

Feb 6, 2007 '(decision) 153  
"Decision Transcript"

1 We also have, Mr. Chairman, an  
2 absentee ballot from another participant who  
3 is Michael Turnbull. And has a very short  
4 comment, but his vote is to approve the  
5 application which would give a resulting vote  
6 of five to zero to zero.

7 CHAIRPERSON GRIFFIS: Excellent.  
8 Thank you very much. Thank you all very much.  
9 We do appreciate it. Thank you for the  
10 clarification today and I'm glad we were able  
11 to get through that.

12 That being said, we have one more  
13 case at the morning's public meeting. Why  
14 don't we move ahead to that.

15 MR. MOY: The next and last case  
16 for decision is Application No. 17553 or Naun  
17 Segovia, pursuant to 11 DCMR 3103.2 for  
18 variances from the building height and storage  
19 limitations under Section 400 for variance  
20 from the rear yard requirements under Section  
21 404, a variance from the open court  
22 requirements under Section 406 and a variance

1 from the prohibition on enlarging a structure  
2 devoted to a nonconforming use under  
3 subsection 2002.5 to allow the expansion of an  
4 existing apartment house from 20 units to 34  
5 units in the R-4 District at premises 1327  
6 Euclid Street, NW. That's in Square 2861, Lot  
7 4.

8 Staff notes for the record that  
9 the application was amended on January 23rd,  
10 2007, to remove the requested relief from  
11 2002.5, as well as the application being  
12 amended to include Lots 76 and 77.

13 On January 23rd, 2007, the Board  
14 completed public testimony, closed the record  
15 and scheduled its decision on February the  
16 6th. The Board requested additional  
17 information which was filed by the Applicant  
18 on January the 30th, 2007. That is identified  
19 in your case folders as Exhibit 37.

20 The Board is also in receipt of a  
21 supplemental report from the Office of  
22 Planning which is dated January 29, 2007, and

1 that is identified as Exhibit 36.

2 And, finally, staff notes that  
3 there is a letter in support from Jim Graham  
4 a Ward Council Member which is identified as  
5 Exhibit 38. And the staff is just going to  
6 stop here and that completes the staff's  
7 briefing, Mr. Chairman.

8 CHAIRPERSON GRIFFIS: Excellent.  
9 Thank you very much. I appreciate the opening  
10 remarks. I think that clarified exactly the  
11 relief that was being sought.

12 This is a complicated case  
13 obviously. There's numerous aspects to it.

14 One and the most important being  
15 the reinvigoration and reanimation of existing  
16 structures. Obviously, we heard numerous  
17 requests for a variance. This has an even  
18 particular and more interesting -- well, a  
19 couple of particular uniqueness to it.

20 One is is how it was actually  
21 created in the R-4 zone district and there is  
22 in the record that was provided by the Office

1 of Planning the history. The fact that this  
2 was granted a variance back when it was built.

3 And then we have the element of  
4 maintaining the affordable rental units and we  
5 had kept the record open to fully address the  
6 element of practical difficulty in fully  
7 complying with the zoning regulations as it is  
8 trying to meet that laudable program goal of  
9 maintaining at the existing rent level those  
10 units which would be returned to the existing  
11 tenants.

12 Let me open it up for deliberation  
13 from the Board and comments, questions as we  
14 proceed.

15 Yes, Mr. Etherly?

16 MEMBER ETHERLY: Thank you very  
17 much, Mr. Chair.

18 I'll agree with your opening  
19 statement with regard to this case that at the  
20 outset there was perhaps -- I don't want to  
21 use the word consternation, but there was  
22 perhaps, I think, a little bit of a challenge

1 in terms of getting at precisely the aspects  
2 of the variance test as required under the  
3 zoning regulations.

4 I think the additional submission  
5 of some data that speaks to some of the  
6 financial aspects of this property have helped  
7 to, if you will, round out, I think the file  
8 in this particular case.

9 As it relates to the issue of the  
10 physical kind of characteristics of the  
11 property and what, if you will, kind of  
12 represents the hardship or the unique  
13 circumstances, clearly the Office of Planning  
14 continues to have some difficulties or some  
15 challenges, if you will, with regard to the  
16 property.

