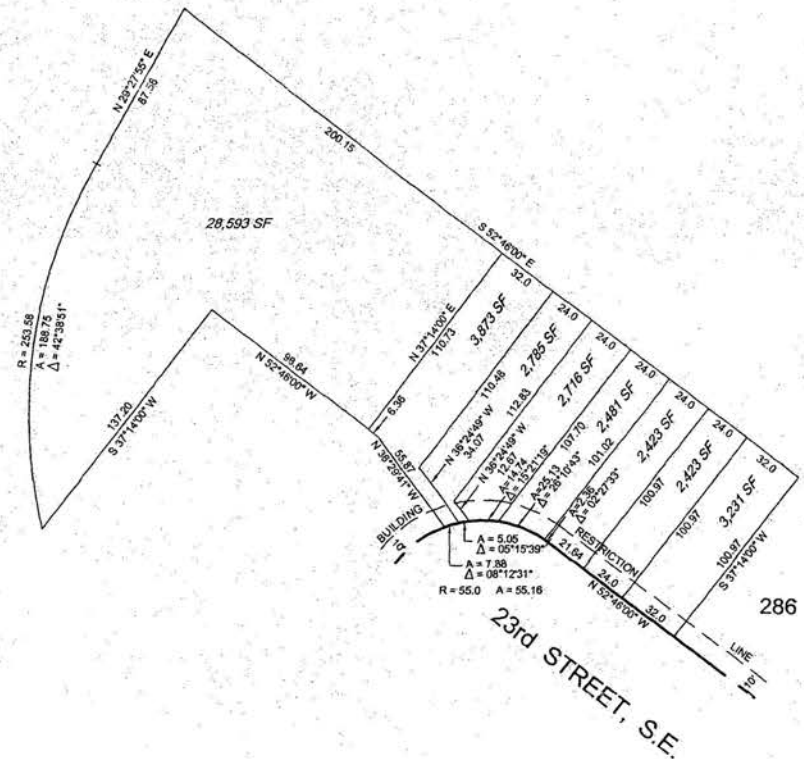
_____, 2006

I certify that this plat is correct and is hereby recorded.

DRAFT

Surveyor, D.C.

SUBDIVISION SQUARE 5740



RECEIVED
D.C. DEPT. OF ZONING
2005 MAY 11 AM 10:59



PROPOSED SITE PLAN
scale: 1" = 40'

ARCHITECT:
McAllister
ARCHITECTS, P.C.
119 South Saint Asaph Street
Alexandria, Virginia 22314
(703) 519-8523
(703) 519-0102 fax

DEVELOPER:
CIH Homes L.C.
9316 Piney Branch Road
Suite 106
Silver Spring, MD 20903
(301) 445-5000
(301) 445-1035 fax

BZA
Case No. 17364
Exhibit No. 9A

Skyland Terrace, S.E.
Washington, D.C. 20020
APRIL 1, 2005

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

+ + + + +

BOARD OF ZONING ADJUSTMENT

+ + + + +

PUBLIC HEARING

+ + + + +

TUESDAY,

OCTOBER 11, 2005

+ + + + +

The Board convened in the Board of Elections and Ethics Hearing Room, 441 4th Street, N.W., Washington, D.C. 20001, pursuant to notice at 11:50 a.m., Geoffrey H. Griffis, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

GEOFFREY H. GRIFFIS	Chairperson
RUTHANNE G. MILLER	Vice-Chairperson
CURTIS L. ETHERLY, JR.	Board Member
JOHN A. MANN, II	Board Member (NCPC)

ZONING COMMISSION MEMBERS PRESENT:

JOHN PARSONS	Commissioner (NPS)
KEVIN HILDEBRAND	Commissioner (AOC)

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY	Secretary
BEVERLEY BAILEY	Zoning Specialist
JOHN NYARKU	Zoning Specialist

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

LORI MONROE, ESQ.

OFFICE OF PLANNING STAFF PRESENT:

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WASHINGTON, D.C. 20005-3701

TRAVIS PARKER
KAREN THOMAS
STEVE MORDFIN

This transcript constitutes the minutes
from the Public Hearing held on October 11, 2005.

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

11:50 a.m.

CHAIRPERSON GRIFFIS: And let's call to order the October 11, 2005 morning public hearing of the Board of Zoning Adjustment of the District of Columbia.

I'm going to go very quickly because if you're not familiar with who we are by now, you'll get there soon enough. But the important aspect, of course, is we're here to hear special exceptions and variances.

The order of procedure for those will be as follows: We will hear from the applicant, their presentation, any witnesses or any evidence that they're going to provide for the Board. We will then go to any government reports attending to the application; Office of Planning, Department of Transportation, etcetera. We then hear from the Advisory Neighborhood Commission within which the property is located. Then we will go to persons or parties in support of applications and then we will move on to persons or parties in opposition to the application.

Lastly, we give the applicant an opportunity to bring rebuttal witnesses or just to

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1 provide conclusion and summaries for the Board.

2 I'm going to go through this very quickly
3 because everyone has been patient getting through our
4 FMBZA matters this morning. So, let me just say that,
5 of course, the record will be closed at the conclusion
6 of the hearing today. That's important to understand
7 only because what you need to do is make sure that
8 you're providing all the information that you want the
9 Board to deliberate on today. If the Board feels that
10 we don't have all the information that we require, we
11 will be very specific as to what information should be
12 put into the record and when that should be put into
13 the record.

14 Of course, the Sunshine Act does require
15 us to do all our proceedings in the open and before
16 the public. We do utilize an Executive Session for
17 purposes of reviewing a record and also deliberating
18 on a case. But even with that in the executive
19 session it is only and solely on the record that is
20 created before us today. And all of that is in
21 accordance with our rules and regulations and also the
22 Sunshine Act.

23 Let me ask if there are any preliminary
24 matters that anyone has today regarding the cases
25 before us this morning. Preliminary matters are those

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1 which relate to whether a case will or should proceed
2 today, requests for postponements, withdrawals,
3 whether proper and adequate notice was provided; these
4 are elements of primarily matters.

5 If you have a preliminary matter for the
6 Board's attention, I'd ask that you come forward and
7 have a seat at the table at this point.

8 Also, and it's excellent to be reminded of
9 visually, witness cards should be filled out prior to
10 coming forward to speak to the Board. Two witness
11 cards. You put your name and address on them. Then
12 they go to the recorder. And you can have a seat at
13 the table then and provide testimony.

14 Of course, this is not our normal hearing
15 room. It is under renovation. We expect it will be
16 absolutely spectacular for the public's use shortly.
17 Who knows when. However, with that we're going to
18 make due and be very mindful of the short time that we
19 have today to proceed with the rest of the cases.

20 If there are no preliminary matters for
21 today's cases, then I would ask that everyone that is
22 going to provide testimony or is thinking about
23 providing testimony if you would please stand and give
24 your attention to Ms. Bailey with the Office of
25 Zoning. She's going to swear you in. Any and all

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1 cases, we'll get everyone sworn in right now.

2 (Whereupon, Witnesses were sworn.)

3 CHAIRPERSON GRIFFIS: Thank you all very
4 much. And thank you, Ms. Bailey, and a very good
5 morning to you again, Ms. Bailey. And when you are
6 ready, why don't we call the first case for the
7 morning session?

8 MS. BAILEY: Mr. Chairman, the first case
9 is not listed on the agenda, but it is scheduled on
10 the docket for today. And that is application 17354
11 of Steven Hopkins. And it's pursuant to 11 DCMR
12 3103.2 for a variance from the use provisions under
13 subsection 330.5 or in the alternative a variance from
14 the minimum lot area requirements under subsection
15 401.3 and a variance from the open court with
16 requirements under section 406 to allow a third floor
17 addition to a conversion of an existing road dwelling
18 into a three unit apartment house. The property is
19 located at 1201 Harvard Street, N.W. The square is
20 2853 and the lot is 139 that the property is zoned out
21 for.

