

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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PUBLIC HEARING

+ + + + +

TUESDAY,

JANUARY 24, 2006

+ + + + +

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

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

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

ZONING COMMISSION MEMBER PRESENT:

CAROL J. MITTEN	Chairperson
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OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY	Secretary
BEVERLEY BAILEY	Sr. Zoning Specialist
JOHN NYARKU	Zoning Specialist
TRACEY W. ROSE	Sr. Zoning Specialist

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

SHERRY GLAZER, ESQ.
LORI MONROE, ESQ.

OFFICE OF PLANNING STAFF PRESENT:

MAXINE BROWN-ROBERTS
STEPHEN MORDFIN
TRAVIS PARKER
KAREN THOMAS

The transcript constitutes the minutes
from the Public Hearing held on January 24, 2006.

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1 MS. BAILEY: Application Number 17404 of
2 Wilbur Mondie, pursuant to 11 DCMR 3103.2 for a
3 variance from the lot width and lot area requirements
4 under section 401.3 to allow the construction of four
5 plats at premises 410, 412, 414, and 416 Richardson
6 Place, Northwest. The property is zoned R-4.

7 CHAIRPERSON GRIFFIS: Let me just make sure
8 that the court reporter has gotten the information he
9 needed. You're all set, okay.

10 (Whereupon, the above-entitled matter went
11 off the record at 11:02 a.m. and went back on the
12 record at 11:05 a.m.)

13 CHAIRPERSON GRIFFIS: Very well, are we
14 ready?

15 MR. MCCANTS: We are ready.

16 CHAIRPERSON GRIFFIS: Excellent.

17 MR. MCCANTS: Mr. Chairman and members of
18 the Board, my name is Leonard McCants. I'm an
19 attorney. I represent Mr. Wilbur Mondie, who is the
20 applicant in this case.

21 Mr. Mondie is an applicant and he's filed
22 his application pursuant to 11 DCMR, Section 3103.2 for
23 -- well, previously filed for variance relief from the
24 minimal lot and area requirement, but that application
25 was subsequently amended. And now he is seeking

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1 relief, special exception relief, under Section 410, to
2 permit construction of a single building consisting of
3 four single-family dwelling units on a single
4 consolidated lot, inclusive of the following lots:
5 lots 411 -- I mean 811, 12, 13, 14, and 15 at 418
6 Richardson Place, Northwest, Square --

7 CHAIRPERSON GRIFFIS: I'm sorry. Hold on
8 a second. Did you --

9 MR. LA COUR: With respect --

10 CHAIRPERSON GRIFFIS: I was going to say,
11 if you're going to address the Board then you need to
12 be on the record. So you need to be --

13 MR. LA COUR: It's probably important
14 procedurally --

15 CHAIRPERSON GRIFFIS: Here, take your time.
16 Have a seat. You want to have the microphone on.

17 MR. LA COUR: It's probably important
18 procedurally --

19 CHAIRPERSON GRIFFIS: Just touch, touch the
20 mic. There it is.

21 MR. LA COUR: How about that? Is that
22 better?

23 CHAIRPERSON GRIFFIS: Good, now we're
24 ready.

25 MR. LA COUR: I'm not really too familiar

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1 with --

2 CHAIRPERSON GRIFFIS: That's fine.

3 MR. LA COUR: -- your procedural rules, but
4 I think it's important that the Board and for the
5 record that Mr. McCants is sworn in. He was not here
6 in the morning when we had the swearing in process and
7 I think if he's going to give testimony --

8 CHAIRPERSON GRIFFIS: We're going to do two
9 things. First of all, if you can just state your name.

10 MR. LA COUR: Sure, I'm Karl La Cour at
11 1722 Fourth Street.

12 CHAIRPERSON GRIFFIS: And you are the party
13 in opposition of this application.

14 And it is my understand, Mr. McCant that
15 you are the attorney representing --

16 MR. MCCANTS: I'm the attorney; that's
17 correct.

18 CHAIRPERSON GRIFFIS: You wouldn't be sworn
19 in then.

20 MR. MCCANTS: That's correct.

21 CHAIRPERSON GRIFFIS: Okay. He's not going
22 to be providing any testimony.

23 MR. LA COUR: Okay, great.

24 CHAIRPERSON GRIFFIS: He provides the legal
25 analysis and he is not sworn in.

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1 MR. LA COUR: The other two items is there
2 are two items that I don't know if we, they can be
3 dismissed or dealt with regarding the ANC.
4 Unfortunately, he's at a funeral and I'm authorized to
5 speak on his behalf. I have that paperwork. I think
6 it's been provided to the Board, but I was asked to
7 submit it at the beginning of the hearing. And I don't
8 know if I do that at this time.

9 CHAIRPERSON GRIFFIS: Do we have that in
10 yet? If not, yes, if you wouldn't mind providing it to
11 the applicant. We can get that into the record. What
12 else do you have?

13 MR. LA COUR: And the other item is in
14 respect to the seven day rule. And I don't know if you
15 received the paperwork with respect to that; however,
16 as you know, the ANC meeting did not meet until -- so
17 we wouldn't have met the seven day rule and we ask for
18 a waiver of that seven day rule.

19 CHAIRPERSON GRIFFIS: Indeed and I
20 appreciate you bringing that to our attention.

21 MR. LA COUR: Right.

22 CHAIRPERSON GRIFFIS: We are aware of that.
23 We often times take that up in the chronology when we
24 call opposition.

25 MR. LA COUR: Okay. I didn't know when

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1 that was.

2 CHAIRPERSON GRIFFIS: That's fine.

3 MR. LA COUR: And I didn't want to lose the
4 opportunity to say.

5 CHAIRPERSON GRIFFIS: Yes, we won't lose
6 opportunities here.

7 MR. LA COUR: The copies I have were to be
8 presented to Mr. Moy. That's what I was given.

9 CHAIRPERSON GRIFFIS: Excellent.

10 MR. LA COUR: Is it okay to approach Mr.
11 Moy?

12 CHAIRPERSON GRIFFIS: Absolutely.

13 MR. LA COUR: Thank you. I'm sorry to
14 interrupt Mr. McCants.

15 MR. MCCANTS: Mr. Chairman, as I understand
16 it, you're waiving the rule with respect to the ANC
17 filing its report on time?

18 CHAIRPERSON GRIFFIS: That's correct. I'll
19 take comments from the Board if they have any concern
20 on that.

21 Board Members, comments on waiving our
22 rules and regulations and accepting the ANC report?

23 (No response.)

24 CHAIRPERSON GRIFFIS: Noting there's no
25 opposition the Board would accept that in, so that will

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1 be part of the record, of course, and then it will be
2 presented.

3 MR. MCCANTS: All right. I would just like
4 to object for the record that we have not seen the
5 report. We don't have any evidence of the report.

6 CHAIRPERSON GRIFFIS: Okay.

7 MR. MCCANTS: So it's a total surprise as
8 to the ANC report, so we are at a disadvantage in that
9 respect.

10 CHAIRPERSON GRIFFIS: Okay.

11 MR. MCCANTS: But I understand the court's
12 ruling.

13 CHAIRPERSON GRIFFIS: No, I appreciate your
14 position on that, of course, in having the ANC member
15 not here today; however, it is presented for your
16 review today and we will, if needed, allot for more
17 time or submission as that is required to address the
18 ANC report.

19 Okay. Then we were back at the revision of
20 the relief being requested.

21 MR. MCCANTS: Yes, sir. That's correct.

22 CHAIRPERSON GRIFFIS: And, as you've
23 indicated, you requested special exception from 410.

24 MR. MCCANTS: That's correct.

25 CHAIRPERSON GRIFFIS: Let me ask, first of

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1 all, the Board is very familiar with it, is it as a
2 single lot to be viewed as separate buildings as one
3 building for purposes of the regulations.

4 Let me ask, is this a single lot?

5 MR. MCCANTS: No, it's not a single lot.
6 It's under one ownership but there are four different
7 lots.

8 CHAIRPERSON GRIFFIS: And your legal
9 opinion is that 410 would be --

10 MR. MCCANTS: Applicable?

11 CHAIRPERSON GRIFFIS: Applicable to address
12 the situation where you actually have multiple lots?

13 MR. MCCANTS: Yes, sir. I don't believe
14 that the regulation prohibits that.

15 CHAIRPERSON GRIFFIS: Okay.

16 MR. MCCANTS: And I believe the regulation
17 does not in any way prohibit that nor does it speak to
18 that one way or another. But since these lots are all
19 owned by the same person and he intends to consolidate
20 them under one building, I don't think it's a problem
21 with the regulation with respect to that.

22 MS. MITTEN: I think the issue is still
23 outstanding, but can I just get you to repeat one more
24 time which lots are included in the application,
25 because documents -- you just mentioned four lots, but

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1 I think you said five -- I think you kicked off five
2 lots. I just want to be sure that I understand the
3 subject.

4 MR. MCCANTS: I'm sorry. There are five.
5 They are lots 811, 812, 813, 814, and 815.

6 MS. MITTEN: Okay. The issue still remains
7 that the Chair brought up.

8 CHAIRPERSON GRIFFIS: 811, I didn't have
9 that noted.

10 Okay. I think it's important to take a
11 quick moment to look at 410 just for clarification.

12 Noting special exceptions, the title 410 of
13 course is for groups of residential buildings in R-5
14 and R-4.

15 Okay. Let's move ahead then with that, in
16 terms of 410. We may have additional information or
17 questions as we get into the testimony today.

18 MR. MCCANTS: All right then.

19 CHAIRPERSON GRIFFIS: I noted a couple of
20 things as we were reading and I think the other Board
21 Members have a couple of preliminary questions on it.

22 The other aspect, and I think it came up
23 either from the party in opposition or one of the
24 submissions from the ANC of ownership. And you've
25 indicated that in fact these are all under single

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1 ownership?

2 MR. MCCANTS: That's correct.

3 CHAIRPERSON GRIFFIS: And the applicant is
4 the owner of all of these?

5 MR. MCCANTS: That's correct.

6 CHAIRPERSON GRIFFIS: 811, 812, 13, 14, and
7 815? One other question from Board Members, is there
8 additional relief required.

9 Ms. Mitten, I don't know if you want to
10 address that?

11 MS. MITTEN: The issue that the Office of
12 Planning had noted that I think is relevant is that
13 when you consider this a single structure then it
14 becomes sort of impossible to consider it individual
15 road dwellings and invoke the lot occupancy limitation
16 for a road dwelling at 40 percent, or at 60 percent,
17 I'm sorry, where as the Office of Planning's view and
18 I'm open to be persuaded otherwise, but based on their
19 arguments, that this would come under **A**all other
20 structures@, which is at 40 percent, sort of like you
21 can't have it both ways. So what's your response to
22 that?

23 MR. MCCANTS: Well, my response to that is
24 that this clearly does come under 410. It is one
25 structure. The whole purpose of 410, obviously as you

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1 know, is to allow the builder or developer to build
2 multiple properties under one structure as long as
3 certain thing are done; that they're built
4 simultaneously, that they have front entrances, and so
5 on and so forth. Both items are set forth in the
6 regulations.

7 In terms of whether these comply with 410,
8 I think it's quite clear that they do. The Office of
9 Planning's position seems to be that well, it comes
10 under the regulation which states and say **A**all other
11 structures@. That is not my interpretation of the
12 regulation and I think others who have looked at this
13 also have concluded that that's not a part of it.

14 What is relevant is that 60 percent lot
15 occupancy, which shows that it's road dwellings, plats,
16 church, or public school. In this case we're talking
17 about plats.

18 Now, how do they become plats? They become
19 plats once it's built we come back to the Board and we
20 say Board please subdivide these into four different
21 properties. And that's a special exception and it can
22 be done with minimal involvement of the Board and
23 minimal requirement, as long as certain things are met.
24 And I just have a copy which shows that. Under 410.6,
25 we come back after we've been approved to ask for a

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1 subdivision of the property, and no subdivision of the
2 property shall be authorized until the Board has
3 determined that the following requirements are met:
4 there shall be adequate free access to the street from
5 each separate dwelling; in this case, we conform with
6 that and that's the way we're going to build it, group
7 of dwellings or building resulting from the
8 subdivision; adequate access for fire protection and
9 other purposes will be provided by easement, alley, or
10 street, and obviously that will be the case because
11 we're building on a street and be fronting on a street,
12 on a public street that's already there. It's no
13 different from any other property on that street.
14 There shall be adequate yard, court light, for each
15 dwelling, group of dwelling, or group of buildings
16 resulting from the subdivision. And obviously that
17 will be provided as well. These will be real houses or
18 plats. The idea is that it will be no different from
19 any of the other buildings on that street.

20 MS. MITTEN: Here's my issue with it, which
21 is that you are selectively drawing on provisions of
22 the ordinance. So for purposes of the flexibility
23 that's afforded by 410, which is allowing you to
24 consider these structures as a single building for
25 zoning purposes there's flexibility built into that.

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1 That's why you amended your application. You found out
2 that you don't have to apply for all these individual
3 lot variances; so there's flexibility built into it.
4 But one of the trade-offs for that is you're no longer
5 a road dwelling, a plat, or so forth. But then you're
6 saying but when we come back then we will be a series
7 of road dwellings. Well, if you want to look at it
8 that way, then those series of road dwellings won't
9 have lots that conform to the minimum lot width and the
10 minimum lot size. So what I'm trying to say is there
11 needs to be a consistent interpretation when you're
12 invoking 410.

13 So, this structure that you -- or this
14 building that we will consider under 410 contains a
15 series of road dwellings or plats, which means that it
16 is itself that building, not a road dwelling or plat.
17 So it's an **A**other structure@. That's my view.

18 CHAIRPERSON GRIFFIS: And there's a whole
19 other aspect to that, and I tend to agree with where
20 you're going with that. But it seems that we're
21 missing a step too. And I don't think it's even the
22 intent. I think it's the direct reading of 410 that
23 you're assuming that it's a single lot and then all
24 these structures are going in there and how they're
25 dealt with will be dealt with in 410. And then the

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1 next step is, and I think we can authorize in one
2 special exception, it's not two steps, the next step is
3 a subdivision. But we've stepped over that without any
4 sort of --

5 MS. MITTEN: True.

6 MR. SHER: -- dealing. And I think that's
7 where 410 in my reading and my experience in other
8 cases have been that 410, the intent and the direct
9 letter of it is to give some flexibility, as Ms. Mitten
10 has said, if you have a larger lot and you want to
11 create something that one, is in character with the
12 rest of the area, which may be on the fringe of an R-4,
13 or in an R-4 and R-5 and do numerous buildings. The
14 regulations allow us to look at it as single structure
15 for our purposes. But this seems to be stepping,
16 dancing over, and as Ms. Mitten adequately said, I
17 think selectively utilizing aspects that I'm not sure
18 it's all clear in my head how or whether that's
19 appropriate at this point.

20 Ms. Miller?

21 VICE-CHAIRPERSON MILLER: Just following up
22 on what you're saying, when I'm looking at 410, and we
23 have to determine whether or not it complies, the
24 application complies with 410, I see lot only referred
25 to in the singular, such as in 410.8 and 410.9. I

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1 don't see anywhere, unless I'm missing something, where
2 this provision applies to several lots under one
3 ownership. And so my question is, do you have any
4 authority for that or do you think it's a reasonable
5 interpretation for some reason?