17 As you noted and has been  
18 discussed in the Applicant's submittal, I  
19 think there is, if you will, a confluence of  
20 factors here that do speak to a satisfaction  
21 of the first part of the variance test as was  
22 discussed in our initial hearing on this

1 matter and as my colleagues will recall, we're  
2 confronted with, as if the case in many  
3 aspects of the District of Columbia, a  
4 community, a neighborhood that is in  
5 transition as was identified by the Applicant  
6 in its written submissions and also with  
7 respect to some of the photographic submittals  
8 that were provided. We're seeing a changing  
9 neighborhood where additional architectural  
10 changes are coming about as existing  
11 properties are reinvigorated, galvanized, if  
12 you will, for today's marketplace in terms of  
13 rental income, in terms of condo conversations  
14 and others.

15 But with that being said, as I  
16 looked at this particular case, I called to  
17 mind one of our kind of staunch precedent  
18 cases, if you will, and that is the Gil Martin  
19 case that speaks to the issue of a confluence  
20 of factors, if you will.

21 And as I look at this particular  
22 application again, at our initial hearing I

1 struggled with trying to, if you will, patch  
2 together the uniqueness, that first prong of  
3 our variance test. But as I look at the  
4 record here, taking into consideration the  
5 existing property that we have itself, taking  
6 into consideration the surrounding properties,  
7 the types of renovations and modifications  
8 that have been done with regard to the  
9 exterior of many of the properties surrounding  
10 this particular subject property. I think the  
11 Gil Martin's case language with respect to the  
12 issue of a confluence of factors, if you will,  
13 is somewhat instructive here.

14 Again, the Office of Planning  
15 identified or I should say felt that it could  
16 not identify, if you will, an adequate ground  
17 for what was unique or extraordinary or  
18 exceptional with regard to the site  
19 characteristics here. But as I read the Gil  
20 Martin cases and in particular as I come to  
21 that language with regard to looking at a  
22 confluence of factors, I think there are

1 clearly a number of factors here that have  
2 moved the Applicant in the direction in which  
3 he is trying to move.

4 As you move to the issue of  
5 peculiar and practical difficulties, again,  
6 the Office of Planning in its most recent  
7 submittal that being Exhibit Number 36 dated  
8 January 29th, noted that there was not any  
9 documentation provided by the Applicant  
10 speaking to the issue of economic hardship, if  
11 you will. And as my colleagues are aware, we  
12 were provided with -- let me find that. Thank  
13 you very much, Mr. Chair. At Exhibit Number  
14 37 some documentation which I believe begins  
15 to round out the record, if you will,  
16 regarding the costs that are to be incurred by  
17 the Applicant under two scenarios.

18 And the scenarios that are  
19 identified by the Applicant involve the  
20 renovation of the existing 20 units and  
21 returning only 13 of them to current market  
22 rents resulting in what would be essentially

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1 an ongoing loss and that would be probably  
2 describing that scenarios generously because  
3 even that scenario would require a very, very  
4 generous loan rate.

5 With the application as it's  
6 currently proposed, renovation of the existing  
7 20 units returning 13 of them to current  
8 market rent and the construction of additional  
9 14 units, we do see the return on investment  
10 that the Applicant is seeking to get here.

11 I see this information as being  
12 helpful with regard to rounding out the case  
13 with regard to the economic aspect of the  
14 argument that the Applicant, I believe, was  
15 endeavoring to make at our first but perhaps  
16 with a little bit of difficulty.

17 I'll stop right there, Mr. Chair,  
18 and just kind of highlight some of those  
19 preliminary thoughts as thoughts that I have  
20 regarding potentially moving forward on this  
21 case.

22 CHAIRPERSON GRIFFIS: Excellent.

1 Thank you.

2 Others?

3 VICE CHAIR MILLER: I found this  
4 a difficult case because I think what the  
5 Applicant is proposing is a good thing for the  
6 community. The project would maintain  
7 affordable units that were renovate a  
8 dilapidated building.

9 It's a very positive thing but  
10 then what we're charged with doing is to make  
11 sure it actually passes the variance test.

12 So, I agree with Mr. Etherly that  
13 with respect to the first prong, I could see  
14 that perhaps a case for exceptional  
15 circumstances here and the picture that they  
16 painted was one of a building that was  
17 becoming obsolete because of the changes  
18 surrounding it. And that they had to change.  
19 And I can accept that.