22 CHAIRPERSON GRIFFIS: Excellent. Ready to
23 move ahead?

24 MR. CUMMINGS: I believe so. Yes, sir.

25 CHAIRPERSON GRIFFIS: Good.

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1 This, of course, is a continuation of a
2 case and we set this for today. There's some
3 clarification. Mr. Hopkins, you can introduce
4 yourself for the record and I will note this for
5 everybody, that when you come forward you just need to
6 do this once, but you will need to state your name and
7 address for the record.

8 And we do have Exhibit 30 that was
9 submitted in, which is a changing of the application.
10 And I'll turn it over to you.

11 MR. CUMMINGS: Thank you, Mr. Griffis.

12 For the record, I'm James Cummings, C-U-M-
13 M-I-N-G-S. I practice architecture at 2103 O Street,
14 N.W., Washington, D.C. 20037. I am an architect.

15 And Mr. Hopkins was delayed arriving this
16 morning. But since the application has been amended,
17 it seems that it's fairly -- it at least seems to us
18 a fairly straightforward matter. And if the Board
19 agrees, then I am empowered to represent him in the
20 second matter.

21 So he has withdrawn his application for
22 the use variance and is now, it is my understanding,
23 requesting a special exception for the open court
24 requirement. And by presentation, it's fairly
25 straightforward. The building is in its original

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1 state. When it was built, it has been renovated a
2 couple of times since then, but at the moment it still
3 has the same boundary of its original construction.
4 There may have been a kitchen addition that was built
5 subsequent to its original construction, but it hasn't
6 been modified significantly on the exterior for quite
7 a long time.

8 We have a situation where the existing
9 building already does not comply with the open court
10 requirements. And Mr. Hopkins' application is that he
11 would be allowed to extend the third floor attic
12 through the back of the building using the same
13 footprint that exists on site currently. The very
14 large rear yard would remain unchanged, except that he
15 would, of course, need an egress method from the upper
16 floors since the current porch only reaches the first
17 floor of the house.

18 There was a porch on the back of the
19 building. It has been removed. There are even doors
20 on the back of the existing house. There should be
21 photographs in your submission that include
22 photographs of the back of the house where the real
23 purpose of this particular exception is to relieve the
24 pressure that modifications in the house might have on
25 the neighboring properties.

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1 The block of houses which, I believe is in
2 the number of eight, they're the standard alternating
3 left/right, left/right L additions to a main block so
4 that they don't -- the courtyards, in fact, share an
5 open space. The existing courtyard on his property
6 is, if I remember correctly, 4 feet -- well, that's
7 it's most limited dimension other than a chimney. And
8 in combination with his neighbor's house there is an
9 effective 8 foot courtyard. And that's just the nature
10 of the existing condition.

11 For him to occupy the building in a way
12 that is allowed to him by right and would be most
13 amenable to him, he would be allowed to make this
14 third floor addition on the party line. But in the
15 interest of preserving the daylight, ventilation and
16 convenience of his neighbor he would prefer not to do
17 that.

18 This also would apply to an area of the
19 building behind -- well, in this case the existing
20 dining room where this narrow open court, given the
21 current side yard setback requirements make it
22 impossible for him to use the third floor otherwise.
23 So he's kind of backed into this situation where he
24 either needs to build to the property line, which is
25 allowed in this zoning district or ask for this

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1 special exception so that he occupy the same footprint
2 and preserve as much of that open court as it
3 currently there. If he were required to use the
4 existing side yard setback, though, the third floor
5 wouldn't be able to be developed.

6 He asked us to submit the drawings that
7 are called Z-05 and Z-06 to show a way that he could
8 develop his property into a unit in which he would
9 live and then a unit that he would rent. He is a
10 federal employee and it is plan that he would reside
11 here until his retirement in several years. And this
12 is his home. He's not a developer, for example. He
13 works for the EPA. I don't think he got to mention
14 that last time, but I know that that's a sensitive
15 issue for everyone.

16 CHAIRPERSON GRIFFIS: About working for
17 the EPA?

18 MR. CUMMINGS: Yes, I think so. It's a
19 very dangerous to work.

20 The other question that did come up at
21 last month's hearing was whether or not the use of the
22 third floor as an occupiable space would require
23 increasing the height of the building on the street
24 face. And that is not the case. Not only is it not the
25 case, it wouldn't be our intention.

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1 I mean, we do quite a lot of historic
2 preservation work and we would have no interest in
3 violating that very clean line that exists on the
4 street face of those eight buildings on the block. And
5 it happens that the way the house is developed, and
6 this would actually show on the original submission
7 section drawing, there's a fairly steep flat roof over
8 that roof. And we would reduce the height of the slope
9 so that we could maintain the existing facade and then
10 provide an occupiable floor behind it.

11 It also turns that, frankly, Mr. Hopkins'
12 access to revenue is limited and he couldn't really
13 make this building to everything that would be
14 possible because he would have to conserve his funds.
15 So the idea of doing some over grand third floor with
16 flying ceilings and big skylights and so forth, that's
17 really just beyond his funding anyway.

18 CHAIRPERSON GRIFFIS: What kind of
19 exterior are you going use on the back is proposed?

20 MR. CUMMINGS: Well, I know that the
21 building code will require only a one hour fire
22 rating. It really isn't very sensible to do that
23 because of concern for sound as well as aesthetics.
24 And so we would hope to use masonry. But we really
25 aren't that far along.

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1 CHAIRPERSON GRIFFIS: Okay. Brick?

2 MR. CUMMINGS: The building is now brick.
3 That would be the best thing to do. And before we
4 would use concrete block, we would use stucco. I mean,
5 concrete block would be terrible. I don't happen to
6 have a lot of faith in the wallboard fire rating
7 system. They're too easy to be damaged, frankly.

8 CHAIRPERSON GRIFFIS: So you don't know
9 specifically what it's going to be?

10 MR. CUMMINGS: No. No. But I mean I can
11 only tell you in general. What our general approach
12 to these types of projects is to provide something
13 that you can't defeat the fire rating by installing an
14 electrical outlet. Because 50 years from now or two
15 years from now someone may know or not know that that
16 drywall they're cutting has a fire rated purpose. So
17 we'll avoid that.

18 CHAIRPERSON GRIFFIS: Right. Of course,
19 right kind of assurance do we have in terms of --
20 that's one of the criteria of the 223, of course, is
21 the design review, the materiality and also the
22 lighting. And that's one of the objects that we take
23 into consideration. You've just testified to the fact
24 that there's limited resources or a budget to do this.
25 And yet you've said that it will be masonry because

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1 that's a better maintenance of a fire rating. What
2 kind of assurances do we have to deliberate on this in
3 terms of what the materiality will be or the finish
4 will be?

5 MR. CUMMINGS: Well, one of the advantages
6 we have in building over the existing footprint is
7 that it will allow us to use masonry, where if we had
8 to build it from the party wall, we would be kind of
9 starting to scratch. It would be a lot easier to use
10 steel and work there. We really don't want to do that.
11 So if it's in your purview to limit the material
12 choices, then you should. I mean, that's really your
13 call, I think. It sounds like it's your call.

14 CHAIRPERSON GRIFFIS: Okay. Anything
15 else?

16 VICE CHAIRPERSON MILLER: In general I
17 thought there were two types of variances we were
18 looking at before. One was a use variance and one was
19 an area variance. And the application was amended to
20 remove the use variance. And in your words you made
21 reference to special exception. But I don't know if
22 that inadvertent. But the application is for an area
23 of variances. And I'm wondering if you can address
24 the three prong test that we need to consider to grant
25 the variance.

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1 CHAIRPERSON GRIFFIS: Actually, I thought
2 he was actually amending the application to come under
3 223.

4 VICE CHAIRPERSON MILLER: Oh, is that
5 right?

6 CHAIRPERSON GRIFFIS: Which means he's
7 certifying the fact that that the lot occupies the two
8 area variance of a nonconforming court and a
9 nonconforming lot width. Lot width of course is
10 covered under G23 as long as we have our lot
11 occupancy, which is appropriate. Is that --

12 MR. CUMMINGS: Yes, that's my
13 understanding

14 VICE CHAIRPERSON MILLER: Okay.

15 MR. CUMMINGS: That we needed the area
16 variance because we were asking for three units in a
17 lot that has less than 900 square feet per unit.