6 MR. MCCANTS: In terms of what -- I'm
7 sorry, I didn't get the question.

8 VICE-CHAIRPERSON MILLER: I think the
9 question is whether 410 can apply to property that's
10 consisting of more than one lot.

11 MR. MCCANTS: I think it does apply because
12 it's all in one ownership. The building --

13 VICE-CHAIRPERSON MILLER: Is there any
14 authority for that in here where it says it's all under
15 one ownership.

16 MR. MCCANTS: No, but putting it another
17 way there's no prohibition to it.

18 VICE-CHAIRPERSON MILLER: I guess --

19 MR. MCCANTS: And the --

20 VICE-CHAIRPERSON MILLER: -- do the
21 regulations read in terms of lot? I mean I don't see
22 under 410 anywhere where it says lots in the plural.

23 MR. MCCANTS: It doesn't even speak to
24 lots. And I don't think -- the regulation that I read
25 says in an R-5 that approved by the Board of Zoning

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1 Adjustment as a special exception under 3104, a group
2 of one family dwellings, plats, or apartment house, or
3 combination of these buildings with division walls
4 erected from the ground up, from the lowest floor up,
5 may be erected and deemed a single building for the
6 purpose of this title.

7 VICE-CHAIRPERSON MILLER: But if you go
8 further and look through the provisions; for instance,
9 410.8 and 410.9 reference lot. It doesn't say anything
10 about more than one lot.

11 MR. MONDIE: If I may just comment. My
12 name is Wilbur Mondie, for the record, and I have
13 walked through a lot at the zoning offices,
14 particularly with Ms. Faye and here in this building.
15 And there's never been an objection between moving the
16 building lots between 12 feet and 14 feet, or closer as
17 needed and is required. And with single ownership,
18 we're taking that a step further and moving them to the
19 extremities so as to create this one lot. And there's
20 never been a problem and I was very poignant in asking
21 Ms. Faye, I guess you all know her, could we do this --
22 as far is there a problem about since I own all five
23 lots to move them as needed for property line purposes.
24 And there was categorically no exception, no problem
25 with that.

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1 CHAIRPERSON GRIFFIS: Well, I think
2 generally I would tend to agree but are you creating
3 one lot?

4 MR. MONDIE: Yes, just for this purpose so
5 that we can build, you know, apply 410. Instead of
6 moving them from 12 feet to 14 feet or 11.6, we're
7 moving it to the extreme east, west, north, and south
8 could get. That's one lot.

9 CHAIRPERSON GRIFFIS: And how are you doing
10 this. I mean where are you in the process?

11 MR. MONDIE: Where are we in the process?
12 By, as you say ownership, now that we have the one and
13 the two to move those lot lines --

14 CHAIRPERSON GRIFFIS: Have you pulled the
15 plat and submitted for the subdivision into a single
16 record lot?

17 MR. MCCANTS: No, that hasn't been done yet
18 and it won't be done until we get the Board's approval
19 because that's one of the things. I mean because
20 that's one of the things -- I mean if you did that
21 before it gets the Board's approval and if the Board
22 disapprovals, then he has one gigantic lot and wouldn't
23 be able to build.

24 CHAIRPERSON GRIFFIS: That's right.

25 MR. MCCANTS: So that's the problem. So

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1 that's why the first step was to get your approval.
2 Then the second step was to go back to the subdivision
3 office to get them to consolidate them as one lot.

4 CHAIRPERSON GRIFFIS: Okay.

5 MS. MITTEN: I think the bigger point is
6 the one that the Chair was getting at though, which is
7 that we should decide what the proper interpretation
8 is. But for the purpose of the presentation to the
9 Board, it is a single lot. It is a single entity. And
10 I think what the Chair was getting at is that if you
11 have that single entity already subdivided into
12 individual lots, then doesn't that sort of -- does that
13 impair the Board's ability to invoke the requirements
14 of 410.6, which is -- we may not -- the fact that
15 there's already an existing subdivision that may not be
16 the subdivision that we would approve if we had a blank
17 slate and it were a single lot. So I think we have to
18 assume we have the blank slate and the fact that
19 there's an existing subdivision of lots is of no
20 concern of ours.

21 CHAIRPERSON GRIFFIS: Right. Yeah, it's an
22 interesting -- it's kind of -- I think we can move on.
23 Actually, I'd like to hear the position of the party in
24 opposition and the ANC parties also with this to see if
25 they have any additional comment, or position, or

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1 clarification for the Board.

2 MS. MONROE: Mr. Chairman, can I comment a
3 second on this.

4 CHAIRPERSON GRIFFIS: Yes.

5 MS. MONROE: Because I just want to mention
6 because it might help to put things a little bit in
7 perspective, but traditionally I think 410 is seen as
8 an exception to 3202.3, because 3202.3 is the summation
9 set and that says every building has to have a separate
10 lot. And in this case, what 410 is trying to do is say
11 if you have one large lot, not several multiple lots,
12 but one large lot, each one of these individual row
13 buildings doesn't need to have its own lot. It can be
14 considered one building on one lot. Which is why I
15 think it might not be clear in 410, but I think what
16 410 is after is that you have one lot, not individual
17 tax lots or individual whatever, just one lot and one
18 ownership. And that's what I think kind of a
19 fundamental part of 410, you need to have one lot to
20 start with because it's an exception to 3202.3.

21 CHAIRPERSON GRIFFIS: Right.

22 MS. MONROE: I don't know if that helps.

23 CHAIRPERSON GRIFFIS: Yes, I absolutely
24 agree. And then you wonder when 2516 kicks in. What
25 is the exception to building lot control.

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1 MS. MONROE: Because this only applies --
2 410 only applies in R-4 and R-5, or questionably; 2516
3 and 2517, one I think is commercial districts and one
4 is residential, but 410 these are kind of separated out
5 even more.

6 CHAIRPERSON GRIFFIS: Right.

7 MS. MONROE: And those other ones are more
8 general special exceptions.

9 CHAIRPERSON GRIFFIS: Right.

10 MS. MONROE: I think that's the way it
11 works.

12 MS. MITTEN: Well, and 2516 relates to
13 properties that don't have street frontage too. So
14 that's one of the requirements of 410.

15 MS. MONROE: Right that was for lots
16 originally.

17 CHAIRPERSON GRIFFIS: Okay.

18 MR. MCCANTS: Mr. Chairman, I believe --
19 do you have any further questions on that?

20 CHAIRPERSON GRIFFIS: I don't think so at
21 this time.

22 But does the party in opposition have a
23 position on this?

24 MR. LA COUR: May I approach?

25 CHAIRPERSON GRIFFIS: Yes. And is the ANC

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1 present, ANC representative for 5-C?

2 MR. LA COUR: No, Mr. Berry is at a
3 funeral. He's going to try to make it here but he's
4 just running very late so he asked me to appear for
5 him.

6 CHAIRPERSON GRIFFIS: Indeed.

7 MR. LA COUR: I guess the first thing that
8 I'd like with respect to Mr. McCants about not being
9 able to respond to the report that we're requesting to
10 waive, as he may recall --

11 CHAIRPERSON GRIFFIS: Actually, I'm just
12 asking if you had a position on this particular,
13 specific --

14 MR. LA COUR: Yes, our understanding and
15 our position has always been is that we don't think
16 that you can combine lots that have already been
17 subdivided pre-57 and get a 410 exception to it. We
18 always assumed that it had to be a single lot and that
19 if you're going to do a single lot it's going to be
20 another structure here because they're not going to
21 meet the width and they're not going to meet the
22 minimum size requirements. So it's a backdoor way to
23 cleverly try to make apartment buildings where in an R-
24 4 where it should be single family homes. And we think
25 that's what was going on here.

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1 CHAIRPERSON GRIFFIS: Okay. I appreciate
2 that. Thank you.

3 MR. MCCANTS: Mr. Chairman, I just want to
4 make one thing for the record clear.

5 CHAIRPERSON GRIFFIS: Yes.

6 MR. MCCANTS: These are not going to be
7 apartments. These are single-family homes. These are
8 town homes. And the only difference between building
9 them individually and building them the way we're
10 building them is 410 allows us to do that, building
11 them simultaneously --

12 CHAIRPERSON GRIFFIS: No, we're clear on
13 why you're here.

14 MR. MCCANTS: You know, so it's not an
15 apartment. So I just want the record to be clear.

16 CHAIRPERSON GRIFFIS: I understand.

17 MR. MCCANTS: No apartments.

18 CHAIRPERSON GRIFFIS: Understood. 410 is
19 a little precarious in the utilization of this and I
20 think you understand what we're investigating here.

21 MR. MCCANTS: Yes, sir.

22 CHAIRPERSON GRIFFIS: I don't think the
23 Board has -- I know the Board has not taken a position
24 on this but obviously is gaining the advice and wisdom
25 of all those that have looked at this, because in the

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1 flip side and in your comments these are townhouses or
2 plats, and in that case then they would have to come in
3 compliance with different dimensional requirements in
4 the regulations.

5 Okay. That being said I don't think
6 there's any position of definitive nature at this
7 point. I think we ought to proceed, hear the facts of
8 the case, and then the Board can in its deliberation
9 and time appropriate make a definitive stance.

10 Ms. Mitten?

11 MS. MITTEN: I would just like to remind
12 you that there was the issue that was raised by the
13 Office of Planning that I think we do have to decide
14 because it speaks to the relief that's being requested
15 and the applicant didn't advertise for variance from
16 the lot occupancy to the extent that we agree with the
17 Office of Planning's interpretation.

18 CHAIRPERSON GRIFFIS: Right, and as I
19 understand the Office of Planning's position on that,
20 and I think it's important to address it now if we can,
21 the point is in the R-4 district road dwellings and
22 plats are allowed at 60 percent lot occupancy. There
23 are other structures, specifically enumerated that, or
24 rather a conversion into an apartment building, which
25 would be an existing, has no lot occupancy prescribed,

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1 and then those of other categorization would be
2 required to comply with 40 percent lot occupancy, if I
3 have my percentages correct.

4 The question then is, is this Aother@ or
5 is this a townhouse flat. And I guess the difficulty
6 in understanding the aspect is in one sense you're
7 asking us to look at it as a single building and then
8 in the next, as Ms. Mitten says, in the next iteration
9 we look at it individually. How do we reconcile that,
10 in terms of the regulations.

11 MR. MCCANTS: Well, I think you look at it
12 as one building pursuant to 410, which does not have
13 these requirements. I mean that's why 410 was there.
14 It's not, it's not for the purpose of looking at it as
15 individual buildings but to look at it as one
16 structure. And even if we looked at it as one
17 structure, this property will occupy 59.7 percent of
18 the lot, so it will be in compliance in accordance with
19 the regulation, as we deem it to be a road dwelling or
20 flat. And I think that's what we are here about and
21 that's what we are saying and that's what our testimony
22 will be, that it is in fact one building occupying 59.7
23 percent of the lot.

24 CHAIRPERSON GRIFFIS: Okay. If I
25 understand you correctly, you're reading 410.1 which is

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1 talking about a group of types of structures. And
2 you're saying this is a group of road dwellings or
3 flats?

4 MR. MCCANTS: That's correct, in one
5 structure being built simultaneously.

6 CHAIRPERSON GRIFFIS: Right and 410 look at
7 that as one structure.

8 MS. MITTEN: I mean I understand -- I think
9 I understand the differences between -- I mean this is
10 clearly just an interpretation question. My
11 interpretation would be consistent with what the Office
12 of Planning had suggested because I think that you
13 can't -- if you're going to invoke 410 then it's a
14 building that is comprised of a group of individual
15 buildings. And that group cannot be anything but
16 another structure under the lot occupancy rules because
17 it's not a single road dwelling, flat, and so on. So
18 you either invoke 410 or you don't. That's kind of my
19 deal.

20 CHAIRPERSON GRIFFIS: Others?

21 (No response.)

22 CHAIRPERSON GRIFFIS: Let's hear from the
23 Office of Planning and since it is their analysis, if
24 they have anything they want to contribute in that?

25 MS. THOMAS: I'm Karen Thomas with the

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1 Office of Planning. If it's -- for this situation of
2 all other structures is it one -- if you don't look at
3 it as **A**all other structure@, what is it? Is it a big
4 giant row house? Is it a big giant plat? What exactly
5 is it? There are four regulations that contain road
6 dwelling plats, if you have churches. Everything else
7 is lumped into all other structures. When the zoning
8 regulations were being contemplated prior to 1958,
9 everything that didn't conform to a road dwelling or
10 plat was lumped into the category of **A**all other
11 structure@ and put in allowed occupancy of 40 percent
12 because it probably/possibly didn't want it to expand
13 because already it would've been a non-conforming use
14 or a non-conforming structure within the R-4 zone. So
15 you couldn't have -- it sort of tampers that expansion
16 of these **A**all other structures@ by putting in a 40
17 percent. So this, we believe, is an **A**all other
18 structure@ because it doesn't comply with either a row
19 house or a plat. What is it? Is it a big giant row
20 house?

21 MR. MCCANTS: Mr. Chairman, it's one
22 building that's being built that's going to have four
23 different townhouses. Under 410 -- that's why 410 was
24 there so as to allow you to do that without going
25 through the very imagination that one would have to go

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1 through and then an individual to build the property on
2 an individual lot. That's why they have it.

3 CHAIRPERSON GRIFFIS: Right.

4 MR. MCCANTS: And actually in the preamble
5 to the Zoning Commission Order 19 of November 17, 1970
6 when this was created it says the proposed text
7 amendment is to provide for improved site planning and
8 mix of housing types commensurate with that of
9 community facilities and encourage ownership in the R-4
10 and 5 districts.

11 MS. THOMAS: Can I just add one more thing.
12 Also, we looked to the definition of what exactly is an
13 apartment. One building of various units, more than
14 three units. You're having four units. The R-4 zone
15 regulation does not account for having apartments in
16 the R-4 district. So if you're erecting a new
17 structure from the ground up, this is not even a
18 conversion, you are in fact de facto erecting an
19 apartment building. Three units all together, three or
20 four units all together in one building where it looks
21 like a row house it is an apartment building.

22 MR. MCCANTS: Mr. Chairman --

23 CHAIRPERSON GRIFFIS: Yes, I understand the
24 difficulty because 410 is asking us to look at it as
25 one structure. But in terms of program, in terms of

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1 utilization, it is being proposed as not being an
2 apartment building. I guess it doesn't seem to be
3 clear on either -- I don't think the regulation is
4 unclear, I think the facts and specifics in this case
5 make it more difficult to easily decide it should be
6 distinctly in one and not the other, based on the fact
7 that we have numerous lots but we're being asked to
8 look at it as a single lot. I don't have difficulty in
9 getting into a building. I'm not so sure I'm persuaded
10 that it should be utilized in all the requirements as
11 an apartment building in an R-4, only because 410 seems
12 to intend us to look at it and then intends us to look
13 at it as to what the specifics are required in that
14 section. But it's just not clear that we should be
15 invoking only 410 in my mind.