20 My problem and maybe, Mr. Etherly,  
21 you can help me out on this, but my problem  
22 was with the practical difficulty test. And

1 that's where I was hoping that the Applicant  
2 would make a stronger showing when we invited  
3 them to address that test more fully in post-  
4 hearing filings.

5 I think they made a very good  
6 showing that they have to renovate this  
7 building, that it needs to grow, they just  
8 can't renovate it, that the figures show that  
9 they would operate at a loss. And so they  
10 have to change.

11 My problem is there is a gap  
12 between -- they said, here's the renovation  
13 figures as is and we're operating as a loss.  
14 And then here are the figures for the project  
15 as proposed.

16 What they didn't show and what I  
17 was hoping they would show is why they have to  
18 do such a great difference from the  
19 regulations. Such a great deviation. It's  
20 six stories. It's 69 feet high. It's  
21 doubling the height and that is what OP has  
22 such a concern with.

1                   And at the hearing was saying can  
2     you show us, you know, why you can't do less  
3     and not need such great variance relief? And  
4     I didn't really see the rationale in their  
5     papers. And so maybe I missed it. But that's  
6     where my problem is. I think they didn't show  
7     why they had to do such a great deviation.

8                   With respect to substantial  
9     detriment, which is the third prong, I think  
10    there are aspects on both sides. I mean,  
11    Office of Planning felt this was detrimental  
12    because it was so out of proportion to what  
13    the regs require. And that it was there for  
14    a contrary to the intent of the R-4 District.

15                  On the other hand, the Applicant  
16    was painting a picture that it was actually in  
17    line with what was being built around it and  
18    that this certainly was a positive effect with  
19    respect to the affordable housing aspect.

20                  So, for me, I just have problems  
21    with the practical difficulty element.

22                  CHAIRPERSON    GRIFFIS:       What's

1     fascinating in terms of looking at this. And  
2     both of you started to address it is obviously  
3     the variance test is set up so that the first  
4     threshold that needs to be met is uniqueness.  
5     So, that if you look at this and it was  
6     granted the variance, it could not walk down  
7     the street and on assumption be granted again.

8             And so I think in some of the  
9     difficulty that I have in looking at this. I  
10    absolutely agree that this is great  
11    development program, but having some  
12    difficulty in finding how it meets the test of  
13    the variance itself in terms of what it's  
14    being -- what relief is being requested an  
15    dhow that relates to the uniqueness of the  
16    property and the practical difficulty in  
17    complying with those.

18            I think if you look at what Mr.  
19    Etherly is saying as I understand it, is that  
20    there is a confluence of elements of which Gil  
21    Martin does set precedence for us to look at.  
22    And it is practically speaking utilized

1 numerous times because all projects don't  
2 break out easily into kind of the legal  
3 language of our regulations but rather are  
4 real and complicated.

5 And here is one that may well be.  
6 I think it does strike one as a huge addition  
7 to an existing building and maybe that's  
8 another element that's being really weighed  
9 for us is that the magnitude and essentially  
10 the cost benefit is what's being asked for  
11 directly related to the uniqueness and  
12 practical difficulty.

13 MEMBER ETHERLY: Yes. I would  
14 definitely agree with that, Mr. Chair. And  
15 again, there was no shortage of difficulty on  
16 my part at the outset of this case with  
17 respect to potentially moving in a different  
18 direction here.

19 What I am perhaps caught between  
20 is when you look at the photographic evidence  
21 that was provided by the Applicant. And I do  
22 not have an Exhibit Number on this particular

1 exhibit. But my colleagues will recall that  
2 the Applicant provided a series of  
3 photographic shots, if you will, of some of  
4 the adjacent properties in the immediate  
5 vicinity.

6 As was indicated by Mrs. Miller,  
7 the Office of Planning on page 2 of its  
8 January 29th report did express a concern with  
9 regard to the intent, purpose and integrity  
10 prong of the variance analysis as related to  
11 the zone plan in the public good.

12 I am perhaps, however, enlightened  
13 by the fact that as was indicated I think both  
14 in the verbal testimony and photographic  
15 evidence, that the immediate neighborhood  
16 does, in fact, contain and I'm reading  
17 directly from the Applicant's burden of proof  
18 statement which is -- and, again, I apologize  
19 for not having an Exhibit Number for that but  
20 it is the white binder that was included in  
21 our original file submittal.

