GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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PUBLIC HEARING

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TUESDAY

JULY 27, 2004

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The Public Hearing convened in Room 220 South, 441 4th Street, N.W., Washington, D.C. 20001, pursuant to notice at 11:04 a.m., Geoffrey H. Griffis, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

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

ZONING COMMISSION MEMBER PRESENT:

JOHN G. PARSONS	Commissioner

OFFICE OF ZONING STAFF PRESENT:

Beverley Bailey	Zoning Specialist
John K.A. Nyarku	Zoning Specialist

OFFICE OF PLANNING STAFF PRESENT:

Stephen Mordfin	Office of Planning
Travis Parker	Office of Planning
Steve Cochran	Office of Planning
Karen Thomas	Office of Planning

D.C. OFFICE OF THE ATTORNEY GENERAL:
Sherry Glazer, Esq.

(This transcript constitutes the minutes from the public hearing held on Tuesday, July 27, 2004)

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(11:04 a.m.)

CHAIRPERSON GRIFFIS: Good morning, ladies and gentlemen. Let me call to order the morning public hearing of the 27th of July 2004. This is the Board of Zoning of the District of Columbia and my name is Geoff Griffis, Chairperson. Joining me today is the Vice Chair, Ms. Miller, and also it is my privilege to have Mr. Etherly with us, of course, as always, as member of this Board. Representing the Zoning Commission is Mr. Parsons with us this morning, and representing the National Capital Planning Commission is Mr. Mann. A very good morning to all of you.

Copies of today's hearing agenda are available for you. Pay no attention to the time that's listed on those hearing schedules, but you can see, obviously, the chronology of the cases which we're going to get through.

I do, let me say, appreciate everyone's patience with the Board as we had a lot of business obviously that you've sat through for our morning special public meeting.

Again, let me reiterate the fact that we have two ways that we record all proceedings before

the Board of Zoning Adjustment. The most important, of course, is the court reporter, who is sitting to my right on the floor. We are also being broadcast live on the Office of Zoning's website. So to that, there's a couple of things.

First of all, when coming forward to speak to the Board, you need to fill out two witness cards. Witness cards are available where you entered into the hearing room, and they are also available at the table where you will give testimony. Those two cards go to the recorder prior to coming forward to address the Board.

Also I would ask that when you do come forward, you are going to need to say your name and your address only once so that we can obviously give all the credit for the things that you say in the transcript.

Let me also have everyone turn off cell phones and beepers at this time so we can move on fairly quickly.

The order of procedure for special exceptions and variances is first we hear the statement of witnesses of the applicant. Second, we hear any government reports attendant to the application such as the Office of Planning's report.

Third, we hear from the Advisory Neighborhood Commission. Fourth, we hear persons or parties in support of an application. Fifth, we hear persons or parties in opposition to the application. Sixth, finally, of course, is any time for rebuttal witnesses by the applicant and closing remarks by the applicant.

I'm going to race through a lot of these opening statements so we can get on with our schedule. If there is a need for me to reiterate or, in fact, state, I will get that with the specific case. But an important aspect is cross-examination. Cross-examination of witnesses is permitted by the applicant and parties in a case. The ANC within which the property is located is automatically a party in the case and therefore will be afforded the ability to cross-examine witnesses.

The record will be closed at the conclusion of this hearing except for any materials that will be requested by the Board, and we are very specific on what is to be submitted and what it is to be submitted into the Office of Zoning. After that material is received, of course, everyone should understand that the record would be finally closed and no other information is accepted into the record. That record, of course, is what we will look at,

review, deliberate and decide on.

The Sunshine Act requires that this Board conduct all hearings in the open and before the public. This Board may enter into executive session either during or after a hearing on a case, and that would be in accordance with our rules of procedure and also the Sunshine Act.

The decision of this Board in contested cases must be based exclusively on the record, and that is why it's so important, of course, to put all your testimony on the record today or submit it in writing while the record remains open.

We would ask that people present today not engage Board members in conversation today so that we do not give the appearance of receiving information outside of the record.

The Board will now consider any preliminary matters. Preliminary matters are those which relate to whether a case will or should be heard today, such as requests for postponements, continuances, or withdrawal, or whether proper and adequate notice has been provided. If you are not prepared to go forward with a case today or you believe the Board should not proceed with a case on its hearing agenda, I would ask that you bring that to

our attention.

I am first going to say a very good morning again to Ms. Bailey from the Office of Zoning. Mr. Moy, who is usually with us, is not here with us today, but I'm sure he's having a great time where he is. And Mr. Nyarku also from the Office of Zoning is with us.

Ms. Bailey, are you aware of any preliminary matters for the attention of the Board?

PRELIMINARY MATTERS

MS. BAILEY: Mr. Chairman, yes, sir, there is, and it does contain one of the cases this morning, Application Number 17095 of Sun Service, Inc. There is a request for that application to be continued to another date.

CHAIRPERSON GRIFFIS: Okay. Thank you. Let me think about where we take that up in the agenda, but in the meantime, while I take a moment, let me ask that all those that are going to testify today or even thinking about testifying, if you would, please stand and give your attention to Ms. Bailey. She is going to administer the oath.

(Witnesses sworn.)

CHAIRPERSON GRIFFIS: Very well. Why don't we get quickly just to Sun Service, 17095, which

I believe is requesting a continuance. Do we need to call the case in that, Ms. Bailey?

MS. BAILEY: No, Mr. Chairman.

CHAIRPERSON GRIFFIS: Good. Let's not.

Is a representative here? The applicant?

Okay. First of all, we did receive a written letter requesting the continuance and, quite frankly, the reason why I'm calling you up here is because I was handed it this morning walking into this. So I just need a little bit of clarification. So we're going to have you just introduce yourself for the record and we can proceed very expeditiously with this.

MR. GUNES: Bekir Gunes. I represent Sun Service.

CHAIRPERSON GRIFFIS: Okay. We have been through this before.

MR. GUNES: The reason I want a continuance is because I found out I couldn't get anywhere myself and I hired a lawyer, which is the lawyer that's going to represent me. Two weeks ago, we have conversation with the lawyer, but he just came from vacation, so physically he said we're not ready to have that this morning.

CHAIRPERSON GRIFFIS: Okay.

Anything to add?

MR. GLASGOW: I was contacted officially to attend the hearing today yesterday, so obviously we didn't file a statement or any of the normal things that we file when we're contacted within a case.

CHAIRPERSON GRIFFIS: Okay.

MR. GLASGOW: I had been contacted by Bekir originally about two weeks ago to deal with this. I told him I was not able to get a statement in the record. I was on vacation last week so I was not in a position to proceed forward with this application.