16 Others, quick questions?

17 VICE-CHAIRPERSON MILLER: No, I just want
18 to comment. I think I agree with the Office of
19 Planning and Ms. Mitten. I don't see how the 60
20 percent can apply to this situation because it refers
21 to row dwelling, like one row dwelling, and this is
22 four row dwellings and we can't divide them up and see
23 if each one is 60 percent because then that takes away
24 from the whole 410 concept. So it looks to me if it's
25 410, it's not a row dwelling and you would have to

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1 apply the 40 percent.

2 MS. MITTEN: I think, you know, just in you
3 articulating it that way it just kind of gelled even
4 more in my mind, which is about the selectivity, which
5 is if you're going to call it a row dwelling then row
6 dwellings require a certain lot width and all of that.
7 So they're not individuals because it's a selective
8 interpretation. You can't pluck something you like out
9 of lot occupancy and ignore something you don't like
10 out of rear yard, or lot width, or minimum lot size.

11 MR. MCCANTS: Mr. Chairman, may I just say
12 one thing. If I can ask Board Members to look at 410.1
13 in the regulation. It specifically says that in the R-
14 4 district, approved by the Board of Zoning Adjustments
15 as a special exception under 3104, a group of one
16 family dwellings; here we have a group of one family
17 dwellings, all right? Plats or apartment houses or a
18 combination of these buildings, so it could be plats
19 and apartment buildings all at the same time, with a
20 division wall erected from the ground up, same as here,
21 or from the lowest floor up, may be erected and deemed
22 a single building for the purpose of this title,
23 provided the requirements of 410.2 and 410.11 shall be
24 met. That's all the regulation requires. I mean we
25 cannot --

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1 CHAIRPERSON GRIFFIS: Okay.

2 MR. MCCANTS: Please don't change the
3 regulations on us. I mean we rely on the regulations.
4 We're complying with the regulations. And we're
5 complying with the regulations to their respect and
6 that's all we've got to go by. No matter what the
7 regulation says it's quite clear, it says that a group
8 of one family dwellings, and that's all we have here.
9 These are townhouses that are grouped together.

10 MS. MITTEN: That's exactly the point. The
11 point is, the point is that 403.2 says that the 60
12 percent maximum percentage of lot occupancy applies to
13 a row dwelling, not a group of row dwellings. When you
14 go into 410, you are saying we want to be considered a
15 group of row dwellings. And the ordinance is clear
16 that 60 percent lot occupancy applies to a row
17 dwelling.

18 MR. MCCANTS: Now, we are talking about a
19 group of one family dwellings, which the regulation
20 says right here. That's what we are.

21 MS. MITTEN: Mr. Chairman, I think the
22 issue is real clear. I don't know that there's a whole
23 lot more to say. We're just debating back and forth
24 the same words.

25 CHAIRPERSON GRIFFIS: Right.

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1 VICE-CHAIRPERSON MILLER: No, I think the
2 attorney raises the question of whether 403 even
3 applies or whether you just have to follow what's
4 written out in 410 period.

5 Is that your point?

6 MR. MCCANTS: That's exactly my point. The
7 only thing we have to do is follow the requirements
8 under 410. And what they say, all buildings in a group
9 of buildings shall be erected simultaneously. So it
10 contemplates that there are more than one building
11 going to be built at the same time.

12 CHAIRPERSON GRIFFIS: Right, I intend to
13 agree with that assertion; however, then I go back to
14 the original assertion that we made that 410 is written
15 for a single lot and multiple dwellings are looked at
16 on a single lot, and therefore combined for our
17 purposes under 410. But we haven't met that threshold
18 and that's why -- believe me, I think we're bright
19 enough because we've been through numerous aspects of
20 this and that's the confusion. It's like we have a
21 little piece, I think Ms. Mitten said it succinctly, we
22 have a little piece of this and a little piece of that
23 but I'm not sure we're 100 percent where we need to be.
24 So it's either we're looking at a lot occupancy for an
25 apartment building in an R-4 under 410, in which case

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1 we're looking at 40 percent lot occupancy, or we need
2 to have some substantiation that there's a single lot,
3 or we need a subdivision that shows that there's, or a
4 variance from the lot width.

5 And I guess I don't really know how to
6 force which way to go in this but that's where I am.

7 MR. MONDIE: If I might offer a comment.
8 Mr. Chairman, something you said at the beginning, what
9 character of the buildings were going to be an
10 essential point. Part of our presentation goes to that
11 because we noted in our rehearsals of getting to that
12 that character was a part and when you mentioned that
13 the light went on and I said, oh, yeah, that was our
14 whole -- we under -- and the way it was presented to me
15 in discussions with zoning is there is a metamorphoses
16 of a sort that Chapter 6 give us that reason and
17 requirement to come back to the Board to see if these
18 three things have been met, and one of which and the
19 most essential is now is it in character with this
20 particular neighborhood. And part of our presentation
21 is driving to try to get that, to address those issues.

22 CHAIRPERSON GRIFFIS: Okay. I think I
23 understand what you're saying. I want a couple
24 clarifications on 410.6. I don't know anything in the
25 regulations that has you come in for one special

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1 exception and hold out for the next step. We don't do
2 a two-step process. I think 410 reads **Atogether@**.
3 And so if you came in for a special exception it would
4 be, and then it would be presented to the Board as part
5 of this single lot it was to be subdivided. We would
6 look at that potential subdivision. That's not a case
7 that we have before us today. And that just -- that
8 actually reinforces my own confusion because if we
9 can't even look at a major section of 410 what are we
10 doing in 410. But I've said all that and I'm not sure
11 we have consensus in that direction.

12 Yes?

13 MR. MCCANTS: Mr. Chairman, I see your
14 point on 410.6, however, we were going to address that
15 today.

16 CHAIRPERSON GRIFFIS: I understand.

17 MR. MCCANTS: Yes, in terms of the
18 subdivision of the property.

19 CHAIRPERSON GRIFFIS: Okay.

20 MR. MCCANTS: So that's going to be
21 addressed.

22 CHAIRPERSON GRIFFIS: Okay. The party in
23 opposition has their hand of. And I'll just make note
24 if you want to address the Board you just need to come
25 forward. I mean I'm not going to stop process, but you

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1 are a full participant in this, so if there's
2 additional comments you can be here.

3 MR. LA COUR: Thank you.

4 CHAIRPERSON GRIFFIS: Yes.

5 MR. LA COUR: I have a question. I
6 downloaded from your website a code section. I checked
7 with somebody else who had downloaded it, and under
8 410.1 it specifically says in an R-5 district, I
9 noticed Mr. McCants keeps saying R-4 district, this is
10 -- but it says R-5. I think there is a significant
11 distinction there. If it wanted to say R-4, it
12 would've put R-4 in there.

13 CHAIRPERSON GRIFFIS: Right.

14 MR. LA COUR: I understand that the header
15 says R-5 and R-4, but in that section itself it only
16 says R-5. R-5 is contemplating apartment buildings,
17 which is exactly what our confusion was and our concern
18 all along, and I just wanted to bring that to the
19 Board's attention so that maybe I'm misled, I have the
20 wrong statute, I'm understanding you have the same
21 statute as me.

22 CHAIRPERSON GRIFFIS: Right, I think you've
23 hit a very critical aspect that, in fact, the Board in
24 this case and previous cases has been wrestling with.
25 In fact, we've pulled the entire legislative history,

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1 the writings on this and understanding. And I know our
2 attorneys at OAG are working on this because there are
3 differing understandings of why this is. But for our
4 purposes today, I will hear others if they disagree,
5 410 does cover R-4, based on the fact that the
6 regulations read it in the title. But I think you're
7 absolutely correct, it then specifically identifies R-5
8 all the way through it. So one could logically come up
9 with the question of is R-4 actually even covered in
10 410. But it's been the process of the Board to date
11 and it hasn't been established from our attorneys or
12 any applicants persuasively that it would not cover R-
13 4. But you're absolutely correct that it does raise
14 the confusion factor even higher.

15 MR. LA COUR: My other question is under
16 the General Provisions under 3102.3, it says in any
17 conflict between this chapter 31 and any other
18 provisions of the title, which would be title 11, which
19 is what 410 would fall under, it says the other
20 provisions of this title should govern. In any
21 conflict with this chapter between the general and
22 specific rules, the special rules shall govern. It
23 would seem to me arguably then that even if he got his
24 410 exception he would still have to meet the width and
25 the lot use requirements, or am I miss something?

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1 CHAIRPERSON GRIFFIS: No, I would
2 absolutely disagree with you there because 410 is
3 actually more prescriptive or more specific. It would
4 be required to comply fully with 410 but not go back to
5 the general provisions of the zone district.

6 MR. LA COUR: So what would be the purpose
7 of having an 18 foot rule. How less specific can you
8 get? Can you make it any width you want to then?

9 CHAIRPERSON GRIFFIS: Well, that goes into
10 a very large picture of the regulations, but there are
11 general requirements in the zone district and then
12 there are specific requirements, and then there are
13 exceptions and special exceptions laid out for those
14 perimeters.

15 MR. LA COUR: This has been quite an
16 education process for me, so.

17 CHAIRPERSON GRIFFIS: It is indeed.

18 MR. LA COUR: I appreciate it. One other
19 thing that I wanted to add that was brought to me by
20 one of the other opposition group members is that we
21 fully concur with OP's analysis of this.

22 CHAIRPERSON GRIFFIS: Okay.

23 MR. LA COUR: If that's of any help for the
24 record.

25 CHAIRPERSON GRIFFIS: It is indeed.

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1 MS. MITTEN: Can I just --

2 CHAIRPERSON GRIFFIS: Yes.

3 MS. MITTEN: I@m glad Mr. La Cour asked
4 the question because there -- for whatever this is
5 worth and I think it is worth something in terms of
6 guidance to the Board, if you then -- if there is some
7 uncertainty about whether this should apply in R-4,
8 then what was intended in R-5, you know, just by way of
9 lot occupancies since that seems to be an issue. Well,
10 in R-5A, the only distinction that's made among uses
11 that are given 60 percent lot occupancy are church or
12 public school. Road dwellings, plats, they fall into
13 Aall other structures@ in R-5A. In R-5B, all
14 structures have a 60 percent lot occupancy requirement.
15 So I think there may be something there for the Board
16 to use as guidance. I think the choice we need to make
17 is what was the level of intensity intended in R-4
18 versus the R-5 zones. And that may help us sort
19 through this. I don't know.

20 CHAIRPERSON GRIFFIS: Good, I think that
21 does help in terms of analysis and in my position,
22 which perhaps I have not been clear. But the clarity
23 of my position is this: I don't see 410 as being read
24 or the intent of 410 to do away with the general
25 perimeters of the 410 requirement, meaning there is a

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1 density that is controlled with our lot width, minimum
2 lot width, and dimensions and lot occupancy. 410, in
3 my mind, is not to be read of if you have one large
4 site you can actually increase your density. No, it
5 allows you the flexibility of placement of them within
6 a certain reason.

7 So, I guess succinctly I would tend to
8 agree that there would be a lot occupancy perimeter in
9 this specific case that would need to be adhered with.

10 VICE-CHAIRPERSON MILLER: Just to follow up
11 on that because I think I had paraphrased applicant's
12 attorney interpretation and I think he agreed and I
13 don't think it's correct. He was saying that if you
14 just read 410 you don't have to look at the other
15 regulations. And that's not correct because you don't
16 just disregard lot occupancy you have to figure out
17 which one applies and that's in 403. And there's
18 nothing in 410 that specifically addresses which one
19 should apply. So we're left then to interpret what
20 kind of building this is and apply the right lot
21 occupancy.

22 CHAIRPERSON GRIFFIS: And where do you see
23 410 directing you to comply with lot occupancy?

24 VICE-CHAIRPERSON MILLER: You don't ignore
25 a regulation just because it's not addressed in another

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1 one. For instance, 403.2 is pretty strong. It says no
2 structure including its accessory building should
3 occupy its lot in excess of the percentage of lot
4 occupancy set forth in the following tables.

5 CHAIRPERSON GRIFFIS: Good, I think that's
6 an excellent point; 410 is a special exception that
7 does not relieve you of lot occupancy and that's
8 exactly where we are is then therefore, what is it that
9 has to be complied with and then obviously we look at
10 where we are. Is this a larger structure than a one-
11 family dwelling, group of one-family dwellings, is this
12 too something that would be designated in the R-4 as
13 **Aall other@**.

14 MR. MONDIE: And if I may, Mr. Chairman,
15 the last document as my attorney was explaining to me
16 just yesterday as we were rehearsing, our presentation
17 is somewhat geared to bring in other parts of the code
18 of Zoning Regulations to address that. So I think if
19 we went through it would maybe be a lot clear.

20 CHAIRPERSON GRIFFIS: Okay. I think we
21 should -- let's move ahead. We will hear the case and
22 the facts in the case and then we will obviously have
23 you address that issue if you find it persuasive and
24 the party in opposition can obviously position them in
25 the same respects, and at the end, obviously, before we

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1 decide this we will be definitive of what relief is
2 required.

3 MS. MITTEN: I just want to be clear. So
4 we're going to proceed with the hearing even though at
5 the conclusion of the hearing or when we deliberate on
6 the case we may decide that, in fact, they didn't see
7 k all the relief that they're required to and perhaps
8 have to have an additional hearing?

9 CHAIRPERSON GRIFFIS: No, absolutely not,
10 but the substance of it what I'm directing the
11 applicant to do is to address the issue of lot
12 occupancy. If they want to address it in terms of
13 making a variance case that's their prerogative. If
14 they want to address to the fact that they do not have
15 to have that relief, then that's also their case
16 presentation.

17 MS. MITTEN: I guess I think it -- I would
18 think it would be fair for the Board to make a ruling
19 at this time as to what the appropriate interpretation
20 is so it's not for them to continue to argue what the
21 standard is, but for us to tell them what the standard
22 is.

23 CHAIRPERSON GRIFFIS: Okay.

24 MS. MITTEN: I mean that's what I would
25 advise. And then, in fact, depending on what we think

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1 if a variance is required we should do what we always
2 do, which is have someone advertise for the proper
3 relief and come back.

4 CHAIRPERSON GRIFFIS: Well this case we
5 wouldn't necessarily need to because they have the
6 variance already advertised. I think we could get away
7 with that.

8 MS. MITTEN: Okay.

9 CHAIRPERSON GRIFFIS: But that's a good
10 point. But let's hear from others on this as to a
11 definitive position of the Board that would like to be
12 stated that we could move ahead with?

13 VICE-CHAIRPERSON MILLER: I guess
14 alternatively I hear them saying that they have a case
15 that might influence this issue and that we ought to
16 hear that. So I guess I see this as an application
17 under 410. We put the applicant on notice of the
18 concerns that we have and we could hear their case.

19 And I guess the same with the variance. If
20 they have the opportunity, if they've advertised, to
21 make an alternative case and we can just hear it and
22 then decide at the end.

23 CHAIRPERSON GRIFFIS: All right, we're
24 going to take five minutes and just address this very
25 quickly and we will be back.

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1 (Whereupon, the above-entitled matter went
2 off the record at 11:56 a.m. and went back on the
3 record at 12:40 p.m.)

4 CHAIRPERSON GRIFFIS: All the great minds
5 on the Board have focused on this and tried to derive
6 something. We have not come up with anything
7 definitive in terms of how 410 or lot occupancy should
8 be utilized or applied for in this application. This
9 has very specific characteristics and unique facts.