22 The Applicant describe the

1 immediate neighborhood as follows: The  
2 immediate neighborhood contains in the  
3 immediate proximity of the property structure  
4 erected before 1958 that currently exceeds  
5 zoning, height and story limits. Structures  
6 on each side of the property already exceed  
7 the current height limitation of 40 feet and  
8 an apartment building directly across the  
9 street exceeds 40 feet in three stories.

10 Again, I am very, very well  
11 enlightened by Mrs. Miller's comment because  
12 I think it does beg the question which is,  
13 where do you perhaps draw the line, if you  
14 will.

15 I'm perhaps being a little soft in  
16 saying that I'm happy I don't have to answer  
17 that question with regard to this particular  
18 case, but I think as we look at again the Gil  
19 Martin case, which spoke to one, a confluence  
20 of factors being relied upon for the issue of  
21 answering that question of, what's the  
22 uniqueness? I think when you also look at the

1 economic data that's been supplied here, I  
2 think that helps to further buttress the case  
3 as it relates to the issue of the second prong  
4 of the variance analysis which is that  
5 peculiar practical difficulty.

6 The Gil Martin case does rely on  
7 the peculiar practical difficulty prong. And  
8 in discussing the issue of economic harm, and  
9 I apologize for not having that particular  
10 cite handy. But as I look for it, Gil Martin  
11 does note at one point that at some point  
12 economic harm becomes sufficient when coupled  
13 with a significant limitation on the utility  
14 of the structure.

15 To me, that is, I think, kind of  
16 the crux of the argument that's been put  
17 before us with regard to this particular  
18 property. We have a property that's falling  
19 below the standard of surrounding properties.  
20 One, given the photographic evidence and just  
21 given the development of the market and we  
22 have an effort here to move that property back

1     into not only a productive stance, if you  
2     will, but also a competitive stance. I think  
3     the economic data that's been provided helps  
4     to buttress that particular case.

5                 With respect to the third prong as  
6     identified by the Office of Planning, I am  
7     perhaps not as swayed that it is significantly  
8     as out of step with the intent, purpose and  
9     integrity of the zone plan in public good as  
10    the Office of Planning has presented in its  
11    analysis.

12                We will recall as we looked at  
13    other cases dealing with, while this is not a  
14    traditional case of in-fill development if you  
15    will, the effort to bring more housing --  
16    affordable housing in some respects back onto  
17    the marketplace I think is indeed a good thing  
18    and one which would be supported by the zone  
19    plan.

20                I will definitely not hesitate to  
21    acknowledge that, again, I started off this  
22    case and started off the close of our last

1 hearing not, perhaps, being where I am today.  
2 But I think the data that's been provided  
3 helps to strengthen the record in this  
4 particular case from my standpoint.

5 Thanks, Mr. Chair.

6 CHAIRPERSON GRIFFIS: Thank you  
7 very much.

8 VICE CHAIR MILLER: I just want to  
9 say, you know, I'm almost there, Mr. Etherly.  
10 I wish that they had supported the economics  
11 better for us to come to that conclusion.

12 I saw one sentence in their  
13 report. And I'll read it. It gave me cause.  
14 It gives me cause, but to me that's enough to  
15 make your case on economics that you have to  
16 do so much. And this is what they said and  
17 maybe this means more to you and you can say  
18 it proves their case.

19 But basically they said, adding  
20 only a single floor will be unfeasible as the  
21 entire construction of structural engineering  
22 and an addition of a five-stop elevator will

1 have to be borne by market rents for only six  
2 additional units above the renovation costs  
3 which have been demonstrated to result in a  
4 significant operating loss.

5 I mean, again, I'm stuck with,  
6 okay. I know that just renovating is a  
7 significant operating loss. But I just -- and  
8 I wanted them to be able to show me this  
9 because I think it's such a good project. But  
10 as far as meeting our tests, I just -- I'm not  
11 sure how it does that.

12 Often when we've seen some of  
13 these cases they say, well, you know, we could  
14 do this but then we need a variance for this  
15 kind of relief or we could do that. And we  
16 end up with, okay. This is the appropriate  
17 relief. This is what you need to do and doing  
18 anything else would cause other problems.