18 CHAIRPERSON GRIFFIS: And Ms. Miller is
19 exactly right to bring up the question and
20 clarification. What is the existing lot occupancy on
21 the site?

22 MR. CUMMINGS: The certificate of
23 occupancy currently allows for a group home.

24 CHAIRPERSON GRIFFIS: -- lot occupancy.

25 MR. CUMMINGS: Oh, it's well below the

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1 allowable.

2 CHAIRPERSON GRIFFIS: Right. I seem to
3 remember that.

4 MR. CUMMINGS: I think it's 41 percent and
5 this lot is 60. Yes, 41 percent existing, 60 percent
6 is permitted.

7 CHAIRPERSON GRIFFIS: And the proposed
8 addition, as you have announced it several times
9 today, does not change the percentage of lot
10 occupancy?

11 MR. CUMMINGS: That's correct.

12 CHAIRPERSON GRIFFIS: Because they're omni
13 existing structure?

14 MR. CUMMINGS: Yes.

15 CHAIRPERSON GRIFFIS: However, it does
16 impact the court area that's created?

17 MR. CUMMINGS: Absolutely.

18 CHAIRPERSON GRIFFIS: Okay.

19 MR. CUMMINGS: There should be letters in
20 the records also from the two adjacent numbers,
21 particularly the one who would be affected most by
22 this, and they both are in support of exception for
23 the court width. The width on the court is listed as
24 a recommendation by the Zoning staff because there is
25 this little chimney on the back of the building that

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1 reduces it below even four feet. And they wanted to
2 make sure that we wouldn't back ourselves into a
3 situation where the chimney would have to be removed
4 just because we got an exception for four feet.

5 CHAIRPERSON GRIFFIS: Well, okay. It
6 seems to me the regulations allow chimneys to be
7 projections in open areas.

8 MR. CUMMINGS: We didn't discuss that with
9 your staff. We just accepted the recommendation.

10 CHAIRPERSON GRIFFIS: Okay. Follow ups,
11 questions?

12 VICE CHAIRPERSON MILLER: Okay. Then
13 again then I'm not clear that the special exception
14 test has been addressed. Do you believe that it has?
15 I just looked at your letter or the letter that was
16 submitted in the record and it's just a one paragraph
17 letter. It doesn't really address the standards.

18 MR. CUMMINGS: Well, I actually wasn't
19 prepared to present today. As I mentioned, Mr.
20 Hopkins is delayed arriving. And if you could review
21 for me what that might be, it might be that I can
22 answer it because I'm familiar --

23 CHAIRPERSON GRIFFIS: Is he coming?

24 MR. CUMMINGS: He is on his way as far as
25 I know..

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1 CHAIRPERSON GRIFFIS: He is? Okay. I
2 should have clarified that from the beginning. Why
3 don't we give you a couple of moments to wait for him.
4 And as he shows up, we can put you back on the
5 schedule. In the meantime, we can move ahead with the
6 other cases that are here and ready to roll

7 MR. CUMMINGS: Okay. It might be possible
8 I could answer that.

9 CHAIRPERSON GRIFFIS: Well, I'll tell you
10 what, we're going to get through the cases that are
11 here. And if he isn't here, we're going to lay it out
12 for you.

13 MR. CUMMINGS: Okay. Great.

14 CHAIRPERSON GRIFFIS: And we'll take our
15 time to get through it.

16 MR. CUMMINGS: Appreciate your patience.

17 CHAIRPERSON GRIFFIS: That being said,
18 we'll just temporarily put this -- Ms. Bailey. And if
19 you wouldn't mind, let's call the next case.

20 MS. BAILEY: The next case is application
21 17364 application of CIH/VMS Restorations LLC, and
22 it's pursuant to 11 DCMR § 3104.1 for a special
23 exception to allow the construction of five single-
24 family row dwellings and two single-family semi-
25 detached dwellings under section 353, and pursuant to

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1 11 DCMR § 3103.2 for a variance to allow one parking
2 space in the front yard of each dwelling under
3 subsection 2116.2. The property is located in the R-
4 5-A District at the premises of 2300 block of Skyland
5 Terrace, S.E. (Square 574, Lot 852).

6 CHAIRPERSON GRIFFIS: Mr. Parsons is going
7 to be joining us a moment, but we're going to move
8 ahead and we will catch him up.

9 So who is going to begin?

10 MS. BALDWIN: Good afternoon. It is
11 afternoon. My name is Stephanie Baldwin. I'm from
12 Greenstein, Delorme and Luchs. With me today is Pat
13 Brown from Greenstein. And representing the applicant
14 is Mr. Kevin O'Malley with CIH/VMS Restorations.

15 We're here today to seek approval for the
16 development of 7 townhomes within an R-5-A zoned
17 district. A variance is required for each of the
18 townhomes to locate a parking space in the front of
19 each home.

20 The property is currently owned by the
21 District. It's being developed under the Home Again
22 Initiative, the program to build homes on vacant or
23 abandoned property.

24 The applicant has met with the Office of
25 Planning and the ANC. There's no disagreement or

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1 opposition to the application. The applicant has also
2 met with the Department of Health regarding storm
3 water management issues.

4 We can begin with a description of the
5 project, which Mr. O'Malley could take you through if
6 that's how you'd like to proceed.

7 CHAIRPERSON GRIFFIS: I think that would
8 be fine. Actually, it's fairly brief. I think it's
9 fairly clear what we're looking at. However, I would
10 like to ask the highlight of the dimensions of the
11 side yards on the end units if you can provide those.
12 Also, you did bring up the fact of the storm water
13 management and, of course, it's also Office of
14 Planning. There is detail of how that's going to be
15 dealt with that, but we could touch on that also in
16 terms of discussion.

17 And then lastly if you wouldn't mind,
18 you'll just say in your testimony as it is in the
19 record if that is correct that you are subdividing
20 each of these. And so we're looking at each of these
21 as individual lots. Of course, if we weren't, then we
22 would go to a whole different section of the
23 regulations. Other than that, I don't think we need
24 to do much else.

25 Go ahead.

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1 MR. O'MALLEY: My name is Kevin O'Malley.
2 I'm Executive Vice President of CIH/VMS Restorations
3 LLC. Our business address is 9316 Piney Branch Road,
4 number 106, Silver Spring, Maryland 20903.

5 I'll address, if I can recall your
6 questions specifically, side yards as to each of the
7 end units are set at 8 feet, the minimum side yard
8 requirement.

9 As to the -- if you're repeat, Mr.
10 Griffis, your other concerns?

11 CHAIRPERSON GRIFFIS: There was a question
12 that arose about the storm water management and how
13 that was going to be dealt with?

14 MR. O'MALLEY: Regarding storm water
15 management, the storm water management that is
16 effected by the development of the site is basically
17 the impervious surfaces; the roofs and the driveways.
18 The homes face Skyland Terrace and the roof slopes to
19 the front and the rear from the midpoint of the home.
20 Storm water that is captured on the roofs, transferred
21 into gutters and downspouts and then they're fed into
22 dry wells on each of the lots in the rear. So it'll be
23 captured within that particular lot.

24 With regarding the front of the homes,
25 water that first falls to the roof into the gutters,

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1 downspouts will be transferred into dry wells that are
2 set in front of the homes as well. So we're setting
3 a drywell in the front and in the rear of each home.
4 I think the Office of Planning's concern was more to
5 the rear and the development to the rear because the
6 slopes do fall dramatically away to the rear of the
7 home.

8 Our engineers have had conversations in
9 the design process with the Department of Health, and
10 while of course we haven't submitted a building permit
11 application for their specific approval, they have
12 indicated that this is a system that they would
13 approve of when our building permit application goes
14 through the process.

15 CHAIRPERSON GRIFFIS: Just for
16 clarification on that point, when you put in for a
17 permit this will be reviewed by the appropriate agency
18 of DCRA for storm water management on each of these
19 sites?