10 So, what I am going to instruct you to do
11 is to proceed with the special exception under 410,
12 noting the comments of the Board and the concerns that
13 we have in terms of one, not being a single lot of
14 record, thereby having us look at a single lot of
15 record of individual structures deemed as one
16 structure for the purpose of 410. With that and
17 directly attendant to it, what other relief and
18 requirements would be -- should be addressed? Because
19 410 does not relieve you, it's not a special exception
20 like 223 that relieves you of other aspects in the
21 regulation under one umbrella of a special exception.
22 No, 410 instructs how to look at certain aspects and
23 has those perimeters but doesn't relieve you and
24 there's no address of lot occupancy. And so I will
25 instruct you also to address the variance of lot

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1 occupancy, as you are not meeting the 40 percent if
2 this was look at or definitively decided by the Board
3 as this would fall under the category of all other
4 structures. I think that would expedite our, if I can
5 use that word at 12:30, our proceedings today. And I
6 will open it up to you to give you obviously the
7 opportunity not to proceed today, to reevaluate the
8 application of what I'm saying, or to proceed full
9 speed ahead. We would not need to re-advertise this
10 as it's fairly clear that it was originally advertised
11 for a variance relief, difference specifics but the
12 variance relief was there. So I'll answer any quick
13 questions that you might have.

14 Why don't you pull a seat up around here?
15 I'm just going to take questions just on that piece.
16 If you have --

17 MR. LA COUR: I just had -- is this on?

18 CHAIRPERSON GRIFFIS: There it is, sorry.

19 MR. LA COUR: Just one more quick
20 observation and I know there's counsel in the wisdom of
21 many. However, I looked at section 410 again, the
22 special exception, it says in R-5 and R-4 and our
23 concern is, and maybe I'm not articulating this well
24 enough but I wanted this to be very clear, but our
25 concern is if you allow a single building to go up that

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1 has three or more units, then by definition it becomes
2 an apartment in an R-4 zone. And what you're doing is
3 you're changing the character of an R-4 zone, which is
4 single family homes, into an R-5.

5 CHAIRPERSON GRIFFIS: I'm going to have you
6 do that in your case presentation --

7 MR. LA COUR: Okay.

8 CHAIRPERSON GRIFFIS: And let me just try
9 and assure you, if I can or not, that we are very aware
10 of all the issues attendant to this and probably more
11 so than actually have been addressed here. So the
12 motion will not go unnoticed, anything I doubt will go
13 unnoticed. But again, we need to gather all the
14 information.

15 MR. LA COUR: I appreciate that. I don't
16 want to second guess the Board. I just reread the OP
17 report and I noticed that wasn't mentioned in there and
18 it is a major concern of the opposition group.

19 CHAIRPERSON GRIFFIS: Excellent, and we'll
20 look for that in the case presentation because I think
21 that will probably be of substance.

22 MR. LA COUR: Thank you.

23 CHAIRPERSON GRIFFIS: Okay.

24 And Mr. McCants, you're prepared to go
25 forward today?

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1 MR. MCCANTS: Yes, sir.

2 CHAIRPERSON GRIFFIS: Excellent.

3 MR. MCCANTS: We're prepared to go forward
4 today.

5 CHAIRPERSON GRIFFIS: Then let's move
6 ahead.

7 MR. MCCANTS: At this time, given the
8 amount of time that we've spent so far, I'm going to
9 call Mr. Mondie and ask him a few questions.

10 Mr. Mondie, would you please state for the
11 record your name.

12 MR. MONDIE: My name is Wilbur Mondie.

13 MR. MCCANTS: And what is your address,
14 sir?

15 MR. MONDIE: 1311 Delaware Avenue,
16 Southwest, Washington, D.C.

17 MR. MCCANTS: And what do you do for a
18 living?

19 MR. MONDIE: I am a realty specialist. I
20 work for the Department of Veterans Affairs. I'm over
21 170 medical centers. I do their real estate issues.
22 I do easements, some acquisitions and disposal of real
23 estate.

24 MR. MCCANTS: And you are the applicant in
25 this case?

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1 MR. MONDIE: I am the applicant.

2 MR. MCCANTS: And would you tell the Board,
3 you own I believe four or five lots, lots 11, 12, 13,
4 14, and 15 on Richardson Place, Northwest?

5 MR. MONDIE: That is correct.

6 MR. MCCANTS: All right. Now, you're
7 seeking from the Board relief under 410 of the zoning
8 regulation, is that correct?

9 MR. MONDIE: That is correct.

10 MR. MCCANTS: Now, have you prepared plans
11 in connection with how you propose to develop this lot?

12 MR. MONDIE: Yes, I have.

13 MR. MCCANTS: All right, do you have an
14 Exhibit there that will show that?

15 MR. MONDIE: Yes, I do.

16 MR. MCCANTS: All right, would you show
17 that to the Board, please?

18 MR. MONDIE: Yes.

19 Mr. Chairman --

20 CHAIRPERSON GRIFFIS: You're just going to
21 have make sure you're on a mic.

22 MR. MONDIE: On a mic, okay.

23 Mr. Chairman, members of the Board, what we
24 have here is a presentation of this project. We start
25 with a photograph, and by the way, this is part of the

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1 submission we made earlier.

2 CHAIRPERSON GRIFFIS: Right.

3 MR. MONDIE: If you get to those Exhibits,
4 Exhibit 1 of 3, it shows in particular the houses, the
5 residences that are on Richardson Place. At the top
6 you see the first 1, 2 --

7 VICE-CHAIRPERSON MILLER: You're not being
8 picked up by the court reporter.

9 MR. MONDIE: If you look at the top of
10 Exhibit A-1 of 3, you'll see the first three houses
11 going from west to east, facing north on Richardson
12 Place. At the bottom you would see, taking again that
13 we started at residence number two through six. So
14 there are six residences on the north of Richardson
15 place, four on the south. Of interest, all of these
16 particular units are, if we had to characterize them as
17 being twins, they are ten-tuplets. They are virtually
18 identical. They vary only in the way they are painted
19 basically, and the width. And all of the widths are
20 between 11 and 12 feet.

21 CHAIRPERSON GRIFFIS: So the lot widths are
22 11 and 12 feet?

23 MR. MONDIE: 11 and 12.

24 CHAIRPERSON GRIFFIS: And how tall are
25 they?

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1 MR. MONDIE: They are, as shown here, they
2 are two story.

3 CHAIRPERSON GRIFFIS: Okay.

4 MR. MONDIE: What we're proposing is a
5 development that matches the facade of that particular
6 building. That's been a great concern. We worked with
7 the various groups appointed the citizens of the
8 community. They were concerned that as you look out to
9 the right there, Exhibit A-3 of 3, we first came with
10 a building that was a lot more modern, for lack of a
11 better word, it had pitched roofs and a lot features
12 that were out of character with the neighborhood, and
13 we told them we were proposing to change that. And as
14 you look in the drawings we have come to that same
15 character that they have with those ten buildings. And
16 we have repeatedly made the adjustment and we will
17 continue to. We will get it as close to matching
18 exactly; they'll become instead of ten-tuplets, it will
19 be fourteen-tuplets if you will.

20 CHAIRPERSON GRIFFIS: Does that mean you're
21 going to reduce it to two stories?

22 MR. MONDIE: No, we're going to match the
23 facade, and the facing, and the fenestration, et
24 cetera.

25 CHAIRPERSON GRIFFIS: Okay.

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1 MR. MONDIE: The materials and the --

2 CHAIRPERSON GRIFFIS: The materials and the
3 fenestration?

4 MR. MONDIE: Yes, sir. Yes, sir. Right
5 now we're trying to match what the code permits and
6 that is what it permits as far as the height and number
7 of stories.

8 Exhibit C-1 -- by the way, Exhibit B is
9 showing that we are, we were converting from a variance
10 to this 410 and we have the signature of Attorney
11 McCants there and myself indicating this way. That was
12 Exhibit B.

13 Exhibit C-1 of 3 is showing the new site
14 plan. As you look through you can see these lots,
15 which were, by the way, 12 feet wide as they're
16 currently recorded, plus or minus 12 feet. There are
17 a few inches. If you look to the plat plan from the
18 district, which is Exhibit C-3, they are shown as being
19 plus or minus three feet. And there again, the same --
20 we've had no problem moving, as a matter of fact, the
21 Office Planning has suggested we move the lot line to
22 make it two separate lots. So these lot lines to be
23 moved has not been ever an issue; that we moved ours
24 from 12 feet to get the maximum permitted for these
25 residences since they were, there's a lot of stress to

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1 make them as wide as possible. Twelve feet is what was
2 allowable without going over the boundaries and giving
3 comfortable placement of the buildings on that.

4 CHAIRPERSON GRIFFIS: I don't understand.
5 You've moved the boundary lines? You've subdivided
6 this already?

7 MR. MONDIE: Not subdivided.

8 CHAIRPERSON GRIFFIS: How do you move the
9 boundary line? What's the boundary line? Are you
10 talking about the property line?

11 MR. MONDIE: Yes, the property lines are
12 shown on the plat plan.

13 CHAIRPERSON GRIFFIS: I have that. Those
14 are the originals.

15 MR. MONDIE: Those are the originals.

16 CHAIRPERSON GRIFFIS: So what are you
17 moving?

18 MR. MONDIE: So they have been designed to
19 be 14 feet wide now for the construction purposes. For
20 the new project that we are building --

21 CHAIRPERSON GRIFFIS: For the structures
22 themselves. If you look at Exhibit C-1, they are now
23 14 feet each. We have, and I stress again, we have
24 gone through planning. There was never a question, one
25 of my specific questions to Ms. Faye, who was the head

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1 over there, was can we do this. Can we move this 12
2 feet to 14? Absolutely yes. We've talked to people in
3 this building of zoning, and I believe what Ms. Karen
4 Thomas is suggesting is that instead of having four
5 buildings we should have two-two story structures on
6 two lots.

7 CHAIRPERSON GRIFFIS: Okay.

8 MR. MONDIE: Again, we would be moving
9 these property lines to accomplish that.

10 CHAIRPERSON GRIFFIS: But in your
11 discussion, you mentioned several times now down at the
12 DCRA and the Office of Zoning here, is it your
13 testimony that you were told that you could do this as
14 a matter of right?

15 MR. MONDIE: If you are the owner of those
16 properties, yes.

17 CHAIRPERSON GRIFFIS: Then why are you
18 here?

19 MR. MONDIE: Because when they are moved
20 they do not become 18 feet wide to get four units.

21 CHAIRPERSON GRIFFIS: So it's not matter of
22 right? So Ms. Faye told you that you could put a 14
23 foot structure there, correct?

24 MR. MONDIE: Yes.

25 CHAIRPERSON GRIFFIS: But did she say that

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1 --

2 MR. MONDIE: If we go through -- if we had
3 gone through the variance process we would've done
4 that.

5 CHAIRPERSON GRIFFIS: Okay. So she didn't
6 say it was a matter of right, but rather of course you
7 could do that.

8 MR. MONDIE: Yes, yes.

9 CHAIRPERSON GRIFFIS: But you've got to
10 come to the Board to get release to do it?

11 MR. MONDIE: Yes, sir. Yes, sir.

12 CHAIRPERSON GRIFFIS: That's true. I mean
13 you could put the Chrysler Building on this, just as
14 long as you got a height variance from us.

15 MR. MONDIE: Yes, sir.

16 CHAIRPERSON GRIFFIS: Okay, I understand.

17 MR. MONDIE: Sorry, sir.

18 VICE-CHAIRPERSON MILLER: And I just want
19 to ask a follow-up question to make sure I understand.
20 In Exhibit C-1 where they're divided into 14 feet
21 widths, is that just a drawing or have you actually
22 changed the boundaries already?

23 MR. MONDIE: We have not changed the
24 boundaries officially with going through procedure, but
25 as owner of the lots we would theoretically make it one

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1 building as Ms. Thomas is suggesting, we could combine
2 two of these into a 28 foot wide lot and easily meet,
3 but we'd be building less buildings so to speak.

4 VICE-CHAIRPERSON MILLER: Okay. So this is
5 just how you intend to divide it?

6 MR. MONDIE: Yes, yes, indeed, indeed.

7 VICE-CHAIRPERSON MILLER: Okay. Thank you.

8 MR. MONDIE: And that has never been an
9 issue, a question of having to go and officially do it.
10 That's why I was trying to point out there.

11 CHAIRPERSON GRIFFIS: I'm sorry because I
12 want to put this to rest. I cannot believe or it's not
13 my understanding that you could actually go subdivide
14 these into 14 feet. And you said that you would have
15 had to -- the district, DCRA cannot and the Zoning
16 Administrator will not approve a non-conforming lot in
17 a subdivision.

18 MR. MONDIE: Oh, I'm sorry, I mis spoke, it
19 would have to go to variance to build the buildings on
20 that lot.

21 CHAIRPERSON GRIFFIS: Right, okay, so with
22 approval certainly it could be subdivided.

23 MR. MONDIE: Yes, and that's why we are
24 here for approval for the 410 and we're doing the same
25 virtual movement of lot lines to accomplish this.

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1 Exhibit C-2 is the mailing map that was
2 provided by the D.C. Government showing how they were
3 -- where the 200 foot radius was. And if you look at
4 it, the bulls eye is right in the middle and that 200
5 foot radius, there was a lot of questions raised by the
6 community as to they were not notified. I do not see
7 any of those people. Are any people here from the
8 community now, I mean other than the focus group?
9 Because there was a lot of questions and issues. They
10 did not get notified and --

11 CHAIRPERSON GRIFFIS: That's fine. We can
12 move ahead.

13 MR. MONDIE: So we got that squared ahead.
14 I'd love to clear that up every chance I get because
15 some people feel very -- like we're at fault for not
16 notifying them and I'd like to point that out that it's
17 not our responsibility or duty.

18 So this gives a picture of the lot as the
19 project as we contemplate it. We want to build four
20 units, and as I go through I'll be pointing out --

21 MR. MCCANTS: Go ahead, I wanted to ask a
22 few questions so we could kind of move on. What type
23 of --

24 MR. MONDIE: Well, in that case I have a
25 list of questions that was presented by the focus

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1 group, which is Exhibit D. We've gone through A, B, C,
2 and now D.

3 CHAIRPERSON GRIFFIS: You need to get
4 closer to a mic.

5 MR. MONDIE: Sorry about that.

6 CHAIRPERSON GRIFFIS: And we note that
7 actually Exhibit D is the response to questions?

8 MR. MONDIE: yes.

9 CHAIRPERSON GRIFFIS: Do you just want to
10 highlight that for us? I know the Board has looked at
11 it and reviewed.

12 MR. MONDIE: You want me to just highlight
13 it and go through it briefly, is that what you mean?

14 CHAIRPERSON GRIFFIS: Absolutely.

15 MR. MONDIE: Yes, okay.

16 CHAIRPERSON GRIFFIS: I mean we've read it.

17 MR. MONDIE: Okay. What's happening there
18 is there were questions asked that basically wanted
19 certain aspects of this building changed and we met and
20 changed it to their requirements. Most noteworthy was
21 the parking issues. And for that response we made the
22 buildings with a three and a half foot easement area to
23 the rear parking area that allows access not only for
24 the residents who will live here but for fire, and
25 safety, and the like. So they can have ease of aspects

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1 to get and service these buildings.