19 But here we just -- this is the  
20 renovation and this is the cost of in-profits  
21 for our proposal. So, there's kind of a gap  
22 here as far as I can see.

1           Maybe it's there but they just  
2 haven't given it to us.

3           MEMBER ETHERLY: And I would agree  
4 with that. I think definitely the difference  
5 between our two positions is I've crossed that  
6 bridge a little more easily than perhaps you  
7 are.

8           As I read through the Gil Martin  
9 case, let me offer a little bit of language  
10 where Gil Martin talked about some of the  
11 economic -- the economic costs, if you will,  
12 as it related to that practical difficulty  
13 prong. And, perhaps, indicate a little bit of  
14 how I'm making that walk.

15           In discussing two previous cases,  
16 Barber and 1700 Block, this is what Gil Martin  
17 discusses economic costs or economic  
18 arguments, if you will.

19           In both Barber and 1700 Block and  
20 practical difficulties were ones that  
21 increased costs and reduced enjoyment of the  
22 property, yet it was clear that in the latter

1 the costs were far larger and the restrictions  
2 upon use were far greater.

3 In 1700 Block, moreover, there was  
4 no feasible alternative that would have  
5 complied with the regulations whereas in  
6 Barber there were different designs that would  
7 have been in compliance with the regulations.

8 I'll pause there because I think  
9 it gets right at your argument, Mrs. Miller.  
10 And that is, if I perhaps see a scenario where  
11 you simply did a matter of right, help me  
12 parse out what the economic aspect of that is,  
13 whereas, I'm arguing or I'm suggesting that I  
14 think the economic case has been made  
15 satisfactorily.

16 The language in Gil Martin moves  
17 on to read that it is for the BZA in the first  
18 instance to weight carefully the claims of  
19 potential difficulty advanced here in light of  
20 these two cases and other applicable  
21 precedence.

22 So, for example, it reads that

1 Barber suggested a substantial increase in the  
2 cost of an intended improvement coupled with  
3 some loss and the overall utility of the  
4 property was not a practical difficulty that  
5 merited an area variance.

6 On the other hand, 1700 Block  
7 indicates that at some point economic harm  
8 becomes sufficient at least when coupled with  
9 the significant limitation on the utility of  
10 the structure.

11 So, my argument with respect to  
12 supporting the finding of extraordinary and  
13 exceptional conditions, peculiar practical  
14 difficulties and no harm to the intent,  
15 purpose and integrity of the zone plan is that  
16 the economic harm that's been demonstrated by  
17 the Applicant coupled with the Applicant's  
18 argument that the utility of the building as  
19 currently structured in this marketplace and,  
20 in particular, in this immediate community  
21 does have a significant limitation that they  
22 are attempting to address by the project as is

1 currently proposed.

2 It is a walk, I will grant you in  
3 terms of the analysis here. But I think the  
4 Applicant has done it satisfactorily. Not  
5 easily and I will definitely grant you that.  
6 But I think the Applicant has made that case,  
7 given the information that's been provided on  
8 the record.

9 VICE CHAIR MILLER: I just want to  
10 say. I mean, I would really like to support  
11 this application, but I think in most cases,  
12 I think it's the no feasible alternative that  
13 I'm getting at and that's what you said.

14 And I think there's a line in Gil  
15 Martin that says that BZA failed to address  
16 the feasibility of locating the parking space  
17 or part of it within the structure of the  
18 Carriage House in order to comply with the  
19 zoning regulations or whether such an  
20 alternative was in the circumstances of the  
21 instance case, a practical difficulty.

22 And, I guess, that's my problem

1 here. It's like they didn't show that they  
2 couldn't do anything else. There was no  
3 feasible alternative to such an increase in  
4 their belief.

5 CHAIRPERSON GRIFFIS: Excellent  
6 discussion.

7 Two big things that I don't think  
8 we've addressed that I find actually  
9 persuasive in this application and I think --  
10 let me step back.

11 I think the discussion that we've  
12 just had on the Board is actually a consensus  
13 of the Board that we want to support this  
14 application based on program and that there is  
15 some difficulty in seeing how it meets the  
16 test requirements. And this is where I see  
17 myself to thing over to it actually making the  
18 test for the variances as requested.