Also, I am aware because of other cases that I've held that we potentially have a decision in a case on this same property which would in a fairly short period of time moot this case potentially.

CHAIRPERSON GRIFFIS: All right. We have a decision scheduled for August 3rd on this property which would obviously impact the existing application that is before us.

My concern is this, and I know the Board members remember this: The last two times you have been before us, we have said this is it, no more continuances. You have opposition from the -- I believe it's the Reed-Cooke Association that was

saying that they want this dispensed with very quickly, and obviously I think that's what we're balancing here.

But let me -- if there are questions or anything from Board members -- Ms. Miller?

VICE CHAIRPERSON MILLER: I have two questions. One is, I want to know if there is anybody else here who wishes to speak to this case. The last time we were here, the Reed-Cooke Neighborhood Association opposed the motion for continuance.

(No response.)

VICE CHAIRPERSON MILLER: Okay. Not hearing from anybody, I'll move to my second question, and that is to Mr. Glasgow.

I don't know to what extent you have had a chance to look at this application, but is it your understanding that if the other application involving this same property is granted a variance on August 3rd or granted the variances at issue, that this case will be moot and over?

MR. GLASGOW: This case would be mooted as soon as construction starts, which we would like to start, as representing that other applicant, very quickly. As you probably are aware, there have been requests for the Board to decide that case and we

understand the Board's schedule, that it couldn't come up until next Tuesday, but we're ready to move forward very rapidly with the commencement of construction at that site. We're awaiting the Board's decision and the issuance of the order.

VICE CHAIRPERSON MILLER: Okay. That really doesn't -- then our decision on August 3rd does not decide this case.

MR. GLASGOW: Oh, yes. Yes, it does.

VICE CHAIRPERSON MILLER: Because we don't have any control over when construction starts. So you're saying construction would moot the case, not a decision on the variance.

MR. GLASGOW: No, I'm saying both because we're not going to start construction if we don't have the granting of the case.

VICE CHAIRPERSON MILLER: I guess I also want to inquire when you were retained and if you have had a chance to look at this case, because, as the Chairman was saying, it was pretty clear to the applicant in this case that we had already continued the case a couple times and we were -- he was supposed to be prepared today.

MR. GLASGOW: Well, I was retained yesterday afternoon, so I haven't looked at the case.

I'm aware that there is a case out there because of trying the other case, but I haven't looked at any of this in any kind of detail.

VICE CHAIRPERSON MILLER: And, I'm sorry, I didn't catch your name, but why is it that you took until two weeks ago to try to retain an attorney for yourself?

MR. GUNES: Because all Adams Morgan Association of Restaurant Owners business which we have contract, they're pushing the D.C. Councilmember, they want to continue that business, and I told them I can't myself just -- you know, it's no place and I was there last time, which I said we're going to advance it. But it's no space, and all Adams Morgan Association of Restaurant Owners, they support me, they say we can do something with help from the government because there's no parking in Adams Morgan.

VICE CHAIRPERSON MILLER: Okay. Mr. Glasgow, let me ask you this question even though you just recently picked up the case. If we deny or dismiss the case today, how does that impact on the applicant?

MR. GLASGOW: Well, I guess, depending upon what all the options would be, it's after the order is issued whether we would file for a motion for

reconsideration and how that all would go. But I don't know that there is a -- hopefully there is not a necessity to do that just because of other things that are going to be happening with the property, although I don't want to prejudge what the Board is going to do next week.

VICE CHAIRPERSON MILLER: Okay. What I would like to say is, I mean, I would tend to lean towards denying today based on the history in this case; however -- dismissing -- however, since there is nobody here actually asking that this motion be denied today, I could go along with one more continuance.

CHAIRPERSON GRIFFIS: Others?

Okay. I don't want to spend a lot of time on this, although -- well, quite frankly, it doesn't deserve a lot of our time because we have been through this so many times. I can't imagine how we weren't more clear than we were last time when I said you should get representation to put this application together. That it took some time, I think we can grant a little bit of understanding.

I am with Ms. Miller in the fact that we knew if we saw this again and it wasn't ready to go, we were going to dispense with it; however, I think with the new information, with the application that

has come in in the meantime that dealt specifically with this property obviously has a major impact on it.

What I would suggest we do is set this for the 21st of September 2004 for a hearing in the morning. Quite frankly, just based on the assurance that depending on what happens in our decisionmaking on August 3rd that we at least give you an opportunity to make your case. You know, my words my seem hollow because I think this is what I said last time. We can't do this again.

We are putting you in in a very packed morning, and so I will not be able to afford you an awful lot of time, so we're fully expecting that the case that would come before us to be incredibly well set out in the written submissions so that we might get through it very quickly at that time.

Let me hear any other comments or actually disagreements with doing that from the Board members who are actually on this case, which is Mr. Etherly and myself and Ms. Miller, regarding this application. Is there any objection to doing that?

Okay. Not having any voiced objection, I think we should set this, then, for the 21st of September and move on with our agenda today. Thank

you.

MR. GLASGOW: Thank you.

CHAIRPERSON GRIFFIS: Okay. Ms. Bailey, when you are ready.

APPLICATION OF MacARTHUR LAVEROCK LLC

17193 ANC-3D

MS. BAILEY: The first case, Mr. Chairman, is Application Number 17193 of MacArthur Laverock LLC, pursuant to 11 DCMR 3103.2, for a variance from the rear yard requirements under Section 404 to construct a single-family detached dwelling in the R-5-A District at premises 4600 block of Laverock Place, Northwest, also known as Square 1356, Lot 36.

Is the applicant here on this case? Would you please have a seat at the table.

CHAIRPERSON GRIFFIS: Thank you, Ms. Bailey.

Ms. Bailey, I know you are about to mention to me that there are two applications for party status; is that correct?

MS. BAILEY: Yes, sir.

CHAIRPERSON GRIFFIS: Excellent. Thank you very much.

These are applications for party status proponents, supporters of this application. Are

Elizabeth Castaldi, Mark Myers, and Caroline Ortwein here? You are all here? All three. Fabulous. All right. We're going to combine that party application status.

Let me ask you a couple quick questions. You can make your way up, just have a seat at the table. First of all, of course, there are two different ways one can participate in an application. Actually, there are more, but here are the two that are before you.

First of all, as an individual, come and give your testimony as a person. We allow you the time. You do avail yourself to cross-examination and we take that in. The second is to, as you have done, apply for party status. If granted party status, you are a full participant in this case, meaning we will call you to present a case in support of this application, you are able to cross-examine all the witnesses that will be called, you will be required as the Board requests filings from the applicant, findings of facts, conclusions of law. You're a full participant.