2 CHAIRPERSON GRIFFIS: Good. Going directly
3 to the parking, which goes to question number three of
4 that, the new layout you just addressed, the three and
5 a half foot access easement, slanted spaces provides
6 easy access, it seems to make some sense, on lot 4, the
7 rear parking space, does that meet the requirement of
8 9 by 19 space?

9 MR. MONDIE: Number 4? The length and the
10 width, yes, yes, sir.

11 CHAIRPERSON GRIFFIS: So on the left side
12 of the sheet there is a clear 19 foot that is
13 consistent that is consistently 9 feet wide?

14 MR. MONDIE: Oh, if you -- from this to 9
15 feet wide? Well, if you're talking at the very base of
16 it I would have to research that.

17 CHAIRPERSON GRIFFIS: Okay, well let's take
18 -- we'll keep the record open for that dimension.

19 MR. MONDIE: Yes, yes, but the width, the
20 length is definitely over 20 feet.

21 CHAIRPERSON GRIFFIS: Okay.

22 MR. MONDIE: So the questions they asked we
23 -- especially for changes to be made, by and large we
24 complied with all of them. There was a question, as
25 mentioned earlier, about changing from the modern look

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1 to the traditional look; we've made those changes and
2 we've worked what we think very diligently and given
3 them basically everything they've really asked for in
4 this process. We are -- Exhibit E are some of the
5 people who have signed saying they support this
6 construction, we went through the neighborhood. And
7 one issue --

8 MR. MCCANTS: I just want to ask you one
9 question, Your butting property owner, does he support
10 your application?

11 MR. MONDIE: Yes, he does, a Mr. Jim
12 Norris, as a matter of fact we are purchasing the
13 property from him that adjoins the property.

14 MR. MCCANTS: All right, go ahead.

15 MR. MONDIE: Okay. Next was the quality of
16 construction. One was we are building with
17 manufactured home and it is embraced by the District of
18 Columbia. And we have an example at 1380 Tuckerman
19 Street, Northwest, just a mere four blocks from Walter
20 Reed in a very exclusive neighborhood. And not knowing
21 I would need this for these demonstration purposes but
22 I did take photographs while it was under construction,
23 just kind of a hobby of mine, and we see where the
24 foundation walls were built. These are trucked in from
25 Pennsylvania. They were placed on top of the

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1 foundation. And I might mention in passing the Board,
2 when we were meeting with the opposition party, I found
3 that Mr. La Cour had quite a bit of knowledge about
4 this, which was beneficial because we'll talk about it
5 later, if needed, that this was well received by the
6 citizens group, Mr. La Cour being head of that.

7 CHAIRPERSON GRIFFIS: Well, I'm a little
8 perplexed on why you're showing us this and also I know
9 you have some kind of advertising cut sheets from
10 Deluxe Building Systems.

11 MR. MONDIE: Yes, sir. Only to show that
12 this was a quality construction building that we're
13 placing.

14 CHAIRPERSON GRIFFIS: Okay. These are all
15 detached homes, is that correct?

16 MR. MONDIE: Yes, sir

17 CHAIRPERSON GRIFFIS: And you're building
18 row dwellings?

19 MR. MONDIE: I'm sorry?

20 CHAIRPERSON GRIFFIS: I guess I'm having a
21 difficult time looking. That's a beautiful house,
22 sure, but that's a detached home and you're proposing
23 to do row dwellings, which is a whole different type of
24 structure.

25 MR. MONDIE: And the only way of presenting

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1 these is to say you can get them of all stripes, all
2 shapes, all heights.

3 CHAIRPERSON GRIFFIS: Right.

4 MR. MONDIE: In our case, they do build
5 specifically these particular homes. And these are
6 redesigned as needed.

7 CHAIRPERSON GRIFFIS: Well, why wouldn't
8 you give us a picture then of a row dwelling?

9 MR. MONDIE: Actually, I could have but
10 this was most handy right of the Internet.

11 CHAIRPERSON GRIFFIS: Okay.

12 MR. MONDIE: And it was kind of way to show
13 you can do a laundry, like a shopping list.

14 CHAIRPERSON GRIFFIS: Sure, sure.

15 MR. MONDIE: If you want a cape cod, if you
16 want a row house.

17 CHAIRPERSON GRIFFIS: And I'm sure these
18 are over at Fairfax; however, let's move ahead.

19 BOARD MEMBER MANN: Okay. So this is a
20 sample of the direction and the quality of construction
21 we're going.

22 MR. MCCANTS: Now, let me just ask you a
23 couple of questions.

24 Are all the buildings in the group of
25 buildings going to be erected simultaneously?

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1 MR. MONDIE: Yes, they are.

2 MR. MCCANTS: All right, and when they're
3 erected simultaneously, will they be attached, those
4 building -- an example of a building that showed in
5 Exhibit, what is that Exhibit number there? The
6 pictures?

7 MR. MONDIE: That's Exhibit F, I believe,
8 yes.

9 MR. MCCANTS: They will be similar
10 buildings that will be built, they will come together
11 as -- with no separate walls or space between the
12 buildings, is that correct?

13 MR. MONDIE: That is correct.

14 MR. MCCANTS: Okay. So it will be in
15 effect four buildings?

16 MR. MONDIE: That is correct, sir.

17 MR. MCCANTS: Will all the front entrances
18 of the group butt the street?

19 MR. MONDIE: Yes, they will. Yes, they
20 will. They will be abutting Richardson Place.

21 MR. MCCANTS: Will there be any rear or
22 service entrance, no rear or service entrance shall
23 abut a street, front yard, or the main floor, do you
24 comply with that?

25 MR. MONDIE: We have complied with that,

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1 and the rear is an alley.

2 MR. MCCANTS: No exterior stairways shall
3 be constructed above the level of the joists of the
4 main flow unless located entirely within the building
5 area?

6 MR. MONDIE: That is correct. We meet
7 that. We conform to that building requirement.

8 MR. MCCANTS: There shall be adequate free
9 access to the street from each separate dwelling?

10 MR. MONDIE: Yes, there is.

11 MR. MCCANTS: Adequate access for fire
12 protection and other purpose shall be provided by
13 easement, alley, or street?

14 MR. MONDIE: That is correct.

15 MR. MCCANTS: Will there be adequate yard,
16 lights, courts, and air for each dwelling?

17 MR. MONDIE: That will be provided. We
18 conform with that.

19 MR. MCCANTS: Will your property, will the
20 height of the building be in conformance with the
21 height of your other buildings in the area?

22 MR. MONDIE: Yes, the height and we have
23 examples of some buildings, other buildings. In this
24 photograph they are virtually 80 feet away, 100 feet
25 away.

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1 MR. MCCANTS: The front entrance of the
2 dwellings shall face the street or abut -- that's on
3 the street on the lot will abut the street and face the
4 street?

5 MR. MONDIE: That's correct, will abut and
6 face Richardson Place.

7 MR. MCCANTS: Will there be any exterior
8 stairways above the level of joist?

9 MR. MONDIE: there will be no exterior
10 stairways above the level of the joist, no.

11 MR. MCCANTS: Will the erection of the
12 proof of building that we propose here adversely affect
13 the present character or future development of the
14 neighborhood?

15 MR. MONDIE: No, we are absolutely
16 committed to making where there exists ten-tuplets, for
17 lack of a better word, fourteen-tuplets. They will be
18 matching and in all form and character.

19 MR. MCCANTS: Will these be apartments?

20 MR. MONDIE: These absolutely will not be
21 apartments. I have reiterated and said that to Mr. La
22 Cour, the opposition group on many occasions, and
23 that's our commitment. And even if the Board wanted to
24 make it a requirement to go with the building when we
25 sell it, as indicated as a concern, we would submit to

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1 that. It's a bit of overkill. I don't think any other
2 developments would make those kind of requirements, but
3 we are so committed we would take that drastic step.

4 MR. MCCANTS: I have no further questions
5 of him at this time.

6 VICE-CHAIRPERSON MILLER: Mr. Mondie?

7 MR. MONDIE: Yes.

8 VICE-CHAIRPERSON MILLER: Here I am.

9 MR. MONDIE: Yes.

10 VICE-CHAIRPERSON MILLER: I just wanted to
11 ask you what you meant by your statement that they
12 won't be apartments. How are you defining apartments
13 or distinguishing them from apartments?

14 MR. MONDIE: We intend to come back to the
15 Board, as indicated in paragraph six, and ask to
16 subdivide these units into single families, right there
17 at the fourteen foot line. And whereupon we hope to
18 sell them fee simple, not as condominiums and with the
19 intent of saying this is now your single family home,
20 you can occupy it.

21 We have designed them as well, some
22 buildings design intentionally --

23 CHAIRPERSON GRIFFIS: Keep your voice up,
24 she can't hear. Keep your voice up.

25 MR. MONDIE: Okay. Some buildings are

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1 designed intentionally with a separate entrance whereas
2 the party can now enter from the front of the building,
3 go downstairs and open a door and come and go
4 separately. The person living in the cellar of this
5 building will have to go through the main entrance door
6 shared by the family of ownership, go to a stairway
7 within and go downstairs. That person, that family
8 occupying or anyone living in the cellar would have to
9 go through the main residence to go downstairs.

10 MS. MITTEN: Do you understand that what
11 you just said is that you intend to build plats, a two
12 family dwelling is a plat.

13 MR. MONDIE: No, this is not a dwelling.
14 When you go downstairs this is you're going to your
15 cellar where you have an additional bedroom for the one
16 family that owns the four floors. We are not making it
17 for separate families within this building.

18 MS. MITTEN: Then why would you have the
19 separate entrance? You lost me.

20 MR. MONDIE: No, no, I said there is no
21 separate entrance from the outside. There is one
22 single entrance into this, into each one of these
23 buildings here.

24 MR. MCCANTS: May I just say, in most
25 District of Columbia, most townhouses have ability

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1 where one can go into the basement from the front of
2 the building. And what he's saying, he's negating that
3 so that won't be an issue.

4 MS. MITTEN: Okay. Then maybe I just have
5 on the cellar plan that we have in the record there
6 shows stairs at the rear and stairs at the front of the
7 cellar that are not part of the interior.

8 You're going to need to get on a mic.

9 MR. MONDIE: Okay. At the rear, at the
10 rear for fire purposes you're required to have an exit.
11 At the front there's no separate -- the stairs you see
12 are the ones you enter and you go upstairs to get to
13 the main entrance for the one residence. The one
14 residence --

15 CHAIRPERSON GRIFFIS: We have all that in
16 front of you so you don't need to -- just point to it
17 and we have the copies in front. So you could probably
18 just have a seat and be on the mic.

19 MR. MONDIE: Okay.

20 CHAIRPERSON GRIFFIS: I think it's be easy
21 enough.

22 MR. MONDIE: Okay. These stairs that you
23 see at the front of the building are the ones that you
24 walk up to get height for the cellar. You are not
25 inside the building with these stairs. That's a --

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1 it's not an entrance to the building.

2 MS. MITTEN: Okay. I guess I wouldn't
3 expect to see that on the cellar plan but maybe that's
4 just me.

5 MR. MONDIE: Yes, so if you go to the first
6 floor, to the first floor plan you'll see that at the
7 entrance there's one, two, three, four, five, six,
8 seven, eight rises to get to where you can enter this
9 particular building.

10 MS. MITTEN: Right.

11 MR. MONDIE: And those eight rises are the
12 one that I guess showing and reflected in the cellar
13 because they are taking up space in the cellar.

14 MS. MITTEN: Okay. And then at the rear?
15 Why is there a requirement to have that -- that's not
16 a fire code requirement to have a walkout cellar?

17 MR. MONDIE: Yes, you don't want people in
18 the cellar to get trapped with one exit-way and can't
19 get out, can't come back up these stairs they can run
20 out the back.

21 MS. MITTEN: Are you representing that
22 that's a fire code requirement?

23 MR. MONDIE: Yes, yes, my architect, Mr.
24 Adebity, who was one of the leading architects at
25 Howard University, now retired, a lot of the

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1 requirements he was pointing out we cannot get around
2 and this was one of them, for the fire exits.

3 MS. MITTEN: Okay. I noticed that there's
4 an awful lot of plumbing in the basement. There
5 appears to be a full bathroom and then a half bath in
6 the basement?

7 MR. MONDIE: Yes.

8 MS. MITTEN: Why do you need so much
9 plumbing in the basement?

10 MR. MONDIE: We want -- this is -- we're
11 making it high end. The person who might occupy that
12 bedroom in the cellar will have complete privacy.

13 MS. MITTEN: Why do they need their own
14 bathroom plus another half bath?

15 MR. MONDIE: For that individual who is
16 watching the game or whatever who's in the wreck room
17 area, that does not now disturb the person who is
18 sleeping in the backroom. And there is serious
19 consideration taken into what you're saying to make
20 this into the hot water, the furnace room. It is
21 interesting that you would mention that because that is
22 one of the areas we are seriously considering putting
23 the furnace area and hot water services, in that half
24 bath.

25 MS. MITTEN: I just have a concern that

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1 you're basically creating a de facto apartment in the
2 basement and that it will become a separate unit. And
3 there are a lot of plats on Capitol Hill that have sort
4 of been grandfathered over time, but when you build it
5 new you have to conform to all of the requirements,
6 including the requirement for parking.

7 MR. MONDIE: Right, well the only thing I
8 can say to address that is we have designed it as a
9 five bedroom house. We feel there is a shortage of
10 such, to have -- to make it exclusive and to give it
11 some of the high end characteristics we are going for,
12 which I have not gone into. A lot of the high tech is
13 to have each bathroom -- each bedroom will have its
14 separate, and we want some additional half baths for
15 guests and visitors.

16 MS. MITTEN: Who do you envision living in
17 this dwelling with five bedrooms, five and a half
18 baths? No, five baths and two half baths?

19 MR. MONDIE: That is correct. We are
20 looking for that family who has a need for extra space.
21 And we definitely do not -- we're not building it as
22 the neighbors are worried about low income. That's why
23 we're putting so many amenities within the property.
24 We have amenities such as everything from being able to
25 see the person who is at the front door, to having

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1 heated toilet seats, a lot of privacy, a lot of none-
2 sharing of restrooms and the like.

3 MS. MITTEN: I guess I just, you know, this
4 is all part of your case, but I find it a little ironic
5 that you're talking about high end and so on, and yet
6 you're putting it into a 14 foot wide house. Part of
7 what's luxury is space. And there is an awful lot
8 being crammed into the amount of space that you're
9 talking about. So I just find that somewhat ironic.

10 MR. MONDIE: Well, I think, personally, as
11 the developer here, I think there's a shortage of that
12 number of bedrooms, which will give this property an
13 attraction.

14 CHAIRPERSON GRIFFIS: Okay. And I think
15 what Ms. Mitten is just trying to get a handle on is
16 just 410.16 and getting into the character or group.
17 Certainly zoning wouldn't prescribe who lives here or
18 how they live, but getting a handle on the density and
19 the size of this and whether that would in fact
20 adversely affect the present character and future
21 development of the neighborhood.