19 And then the two elements that  
20 we've discussed briefly but generally. And  
21 that is, one, maintaining the rental scenario.  
22 We had, in fact, the legal representation of

1 the existing tenants saying that there was a  
2 legal binding agreement that they were moving  
3 back in at the levels of rent that they were  
4 charged with. It goes really to what Mr.  
5 Etherly I think is pulling all together in the  
6 Gil Martin case is the fact that there's a  
7 confluence of issues and elements coming to  
8 play here. And one of those major ones, it's  
9 a whole other agency than Zoning. It's a  
10 whole other restrictive and that's the rent  
11 control and the legal aspect that they've  
12 brought together.

13 So, if we break down generally and  
14 I will note that we asked the Applicant to  
15 provide us general parameters of the economic  
16 difficulty and that they did provide that.  
17 And I look at it from the general perspective.  
18 First of all, we're not dealing with condos  
19 which the Board has become very, very familiar  
20 with in terms of economics and putting  
21 together and the difficulties often times that  
22 arrive out of that. And that is a one-shot

1 deal. You know you're going to make a certain  
2 amount at settlement. A rental where I'm  
3 getting at with this one and what they've put  
4 together successfully. The rental is an  
5 ongoing maintenance. It's an ongoing cost.  
6 And those costs, as we all know in real estate  
7 don't go down, but they increase.

8 So, there is a certain amount of  
9 threshold that they have to reach immediately  
10 in order to make this a successful project  
11 based on, one, the unit aspect of the history,  
12 the zoning history of this property. But also  
13 in the unique aspect of the requirements of  
14 the rental rates and the tenants moving back  
15 in.

16 So, what does that all say? I  
17 think you can look at the general parameters  
18 of what they've put forward and they have  
19 accepted the fact that if you maintain the 13  
20 units, you need to build a certain amount of  
21 units onto this property that can then support  
22 that and support the entire building.

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1           There was some question in the  
2   hearing about, well, the elevator if you bring  
3   it up one more floor there's a certain added  
4   cost to that. To me, I was more -- to be  
5   direct and honest. The most difficulty I had  
6   was that top level, that penthouse level which  
7   were two more units. And I spent a lot of  
8   time looking at the plans and a lot of time  
9   looking at the economics. And frankly I think  
10   we may not have had any problems if that  
11   wasn't there. However, it's there. And it  
12   does support, in fact, I think the assertion  
13   of the that economically they need to have --  
14   they need to show a certain percentage of  
15   return.

16           Now, for a condominium regime, we  
17   could say, okay. We've heard the persuasive  
18   arguments that the bank won't finance it  
19   unless there's a certain profit that can be  
20   shown and projected out. But that's not our  
21   situation here. There's a reality in the  
22   rental that I think we can rely upon which is

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1 provided here that there's a certain amount of  
2 return that has to come, one to pay off for  
3 the construction, the base renovation of the  
4 building and the addition and then the  
5 maintenance as they go forward.

6 And it seems to me I don't thing,  
7 one, that this Board has the -- frankly, the  
8 expertise to get into the minutia of whether  
9 12 units or 14 units or the actual market rate  
10 for those units to really get down to dissect  
11 the elements that have been provided.  
12 However, I think we do have the expertise to  
13 assess and judge whether this is a proper  
14 representation of reality as they've set  
15 forth.

16 And I find that for those reasons  
17 as they are presented in terms of the income  
18 and the rent, the expenses which they break  
19 down and also the projected revenue based on  
20 the debt service that's going to be required  
21 but also based on the ongoing maintenance and  
22 the maintenance of the rent control units that

1 this does lend to what Mr. Etherly has put  
2 forth as a confluence of elements that go to  
3 the uniqueness of practical difficulty and  
4 complying with the regulations.

5 And in terms of the last piece of  
6 the test that goes to the fact of whether this  
7 would impair the intent, integrity of the zone  
8 plan or of the public good, again that gives  
9 me some cause. The Office of Planning is  
10 fairly strong in their discussion and position  
11 that, you know, in an R-4 how can you allow  
12 this percentage of increase? And, you know,  
13 there is some great logic to that and there is  
14 some, I think, support for that in my own  
15 mind.