What I am asking you is whether you want to be -- first of all, whether you understood that there were two ways to go about this, and secondly if

you want to rise to the level of party status or do you just want to provide testimony as a person? Before you answer any of that, you can just state your name and address for the record.

MS. CASTALDI: Okay. I'm Elizabeth Castaldi at 4600 Laverock Place, Northwest.

CHAIRPERSON GRIFFIS: Excellent.

MS. CASTALDI: And I didn't understand that there were two -- we just got a form in the mail and I filled it out.

CHAIRPERSON GRIFFIS: Perfect.

MS. CASTALDI: I guess what I would like to do is be on the record in support of the application.

CHAIRPERSON GRIFFIS: Okay. So you want to provide testimony as a person.

MS. CASTALDI: I think so.

CHAIRPERSON GRIFFIS: Excellent.

MS. CASTALDI: Yes. Okay.

CHAIRPERSON GRIFFIS: What we're going to do then, as you heard, or maybe I went too quickly, but we do have the order going through. I'm going to have them present the case itself, we're going to get the government reports, and then I'm going to have you come up and just give testimony, say whatever you

would like for three minutes, and then we will move on from there.

MS. CASTALDI: Okay. And would there be any advantage to my doing the second, the second one?

CHAIRPERSON GRIFFIS: The party status?

MS. CASTALDI: The party status.

CHAIRPERSON GRIFFIS: Any advantage?

MS. CASTALDI: No.

CHAIRPERSON GRIFFIS: I mean, for this application?

MS. CASTALDI: No. Okay. All right. Just asking. Okay.

CHAIRPERSON GRIFFIS: Well, you know, I have to think so heavily about the answers I give these days. No. I think in this instance, if you're supporting, there clearly wouldn't be unless -- no.

MS. CASTALDI: Good. Okay.

CHAIRPERSON GRIFFIS: We will give you every opportunity to provide what you want in the case. Excellent.

MS. CASTALDI: Thanks.

CHAIRPERSON GRIFFIS: Are the others here? Caroline Ortwein? Is that how you say your name?

MS. CASTALDI: Ortwein. She is not here, nor is Mark Myers.

CHAIRPERSON GRIFFIS: Okay. And they were all supportive, so I think we can take them both as written submissions in support of the application, and we will call you back up hopefully very quickly.

MS. CASTALDI: Great. Thanks.

CHAIRPERSON GRIFFIS: Thank you very much.

Okay. With that, let's turn it over for introductions to Mr. Glasgow.

MR. GLASGOW: Mr. Chairman, for the record, my name is Norman M. Glasgow, Jr., of the law firm of Holland & Knight, appearing on behalf of the applicant, MacArthur Laverock LLC, for a variance from the rear yard requirement to construct a single-family detached dwelling on the subject property. The proposed rear yard is at twelve feet whereas the required rear yard is 20 feet.

Here with me today is Mr. John Casey of Laverock LLC, the developers of the property.

I guess the question I have for the Board members is if you have received a copy of the statement that we have filed, and I assume that you have received a copy of the report of the Office of Planning and the ANC report.

CHAIRPERSON GRIFFIS: Correct. We received yours and reviewed everything in the file,

which includes the Office of Planning and the ANC report.

MR. GLASGOW: All right. We are prepared to go a couple of different ways. We can either give a very brief presentation, we can answer questions from the Board, we can --

CHAIRPERSON GRIFFIS: Good. I think it might be -- I think the filings are very clear and straightforward, both the applicant's, the Office of Planning's, and the ANC's. I don't think there is any difficulty with standing on the record unless the Board members have any difficulty with that. I think we have preliminary questions that could be answered.

Obviously one of the pieces that came up -- let me not race to that. Does anyone have any objection to having then stand on the record?

Very well. Then one of the issues that came up was lot occupancy. Is this being -- and the other aspect was, in the filing, there is a question -- actually, in the description of the proposed construction, the applicant proposes to develop the property with one matter-of-right single-family dwelling, and, in fact, the ANC echoes that language in their report. And then I was thinking, well, why am I reading this if this is matter of right? So

really I think it goes to the lot occupancy or how you can explain that.

TESTIMONY OF JOHN CASEY

MR. CASEY: Mr. Chairman, my name is John Casey. I'm a representative of Bogdan Builders, Laverock LLC, for the proposed site.

Right now, the site is currently a vacant lot with a shed on it, and we're proposing to build a single-family dwelling on the property.

We felt as though there was some -- well, first of all, we have been in front of the Laverock Homeowners Association as well as the ANC and have letters of approval.

CHAIRPERSON GRIFFIS: Right. Yes. We have all those in here. They have all been read.

MR. GLASGOW: I think he has a specific question, and that is, I think that the ANC does not -- misinterpreted what percentage of lot occupancy is. I think they were adding in paved areas, particularly on the two lots that face MacArthur Boulevard that aren't even subject to this application as being within lot occupancy.

I think just a quick review of the plat that is attached at page 2 --

CHAIRPERSON GRIFFIS: Right.

MR. GLASGOW: -- of the Office of Planning report pretty well shows, if you look at the lot area and the footprint of the house that we are -- we don't have a lot occupancy issue.

CHAIRPERSON GRIFFIS: Okay. I did want to address -- this is, of course, a self-certified application; it's not coming in for relief from lot occupancy. In your own self-certification application, the maximum allowable lot occupancy is 40 percent for this zone district, and you are saying that your proposed construction is at 28.7 percent; is that correct?

MR. CASEY: Yes, that is correct.

CHAIRPERSON GRIFFIS: Excellent. Doing simple math with the simple mind I have, 28.7 is less than 40.

MR. CASEY: Correct.

CHAIRPERSON GRIFFIS: All right. We made it through that one, in which case, let's move ahead, then.

Are there any other questions of the Board regarding this application?

VICE CHAIRPERSON MILLER: I was just wondering about the ropes course. There seems to be a lot of mention to ropes course on another property and

what this property is going to do with respect to that ropes course.

CHAIRPERSON GRIFFIS: Yes. We have had discussions with the owner of the property with the rope courses and the telephone poles that are supporting them, and we have had discussions with removing those when we start construction on our project. We have had discussion with the owner of that property to go ahead and take them down at our expense.

CHAIRPERSON GRIFFIS: Okay. Any other questions from the Board?

(No response.)

CHAIRPERSON GRIFFIS: Is the ANC representative here, 3D? ANC representative?

(No response.)

CHAIRPERSON GRIFFIS: Okay. I think it's pretty obvious that this has been all laid out very succinctly and directly to the case for the relief requested. I don't think there is any question, looking at the submissions and actually again the larger site plans that are there that this is a uniquely shaped piece of property.