22 Okay, any other questions from the Board?

23 MR. MONDIE: If I might comment, sir.

24 CHAIRPERSON GRIFFIS: Certainly.

25 MR. MONDIE: When and if the Board

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1 determines that this is in fact residential that issue
2 goes away as far as density because then again we have
3 -- we are less than the 60 percent. It is high density
4 when you define them as apartments over the 40 percent.
5 When we go to 60 percent and we are only at 59.7 I
6 believe it was, it is now within the code, the zoning
7 regulations, and is no longer dense. And I can't say
8 often enough that we are willing to make where the next
9 person who purchases this property cannot make it into
10 apartments.

11 CHAIRPERSON GRIFFIS: Good, and I
12 understand that but let me address just briefly
13 because, in my mind, I'm looking at and anticipating
14 the rebuttal case presentation. And you say that
15 although this is, the density isn't impacted because
16 you're complying with, as you said, 60 percent lot
17 occupancy, then I would have to say it's been proposed
18 here that you're not complying with the dimensional
19 requirements of the lots and size, and that would
20 directly impact the number of structures that you have.
21 Because if you had a compliant lot width and lot
22 dimension you would diminish the number of housing.
23 So, just to put it in perspective, but I understand
24 your point.

25 Okay. Anything else then, any other

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1 questions or clarifications?

2 (No response.)

3 Anything further presentation?

4 MR. MCCANTS: Just a couple of questions.

5 In terms of the lot area, what is the required, minimum
6 requirement?

7 MR. MONDIE: The minimum requirement --
8 those numbers I've got to admit I don't carry them in
9 my head.

10 MR. MCCANTS: Mr. Chairman, I believe the
11 minimum lot required is 1,800 square feet. He's
12 providing 1,258 per lot, if one were to look at it this
13 way. So you talked about variance, I'm just trying to
14 put on the record what the variance requirements would
15 be. Two variance would be required, lot area and lot
16 width, if we were to look at it as individual lots and
17 not under the 410 description.

18 CHAIRPERSON GRIFFIS: True, or you could go
19 under lot occupancy. If you came under 410 there's
20 still the question of the Board that you would have to
21 comply with the lot occupancy as it's designated in
22 403, which would allow for 40 percent, not 60.

23 MR. MCCANTS: Well, that's the debate
24 because the 40 percent comes when you call them
25 apartments or **A**other structures@.

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1 CHAIRPERSON GRIFFIS: Right.

2 MR. MCCANTS: This is not.

3 CHAIRPERSON GRIFFIS: Right.

4 MR. MCCANTS: What I'm saying to you is
5 that's not the way in which it's to be looked at.

6 CHAIRPERSON GRIFFIS: Right.

7 MR. MCCANTS: It's to be looked at as plats
8 or townhouses.

9 CHAIRPERSON GRIFFIS: But I hope I'm clear
10 that the Board said that they were not definitive that
11 you were; however, we're putting you on notice that you
12 need to make the case of a variance for the lot
13 occupancy because it may well be determined that after
14 hearing all the facts of this case that we reside in
15 that definition and that interpretation of the
16 regulations. Is that clear?

17 MR. MCCANTS: Yes.

18 CHAIRPERSON GRIFFIS: Okay.

19 MR. MCCANTS: In terms of the lot
20 occupancy, Mr. Mondie, would it be possible for you to
21 build these four buildings using only 40 percent of the
22 lots, of the area of the lots?

23 MR. MONDIE: Using only 40 percent, no.

24 MR. MCCANTS: And why is that? Why could
25 you not do 40 percent?

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1 MR. MONDIE: That would require, to do what
2 we want to do, the only way we could do it is if they
3 were apartments.

4 MR. MCCANTS: And --

5 MR. MONDIE: Another -- well, let me see,
6 the only way we could do this if they are residences,
7 single family residences, where it requires 60 percent.

8 MR. MCCANTS: All right. And having 40
9 percent occupied you would only be able to put I assume
10 two units on there, on the property?

11 MR. MONDIE: Thereabout, it would go down
12 from 40 -- it would go down from 60 to 40, that's a 33
13 percent reduction.

14 MR. MCCANTS: All right. Is it possible
15 then for you to get any other property or adjoining
16 property to make these properties comply with the
17 zoning regulation, in terms of occupancy?

18 MR. MONDIE: No, the only land available is
19 the lot there. We are bounded by an alley on one side
20 and existing buildings on the other.

21 MR. MCCANTS: All right. I think that's
22 it. I don't have anything further.

23 MR. MONDIE: And the one thing that I did
24 want to get into was -- if you don't mind, I could
25 address that.

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1 MR. MCCANTS: Sure, go ahead.

2 MR. MONDIE: The last packets we passed
3 out, and I think the members of the opposition have it
4 as well and I think you have one, Ms. Karen Thomas.

5 CHAIRPERSON GRIFFIS: Right, we have it.

6 BOARD MEMBER MANN: And the Board Members.
7 In our research we came across Section -- where did we
8 start? At the beginning is -- we already talked about
9 Section 6, which allows it to be subdivided. We have
10 to come back for subdivision and it has to meet A, B,
11 and C, which was there should be adequate free access
12 to the street. B was access for protection for other
13 purposes like good fire protection.

14 CHAIRPERSON GRIFFIS: Good, I don't think
15 we need to go through that again. You've addressed
16 that completely.

17 MR. MONDIE: What's new is if you go to
18 Exhibit A in that packet, you'll see that we're
19 starting -- what is acceptable for special exceptions.
20 And there's a chart there. It goes from accessory
21 apartments on the first page to overlay district,
22 that's the way it ends. Those pages -- that's 31.4.
23 As we go alphabetically to get to the end on 31.8, it
24 specifically lists and is circled and asterisked that
25 residential buildings, groups of districts, are

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1 permitted and those residential buildings are R-4, R-
2 5A, and R-5B, are permitted to have special exceptions.
3 And the third column asks what sections and which
4 conditions are specified. Sections in which the
5 conditions are specified and those sections are 410.12,
6 410.14, and 410.16. As we have listed, 410.12, on the
7 next page, the next page shows that 410, again, that's
8 just a duplication of what we've already looked at, but
9 R-5 and R-4 are under specifications. 410.12 is
10 specifically for R-5A, which we pointed out earlier
11 today. As you read further, if you turn to Exhibit E,
12 410.14 is specific for R-5B. These are specific on the
13 record zoning codes that are allowing residential
14 exceptions for R-4, R-5A, and R-5B. Now, if R-5A is
15 410.12 and R-5B is 410.14, and that's for R-5B
16 specific, 410.16 is required the erection of that group
17 of buildings shall not affect adversely the present
18 character or the future development of the
19 neighborhood. That 410.16 is not for R-5A, it's not
20 for R-5B, it must be, as indicated in that table, for
21 R-54. And this is what I was saying we have done the
22 research to find where this R-54 applies as a
23 residential district for exceptions. And here is a
24 clear indication that 410.16 is not specific for R-5A.
25 It doesn't mention it. R-5 --

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1 CHAIRPERSON GRIFFIS: Okay. I don't think
2 you need to persuade us on what the regulations say.

3 MR. MONDIE: Yes, okay. So here it is.
4 And the most important thing, as I just said, Mr.
5 Chairman.

6 CHAIRPERSON GRIFFIS: Yes.

7 MR. MONDIE: Was the character. It says
8 the erection of the group of buildings shall not affect
9 adversely the present character or future development
10 of the neighborhood.

11 CHAIRPERSON GRIFFIS: Good.

12 MR. MONDIE: And I believe our character
13 that we're proposing is like if right now ten-tuplets
14 would be fourteen-tuplets, would be right in line with
15 the width of those buildings that exist there.

16 CHAIRPERSON GRIFFIS: Good, in fact your
17 testimony is that it will be in conformance with the
18 presence character in all form and character, is that
19 correct?

20 MR. MONDIE: Yes, sir.

21 CHAIRPERSON GRIFFIS: Okay, understood,
22 anything else?

23 MR. MCCANTS: That's all.

24 CHAIRPERSON GRIFFIS: Good. Mr. Mondie,
25 let me ask you, what's unique about this property?

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1 MR. MONDIE: What's unique about the
2 property?

3 CHAIRPERSON GRIFFIS: Yes, what's unique?
4 What's the unique circumstance or unique aspect of the
5 lot or property?

6 MR. MONDIE: The size of the property, the
7 location, Northwest Washington, D.C.

8 CHAIRPERSON GRIFFIS: And out of that size,
9 configuration, location, what's the practical
10 difficulty in complying with the lot occupancy?

11 MR. MONDIE: The lot occupancy, well when
12 we do this what's interesting is that we do qualify for
13 residential construction for row houses at less than 60
14 percent. We are 59.7.

15 CHAIRPERSON GRIFFIS: Okay, understood.
16 Okay, let's move ahead. Anything else, any other
17 questions?

18 MS. MITTEN: I just wanted to ask a
19 question. You were talking about the similarity
20 between -- I'm over here.

21 MR. MONDIE: Okay.

22 MS. MITTEN: In case you were looking for
23 me. I see you were looking for me.

24 MR. MONDIE: Yes, yes.

25 MS. MITTEN: You were talking about the

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1 similarity between what you're proposing and existing
2 dwellings.

3 MR. MONDIE: Yes.

4 MS. MITTEN: I'm just having trouble
5 reconciling a three story building as being a close
6 relative of a two-story building.

7 MR. MONDIE: Okay. In character what the
8 opposition has most closely questioned us on was things
9 like the roof shape, the dormers that we were first
10 proposing. At the last meeting that was required by
11 the Board, we actually went down to the detail of the
12 number of panes of windows in the windows, so yes, we
13 are matching all of those characteristics while staying
14 within the Board. So maybe I should characterize that.

15 MS. MITTEN: No, I'm asking you to
16 specifically explain to the Board how a three-story
17 dwelling is consistent with the character of a little
18 neighborhood that you've pointed out to us that has
19 only two-story dwellings.

20 MR. MONDIE: Okay, maybe I should qualify
21 it to that extent that in compliance with the
22 height/density regulations permitted we are making them
23 identical so that it doesn't clash architecturally with
24 the existing buildings.

25 MS. MITTEN: So you're just not answering

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1 my question directly. Are they consistent, are three
2 story dwellings consistent with two-story dwellings in
3 character?

4 MR. MONDIE: In terms of number of stories,
5 no.

6 MS. MITTEN: Okay.

7 MR. MONDIE: Yes.

8 MS. MITTEN: The other thing is you
9 mentioned that the five bedroom product that you are
10 interested in constructing is something that is unusual
11 and you think that it's a niche that hasn't been met in
12 terms of the product that's being offered. If that's
13 true, then how is that consistent with the character of
14 the neighborhood? How is a five story or how is a five
15 bedroom dwelling consistent with the neighborhood if
16 that's not typical?

17 MR. MONDIE: I'm speaking purely from the
18 outward appearance as far as -- but when we get into --
19 we want to meet a niche we think is existing in the
20 housing market where five bedrooms there's a need and
21 a demand for.

22 MS. MITTEN: Okay. Is a five bedroom house
23 consistent with the character of the neighborhood?

24 MR. MONDIE: In these particular existing,
25 the ten buildings, no, no.

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1 MS. MITTEN: Okay. Thank you.

2 MR. MCCANTS: Board Member Mitten?

3 MS. MITTEN: Yes.

4 MR. MCCANTS: I think the regulation says
5 that the erection of the group of buildings shall not
6 affect adversely the present character or future
7 development of the neighborhood. So what we're talking
8 about is the neighborhood.

9 MS. MITTEN: Yes.

10 MR. MCCANTS: And it would not adversely
11 affect the character or future development of the
12 neighborhood. Putting these houses there isn't going
13 to adversely affect it. It doesn't have to be
14 identical to the other buildings.

15 MS. MITTEN: I understand.

16 MR. MCCANTS: It just has to not adversely
17 affect it.

18 MS. MITTEN: I understand.

19 MR. MCCANTS: Okay.

20 MR. MONDIE: Right and this photo easily
21 shows that this has the one, two, three, and so on.

22 MS. MITTEN: Thank you, Mr. Chairman.

23 MR. MONDIE: And where it has an exterior
24 entrance from the front we definitely are not putting
25 one in there.

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1 CHAIRPERSON GRIFFIS: Indeed. I understand
2 in matching the character and not being adverse in
3 character is you're matching materials of the adjacent.

4 MR. MONDIE: Yes, sir, exactly.

5 CHAIRPERSON GRIFFIS: And also the window
6 patterns or other patterns.

7 Okay. Any other questions or
8 clarifications from the Board?

9 MS. MITTEN: Oh, I did need some
10 clarification.

11 CHAIRPERSON GRIFFIS: Yes.

12 MS. MITTEN: Which is I just think that for
13 the record to be complete that we don't have a rear
14 elevation I don't believe. And the front elevation
15 that we have doesn't show the materials that are going
16 to be used. I know it's been represented to us but in
17 order to have that be part of the record I think we
18 need to know the various materials and have them
19 indicated on the elevation.

20 CHAIRPERSON GRIFFIS: Excellent. It was
21 done in a bit of a narrative description but I
22 absolutely agree, in terms of you have the elevations
23 that are submitted. You can just put notes on what is
24 going to be proposed. I understand that there may be
25 some siding on the read but brick on the face, but we

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1 can have that noted along with the parking dimension on
2 the site plan.

3 Okay, anything else?

4 MR. MCCANTS: I believe that's all we have
5 at this time.

6 CHAIRPERSON GRIFFIS: Thank you very much.

7 MR. MCCANTS: Thank you.

8 CHAIRPERSON GRIFFIS: Does the party in
9 opposition have any cross-examination of the witness or
10 do you want to save it for your case presentation?

11 Have a seat. You're going to need to sit
12 over here.

13 MR. LA COUR: Okay. I'm going to just move
14 that over and sit down there.

15 Mr. Mondie, one thing that we've been
16 confused about since the very beginning and there's
17 been several plans that have come in and it's been
18 resubmitted several times, we still don't have a really
19 good working knowledge of what exactly is going to be
20 built here. And from this presentation it's changed
21 yet once again, which really is frustrating the
22 opposition. But I guess my question is first goes to
23 you indicate you are the owner of the lots, and we
24 don't know what your ownership interest is. We've gone
25 through the records, the OP and it's comment --

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1 CHAIRPERSON GRIFFIS: Please ask a question
2 and get a quick answer.

3 MR. LA COUR: What is -- is it just that
4 you own the tax liens on these or do you own these free
5 and clear? Do you have entire clear interests of these
6 property lots? I can't figure that out --

7 CHAIRPERSON GRIFFIS: Okay.

8 MR. LA COUR: -- and we can't find that
9 from the record either.

10 MR. MONDIE: Okay. To answer your
11 question, I have clear -- I've gone to settlement on
12 three of the lots. I have a memorandum of
13 understanding signed with Jim Norris with all of the
14 details of conversion to the fourth lot, known as a
15 garden lot.

16 MR. LA COUR: And the fifth lot?

17 MR. MONDIE: I have gone to settlement on
18 four, lots 811, 812, 13, and 14, a memorandum of
19 understanding with Jim Norris on lot 815.