16 But then you look at actually, Ms.  
17 Miller, where you were going with in terms of  
18 the character. You also look at the fact that  
19 this was zoned at a time at which it was  
20 developing and developed outside of the  
21 parameters of an R-4.

22 And so if you look at whether this

1 would impair the zone plan or map really what  
2 that has to go to is say if you were to grant  
3 this would this somehow be so outside of the  
4 scope of what zoning anticipated or provides  
5 for this area? I don't think it really as you  
6 get into the specific and unique aspects of  
7 this, I don't think it fails on that test.

8 And then if you go to the public  
9 good -- well, frankly, that's where all the  
10 support is coming from. I mean, I look at the  
11 support of Council Member Graham and I'm -- I  
12 applaud him for being a participant in this  
13 and for putting this in. I don't find his  
14 letter went to the actual legal tests of the  
15 variance. I don't find that the ANC did  
16 either in many respects. However, they do go  
17 to the last aspect of the public good and what  
18 would be, and I think we all -- I know I am  
19 and I think we've all said would be in  
20 agreement with it in terms of provision of  
21 very high element and aspect of the good.

22 That's all I have to say on the

1 application and I'll open it up for others.

2 VICE CHAIR MILLER: Mr. Chairman,  
3 sometimes you have the skill of actually  
4 painting the Applicants or another party's  
5 position more clearly than they paint it  
6 themselves. And so I just want to clarify  
7 because I had read that one sentence out of  
8 the statement by the Applicant regarding why  
9 they couldn't -- why adding only a single  
10 floor would be unfeasible.

11 Is it your readings that these  
12 figures make the case that they have to have  
13 that number of units in order to make the  
14 project feasible and that's where that height  
15 is coming from?

16 CHAIRPERSON GRIFFIS: Right. And  
17 that's an excellent question. I think there's  
18 two answer to that.

19 First, yes. Once you break the  
20 roof open and you start restructuring to add  
21 on two units, four units on that floor,  
22 there's a certain base level cost. The

1 economy of adding more obviously is a lesser  
2 cost. So, the more you add, the less it is.

3 And then the other aspect in  
4 answer to your question is. What I was saying  
5 is, I don't know that am putting the expertise  
6 into assessing whether 12 or 14 is right or 10  
7 and 16 is right. However, in looking at their  
8 assessment and what they've done is project  
9 out the base level that they feel comfortable  
10 that, one, they can pay for the construction  
11 which was \$2.3 million, I believe, if I recall  
12 correctly. I put it away now. And then the  
13 ongoing maintenance of it, that that puts it  
14 into the realm of reality for me in assessing  
15 that that was required.

16 Again, I had difficulty in going  
17 to that last level for those last two units.  
18 However, if you look at -- so what is the  
19 impact? The impact would be, you know, the  
20 height on it. And you know, in the initial  
21 application they called it a penthouse. It  
22 clearly wasn't a penthouse. It's a story

1 because it's animated. But in the same  
2 respects, a penthouse would be allowed at 18  
3 feet and 6 inches and the mechanical units  
4 would all go there. In fact, the walkout for  
5 the decks that they are providing could be  
6 there.

7 So, again, I'm looking at, well,  
8 I have to assess in terms of the confluence of  
9 all the elements coming and then the impact of  
10 what that means. Because really what OP is  
11 going to is that this is so outside of what  
12 should improved. The impact of just approving  
13 it is devastating.

14 Well, now that's a perfectly  
15 logically argument. Then I have to look back  
16 at, okay. Now we're charged with looking at  
17 this uniquely. What specifically is in this  
18 project and in this property and in this  
19 application that lends me to understanding why  
20 that's happening. And so to me that aspects  
21 of the massing one on the top level, the top  
22 story, which is essentially what they call the

1 penthouse story, it could be there with a  
2 walkout and the roof decks.

3           They've added on much more. I'm  
4 not saying it's not, you know, just a  
5 penthouse. They've added on a lot more. But  
6 it goes back then into the fact of if I remove  
7 that for me, what would the calculations of  
8 the economies be? I think they've been to the  
9 level we requested persuasive that those two  
10 last units do set them into a comfort zone in  
11 terms of the payment of the debt service and  
12 the maintenance.

13           And the debt service I should say,  
14 in my mind, I clarify, is that it's the  
15 financing that's pulling this. But the debt  
16 service is really underwriting the  
17 affordability of the units that will be  
18 maintained. Because really that's what has to  
19 do when -- well, there it is.