20 MR. O'MALLEY: That's correct.

21 CHAIRPERSON GRIFFIS: Okay.

22 MR. O'MALLEY: And then regarding, these
23 will be fee simple lots so there will be seven newly
24 created lots plus a parcel which represents the area
25 that is part of this current lot that kind of wraps

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1 around behind existing homes towards the part, which
2 is intended to remain unincumbered by the development
3 which will remain in its natural vegetative state. It
4 will be owned by the homeowners association with
5 requirements to maintain it. But in fact I think
6 those requirements will be such that it's to be left
7 alone unless of course there is some requirement, some
8 external requirement that requires some form of
9 maintenance.

10 CHAIRPERSON GRIFFIS: And that's the very
11 large portion that abuts the U.S. Reservation 518?

12 MR. O'MALLEY: Correct.

13 CHAIRPERSON GRIFFIS: Okay. Good.
14 Excellent. Anything else?

15 MR. O'MALLEY: Unless you have further
16 questions in the interest of moving things along.

17 CHAIRPERSON GRIFFIS: Any questions?

18 COMMISSIONER PARSONS: I noticed in the
19 list provided in the record at Exhibit 7 where you
20 indicate where you've mailed notice of this
21 undertaking, and no notice was made to the National
22 Park Service. That may not be your fault, but did you
23 have any discussions with the National Park Service
24 about this?

25 MR. O'MALLEY: We have had no discussions

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1 with the National Park Service, no.

2 COMMISSIONER PARSONS: Were these dry
3 wells your own initiative or did the District suggest
4 this?

5 MR. O'MALLEY: When we undertake a
6 development effort we ask our engineers to vet their
7 concepts with the appropriate agencies in the District
8 so that we know as we go down the pike we have a
9 reasonable chance of having the District of Columbia
10 approve our designs. And this was discussions between
11 the District of Columbia's office, Ms. -- I'm sorry
12 the name. Between the District of Columbia
13 government, Mr. Abi Moussey at the Department of
14 Health and our engineers. And this is the design that
15 they recommend. In fact, there were various options
16 including routing all of the water to the rear and to
17 drywells in the rear or alternatively to larger
18 drywells in the front. But we had a concern with
19 respect to in the front of the homes, the utilities
20 that are coming through to the front that it would
21 restrict the size of the drywells. So we opted to do
22 drywells in both the rear and the front.

23 COMMISSIONER PARSONS: Now, the out parcel
24 or I don't know -- what do you call this larger parcel
25 that goes down to the park?

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1 MS. BALDWIN: Out parcel.

2 COMMISSIONER PARSONS: Very good.

3 MS. BALDWIN: So we all know what we're
4 talking about.

5 COMMISSIONER PARSONS: Now you say this is
6 going to be managed by the homeowners association. Is
7 that association made up of just these 7 homes?

8 MR. O'MALLEY: It will be made up of just
9 the 7 homes. It has not yet been created.

10 COMMISSIONER PARSONS: That seems a little
11 burdensome on people of this income and means, don't
12 you think?

13 MR. O'MALLEY: Well, we're in hopes that
14 it will be maintained in its natural vegetative state
15 so that maintenance will not be required. The only
16 alternative is to deed it to the District -- well,
17 it's already owned by the District of Columbia
18 government in the process to allow Parks and Rec or
19 somebody like that to retain title in the District of
20 Columbia government. But that has not been proffered
21 by the District of Columbia government. The District
22 of Columbia government currently owns this entire
23 parcel.

24 COMMISSIONER PARSONS: You're a contract
25 purchaser, is that how this works?

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1 MR. O'MALLEY: Yes.

2 COMMISSIONER PARSONS: And for whatever
3 reason they've decided to burden you as part of this
4 purchase price. And I'm trying to find a way that we
5 could take that burden off of these houses. I just
6 don't think it's the right thing to do. It's just not
7 fair. Whatever liability insurance, kids playing in
8 the woods; it just doesn't make sense to me.

9 How this Board could effectuate that or
10 help that, I would recommend it be transferred to the
11 National Park Service who is the abutter. But, Mr.
12 Chairman, I'm straying off the reservation here, as it
13 were. But I just don't think it's right to have seven
14 homeowners -- how many acres is this? This remanent
15 parcel?

16 MR. O'MALLEY: It's a little over an acre.
17 I don't recall the --

18 COMMISSIONER PARSONS: It's not even an
19 acre. It looks bigger than that.

20 CHAIRPERSON GRIFFIS: It does.

21 COMMISSIONER PARSONS: Anyway -- well, I
22 don't know what to do. I just think it's the wrong
23 thing to do to burden --

24 CHAIRPERSON GRIFFIS: Well, it's a good
25 point and perhaps we prematurely let all the federal

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1 agencies leave this morning and we could kept them
2 here for the negotiation and how we do land transfer.
3 However, I don't where we would begin to create an
4 alternative of ownership or maintenance outside of
5 what the applicant can bring forward, unless others
6 have an opinion. We certainly can keep it under
7 advisement, unless you have additional comments.

8 MR. O'MALLEY: No. I'd be more pleased to
9 pursue the National Park Service to see if they would
10 like to take ownership to it, as well as the District
11 of Columbia and continue to engage them as to whether
12 or not there is an alternative to the homeowners
13 association actually taking title to that property.

14 I mean, I share your concern. I didn't
15 feel that we had options when you establish
16 communities that have homeowners associations and have
17 common areas, it's not uncommon that there are areas
18 that are owned within the homeowners association that
19 are not developed and that the homeowners association
20 is required to maintain liability insurance for it.
21 And that's part of the budget for the homeowners
22 association and part of their fees.

23 I couldn't quote you an insurance cost in
24 today's climate, but it's typically not significant
25 given the unlikelihood that there would be activity in

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1 this particular area. Because it will become
2 sandwiched immediately behind these homes as well as
3 behind the apartment homes that were built and then to
4 the park. And I'm just not sure that there's that
5 much pedestrian traffic, if any, that goes through
6 that area.

7 And the slopes are so steep. As you can
8 see, it goes from 210 feet at elevation to 140 feet at
9 elevation in one corner. It's a significant drop. So
10 in pursuing whether or not there were development
11 opportunities to the rear, you really couldn't even
12 walk down those slopes without a mule.

13 CHAIRPERSON GRIFFIS: Well, the other
14 adjacent existing townhouses, are they an association,
15 a homeowners association or they just a fee simple
16 configuration?

17 MR. O'MALLEY: I do not know. Those homes
18 were built several years ago, maybe 10 by now, by
19 Habitat for Humanity. So I'm not familiar with
20 whether or not there is a homeowners association with
21 respect to them.

22 In looking at the site plans in developing
23 our plan it appears that they have no common area.
24 That they're fee simple with respect to everything
25 between the rights of way and the property line. So it

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1 might not be required in their case.

2 COMMISSIONER PARSONS: I wanted to talk a
3 little bit about Lots 1 and 2 and how much disturbance
4 of the existing grade is going to occur in the rear of
5 those lots. Not for the buildings themselves, but is
6 there any need to be grading back against the property
7 line?

8 MR. O'MALLEY: Not down to the property
9 line. We will be building a retaining wall off the
10 rear of the home, but not as far down -- not nearly
11 far down to the property line. I don't know if I have
12 that.

13 I don't have that depicted on our site
14 plan that I brought with me here today. But it is
15 matter of as opposed to rear yards of approximately 40
16 feet. The retaining wall will probably be about 15
17 feet off the rear of the homes. And it's more designed
18 to stabilize the rear for construction purposes as
19 well as to give a modest flat area to the homeowners
20 themselves.

21 COMMISSIONER PARSONS: And the dry level
22 well is within that retaining --

23 MR. O'MALLEY: Yes, it will.

24 COMMISSIONER PARSONS: All right. Thank
25 you.

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1 VICE CHAIRPERSON MILLER: I just want to
2 make a comment and kind of a question. With respect
3 to the point that Mr. Parsons made regarding the
4 maintenance costs of the out parcel, I'm just
5 wondering if we could keep the record open for the
6 applicant to explore other possibility, including DPR,
7 National Park Service or a conservation group. I know
8 DPR is coming this afternoon.