20 MR. LA COUR: So you don't have clear title
21 on all five lots yet?

22 MR. MONDIE: No, I have a memorandum of
23 understanding signed by Jim Norris and myself.

24 CHAIRPERSON GRIFFIS: Is that on lot 815?

25 MR. MONDIE: 815, yes.

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1 CHAIRPERSON GRIFFIS: Okay, next question.

2 MR. LA COUR: I'm curious that you had some
3 bidding on these lots for purposes of the construction.
4 We did a Google search and found out on Google that
5 you're doing an open auction to the lowest bidder for
6 building on these lots, is that correct?

7 MR. MONDIE: Oh, absolutely not. The
8 lowest bidder usually has the worst product.

9 CHAIRPERSON GRIFFIS: Okay.

10 MR. MONDIE: One of our assessing is --

11 CHAIRPERSON GRIFFIS: So no, the answer is
12 no.

13 MR. MONDIE: The answer is no.

14 MR. LA COUR: Fine, that's inconsistent
15 with what your application says.

16 CHAIRPERSON GRIFFIS: Okay. What's your
17 question?

18 MR. LA COUR: Let's see. When you talk
19 about the character of the neighborhood, are you being
20 inclusive of only those twelve units that are on
21 Richardson Place, or the square, which consists of some
22 64 buildings?

23 MR. MONDIE: Well, in our research of
24 neighborhood, we did not find a definition in the
25 zoning regulations, but we did look up the definition

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1 in Websters. And Websters --

2 CHAIRPERSON GRIFFIS: How are you
3 characterizing the character of the neighborhood?
4 What's the perimeter of neighborhood?

5 MR. MONDIE: Exactly. We're saying this is
6 a unique neighborhood and we want to maintain that look
7 of the exterior structures as we see it.

8 MR. LA COUR: So you're only considering
9 the twelve units there on Richardson Place and
10 excluding the other 60-something homeowners that live
11 in the neighborhood?

12 MR. MONDIE: My definition of Websters,
13 this is a neighborhood that we want to maintain the
14 character of and we are doing so.

15 MR. LA COUR: Is that a yes or a no.

16 MR. MONDIE: We are maintaining the
17 character of Richardson Place, yes.

18 MR. LA COUR: So Richardson Place only,
19 twelve units rather than the entire square, okay.

20 MR. MONDIE: To us that's a unique
21 neighborhood.

22 CHAIRPERSON GRIFFIS: We got it, next
23 question.

24 MR. LA COUR: With respect to sending out
25 notice, after the last hearing that we had hear did you

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1 go back to the Board or did you go back to the Office
2 to request that those individuals, which are more than
3 50 percent that did not receive notice that you send
4 them notice out?

5 MR. MONDIE: No, we did not. It was not a
6 requirement of the Board. It was a continuation as I
7 understand it.

8 MR. LA COUR: At the time that we had the
9 last hearing it was indicated for the purposes of you
10 expediting your project because money was a concern to
11 you, did you not indicate that you wanted a meeting as
12 quickly as possible?

13 MR. MONDIE: That is correct.

14 MR. LA COUR: And with that conciliation,
15 did not the ANC indicate that they had to meet first to
16 review and write a written report regarding --

17 CHAIRPERSON GRIFFIS: Let's stick to the
18 relief that's before us. There's not much that we can
19 do about what happened.

20 MR. LA COUR: Well, it gets to be objected
21 with regards to the seven day notice. And I don't
22 think it's fair that the attorney should now object
23 when earlier they had agreed to it.

24 CHAIRPERSON GRIFFIS: That's fine --

25 MR. LA COUR: But I want it to be part of

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1 the record though. My concern is that we feel like we
2 are getting blind-sided.

3 CHAIRPERSON GRIFFIS: Okay.

4 MR. LA COUR: Unfortunately, we don't have
5 attorneys that we pay by the hour.

6 CHAIRPERSON GRIFFIS: Right.

7 MR. LA COUR: We are the neighborhood here.
8 Unfortunately, our ANC had a serious issue and so if
9 you would bear with me too, I would appreciate it.

10 CHAIRPERSON GRIFFIS: But look at the
11 bottom-line fact that the Board actually accepted it
12 into the --

13 MR. LA COUR: I asked that and I didn't
14 know that.

15 CHAIRPERSON GRIFFIS: We absolutely did.

16 MR. LA COUR: Okay. I apologize. I did
17 not hear you say that.

18 CHAIRPERSON GRIFFIS: Okay.

19 MR. LA COUR: I just heard his objection to
20 it and you said that we could bring it up later and
21 that's why I'm bringing it up now.

22 CHAIRPERSON GRIFFIS: Okay.

23 MR. LA COUR: Okay, great. Okay.

24 You had indicated that, there was a
25 statement you said that you would write something --

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1 how are you going to bind sellers who purchase those
2 properties to not converting them to plats, as a matter
3 of right? How can you do that?

4 MR. MONDIE: Okay, my answer to you is that
5 is it's an owner burden, one not often or I've heard of
6 in all my years, but it's one that I'm willing to take
7 on if you are that concerned. I want this project to
8 go forward. I have talked with a Mr. Fred Greene, I
9 understand he was --

10 CHAIRPERSON GRIFFIS: Well, I think the
11 direct question is how would you do it? What's the
12 vehicle that you have to actually do that?

13 MR. MONDIE: I have -- it is my
14 understanding from talking to Mr. Fred Greene that it
15 is possible. When he was director of -- about 10 or 15
16 years ago that he put in place the possibility that it
17 can go with the lang, that this zoning requirement
18 could go with the land.

19 CHAIRPERSON GRIFFIS: Somehow you would tie
20 it to the deed or title?

21 MR. MONDIE: Yes, a covenant.

22 CHAIRPERSON GRIFFIS: A preclusion of some
23 sort at conversion.

24 MR. MONDIE: Right.

25 CHAIRPERSON GRIFFIS: Okay, next question.

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1 MR. MONDIE: That person would have one
2 year or two --

3 CHAIRPERSON GRIFFIS: Understood.

4 MR. LA COUR: The last thing is and what
5 we've asked for all along is what is the uniqueness of
6 this piece of property? Why can't you just put two
7 town homes on there like the law requires, why are you
8 building four there? I don't get it.

9 CHAIRPERSON GRIFFIS: Okay. I think we've
10 asked that already. If you don't mind, you can address
11 that in your case presentation, but asking him to
12 answer it again it's going to be productive at this
13 point.

14 MR. LA COUR: Has he answered it?

15 CHAIRPERSON GRIFFIS: He was posed the
16 question and there was an address to the question.

17 MS. MITTEN: I think just for the
18 distinction is the question to be put to the -- and
19 this is the question we did put to them and the
20 Chairman was attempting to elicit the answer; it's not
21 why you can't do something, it's why should you be
22 allowed to do what you're asking, which is a slightly
23 different question. But the burden is for why they
24 qualify for what they're asking, and that's why the
25 Chair was leading him through the test for a variance

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1 earlier.

2 MR. LA COUR: Well, I guess our point is
3 from the very beginning we've been asking why this
4 property is so unique and we've never got an answer to
5 that. This is the first time that I've heard the Board
6 address it, which I think is great, but I still don't
7 know why it's so unique.

8 CHAIRPERSON GRIFFIS: Okay.

9 MS. MITTEN: And you should make that
10 argument when you make your presentation.

11 MR. LA COUR: Thank you.

12 CHAIRPERSON GRIFFIS: Anything else?

13 MR. LA COUR: No.

14 CHAIRPERSON GRIFFIS: Thank you very much.
15 Let's move ahead to the Office of Planning.

16 MS. THOMAS: Good afternoon, Mr. Chairman
17 and members of the Board. I'm Karen Thomas with the
18 Office of Planning. And with respect to the
19 Application before us, the Office of Planning does not
20 support approval of special exception relief, pursuant
21 to Section 410, to construct a single building with
22 four single family units on a consolidated lot on the
23 R-4 zoned district.

24 However, if he could support a variance
25 from the minimum lot area requirement to permit

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1 construction of two plats on two matter of right lots,
2 subject to the consolidation and subdivision of 811
3 through 815, in conformance with the lot requirement of
4 the R-4 zone district.

5 Briefly based on information provided by
6 the application, OP's analysis concluded that the
7 proposal for a single building of four units
8 constituted an apartment by the definition of Section
9 199 and Section 300 does not contemplate or include
10 such a structure in its use of uses.

11 Further, Section 330.4 stipulates that no
12 building shall be erected that is arranged, intended,
13 or designed to accommodate uses not stipulated through
14 Sections 330 to 349. Therefore, the structure proposed
15 would qualify as **A**all other structures@ within the R-
16 4 zone. **A**all other structures@ require a lot
17 occupancy of 40 percent, as stipulated by 403.2, and
18 the developer is proposing a lot occupancy of 59.4
19 percent, or 59.7 percent as Mr. Mondie said.

20 Therefore, the occupancy for the proposed
21 structure would require variance relief since it
22 exceeds the 40 percent requirement and the applicant
23 would have to show that meeting this requirement
24 creates a practical difficulty.

25 In addition, we also believe that the

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1 applicant would need variance relief from Section
2 202.6, which provides that a new structure shall not be
3 erected to house a non-conforming use. Section 410 is
4 not applicable to establish an apartment using the R-4
5 zone district and the applicant would need a use
6 variance to supplement the application if Section
7 410.12 were applied.

8 While all structures along Richardson Place
9 street fronted are 12 feet in width, these structures
10 were built in 1900 and predate the current zone
11 regulations. Of the 52 lots in the square, only 21 are
12 between 12 to 13 feet wide, which represents less than
13 40 percent of lots within the square.

14 Therefore, we believe the structure would
15 not be in character with the existing neighborhood.
16 Section 401 is clearly intended to bring new
17 construction and subdivision into compliance with the
18 R-4 standards.

19 Based on the above reasons, approval of the
20 four unit single building would not be in character
21 with the neighborhood and would also impair the intent
22 and purpose of the zoning plan, as embodied in the
23 zoning regulations and map, including Sections 330.1
24 through 330.4, Sections 2000.2 and 2006.2, which would
25 result in an intensified use beyond that intended by

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1 the R-4 zone.

2 We concluded that a tax lot could be easily
3 subdivided into two conforming R-4 lots and two plats
4 could be built in conformance with the lot requirement
5 of the R-4 zone district, as anticipated by the zoning
6 regulations. Thank you.

7 CHAIRPERSON GRIFFIS: Thank you very much.
8 Any questions from the Board?

9 Ms. Miller?

10 VICE-CHAIRPERSON MILLER: Do you support a
11 variance from the lot area requirements because it's
12 not possible for them to comply with it or why?

13 MS. THOMAS: Yes, it would not be possible.
14 If the applicant were to build within the by-right,
15 matter of right, 18 feet wide lots, we could support a
16 variance, area variance from the lot area because there
17 would be no way for him to increase his lot size.

18 VICE-CHAIRPERSON MILLER: Okay. But
19 otherwise then the applicant could comply with the
20 regulations. Is that correct?

21 MS. THOMAS: That's correct.

22 VICE-CHAIRPERSON MILLER: Thank you.

23 MS. MITTEN: I just want -- maybe you just
24 said it and I just wasn't listening carefully enough.
25 If you would support a variance of the minimum lot area

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1 requirement, what is it about the property that's
2 unique?

3 MS. THOMAS: Well, in that regard, if he
4 could've met at least the lot width, there would be no
5 way for him to increase. It's unique because it's a
6 small piece. It's a small lot. If he actually went in
7 and said okay I'm going to create an 18 foot wide lot
8 there would be no way for him to increase the area.
9 But we would not support anything that's not 18 feet
10 wide beyond that.

11 MS. MITTEN: Okay. Maybe I'm -- just help
12 me with this a second. Isn't the total area of the
13 five lots 4,809 square feet? Is that right?

14 MS. THOMAS: That's correct.

15 MS. MITTEN: Okay. And you're advocating
16 for two lots?

17 MS. THOMAS: Two lots.

18 MS. MITTEN: Okay. So -- and those two
19 lots could meet the minimum lot width requirement? I
20 mean when I divide -- the minimum area requirement is
21 1,800. So I'm just wondering what is -- I'm just
22 wondering why they would need a --

23 MS. THOMAS: Well, if he did meet it, if he
24 did meet it, it was depending on how -- we want to know
25 how he subdivided the lots, but were saying definitely

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1 18. I guess I didn't look into area that much after
2 that.

3 MS. MITTEN: Okay.

4 CHAIRPERSON GRIFFIS: Right --

5 MS. THOMAS: We were stuck on the 18 foot
6 wide, we just didn't want anything out of character
7 beyond 18 foot.

8 MS. MITTEN: Okay.

9 MS. THOMAS: Less than 18 feet.

10 MS. MITTEN: Okay, because if I understand
11 it correctly I don't think you would need an area --

12 CHAIRPERSON GRIFFIS: Right, you could make
13 a conforming subdivision on two lots.

14 MS. MITTEN: Okay. I just wanted to
15 understand that.

16 CHAIRPERSON GRIFFIS: Anything else, any
17 other questions from the Board?

18 (No response.)

19 CHAIRPERSON GRIFFIS: Does the applicant
20 have any cross-examination of the Office of Planning,
21 any questions or oppositions?

22 MR. MCCANTS: Oh, I have none.

23 CHAIRPERSON GRIFFIS: Mr. Mondie, do you
24 have questions?

25 MR. MONDIE: Of course for me it's an issue

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1 of time because what I'm hearing is we would get what
2 we want we'd have two --

3 CHAIRPERSON GRIFFIS: This is an
4 opportunity for cross. Do you have hard-hitting
5 questions of the Office of Planning that would crumble
6 their analysis?

7 MR. MONDIE: Oh, okay.

8 CHAIRPERSON GRIFFIS: I add that narrative
9 to sort of break here. Okay. You'll have plenty of
10 time to address in your closing and summations that
11 we'll get to very quickly I anticipate.

12 Does the opposition have any?

13 (No response.)

14 CHAIRPERSON GRIFFIS: Not noting any. We
15 will take note of the ANC. They did present their last
16 or their submission to us today as presented. They're
17 not represented but it is in the record and we have
18 waived our rules and regulations and accepted that into
19 the record, noting the continuation of this and the
20 timing of the ANC, it is particularly important to have
21 that in. Where there is an objection by the applicant
22 in terms of accepting this and I think we can, if need
23 be, keep the record open for address of the ANC report
24 also.

25 With that, let's bring the opposition party

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1 up and I'll give Mr. Mondie and his representative a
2 moment if you want to address the ANC submission now.

3 MR. MCCANTS: Yes, sir.

4 CHAIRPERSON GRIFFIS: Go ahead.

5 MR. MCCANTS: If I'm understanding that the
6 record, the rules require that the ANC representative
7 be here as well?

8 CHAIRPERSON GRIFFIS: No, it doesn't
9 require them to be here in person. Is that what you
10 mean?

11 MR. MCCANTS: Yes.

12 CHAIRPERSON GRIFFIS: No. It would require
13 if they were here in person a representative of the
14 ANC, any presentation then would be the official
15 position of the ANC. So at this point I think what we
16 would be faced with is just presenting the letter and
17 not getting anecdotally into the other aspects of it.
18 But I think we can address that.