There's also the point that where the building is allowed to sit on the site and how the

property line abuts closely to -- or actually abuts the curb lent itself to its uniqueness and practical difficulty.

All that being said, I think we should move on, if there aren't further questions from the Board, to the Office of Planning's report, and I wish a very good morning to the Office of Planning's representative with us today.

REPORT FROM THE OFFICE OF PLANNING

BY STEPHEN MORDFIN

MR. MORDFIN: Good morning, Chairman and members of the Board. I'm Stephen Mordfin with the Office of Planning, and the Office of Planning would like to stand on the record in this case.

CHAIRPERSON GRIFFIS: Very well.

Does the Board have any questions of the Office of Planning? Applicant have any cross-examination for the Office of Planning?

MR. GLASGOW: No, sir.

CHAIRPERSON GRIFFIS: Good. I will take a quick moment to say that it's an excellent report and we can have everyone stand on the record because it is so sufficiently laid out and comprehensively laid out for the variance for the rear yard, the requirements, the uniqueness, the practical

difficulty, and that this would not impair intent and integrity of the zone plan. Actually, the description also of the site was excellent with the use of the graphics.

Ms. Miller, questions of the Office of Planning?

VICE CHAIRPERSON MILLER: Well, either the applicant or the Office of Planning or both.

There is a letter here, Exhibit 27, from Washington MacArthur Associates, LLP, or something like that, which seemed to be suggesting conditions, and I would just like to get your response.

One is that -- am I reading this right? -- that there be installed a thick buffer of evergreens to serve as a screen along the property shared with WMA, and two, that effective storm water management controls and designs be implemented to prevent potential erosion and possible flooding of WMA's property.

MR. CASEY: Yes. We do have a buffer of trees that are going to be planted between the neighboring property. With regard to the storm water system, we have been with our engineers to make sure that based on a 15-year flood, that the system can handle a 15-year flood, and currently the property has

a -- at the bottom, it has a swell that leads to a sediment control pond, but our system is in place to handle 15-year floods.

CHAIRPERSON GRIFFIS: Okay. Part of the permitting process for this is that you're going to have to submit a storm water management plan; is that correct?

MR. CASEY: The storm water management plan has been reviewed and approved.

CHAIRPERSON GRIFFIS: Okay. Did you bring it to the attention of those reviewers of how important an issue this is and that may be more unique, that they ought to take a special look at it?

MR. CASEY: Yes. The system has been redesigned three times based on comments.

CHAIRPERSON GRIFFIS: I see. Okay. So you have confidence that they have looked at this in great detail?

MR. CASEY: Oh, yes.

CHAIRPERSON GRIFFIS: Okay.

MR. CASEY: It has been brought to the attention of the storm water management review office.

CHAIRPERSON GRIFFIS: Okay. Good.

Any other questions? Follow-up?

(No response.)

CHAIRPERSON GRIFFIS: Very well. Let's go to the ANC report. I asked if the ANC member was here. I don't know if they have come in. If so, they can come forward and read their report. If not, it is Exhibit Number 26 and does meet the requirements, as I reviewed it, although I don't see when it was submitted, to be given great weight. They did vote 4 to 3 to approve the request.

Comments from the Board regarding the letter? Yes?

VICE CHAIRPERSON MILLER: I would just note that they also supported the buffering of the evergreens.

CHAIRPERSON GRIFFIS: Indeed. And also the storm water management plan.

I can say also the ANC and the other association that submitted were in great support and, in fact, they felt that the siting of this building, moving it back in alignment with the other construction, was going to be not only in keeping but if you did it any other way, my interpretation of what they were saying is they would come in and object to the placement of it. So I think there is an aspect of negative -- you know, "make sure you look at this" -- but also positive in terms of what you have been

looking at, which is actually one of the basis of which your variance request relied on.

Ms. Miller, anything else?

VICE CHAIRPERSON MILLER: No.

CHAIRPERSON GRIFFIS: Okay. I do not have any other government reports submitted in regards to this application. As indicated, we do have the Washington MacArthur Association, LLP, letter, Exhibit Number 27. Is Mr. Holbrook here, any representative of that who wanted just to reaffirm?

(No response.)

CHAIRPERSON GRIFFIS: It is in the record, then, and we will take a look at that or have taken a look at that.

I don't have anything else submitted into the record at this time unless others are aware. Is the applicant aware of any other association or government documents?

MR. GLASGOW: No, sir.

CHAIRPERSON GRIFFIS: Very well. Let's hear the testimony, then, persons here to give testimony in support of the application. Just in order to fill out the panel here, let me call all persons in opposition to the application also. They can come forward. We will give a moment. Okay. I

think we have everybody at the table that we need.

A very good morning again to you. I would just have you state your name and address again and proceed with your testimony.

TESTIMONY OF ELIZABETH CASTALDI

MS. CASTALDI: Sure. Elizabeth Castaldi, 4600 Laverock Place, Northwest. It's the property right next door to the lot in question.

I just wanted to say on behalf of myself and our neighborhood association, which is Canal View, that given that they can build on this lot as a matter of right, which we are taking at their word, we would much prefer it to be set back from the road. The original plan had it built right on the sidewalk of our private road, and this allows it to have a little green space in the front and we think it will look better.

They have worked very hard with us. This has been a long process. I don't know if you know the original proposal was for five houses. They did scale it back to three and worked with us on the setback issue.

I am also happy to hear the commitment to take down the ropes course, which was one of our requests, and we had talked to the hospital and they

were willing if Bogdan was willing, and that is wonderful and that has been an eyesore for all of us, and the hospital didn't have the funds to remove it. We thought it might make the properties more appealing when they want to sell them. So I think that will work out well for the neighborhood.

CHAIRPERSON GRIFFIS: Okay. Thank you very much.

A couple of things. First of all, we would have no jurisdiction about what happens to the ropes course.

MS. CASTALDI: Right.

CHAIRPERSON GRIFFIS: So I don't want you to leave here with the impression that we can somehow or we have required that the applicant go and remove those. We are concerned with this specific property. I think obviously we encourage the communication. If everyone is in agreement, hopefully it will happen.

The other is, just for quick clarification, you said you are taking it on the belief that this is a -- they are able to build on this site matter of right. You mean that this is actually a buildable residential site?

MS. CASTALDI: Well, the lot originally that they bought was -- it had one house with a big

lot and it has been split into three lots, which I understand was not -- I mean, it was a matter of right that they could just do that.

CHAIRPERSON GRIFFIS: Okay. So the subdivision in order to get ready for construction is what you believe is correct as a matter of right.

MS. CASTALDI: Correct. I'm assuming that that is correct.

CHAIRPERSON GRIFFIS: Okay.

MS. CASTALDI: Yes.