9 CHAIRPERSON GRIFFIS: It seems to me --
10 admittedly I'm not an expert on this, but we've seen
11 several applications where actually the adjoining
12 neighbors take over control of Park Service or Parks
13 and Rec land. It seems to me this is moving in the
14 opposite direction of a trend. But I don't disagree.

15 I mean, I think exploring opportunities or
16 maybe just providing additional testimony. I mean, we
17 have some aerial photographs here of a projection of
18 what it will take to maintain.

19 VICE CHAIRPERSON MILLER: Right. The costs
20 also. That might be a simple question as to what the
21 liability insurance would be. It might not be that
22 much. Just kind of unknown. And it might be that
23 you're right, that maybe DPR would say it's not a good
24 idea. It usually works better the other way.

25 CHAIRPERSON GRIFFIS: I'm not sure how --

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1 Park Service seems to make sense because it abuts some
2 of their own land.

3 VICE CHAIRPERSON MILLER: Yes.

4 CHAIRPERSON GRIFFIS: Parks and Rec.
5 Frankly, you'd have to trespass to get on it. Okay.

6 Any other questions, clarifications? Very
7 well.

8 We don't want to stop you from telling us
9 anything, but is there anything else you'd like to
10 provide the Board?

11 MR. O'MALLEY: No, sir.

12 CHAIRPERSON GRIFFIS: Let's move ahead
13 then. Other witnesses?

14 MS. BALDWIN: No. No other witnesses.

15 CHAIRPERSON GRIFFIS: Okay. Oh, good.
16 Well, very well. Let me just make sure, of course,
17 the Board is focusing also on the parking, which is
18 the variance which is out in front. And I think it's
19 fairly self-explanatory, which is why you haven't had
20 any questions from the Board at this point. But we
21 will obviously pick that up.

22 Okay. If there's nothing else for the
23 presentations, then let's move ahead to government
24 reports and hear from the Office of Planning, who is
25 present here today regarding the application.

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1 MR. PARKER: Good morning, Mr. Chairman,
2 members of the Board. I'm Travis Parker with the
3 Office of Planning.

4 As stated in the report, we feel that the
5 applicants have met the test for the special exception
6 and the variance. Unless there's a request for my
7 testimony, I'll stand on the record as submitted.

8 CHAIRPERSON GRIFFIS: Excellent. Thank
9 you very much, Mr. Parker.

10 Is there a cross examination of the
11 applicant? Any questions of Office of Planning?

12 MS. BALDWIN: No.

13 CHAIRPERSON GRIFFIS: Does the Board have
14 any questions of the Office of Planning?

15 Very well. I note that the graphics are
16 very helpful, as always. And the analysis is
17 excellent in terms of the variance. It's
18 straightforward in terms of Office of Planning's
19 analysis as well as the applicant's. And that is in
20 my own words, but there's a fabric that's already been
21 created. There's clearly no ability to access parking
22 from the rear as many traditional Washington lots are
23 carved out providing alley access. I don't see any --
24 the particular uniqueness is a given as this has been
25 subdivided and the practical difficulty I think is

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1 also clear in terms of alternative and access.

2 I don't see any other aspects to bring to
3 the immediate attention of the Board from the Office
4 of Planning unless others have something. Yes?

5 VICE CHAIRPERSON MILLER: I just wanted to
6 ask for clarification on page 4 of your report. You
7 say that maintenance and landscaping will need to be
8 addressed by the applicant and the issue of storm
9 water management. Is there more that you think should
10 be presented in this hearing?

11 MR. PARKER: I think the issue of storm
12 water management has been addressed satisfactorily.
13 And the issue of maintenance, as Mr. Parsons brings up
14 a good point, that was a concern of ours whether it's
15 left to the homeowners association or transferred to
16 the Park Service, we wouldn't have objection to either
17 option.

18 VICE CHAIRPERSON MILLER: And anything
19 else on the landscaping?

20 MR. PARKER: No. We're satisfied with the
21 landscaping plan that was submitted.

22 CHAIRPERSON GRIFFIS: Anything else?
23 Excellent. Thank you very much.

24 MR. PARKER: Thank you.

25 CHAIRPERSON GRIFFIS: Move ahead then to

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1 our government agency report. We do have a letter in
2 the record, Exhibit 26, from GACD. Is the
3 representative from GACD present today? Not noting
4 any, we'll take note of that. They were recommending
5 approval of that. It was timely filed.

6 It's not in our records showing in an
7 historic district.

8 Let's go then to the ANC report. ANC 8-b.
9 Is the ANC present? Not noting any presence of any
10 ANC members. And I actually don't have any record of
11 a submission from the ANC, unless the applicant is
12 aware of any submissions from the ANC. Are you aware
13 of any submissions.

14 MS. BOUBERT: The ANC were unable to vote
15 on it. So they were unable to submit anything.

16 CHAIRPERSON GRIFFIS: So we don't have
17 that in. Very well. Then that goes through our
18 government reports very quickly.

19 ANC recommendations -- and for persons
20 present to provide testimony on 17364. Are there
21 persons? Okay.

22 MS. BOUBERT: -- and this property was one
23 of our first 43 properties awarded to or sold to
24 prequalified developers. This one property was bundle
25 5, which was I think a total of ten properties. This

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1 was the only lot that required new construction.

2 We, you know, immediately we jumped to the
3 substantive matters early on. But we also support this
4 project, of course, and believe that the variances
5 that's requested today is within reasonable means and
6 is compatible with existing context and
7 characteristics of this neighborhood. Abutting
8 adjacent structures and neighboring properties do have
9 parking in front as well.

10 And in the matter regarding the out
11 parcels we have noted that and we'll work with the
12 developer to see what options we may have. Looking at
13 costs that would incur or what kind of costs would be
14 incurred by the association and alternate means as
15 well. So, again, I'm here to offer our support.

16 And thank you for your time.

17 CHAIRPERSON GRIFFIS: Thank you very much.
18 We appreciate you coming down to support the
19 application.

20 Are there questions from the Board?

21 VICE CHAIRPERSON MILLER: Is there a
22 landscaping record in the record?

23 MS. BALDWIN: There's a description of
24 what the landscaping is. There's not actually a plan.

25 VICE CHAIRPERSON MILLER: Do you know

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1 where it is.

2 MS. BALDWIN: Oh, it's in the supplemental
3 submission at the top of page 3.

4 CHAIRPERSON GRIFFIS: Anything else? Very
5 well.

6 It's been brought to my attention of
7 course I've skipped over quickly the Department of
8 Transportation's report that was filed, Exhibit 21 in
9 the record, which was stating no objection to the
10 application.

11 Okay. If there's nothing further from
12 government agency reports or the ANC, let's move ahead
13 to persons to provide testimony on 17364. Are there
14 any persons present to provide testimony either in
15 support or in opposition to the application? Not
16 noting any others here present, we'll turn it over to
17 the applicant for any concluding remarks for today.

18 MS. BALDWIN: I think that the record
19 through the testimony and what we've submitted pretty
20 much covers it.

21 I would like to point out that the issue
22 of the out parcel is not within the jurisdiction of
23 the BZA, but we will take into consideration the
24 suggestions you've made and we will do what's best,
25 whether it be maintained by the homeowners association

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1 or if we can be transferred to the National Park
2 Service or what have you, whatever works best will be
3 done. And it's been under consideration for a while as
4 to how that would be handled. But thank you for the
5 comment on that.

6 We would like to request a possible bench
7 decision and a summary order, if possible.

8 CHAIRPERSON GRIFFIS: I guess the quick
9 question is why would you believe that it wouldn't be
10 in our jurisdiction to review the disposition of the
11 parcel that is attendant to the property?

12 MR. BROWN: The Board has been very
13 sensitive more so recently in years about the
14 conditions they impose on orders. And I think that
15 goes beyond the Board's jurisdiction to, in essence,
16 make a condition that somebody give away or sell or
17 dispose of a part of their property.

18 Quite frankly, it may make sense to
19 transfer it to the Park Service, but making that a
20 condition of a project, particularly a project like
21 this which is affordable housing and it is inherently
22 restrictive. I think places a burden on the
23 applicant, the city and goes beyond the Board's
24 authority.