19 Is there any other comments?

20 MR. MCCANTS: No, I have nothing further.

21 CHAIRPERSON GRIFFIS: Very well.

22 MR. LA COUR: For the sake of brevity can,
23 without me having to read the entire letter into the
24 record, can we just --

25 CHAIRPERSON GRIFFIS: Absolutely, no need

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1 to read it into the record.

2 MR. LA COUR: I guess of emphasis is on
3 page two is where it says like the OP, the ANC does not
4 support the construction of the four unit building
5 proposed for the aforementioned of consolidated lot for
6 the reasons related to the requirements of the R-4 zone
7 regulation I think is important.

8 CHAIRPERSON GRIFFIS: Okay, good. Very
9 well then, we'll turn it over to you for presentation
10 of your case in opposition.

11 MR. LA COUR: Thank you for this
12 opportunity. As I said, this has been a learning
13 experience for me and the neighborhood. I moved into
14 the neighborhood only about two years ago and I'm not
15 very familiar with the zoning and I probably know more
16 than I probably want to know about zoning, but it's
17 very important and as a neighbor and having a viable
18 single family existing neighborhood and keeping it that
19 way, I think it's very important for us to be heard
20 here today, as well as the ANC's report, as well as OP,
21 all in opposition to Mr. Mondie's plan.

22 We feel that there's a hidden agenda here.
23 We feel that we want to keep the single family homes
24 that are in this neighborhood. We feel the best way to
25 do that is to keep it R-4. Our concern is that if a

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1 410 exception is granted here, effectively a single
2 building is going to become four units, which is
3 apartment building, which we feel is only going to
4 exasperate the density issues, infrastructure issues
5 that we have on Richardson Place. We have been very
6 amenable to having homes built, single family homes
7 built in the neighborhood, which has, single family
8 homes has been for 40 plus years now has been single
9 family homes. There are no apartment buildings there.
10 Our concern is by allowing someone to vertically build,
11 I guess it's vertically build, four town homes only 14
12 feet wide as a matter of right, somebody is going to
13 come along later and make them into plats. As a matter
14 of right that's two plats, that's eight apartment
15 buildings that we get there where there should've only
16 been, by law, 18 feet wide to put in two town homes,
17 and we would like to keep it that way.

18 We are no opposed with the fact that it is
19 taller than the character of the buildings that are on
20 Richardson Place because it's consistent with what's in
21 the rest of the neighborhood. What we are concerned
22 about with is getting the density issues and getting
23 the infrastructure issues resolved. I know it's
24 something that the zoning doesn't exactly weigh in on,
25 but our concern is that due diligence hasn't been done

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1 here. We've spoken with Pepco; we've spoken with water
2 and sewer. There's a lot of infrastructure issues here
3 that Mr. Mondie has not addressed. We've asked for
4 paperwork regarding this. We have not received it. We
5 are concerned about his ownership interest in this
6 property. At this point, we don't even know who owns
7 this property. He says he has an interest in it, but
8 we don't know that. He's gotten a written agreement
9 with the gentleman who owns four of the buildings next.
10 Our concern is once the Board approves this 410 section
11 exemption it's going to happen down the road with the
12 other four buildings and we absolutely don't want to do
13 that because then we're dealing with 16 apartment
14 buildings.

15 CHAIRPERSON GRIFFIS: Excellent.

16 MR. LA COUR: Thank you to be heard. Thank
17 you for this opportunity. I hope the Board will do the
18 right thing, listen to the concerns of the ANC, the OP,
19 and a neighborhood that is adamantly against having
20 construction done that doesn't follow the zoning
21 regulations and variance requirements of being 18 feet
22 wide.

23 CHAIRPERSON GRIFFIS: Excellent, thank you
24 very much. Let me be ask you this to be clear. In
25 terms of invoking the 18 feet of course would be a non-

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1 conforming dimension of the lot your concern is the
2 density, is that correct, and how that changes and
3 impacts the surrounding area, the number, as you said,
4 units, but of people that might be there?

5 MR. LA COUR: That's correct. If I can
6 expand on that just a little bit. Richardson Place is
7 a very unique street. It's less than 200 feet long.
8 This project is going in at the very end of Richardson
9 Place in very small lots. They want to put in four
10 town homes which could eventually be converted into, as
11 a matter of right, into eight plats. We have a serious
12 parking issue right now. It is abutted on three sides
13 by alleys. Richardson Place is the only access/egress
14 into Richardson Place right there. Our concern is
15 there's going to be safety issues, there's going to be
16 sewer issues, there's going to be electric issues. I
17 don't know if you follow the papers or not but we just
18 had a brownout again just yesterday in the Richardson
19 Place area because the electrical system is so taxed.
20 Adding in four to eight more units is only going to
21 make that worse.

22 CHAIRPERSON GRIFFIS: Good, okay, thank you
23 very much.

24 Any other questions from the Board?

25 (No response.)

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1 CHAIRPERSON GRIFFIS: Is there any cross
2 from the applicant?

3 (No response.)

4 CHAIRPERSON GRIFFIS: Very well. Thank you
5 very much.

6 MR. MCCANTS: I have a -- go ahead, no
7 questions.

8 CHAIRPERSON GRIFFIS: Okay. Thank you.

9 MR. LA COUR: Thank you.

10 CHAIRPERSON GRIFFIS: Let's move ahead to
11 other persons present in this application to provide
12 testimony for 17404. Are there any persons in support
13 of the application?

14 (No response.)

15 CHAIRPERSON GRIFFIS: In opposition to the
16 application?

17 (No response.)

18 CHAIRPERSON GRIFFIS: Not hearing any other
19 persons present to provide testimony we can move ahead
20 then and close.

21 MR. MCCANTS: Yes, thank you very much, Mr.
22 Chairman and members of the Board. I hope that we will
23 resolve the issue of 410 in this application to this
24 zoning application. I looked in the zoning files and
25 found a case that's similar to this case, case number

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1 17381. I have the file in front of me, in which the
2 same type of application is being filed -- had been
3 filed. I don't see any indication yet that the Board
4 has ruled on it. But in point, in fact, what they did
5 was the very same thing that we're doing. There's a
6 lot that they had --

7 CHAIRPERSON GRIFFIS: Is the address
8 Belmont?

9 MR. MCCANTS: Rock Creek Road, Northwest.
10 It is Application Number 17381.

11 CHAIRPERSON GRIFFIS: Right.

12 MR. MCCANTS: Now, all I'm saying is -- and
13 Mr. Chairman, I understand that you are preparing to
14 deal with things as they are as opposed to exceptions.
15 Just give him the same justice that you give everyone
16 else. This is a small developer. He is a guy that's
17 trying to make it. The entire area that surrounds this
18 area is developing all over and people are developing
19 every piece and parcel of land. He happens to be one
20 who's attempting to do the very same thing. You know,
21 he's different from the others except that he's small.
22 This man needs an opportunity to develop and to invest
23 in the community like everyone else. He intends on
24 living in one of the units on the property. So he's
25 not a stranger. He's not a developer that's coming in,

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1 who is going to just build something and go away. He
2 is going to live in one of the units himself. He
3 definitely has an interest in this property and this
4 community as Mr. La Cour and everyone else. But he
5 wants a viable community as well as anyone else. What
6 the opposition continues to say is that he is
7 developing apartments. He has said under oath that he
8 is not developing apartments. The Board can, in its
9 order, make sure that it doesn't happen by restricting
10 the use to single family units. You can do that in
11 your order. You can in your order provide that there
12 will be no plats or additional units in the buildings
13 through your order. So there are ways in which this
14 could be done, but don't deny him the opportunity to
15 develop and to build in this community simply on
16 speculation and on unjustified fears because he is not
17 here to do anything other than to improve the community
18 and to develop the community in accordance with the
19 regulations.

20 Now, just briefly, with respect to the 410
21 application and how it applies here, he will do
22 everything he possibly can in order to comply and I
23 believe he has complied. As we went through the
24 regulation we indicated that he will comply with each
25 and every one of the enumerated requirements under the

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1 special exception. The only area that, Mr. Chairman,
2 you and some of the members have is whether or not he
3 complies with other parts of the regulation which deal
4 with the area requirements, lot requirements, and what
5 have you. I suspect that in terms of the lot
6 occupancy, the OP has indicated that this is apartment
7 use. I don't believe it is. As we indicated before,
8 that's a non-starter, it is not, and therefore that
9 should not be -- this property therefore should not
10 become -- be considered an **A**all other structures@
11 category. It is a plat. It is a townhouse. It is a
12 group of buildings. It is not an apartment. And I
13 think that the Board should be aware of that and keep
14 that in mind as you go through your deliberation on
15 this. All in all, I appreciate the Board's
16 opportunity to give us -- the Board give us this
17 opportunity to present our case and I hope that the
18 Board will consider this application objectively and
19 fairly and give this man an opportunity to build his
20 property in accordance with the regulation, but at the
21 same time not in a way that will economically strangle
22 him and kill him by just requiring that he build these
23 two units, because he simply could not make it if he
24 were to do it that way. Economically it just doesn't
25 make any sense.

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1 So I respectfully ask the Board to grant
2 him special exception and, if necessary, a variance in
3 order to build these properties as he proposed.

4 Thank you very much.

5 CHAIRPERSON GRIFFIS: Excellence, thank you
6 very much and I appreciate your patience getting
7 through all this, although you've added to it a little
8 bit by changing the relief required, but I think we
9 have a good handle on that with the full case
10 presentation, except for a few of the items and let's
11 run down. I'm going to set this for decision-making.
12 There will be a decision in the first meeting in
13 February. That's the 7th of February that it'll go on
14 our docket for our public meeting. My list of
15 information that we are keeping the record open to
16 receive and would be the requirement, and that is the
17 site plan showing the dimension of the parking
18 requirement and how the parking requirement is met;
19 second, the elevations indicating the materials that
20 are going to be used, front and well, one side and the
21 rear. We are allowing the record to stay open if you
22 will -- well, let me move -- we're going to have the
23 record open for the clarification of ownership of all
24 the lots and specific to 815. And I would be open to
25 having submissions on the reiteration of your case and

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1 also the case in opposition if you wanted to just
2 summarize into some short, very narrative fashion to
3 address that.

4 Ms. Bailey, other Board Members, if I've
5 missed anything, let me know.

6 VICE-CHAIRPERSON MILLER: I don't think you
7 missed anything but I would like to know, with respect
8 to the variance, that the applicant's attorney just
9 said that he couldn't comply with the regulations it
10 wouldn't be economically viable and I just want to note
11 that there's -- I don't believe there's any evidence in
12 the record to that effect, and so if we want to leave
13 open the record for them to address that I'd be open to
14 that. I guess you're leaving the record open for them
15 to address the variance just in general, is that
16 correct?

17 CHAIRPERSON GRIFFIS: Yes. I want to
18 caution to the effect that that's a whole new argument
19 to be made. In closing that's one aspect but to issue
20 as another argument we would need to allow the
21 opposition to address it and respond. We won't make a
22 February 7 decision. I don't think there's a need to
23 do that. I think -- well perhaps I could be corrected,
24 but you were making an assertion that the reality of
25 the market wouldn't have you indicate to do two

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1 buildings on that site when you believe that the
2 possibility is to do four?

3 MR. MONDIE: Well, just one clarification
4 I would like too is what Ms. Thomas is saying we could
5 essentially get four buildings but they would be
6 stacked on top of each other. Is that right? On two
7 lots we would have two buildings but now we have the 18
8 foot width. There would be one here and one
9 underneath, one here one underneath on two separate
10 lots.

11 CHAIRPERSON GRIFFIS: No, she's saying have
12 a conforming lot and two plats. Is that correct?

13 MS. THOMAS: Yes.

14 MR. MCCANTS: And so end up with two --
15 four units?

16 CHAIRPERSON GRIFFIS: Right. Okay,
17 anything else? Anything else I've missed, Mr. Bailey?

18 MS. BAILEY: No, Mr. Chairman, just when
19 would you like to have the documents come in to the
20 record?

21 CHAIRPERSON GRIFFIS: Three o'clock next
22 Wednesday, is that a difficulty?

23 MR. MCCANTS: No, I don't think so. We can
24 comply with that.

25 CHAIRPERSON GRIFFIS: Excellent. Those

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1 will also be served on the ANC and also the party in
2 opposition.

3 MR. MCCANTS: All right.

4 CHAIRPERSON GRIFFIS: Let me ask Mr. La
5 Cour, are you anticipating submitting anything into the
6 record?

7 MR. LA COUR: We'll do one final
8 submission, yes, but it will be brief.

9 CHAIRPERSON GRIFFIS: Okay. A narrative
10 submission we'll anticipate from the party in
11 opposition. Okay. It's just a reiteration of course
12 of what was presented today so it will be important for
13 the Board to look at all that. We're not offering an
14 opportunity for responses to those submissions, as
15 we've had ample time to address those today.

16 Anything else?

17 VICE-CHAIRPERSON MILLER: Mr. Chairman, are
18 you saying that we won't really be taking new
19 information in, they'll just be addressing what's been
20 in their case?

21 CHAIRPERSON GRIFFIS: That's exactly
22 correct.

23 VICE-CHAIRPERSON MILLER: Okay, thank you.

24 MR. LA COUR: Before you close can I make
25 two --

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1 CHAIRPERSON GRIFFIS: Can you come up?

2 MR. LA COUR: -- follow-ups to his comment?

3 CHAIRPERSON GRIFFIS: No, not really but
4 come up fast.

5 MR. LA COUR: It grieves me that economic
6 feasibility takes place in this.

7 CHAIRPERSON GRIFFIS: Okay, but it hasn't
8 been presented as an argument for the variance.

9 MR. LA COUR: Okay. Fine so that's not
10 going to be an issue of consideration for the
11 uniqueness of the property?

12 CHAIRPERSON GRIFFIS: I think that opens up
13 a whole new --

14 MR. LA COUR: Great, I just wanted to make
15 sure because we're talking about an individual who
16 after he did his original submission went out and got
17 two more lots.

18 CHAIRPERSON GRIFFIS: Okay.

19 MR. LA COUR: So I mean he keeps expanding
20 his project.

21 CHAIRPERSON GRIFFIS: Understood, okay
22 fine.

23 Anything else?

24 MR. LA COUR: Thanks.

25 CHAIRPERSON GRIFFIS: Okay. And I don't

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1 think it's difficult for you to add a sentence in your
2 submission to make sure that we have that on point.

3 Okay. Anything else in terms of process
4 and submissions?

5 MR. MCCANTS: I don't believe that's -- I
6 don't have anything further.

7 CHAIRPERSON GRIFFIS: Okay, we're all
8 clear?

9 (No response.)

10 CHAIRPERSON GRIFFIS: Very well, thank you
11 all very much. We do appreciate everyone's patience
12 this morning.

13 MR. MCCANTS: Thank you, sir. I appreciate
14 it very much.

15 CHAIRPERSON GRIFFIS: Unfortunately those
16 that are here for our 1:00 session have now sat through
17 a substantial and exciting presentation of our morning
18 session. I will adjourn the morning session with this
19 and say we're going to need to take a 30 minute break
20 and then resume and call to order the afternoon
21 session. So I would anticipate being back -- no, it's
22 afternoon -- so we will be back at 2:30.

23 (Whereupon, the above-entitled matter went
24 off the record at the conclusion of the morning session
25 at 1:58 p.m. and resumed its afternoon session at 2:44

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