CHAIRPERSON GRIFFIS: Okay. So are we.

MS. CASTALDI: Okay.

CHAIRPERSON GRIFFIS: Otherwise we would be looking at -- okay. Very well.

Any other questions from the Board?

(No response.)

CHAIRPERSON GRIFFIS: Does the applicant have any cross-examination?

MR. GLASGOW: None.

CHAIRPERSON GRIFFIS: Very well. Thank you very much.

MS. CASTALDI: Thanks.

CHAIRPERSON GRIFFIS: I appreciate you coming down and being so patient with us all morning.

MS. CASTALDI: Thank you.

CHAIRPERSON GRIFFIS: Okay. Is there anyone else here attendant to Application 17193 to give testimony in support, opposition?

(No response.)

CHAIRPERSON GRIFFIS: Very well. Mr. Glasgow, let's turn it over to you for summation, closing remarks.

MR. GLASGOW: Just very quickly, Mr. Chairman, if we could, we would like to get a bench decision and a summary order so we can move forward with the development of this property. Thank you.

CHAIRPERSON GRIFFIS: Very well. If there are no other further questions from the Board, I think it's appropriate to take this application up in a motion and further deliberation on that, and I would move approval of 17193 of application of MacArthur Laverock -- is that how you say it? See, I can read them, but I don't always say them out loud -- for a variance from the rear yard requirements under Section 404 to construct a single-family detached dwelling in the R-5-A District, premises 4600 block of Laverock Place, Northwest. I would ask for a second.

VICE CHAIRPERSON MILLER: Second.

CHAIRPERSON GRIFFIS: Thank you very much.

I am going to be very brief on this. I

think the criteria for variance of the rear yard has been set, one on the unique shape of the site, one on the unique setting, actually, of the property line and the road alignment, the adjacent properties, and also the other information that's in the record. I think a great reliance on my own deliberation is the Office of Planning's report, which has recommended approval of this and laid out the entire test, which I think was succinctly done.

Others? Yes, Ms. Miller.

VICE CHAIRPERSON MILLER: Mr. Chairman, I mean, I would suggest that we issue a summary order in this case, but I'm wondering if we can include in that summary order just a reference to their agreement to install the thick buffer of mature evergreens to serve as a screen along the property line shared with WMA. I believe that we can if the Board would like to. It would just be a one-line --

COMMISSIONER PARSONS: Just as a finding of fact, not a --

VICE CHAIRPERSON MILLER: Right, not as a condition. No one has really asked for it to be a condition. But just as a, right, as a finding. We're not even doing official findings of fact. Just in the narrative.

COMMISSIONER PARSONS: A hybrid order.

VICE CHAIRPERSON MILLER: A hybrid summary order with the one line.

CHAIRPERSON GRIFFIS: Comments? Questions? Concerns? I don't have any difficulty with that, I guess. I have some hesitation but nonetheless no difficulty with it. Any other comments, questions?

(No response.)

CHAIRPERSON GRIFFIS: Very well. We have a motion before us. It has been seconded. I would ask for all in favor of the motion to indicate by saying aye.

(Chorus of ayes.)

CHAIRPERSON GRIFFIS: And opposed? Abstaining?

(No response.)

CHAIRPERSON GRIFFIS: Ms. Bailey.

MS. BAILEY: The Board has voted 5-0-0 to approve the application. Motion made by Mr. Griffis, seconded by Mrs. Miller. Mr. Mann, Mr. Parsons and Mr. Etherly are in agreement. It is a summary order.

Mrs. Miller, I heard the portion about the buffer, but was there something else that you wanted to include? Just the buffer.

VICE CHAIRPERSON MILLER: Just the buffer.

MS. BAILEY: Okay. Thank you.

CHAIRPERSON GRIFFIS: Good. Thank you all very much.

MR. GLASGOW: Thank you.

CHAIRPERSON GRIFFIS: Very well. Ms. Bailey, when you are ready, we can call the next case for the morning.

APPLICATION OF 701 LAMONT LLC

17198 ANC-1A

MS. BAILEY: That's Application Number 17198 of 701 Lamont LLC, pursuant to 11 DCMR 3104.1, for a special exception from the roof structure requirements under Section 411, and pursuant to 11 DCMR 3103.2, a variance from the lot occupancy requirements under Section 772, a variance from the residential recreation space requirements under Section 773, and a variance from the nonconforming structure provisions under Subsection 2001.3 to convert an existing storage facility to a residential apartment building in the C-2-A District at premises 701 Lamont Street, Northwest, also known as Square 2893, Lot 878.

CHAIRPERSON GRIFFIS: Thank you, Ms. Bailey.

Who all here is in attendance for this application, 17198? Is everyone here? Are you involved in this case or you're the next case?

SPEAKER: We're students.

CHAIRPERSON GRIFFIS: You're students. Oh, my goodness. Well, for the record, we have students in the audience. This is the last case of the morning. Well, small audience, but I will say what I need to say anyway.

I guess just the applicant is here. There is no opposition to this; is that correct? Why don't I have you introduce yourselves?

MS. PRINCE: Allison Prince from Shaw Pittman. No, there is no opposition.

CHAIRPERSON GRIFFIS: Okay. And there is no one else in the hearing room at this point that is attendant to this application. But Board members, I know the applicant in this case, Mr. Jentoft. He and I sit on a board of trustees together for a public charter school for which he has done great work in setting up, running, constructing, and the whole works. I admire him greatly and I have known him for numerous years. I don't have any direct connection to this application or any sort of involvement in it. I think I can get through this with great impartiality,

but I put that before you for any questions or discussion. Any questions?

MEMBER ETHERLY: Just, of course, Mr. Chairman, to do our due diligence. In no way does the business of the charter school impact this application or involve your relationship's role as a charter school board trustee when reviewing this application.

CHAIRPERSON GRIFFIS: No. Indeed, no. In no way it does.

Oh. Actually, this developer does have projects in my office also, but not this specific project.

MEMBER ETHERLY: Okay. And you, of course, would be comfortable that you can continue to participate in the case and rule impartially and without favor or bias.

CHAIRPERSON GRIFFIS: I have no difficulty in doing that.

MEMBER ETHERLY: Excellent. I would have no objection, Mr. Chairman.

CHAIRPERSON GRIFFIS: Questions?

VICE CHAIRPERSON MILLER: I have no concerns unless there are concerns from the party.

CHAIRPERSON GRIFFIS: Right.

Does the applicant have any difficulty

with me continuing on this case?

MS. PRINCE: No, we have no difficulty.

CHAIRPERSON GRIFFIS: Okay. Does anyone else here, anyone at all? Students? Questions? Opposition? We've got to give everyone an opportunity for this one.