25 I mean, I've been here plenty of times and

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1 the Board has never suggested that any of my clients
2 give away or dispose of property as part of
3 conditions. How they use the property, perhaps, but
4 in this case to actually dispose of the property seems
5 inappropriate on its face.

6 CHAIRPERSON GRIFFIS: I don't disagree
7 with some of the comments. First, initially, I think
8 the Board does pay particular attention to its
9 jurisdiction and strictly adheres to it. However,
10 we're here for special exception review under 353,
11 which incorporates in some aspects 410, which does
12 seem to tend to give us the opportunity to review
13 entirely the disposition of the development here.

14 You know, 353 is an interesting section.
15 It kind of just says just refer to everybody and get
16 their comments from all the agencies back. So I guess
17 we could ask specifically of those agencies how they
18 feel.

19 But anyway, I guess the point being very
20 direct, I'm not so persuaded that we don't have the
21 jurisdiction, whether we have the capability or the
22 expertise or decide to take that jurisdiction to hear
23 a remedy, I'm not clear on. Do we actually have the
24 jurisdiction to condition the disposition of one
25 agency or entity taking over possession of that? I

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1 agree with you there. I don't believe that I've seen
2 yet that we could in fact mandate or condition that
3 the Park Service would take this.

4 But, Mr. Parsons, you were going to
5 include?

6 COMMISSIONER PARSONS: Well, I was going
7 to agree with Mr. Brown. But I also say that we do
8 have the jurisdiction to say that this site will not
9 be clear-cut or the timber sold off. I mean, it will
10 remain as is. And we can put that in that order. You
11 wouldn't disagree with that?

12 MR. BROWN: Absolutely not. And those are
13 the typical conditions that you see a BZA order
14 whether a special exception or variance. It does raise
15 -- and that kind of condition is acceptable and I
16 think in line with what the applicant is thinking
17 about to leave in its natural state.

18 The whole question of disposing of the
19 property raises a question that, you know, goes beyond
20 this applicant's ability to comply. What happens if
21 everybody got in the room and the Park Service, for
22 whatever reason, didn't want the property and the city
23 didn't want their property? You're almost setting up
24 a potentially impossible condition.

25 COMMISSIONER PARSONS: Right.

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1 MR. BROWN: Even though it's well taken
2 advice.

3 CHAIRPERSON GRIFFIS: I don't disagree.
4 But it's interesting and actually having the Home
5 Again representative here, I'm wondering as part of
6 the requirements of affordability and the disposition
7 of this, was this not a factor or does this become a
8 factor in terms of your review and calculations of how
9 you maintain the affordability with the burden of
10 maintaining such a large piece of land?

11 MS. BOUBERT: That's why we have to look
12 at what the cost, what kind of cost are we talking
13 about this association incurring on a monthly or a
14 quarterly basis. I don't think that's been factored
15 into the sales price or the homeowners association
16 fees yet. And so looking at what that, what the final
17 cost would be, we want to of course probably look into
18 other options at that point after first finding out
19 what those fees would be. And if Parks would like,
20 you know, we would want to propose that they acquire
21 the property through whatever means or whatever
22 options may be available at that time we may opt to
23 take that step or not. But there's still some
24 unknowns here and until we know for certain, first of
25 all, the square footage. I'm not sure exactly how much

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1 square footing of the out parcel would be needing
2 maintenance.

3 And so I think there are still variables
4 here that need to be considered prior to determining
5 which direction to take.

6 In disposition of this property, of
7 course, 48,000 square feet lot and we knew up front
8 that there was a portion that was unbuildable. But
9 typically as part of our disposition process
10 developers take full responsibility of development of
11 the lots and work with the associations to establish
12 maintenance. So this would be a new case for us to
13 find some remedy for. But we are open to options.
14 and if your Board has any suggestions, we could
15 definitely take a look at those as well and are open
16 to them.

17 CHAIRPERSON GRIFFIS: How big is the
18 trust?

19 MS. BOUBERT: Excuse me?

20 CHAIRPERSON GRIFFIS: How big a trust do
21 you have to pay for the maintenance of the land?

22 MS. BOUBERT: Yes. That's a good
23 question, you know.

24 CHAIRPERSON GRIFFIS: Yes. Well, one
25 thing I think we can somewhat move on with this, but

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1 I think it's an important aspect. But I would hate to
2 see this actually tipping into the point where it
3 isn't actually a viable project to develop because of
4 the burden on the developer but having also to
5 underwrite the sale of the property. So I guess what
6 I'm looking at is where is the balance. And I think
7 Mr. Parsons brought up an excellent point of can it go
8 to somewhere else for maintenance. But, you know, I
9 would look to you not to hear suggestions from us, but
10 rather to actually to bring some suggestions in the
11 negotiations with the developer.

12 But let me let others have a --

13 VICE CHAIRPERSON MILLER: Well, I just
14 wanted to respond to Mr. Brown and say that I don't
15 think the Board is anywhere near the point of making
16 a condition that that property be sold. My concern
17 basically arose out of a statement in your pre-hearing
18 statement. Page 3 it just says "The HOA will be
19 funded with adequate reserves for the maintenance of
20 such features." And so, you know, my question was
21 well how's it going to be funded? I mean, what does
22 that mean. And the fact that you raised the issue of
23 maintenance of the common areas seemed to signal that
24 it was somewhat relevant to your application and
25 therefore within our jurisdiction to understand that

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1 and be satisfied that that would be the case.

2 I don't know if you have a response to
3 that, but that's all, really.

4 MR. BROWN: I understand. And I'm not
5 going to disagree.

6 I think it would be in the interest of
7 certainly the developer and the program, which is
8 larger than just the applicant that -- and there may
9 be conditions the Board does want to impose. A bench
10 decision summary order would be appropriate to allow
11 this project to move forward. Particularly in these
12 times, time is money that a tight program like this
13 can ill afford. So I think that there's enough
14 understanding as to the issue that Mr. Parsons had
15 raised and the concerns to allow the project to go
16 forward with people working on the solution to the
17 land issue would be, I think, appropriate in this
18 circumstance. That would be my request on behalf of
19 Ms. Baldwin.

20 CHAIRPERSON GRIFFIS: All right. Very
21 well. I think we ought to utilize the time that we do
22 have here today. And unless there's any other further
23 questions or any closing remarks by the applicant, I
24 think we should proceed today. I think the record is
25 full. I have not gleaned that we can -- even if

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1 keeping the record open get additional information
2 that may be appropriate for us to continue our
3 deliberation. So, that being said, let's move ahead.

4 Ms. Miller?

5 VICE CHAIRPERSON MILLER: Mr. Brown, I
6 just want to ask you one more question before we go
7 into deliberation. You know that sentence, the HOA
8 that will be funded with adequate reserves for the
9 maintenance of such features, did you have an entity
10 in mind or an idea as to how that would be funded?

11 MR. O'MALLEY: The establishment of
12 homeowners associations is very common. And they are
13 funded by means of homeowners association dues that
14 are collected from the homeowners themselves and
15 maintained in accounts held by the homeowners
16 association used for purposes of the homeowners
17 association as provided for in the bylaws. That
18 entity is yet to be created, of course. But that is
19 how the necessary funds would be provided for.

20 MR. BROWN: And the homeowners association
21 is set up as a not for profit corporation for which
22 all the owners are automatically members and they pay
23 dues and they certain benefits and responsibilities.

24 To put it in context, I mean, I don't want
25 to go any further. While the concern is legitimate

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1 and this is not an insubstantial size piece of land,
2 the plan is not -- the maintenance is to basically let
3 it be as is. So other than in perhaps some incidental
4 costs, we're not anticipating large costs. As Mr.
5 O'Malley said if the trees fall, they're going to fall
6 downhill towards somebody else's property. But it's
7 a natural state so that again, putting it in that
8 context. There's no lawn to be mowed, there are no
9 bushes to be cut, to paths to be manicured.