20           Others? Questions? Comments?

21           Yes, Mr. Mann.

22           MEMBER MANN: I'd agree that this

1 is also a very difficult case and it's a great  
2 benefit to hear each of you argue your  
3 positions on these. But at the end of the  
4 day, I still find that I agree with OP's  
5 position that the practical difficulty case I  
6 don't think was made effectively enough to  
7 make me want to support this application.

8 In addition, even though the  
9 Chairman went to some length to perhaps  
10 disagree with OP's position regarding the  
11 impairment of the intent, purpose and  
12 integrity of the zone plan and public good,  
13 also I think tend to agree with OP in their  
14 position that that prong of the test is not  
15 met either.

16 CHAIRPERSON GRIFFIS: Excellent.  
17 Well, said.

18 Any other comments or  
19 deliberations at this time?

20 Is there action proposed by the  
21 Board?

22 MEMBER ETHERLY: With what has

1     been excellent discussion, Mr. Chair, I would  
2     perhaps fancy the desire to move approval of  
3     Application No. 17553 of Naun Segovia pursuant  
4     to 11 DCMR 3103.2 for variances from the  
5     building height and store limitations under  
6     Section 400, a variance from the rear yard  
7     requirements under Section 404, variance from  
8     the open court requirements and a variance  
9     from the prohibition on enlarging a structure  
10    devoted to a nonconforming use to allow the  
11    expansion of an existing apartment house from  
12    20 units to 34 units in the R-4 District of  
13    premises at 1327 Euclid Street, NW, and would  
14    invite a second.

15                   CHAIRPERSON GRIFFIS:   Second.

16                   MEMBER ETHERLY:   Thank you very  
17    much, Mr. Chair, for that second. I think out  
18    discussion has been extraordinarily detailed  
19    and full and I am very cognizant and aware of  
20    the concerns that have been identified by some  
21    of my colleagues.

22                   Again, I acknowledge that it is a

1 difficult case that does not fit easily within  
2 our variance test. But, fortunately or  
3 unfortunately, rarely do any of them, if ever.

4 I think the test has been met in  
5 this case. I think it is consistent with the  
6 precedent and the analysis that's been sent  
7 forward in other cases that this Board has  
8 handled over the years. But, again, I  
9 acknowledge the challenge and the difficulties  
10 that my other colleagues have identified.

11 Thank you, Mr. Chair.

12 CHAIRPERSON GRIFFIS: Excellent.  
13 Thank you very much.

14 Others? Anyone like to speak to  
15 the motion?

16 Very well. If there's no further  
17 comments or deliberation, we do have a motion  
18 that's been seconded.

19 I'd ask for all in favor to  
20 signify by saying aye.

21 (AYES)

22 CHAIRPERSON GRIFFIS: And opposed?

1 MEMBER MANN: Opposed.

2 CHAIRPERSON GRIFFIS: Why don't we  
3 record the vote.

4 MR. NYARKU: Staff would record  
5 the vote as three to one to zero on the motion  
6 of Mr. Etherly to approve the application,  
7 seconded by the Chair, Mr. Griffis. Also in  
8 support of the motion Ms. Miller. Opposed to  
9 the motion, Mr. Mann.

10 Mr. Chairman, we also have filed  
11 absentee ballot from Mr. Greg Jeffries who is  
12 also participating on the case and his vote is  
13 to deny the application which would give a  
14 final vote of three to two to zero.

15 CHAIRPERSON GRIFFIS: Quite a way  
16 to end the morning.

17 Anything else for the Board in  
18 this morning's public meeting?

19 MR. NYARKU: Not from me, sir.

20 CHAIRPERSON GRIFFIS: Very well.  
21 And hopefully not for us either as we've got  
22 other business to attend to for the afternoon.

1                   With that then, thank you all very  
2 much. Obviously, people are showing up for  
3 our afternoon session. We've had a lengthy  
4 decision-making this morning.

5                   We're going to take a short break.  
6 I will reconvene at 2:30 and we will call the  
7 first case of the afternoon.

8                   Thank you.

9                   (Whereupon, the above matter was  
10 adjourned at 1:32 p.m. to reconvene at 2:30  
11 p.m.)

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