(No response.)

CHAIRPERSON GRIFFIS: Okay. If there is no objection, then, why don't we move ahead with this. Of course, as Ms. Bailey has called this, we have six items that we need to get through.

Let me just start out because my reading of this and actually going through obviously a lot of other cases -- this seems to be the textbook case for the Clerics of St. Viator, which is a court case I think we are all very familiar with, some of us even more so with all the times it's cited. But I think we're going to see evidence of its importance as we run through this.

So with that, I think, if there aren't major difficulties, we can probably get through this fairly expeditiously as, in my understanding of this, and other Board members and the applicant can tell me differently, all these arise very quickly out of the same situation, the uniqueness and the practical

difficulty. So with that, I don't think we need to break all these down individually. We will have questions on each of the individual elements, but let me turn it over to you.

MS. PRINCE: I will make a fairly brief opening statement. We have two witnesses. I think we can have our whole presentation done in about 15 minutes, maybe less.

CHAIRPERSON GRIFFIS: Okay.

MS. PRINCE: Good afternoon. Well, Good morning, Chairman Griffis and members of the Board. I'm Allison Prince with Shaw Pittman and I'm here today in connection with Neighborhood Development Corporation's proposal to convert a vacant warehouse into a housing project.

The building is located at 701 Lamont Street, just west of Georgia Avenue. The building is nonconforming in many respects: height, rear yard, FAR, lot occupancy, roof structure.

In connection with the conversion, there will be no change to the nonconforming aspects of the building, no net gain in FAR, no change in rear yard, no change in height nor lot occupancy. We are here seeking variance relief since residential buildings are limited to a lot occupancy of 60 percent and this

building's lot occupancy is over 90 percent. So technically, variance relief is required just to even allow the conversion.

I know there is some dispute over that issue, but that is definitely the position being taken by the Zoning Administrator, so we have been conservative in our interpretation of the regs to make sure that we were cited for any conceivable area of relief that the Zoning Administrator may identify.

In addition, the existing penthouse, which is nonconforming as to height, setback, and enclosure, is inadequate for the new building. The applicant proposes to add a fully conforming penthouse, allowing the existing penthouse to remain.

Given the nonconformity of the existing penthouse, we have requested special exception and variance relief to allow the new structure. While it could be argued that no relief is necessary because our new penthouse is fully conforming, again, we have cited ourselves for relief in the most conservative manner to ensure there are no difficulties in the zoning review in connection with our building permit. The Zoning Administrator has taken the position that relief is required even to construct a fully conforming penthouse because we are adding the fully

conforming to a roof that contains a nonconforming penthouse.

In addition, the applicant seeks variance release from the residential recreation space requirement of 20 percent of the building's GFA. The applicant will provide more than 80 percent of the required amount of residential rec space. The building is only under the requirement by about 2,000 square feet, and given the fact that the building occupies almost 100 percent of the lot, it is simply difficult to make that requirement.

In connection with its review of this application, the Office of Planning had some concerns about the accessibility of a portion of the residential recreation space in the basement. Specifically, Office of Planning requested the revision of the plans so that users of the space would not have to cross over any portion of the garage, any portion of the parking spaces in the garage to access the rec space. In adjust the drawings to accommodate Office of Planning's request, the applicant has added 200 additional feet of residential recreation space.

The applicant has also prepared a list of the potential uses for the residential recreation space in the building. We would prefer to not be

locked into specific uses of specific spaces but rather have the flexibility to use the residential recreation space for any of the uses that we have cited in a list that I will submit for your review.

The applicant has spoken to many members of the community and has appeared before ANC-1A. The ANC lacked a quorum and took no action on the application. There is widespread for the conversion of this vacant building to a viable residential use. I think you have in the record a letter from Councilmember Jim Graham that was recently filed. It was probably filed late yesterday. We are aware of no opposition to the application.

If the Board has no questions, I would like to proceed with the testimony of the first of our two witnesses, Mr. Karl Jentoft of the Neighborhood Development Corporation.

I will submit the revised basement plan which we have previously shared with the Office of Planning but did not accompany our prehearing filing because it was a change made in response to OP's report, and the list of uses to which we would propose to put the residential recreation space.

CHAIRPERSON GRIFFIS: Let's get clarification of what's coming in. You're giving us a

list of uses? Some of the questions that OP came up and I think the Board also was looking at was the location of the square footage for satisfying the residential requirement. You are giving us uses?

MS. PRINCE: Office of Planning specifically asked that we label each portion of the residential rec space to indicate the purpose to which it would be used. We would rather have the flexibility to note all the residential rec space but have flexibility --

CHAIRPERSON GRIFFIS: Yes. I'm wondering why we need to know that. I mean, don't we --

MS. PRINCE: I don't believe the regulations require it, but we thought a compromise was to list all the uses that we have in mind.

CHAIRPERSON GRIFFIS: Sure. I mean, that's fine.

Now, the other thing was -- something. What was the other thing? You mentioned the Councilmember's letter. I do not have that. I don't know if other Board members have that. I don't think we have received that into the record yet. So if you have a copy --

MS. PRINCE: It was dated yesterday. It was faxed to you, Mr. Griffis. I will submit it to

Ms. Bailey.

MS. PRINCE: It was sent quite late yesterday.

CHAIRPERSON GRIFFIS: Okay. All right. Well, let's pass this around.

VICE CHAIRPERSON MILLER: Did you say that the ANC did not take a position for lack of a quorum?

MS. PRINCE: Correct.

VICE CHAIRPERSON MILLER: Did you present to them? Can you --

MS. PRINCE: We presented the entire application to the ANC, showed the plans, reviewed the plans with the ANC. The ANC raised questions and we discussed the application I think fairly thoroughly given the fact that there was no quorum, and they were unable to take any action due to the lack of a quorum.

VICE CHAIRPERSON MILLER: Okay. Thank you.

CHAIRPERSON GRIFFIS: Good.

Two other quick things. First of all, in terms of the direction of the witnesses as we go forward, obviously I think one of the big issues is, is just the location of the residential rec satisfied, and generally speaking about what is going to happen there so we understand, I think OP has brought up a

good point and they will talk more about it, but a good point about, you know, how you get there, is it safe to get there and will people use it, and if no one is going to use it, then why are we actually providing it. But that is digression.

Lastly, I need clarification on this. You're indicating that the Zoning Administrator is saying if you have an existing building, an existing structure, that you cannot go in and renovate it and occupy it if it is not conforming to the current regulations, or is it that it is getting tipped off in their minds that because this is a -- well, that it's somehow a change of use?