10 CHAIRPERSON GRIFFIS: Very well. Anything
11 further? Okay.

12 Actually this is do our deliberation our
13 motions should we move this forward. And I would
14 move approval of application 17364, that is for the
15 special exception to allow the construction of the 5
16 single-family row dwellings and 2 of the single-family
17 semi-detached dwellings under section 353. This
18 application also involves the area variance, the
19 variance from one parking space in the front yard
20 under 2116.2, and this is at the premises of 2300
21 block of Skyland Terrace, S.E.

22 BOARD MEMBER ETHERLY: Second, Mr. Chair.

23 CHAIRPERSON GRIFFIS: Thank you, Mr.
24 Etherly.

25 I'm going to just talk to the motion and

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1 then open it up for comments and conditions if there
2 are any. But let me take on, first of all, the
3 variance. We talked limited about that. I have to
4 say for the record that I don't find this type of
5 development very appealing in terms of an urban design
6 aspect, but I find it less appealing of unfinished
7 design. And so I see this as actually being a good
8 situation in terms of completing the rest of the
9 development on the square.

10 That being said, of course, the uniqueness
11 to this somewhat landlocked lot, the site grading
12 which is much higher at the rear than from the front,
13 obviously does not allow as it's subdivided by also as
14 the grade would not allow for rear entrance or access.
15 That uniqueness, not to mention it's longer history,
16 which is in the record lends itself to the practical
17 difficulty of providing a parking space. One could
18 say just don't provide a parking space and then we'd
19 be looking at a different type of relief or this is
20 the location of that parking under 2116.2. It makes
21 some sense and it's very sensible in this in terms of
22 replicating what else is on the block in the provision
23 of the parking in the front. Clearly it's difficult to
24 do it otherwise.

25 And whether it would impair the intent and

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1 integrity of the zone plan or map, I think what we're
2 looking at is really a question of context. And this
3 is fitting contextually within the rest of the
4 development and in the area. Therefore, I would not
5 feel that it would dramatically impair the intent of
6 the zone plan in this specific area.

7 Going to the special exception, I'm going
8 to open it up. Of course, 353 is very specific of
9 where this application is to be referred. And we have
10 all the referring agencies providing their
11 recommendations, all very supportive. We've pulled up
12 one specific issue. So let me open it up to the Board
13 for comments. Mr. Parsons, did you want to begin?

14 COMMISSIONER PARSONS: Yes, I did. I have
15 a condition drafted here that I would like to share,
16 and I'll read it twice because it's not short.

17 So as to protect the abutting park land
18 from potential adverse impacts, the out parcel is to
19 remain in its natural state which shall preclude the
20 sale of timber, cutting of trees, altering of the
21 topography or construction of any kind.

22 So as to protect the abutting park land
23 from potential adverse impacts, the out parcel is to
24 remain in its natural state which shall preclude the
25 sale of timber, cutting of trees, altering of the

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1 topography or construction of any kind.

2 CHAIRPERSON GRIFFIS: Comments? Is it
3 redundant to say cutting of trees and selling of
4 timber? I mean if there was a tree that needed to be
5 cut down for whatever reason there might be, would it
6 be precluded?

7 COMMISSIONER PARSONS: I have another
8 sentence to cover that. But the cutting of trees
9 should be limited to dead or diseased. In some cases
10 we say dead, diseased or downed. In other words, a
11 storm comes through and --

12 CHAIRPERSON GRIFFIS: So the intent of the
13 condition, of course, is that you're obviously not
14 going to clear it for profit or reuse of any sort, but
15 rather anything that was done on it would be just for
16 the maintenance and safety of the surrounding area and
17 of the site itself?

18 COMMISSIONER PARSONS: Correct.

19 CHAIRPERSON GRIFFIS: Okay. Questions?

20 VICE CHAIRPERSON MILLER: Would you just
21 read it one more time? I don't think I have a problem
22 with it.

23 COMMISSIONER PARSONS: I'm just feeding --
24 So as to protect the abutting park land from potential
25 adverse impacts, the out parcel is to remain in its

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1 natural state which shall preclude the sale of timber,
2 cutting of trees other than dead, diseased or downed
3 -- no. Cutting of -- yes, yes. We'll worry about
4 grammar later. Altering of the topography or
5 construction of any kind. And the construction of
6 any kind what I'm going to is playground equipment
7 that, you know, tree houses, things of that nature
8 that may be volunteered by seven people to the
9 detriment of others.

10 VICE CHAIRPERSON MILLER: Do we have any
11 evidence in the record that goes to that?

12 COMMISSIONER PARSONS: How people encroach
13 on property like this?

14 VICE CHAIRPERSON MILLER: No, protecting
15 the abutting national park land?

16 COMMISSIONER PARSONS: Has this Board?

17 VICE CHAIRPERSON MILLER: In this case.
18 You're saying the purpose of this is to protect
19 abutting park land, right?

20 COMMISSIONER PARSONS: That's the way I
21 would express it, yes.

22 VICE CHAIRPERSON MILLER: Right. I'm just
23 asking you did that come up in any of the documents in
24 our case?

25 COMMISSIONER PARSONS: In this case? No,

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1 they didn't talk about the out parcel at all other
2 than it would be -- didn't notify the Park Service,
3 didn't engage the Park Service.

4 VICE CHAIRPERSON MILLER: So this
5 basically stemming from your expertise or common
6 knowledge that that would be a good idea in this case?

7 COMMISSIONER PARSONS: Well, I think this
8 Board has to look to the impact on adjacent
9 properties.

10 VICE CHAIRPERSON MILLER: Right.

11 COMMISSIONER PARSONS: And that's why I
12 preface it with the park. I mean if that's troubling
13 you, we can take it out.

14 VICE CHAIRPERSON MILLER: No. I just
15 wanted to know where we were getting it from. And I
16 think that that's a good point and we then have --
17 they weren't notified, so they didn't have an
18 opportunity to participate?

19 COMMISSIONER PARSONS: Right.

20 VICE CHAIRPERSON MILLER: Okay.

21 CHAIRPERSON GRIFFIS: Did you want to add
22 in that statement also to minimize the cost of the
23 homeowners association, is that what you also --

24 VICE CHAIRPERSON MILLER: I think that's
25 a good idea as well.

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1 CHAIRPERSON GRIFFIS: I'm not sure we
2 would actually put that in the condition, but it's
3 certainly part of the intent of the condition,
4 correct?

5 VICE CHAIRPERSON MILLER: Correct. And we
6 did hear a lot of testimony on that. Yes.

7 CHAIRPERSON GRIFFIS: Okay. I don't think
8 we need to actually state it within the condition. I
9 think the condition will go directly to what the
10 condition is. But I think it's important to put that
11 on the record. Of course, it's two balancing pieces
12 here, but I think they're both appropriately stated.

13 Okay. We have a motion before us. It has
14 been conditioned and seconded. And let me other have
15 opportunity to question the condition. I think what
16 we're taking is the quick writing. We will obviously
17 get the exact writing done, but the intent make sure
18 the Board is aware of the intent of the condition. If
19 there's any questions, Mr. Parsons is here to answer
20 that. Nothing. Very well, anything else on the
21 motion at this time?

22 BOARD MEMBER ETHERLY: I have no objection
23 to the condition as it's been offered. And I think
24 with respect to the other aspects of this trust
25 exception, I think the record has been adequately

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1 filled out and I'm just very hopeful that we will
2 continue to see the Home Again Initiative coming
3 before us with further opportunities like this.

4 Thank you, Mr. Chair.

5 CHAIRPERSON GRIFFIS: We're moving ahead
6 with matter of right development.

7 BOARD MEMBER ETHERLY: Absolutely.

8 CHAIRPERSON GRIFFIS: Either way.

9 MS. BOUBERT: That is what we encourage.

10 CHAIRPERSON GRIFFIS: Yes. Indeed. Very
11 well. Okay. Any other questions, comments,
12 clarifications?

13 Very well. If there is nothing else, we
14 have a motion before us. Signify you're in favor by
15 saying aye.

16 BOARD MEMBERS: Aye.

17 CHAIRPERSON GRIFFIS: And opposed?
18 Abstaining. Very well. Let's record the vote. And,
19 Ms. Bailey, I don't see any reason why we wouldn't
20 issue a summary order on the this unless any Board
21 member has any objection to doing that, we can issue
22 a summary order with a condition.