MS. PRINCE: The Zoning Administrator takes the position that when the use is changed from commercial to residential for an existing commercial building in a commercial zone, since the lot occupancy requirement changes from 100 percent to 60 percent, there is a need for a lot occupancy variance.

CHAIRPERSON GRIFFIS: That's an interesting position to hold -- a safe one, perhaps, from the Zoning Administrator's point of view of not making a decision on that, but it's almost -- I mean, I can't say definitively, but it almost puts itself up to -- well, I shouldn't say that. It makes for a very

strong variance case if you have an existing building and you're just going in to convert it, the building, whether it existed before the regulations or not, and so you end up having to come down here, and what's your uniqueness and practical difficulty? Well, you've got an existing building. You know. Okay. You know, we're here for fun and enjoyment, but it raises some question.

Maybe it's just something that the Zoning Commission needs to look at of how we address this situation, because -- and I bring this up because it's of interest, one, of this application, but I think this Board is familiar with at least three others analogous to this that we've seen where, you know, what is happening in the city now is old commercial structures are going to residential conversions.

Okay. That's enough for me unless there's other -- I understand the issue; am I correct?

MS. PRINCE: You understand the issue.

CHAIRPERSON GRIFFIS: Okay.

MS. PRINCE: We have cited ourselves, as I stated, in the most conservative manner.

CHAIRPERSON GRIFFIS: Right.

VICE CHAIRPERSON MILLER: We have had a number of experiences of late with the Office of the

Zoning Administrator where, having appeared before this Board based on self-certified relieve, the Office of the Zoning Administrator comes up with a quite unusual interpretation of the regulations and feels that that would require even additional relief, and the Zoning Administrator's response generally has been to request that we go back to the Board and almost treat this Board as an advice-giving body to get your opinion as to whether additional relief is required.

Well, we don't have the time for that in this case or in, really, any of the others, so we have bent over backwards to cite ourselves for every conceivable area of relief that could be required including I believe unnecessary relief regarding the roof structure. But --

CHAIRPERSON GRIFFIS: Yes, let's go to the roof structure. The roof structure you were saying -- and let me see if I follow -- you have existing, and obviously it's --

MS. PRINCE: Totally nonconforming roof structure.

CHAIRPERSON GRIFFIS: Totally nonconforming because of the setback, the height --

MS. PRINCE: Setback, height, enclosure.

CHAIRPERSON GRIFFIS: And what you're

doing is you're providing a conforming --

MS. PRINCE: A totally conforming roof structure.

CHAIRPERSON GRIFFIS: It doesn't max out the FAR allowance --

MS. PRINCE: No.

CHAIRPERSON GRIFFIS: -- for all the penthouses together.

MS. PRINCE: No. Even when combined with the existing nonconforming roof structure, we're within the .37 FAR.

CHAIRPERSON GRIFFIS: So really you're not here for relief for what you're proposing; you're only here for relief of what is there. I mean outside of the residential rec.

MS. PRINCE: Correct. Except that the Zoning Administrator indicated that -- that office indicated that they believe that relief is required to add a roof structure to a building that already has a nonconforming roof structure, and it was unclear what kind of relief --

CHAIRPERSON GRIFFIS: They're reading that out of 2001.3?

MS. PRINCE: Addition of -- sort of a twofold argument, and we don't have a clear answer,

but one argument, that it is considered an addition to a building that is nonconforming as to lot occupancy even though roof structures are subject to the FAR credit and I do not believe constitute an addition --

CHAIRPERSON GRIFFIS: Well, you couldn't have a roof structure go to lot occupancy, could you?

MS. PRINCE: No.

CHAIRPERSON GRIFFIS: It would obviously have to be on top of a building that would already --

MS. PRINCE: Right. But 2001.3 limits any additions to buildings that are already nonconforming as to lot occupancy.

CHAIRPERSON GRIFFIS: Right.

MS. PRINCE: The rationale would be that this building, upon its conversion, is nonconforming as to lot occupancy and a roof structure constitutes an addition.

CHAIRPERSON GRIFFIS: Okay.

MS. PRINCE: I don't believe a roof structure is an addition, but we need our permit and we've cited ourselves.

CHAIRPERSON GRIFFIS: And here you are. Very well. Let's move on, then. Any other questions? Clarifications?

(No response.)

MS. PRINCE: Mr. Jentoft.

TESTIMONY OF KARL JENTOFT

MR. JENTOFT: Good morning, Chairman Griffis and members of the Board. My name is Karl Jentoft, I'm at 1756 Lamont Street, Northwest, in Washington, D.C. I am here on behalf of the developer of this project, the Neighborhood Development Company.

Let me give you a brief description of us and who we are. We are a small development corporation, about 20 employees, located up in the Petworth neighborhood. We are an LSDB company. We have a combination of about 15 years on our senior management team of construction development experience. We have developed about 200,000 square feet of residential space in the District and currently have about 300,000 more in different stages of planning and development that should be delivered in the next 18 months.

Projects that we have done recently that are along this line is we did a 40-unit condominium rehab of vacant buildings up in the Brightwood neighborhood, and we have brought two other vacant buildings back to life on Rhode Island Avenue and up on Missouri Avenue. We are also participating as equity partners in the Wax Museum development site and

the development of the old Convention Center.

I respectfully request that the BZA approve the special exception and variance relief which is necessary for this conversion of existing warehouse to residential use. Currently this is a five-story plus basement vacant warehouse on the site. Our plans are to develop it into loft condominiums with 38 residential units and 23 parking spaces located on the rear of the first floor and in the basement itself.

We are really hoping to make a real impact in the neighborhood here through this building that has been vacant for so long. The neighborhood itself is right on the edge of Columbia Heights and Petworth and this building sits next to other retail on Georgia Avenue and next to other commercial space with the Linens of the Week sitting next to it on the west side.

With our conversion, we will be able to bring back owners into this section of the neighborhood and people who are committed to really being members of the community.

In terms of community outreach, we did, on July 14th, present to the ANC-1A, and unfortunately they were not able to make a decision due to lack of

quorum. But we are committed to maintaining positive relationships with the neighborhood property owners and improving the surrounding area.

We have also reviewed this application with the Office of Planning.

CHAIRPERSON GRIFFIS: Good. Thank you very much.

Questions from the Board?

(No response.)

CHAIRPERSON GRIFFIS: Excellent.

TESTIMONY OF BILL BONSTRA

MR. BONSTRA: Good morning, Chairman Griffis and members of the Board. My name is Bill Bonstra, I'm the project architect for 701 Lamont Street.

I respectfully request the BZA approve this special exception and variance relief, area variance relief which is necessary for the conversion of this existing 38-unit residential apartment building.