23 MS. BAILEY: Thank you, sir.

24 The vote is recorded as five zero zero to
25 approve the application. Mr. Etherly made the motion,

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1 Mr. Griffis seconded it. Mr. Griffis made the motion,
2 Mr. Etherly second. Mr. Mann, Ms. Miller and Mr.
3 Parsons are in agreement. And it's approved with a
4 summary order and the condition, Mr. Chairman.

5 CHAIRPERSON GRIFFIS: Thank you very much.

6 Thank you all very much. Yes?

7 MR. BROWN: If I could impose upon the
8 Chair, I have the opportunity to come back this
9 afternoon for another case. And --

10 CHAIRPERSON GRIFFIS: Me, too.

11 MR. BROWN: And get some sense of how you
12 are approaching the scheduling.

13 CHAIRPERSON GRIFFIS: Yes. We have one
14 more case, we have two more cases for this morning and
15 then we'll take a break. I don't anticipate the next
16 two will take much more than 30 minutes, which would
17 put as 1:30 and we resume the afternoon at 2:30.

18 Good. With that then, let's move ahead to
19 17372. Ms. Bailey?

20 MS. BAILEY: And that is the application
21 of Leatrice C. Lane, and it's pursuant to 11 DCMR §
22 3104.1 for a special exception to allow a two story
23 rear addition to an existing single-family detached
24 dwelling under section 223, not meeting the side yard
25 requirements (section 405), the property is located in

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1 the R-4 District at 708 Shepherd Road, N.W. (Square
2 3154, Lot 817).

3 CHAIRPERSON GRIFFIS: Hi. How are you this
4 afternoon? Thank you for your patience with us.

5 If you wouldn't mind just stating your
6 name and address for the record? I'm moving ahead
7 very quickly here.

8 MR. NUNLEY: Good afternoon, Mr. Chairman,
9 members of the Board, staff of the Office of Zoning.

10 We're here today to seek the special
11 exception under section 223 for the two story addition
12 onto the rear of this house at 708 Shepherd Place,
13 N.W.

14 Now to put it straight forward we've
15 submitted our statement to the Board. We have the
16 visited the ANC. Even though they haven't responded,
17 they did give us a vote of approval on March 24, 2005
18 before we had submitted the application. We went back
19 to them to get a letter based on the minutes of that
20 meeting. They did not respond. So we have no letter.

21 We've gotten a positive response from the
22 Office of Planning.

23 The project is supported financially and
24 otherwise by the Department of Housing and Community
25 Development.

1 It's been a long morning. I don't want to
2 take a whole lot of time. I don't think we need to. So
3 I'm going to ask if the Board has any questions of us.

4 CHAIRPERSON GRIFFIS: Excellent. I think
5 that that's appropriate just to enter the record with
6 that summation. I think the record is absolutely
7 full.

8 Let's take Board questions. Are there any
9 questions from the Board? And this application is, of
10 course, a 223 application on Shepherd Road.

11 Not hearing any questions from the Board,
12 Mr. Nunley, I think we're going to move ahead.

13 Let's go to the Office of Planning's
14 report and while they're getting ready at the table,
15 I will note that their oblique photos really helped in
16 terms of the analysis of what was actually submitted
17 in writing, and that is one might say the eclectic
18 nature of the development around it, but also the acid
19 test, of course, to attest to the 223 is the impact of
20 the neighbors. And this shows very clearly with the
21 written submission that the adjacent two story
22 apartment building which has no fenestration and its
23 relationship to that.

24 That was enough waste of time to get you
25 ready, and we'll hear from you now.

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1 MR. MOORE: Good afternoon, Mr. Chair and
2 members of the Board. I'm John Moore, Office of
3 Planning and I will stand on the record.

4 CHAIRPERSON GRIFFIS: Thank you. Thank you
5 very much, Mr. Moore.

6 So I'll pick up in your report in terms of
7 making the test, of course. And I would just finish
8 by saying I thought it was an excellent analysis, and
9 that is going through whether it would impair or
10 intrude on the design, the scale or the character of
11 course, it was an issue that it would not as this is
12 a rear addition. And, again, the character might even
13 be difficult to really pinpoint what it is. It's a
14 very interesting area.

15 Let me ask if the Board members have any
16 questions of the Office of Planning.

17 Does the applicant have any cross
18 examination of the Office of Planning?

19 MR. NUNLEY: No.

20 CHAIRPERSON GRIFFIS: Very well. Let's
21 move ahead then. This is not located in terms of our
22 record in an historic district.

23 You've already indicated, Mr. Nunley, that
24 the ANC reviewed this but did not submit a report into
25 the record. Obviously, we won't be able to grant it

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1 great weight.

2 Nothing that, I don't have any other
3 indication of agencies or associations that have
4 submitted into the record unless you're aware of any
5 other, Mr. Nunley?

6 MR. NUNLEY: None that I'm aware of.

7 CHAIRPERSON GRIFFIS: Very well. Then
8 we'll ask if anyone is here present, persons to
9 provide testimony in 17372 in support or in opposition
10 to the application could come forward now. Not noting
11 anyone present to provide additional testimony, Mr.
12 Nunley, let's turn it over to you for any closing
13 remarks that you might have.

14 MR. NUNLEY: Well, my only closing remark
15 is that I believe that we have met our burden of
16 proof. So I would ask for a bench decision and a
17 summary order.

18 CHAIRPERSON GRIFFIS: Thank you very much,
19 Mr. Nunley. We do appreciate it. And we do
20 appreciate the conciseness of the application. It had
21 all of the information that was needed to be provided
22 into it for our full understanding, which allows us to
23 move ahead fairly quickly ahead on this.

24 And I would move approval of application
25 17372 for the special exception to allow a two story

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1 addition at 708 Shepherd Road, N.W., and ask for a
2 second.

3 VICE CHAIRPERSON MILLER: Second.

4 BOARD MEMBER ETHERLY: Second. I defer to
5 Ms. Miller.

6 CHAIRPERSON GRIFFIS: Thank you very much,
7 Ms. Miller.

8 Again, I don't think I need to go into
9 great detail. I think the applicant's submission as
10 well as the OP's submission adequately lay out the
11 test of how it is not -- there are additional pieces
12 of information in the case that went well beyond the
13 special exception test, which the Board is aware of.
14 And I think it's appropriate to move ahead at this
15 time.

16 I'll open it up to others for any
17 additional comments. If there's no further comments,
18 then we do have a motion before us. I'd ask for all
19 those in favor to signify by saying aye.

20 BOARD MEMBERS: Aye.

21 CHAIRPERSON GRIFFIS: And opposed?
22 Abstaining? Very well.

23 Then, Ms. Bailey, if you wouldn't mind
24 recording the vote.

25 MS. BAILEY: Mr. Chairman, the vote is

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1 five zero zero to approve the application. Mr. Griffis
2 made the motion. Ms. Miller second. Mr. Mann, Mr.
3 Parsons and Mr. Etherly are in agreement.

4 CHAIRPERSON GRIFFIS: Very well. I don't
5 see any reason not to waive our rules granting a
6 summary order on this unless any Board members have
7 any objection to that. Not noting any objection, Ms.
8 Bailey, why don't we issue a summary order.

9 MS. BAILEY: Thank you, sir.

10 CHAIRPERSON GRIFFIS: Good. Thank you very
11 much.

12 Thank you all. Appreciate your patience
13 with us and getting through this morning. Good luck
14 with that.

15 Okay. Let's move ahead then to the last
16 case. Yes.

17 MS. BAILEY: 17371 of Nathan and Sharon
18 Bovelleville, pursuant to 11 DCMR § 3104.1 for a special
19 exception to allow a two car garage addition -- oh I'm
20 sorry.

21 CHAIRPERSON GRIFFIS: 17354.

22 MS. BAILEY: I'm sorry. I'm in the
23 afternoon.

24 CHAIRPERSON GRIFFIS: You're absolutely
25 right. We should be calling that right now. However--

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