The building is unusual in that it is a large nonconforming structure built as an industrial warehouse, and we are converting to residential use. It has a long history of vacancy. It was built prior to the adoption of the current zoning laws in 1951,

and there is practical difficulty in converting this to residential use since it was not built in that vein.

I am here today -- I can run through the drawings to give a clarification to anyone, I can answer questions, whatever the Board would like.

CHAIRPERSON GRIFFIS: Let me ask you a first quick question regarding the penthouse structure in laying this out. In your view, is it being placed or -- you know, it's kind of hard to ask a special exception question of a penthouse that is conforming, you know, because I'm about to ask you whether it's impractical because of operating difficulties or size of buildings to not provide this in the correct place that it is, but you're putting it where it's supposed to be.

MR. BONSTRA: Well, that is true, and maybe I can answer the question in this way: We have an existing structure. It's a concrete structure, it has a column grid, and we are putting holes in this structure, so there is certain practical difficulty in locating the stairs, and we believe we have installed them or are providing them in the locations that do make structural sense.

CHAIRPERSON GRIFFIS: Actually, let's

dispense with all this. Let's get to the residential rec, which is actually tied to specifically this project and what is proposed. I think it's important, well, from my understanding, but can you run through just quickly the areas where you're providing it? Also obviously you read OP's report and they are going to be much more fluid with this, but kind of point out how you access these places.

MR. BONSTRA: I would be happy to. Do we have a microphone that I can --

CHAIRPERSON GRIFFIS: Or you can just move the -- well, you have already set up a lot of them. There is a pointer. Actually, you can probably just turn that microphone on and then just point it to you. Use the pointer that's over here so you can kind of stay close. The reporter obviously will draw my attention if you're not getting picked up on it.

Let me also -- last direction is anything that's underneath, we cannot see. So if you want us to look at a board, you can just put them up or just tell us that you're looking down there and we will take a look at it so it doesn't take a lot of time.

MR. BONSTRA: Okay. I will first show you the existing footprint of the building and then I will show you where the residential recreation areas are at

three levels of the building.

The A1.1 drawing shows the boundaries of the site and, in fact, the footprint of the building, and as Ms. Prince said, we're over 94 percent lot coverage, so we have very limited amount of outdoor space that's at ground level.

A major component of the project is the need for parking, which is really part and parcel to a successful residential project. The building currently has no parking, so we are putting parking levels at the lower level as well as partial first floor. The partial first floor is here --

CHAIRPERSON GRIFFIS: And that's bringing it up to the zoning regulated parking requirement.

MR. BONSTRA: The spaces that we show do not all necessarily conform to zoning requirements.

CHAIRPERSON GRIFFIS: But you meet the count that's required.

MR. BONSTRA: We meet the count because the building was built as an industrial building and it has a certain count that's associated with it.

CHAIRPERSON GRIFFIS: Understood. So if I understand what you're saying, given that, you're certifying that, in fact, you are conforming with the regulations of what is required for the parking

numbers, and now you're factoring a market element and saying you're trying to maximize the amount of parking in the building?

MR. BONSTRA: Yes. We're trying to put as many cars in this project as we can, yes.

CHAIRPERSON GRIFFIS: Or you can say it that way. Okay. Understood.

MR. BONSTRA: Yes.

This is the lowest level of the building. We have a ramp coming down here. The areas that are hatched here and here are what we designate as residential recreation area. Those areas total 1,060, and in working with Mr. Mordfin, we have added 202 square feet by linking these specifically to the core.

This is the existing elevator, which will be refurbished, existing fire stair, another fire stair here. We have direct access to the core of the building and access to all of the units above with both these residential recreation spaces.

On the ground floor level, the entry level, one comes in and comes down into the lobby. We have designated a portion of the lobby area, which is quite large, to our residential recreation, and we also have an area at the back here where the old elevator was that we're filling in which is part of

the residential recreation. So we have two spaces, two components of residential recreation on the ground floor.

Since we don't have any grade area to put our outdoor residential recreation, we have shown outside of the private decks, which are here, this hatched area as well as some inside space here are all public residential recreation area. The total of this area falls some 1,800 short of the requirement.

CHAIRPERSON GRIFFIS: Eighteen-hundred square feet, and it's 20 percent --

MR. BONSTRA: Twenty percent requirement, which is quite substantial, especially given the conditions that we're working within right here.

CHAIRPERSON GRIFFIS: And that is --

MR. BONSTRA: Eighteen-ninety-three would be --

CHAIRPERSON GRIFFIS: Right. The special condition is when you have an oversized building; is that what you're saying?

MR. BONSTRA: Yes.

CHAIRPERSON GRIFFIS: So you take up all that square footage that's going to residential --

MR. BONSTRA: We would love to have a court, some sight.

CHAIRPERSON GRIFFIS: Right.

MR. BONSTRA: We don't have any sight area.

CHAIRPERSON GRIFFIS: And, of course, that's as we have said all too often going to residential recreation requirements, but clearly the intent is to maximize the outdoor space. Is that your understanding?

MR. BONSTRA: There is a minimum of 50 percent outdoor.

CHAIRPERSON GRIFFIS: Okay. So one can logically think that --

MR. BONSTRA: Right.

CHAIRPERSON GRIFFIS: I mean, you can provide all of it outside, correct, but not all of it inside. Okay.

MR. BONSTRA: Well, one of the other things I would like to mention is that we have added private balconies in this project and certainly at great cost on just about every floor level, and we feel like even though that does not satisfy the residential recreation requirement, that is an area that will be used quite intensively by the majority of the residents.

CHAIRPERSON GRIFFIS: You indicate that

and you say that they're sized -- I think it's like 900 square feet total.

MR. BONSTRA: That's correct.

CHAIRPERSON GRIFFIS: And that they are of adequate size to be utilized by the residents. So you're saying that they are not these what we've seen a lot downtown, which are really lovely type things, these Juliet balconies, but these are actually walkout areas? And these are projecting over the property line; is that correct?

MR. BONSTRA: They are not.

CHAIRPERSON GRIFFIS: They are not.

MR. BONSTRA: They are on the property.

CHAIRPERSON GRIFFIS: They are projecting in the property.

MR. BONSTRA: We have cut these into the building.

CHAIRPERSON GRIFFIS: Oh, I see. So you're cutting it into the envelope, so it's not actually impacting any sort of lot occupancy issue.

What are you trying to show us? A section or elevation?

MR. BONSTRA: No, I'm trying to show the floor plan that has the balconies, but I don't believe -- it's in your package.

CHAIRPERSON GRIFFIS: Right. I think we can assist. A1.3, which is the third floor plan, I believe starts showing it.

MR. BONSTRA: You can see here an elevation. These are cut in.

CHAIRPERSON GRIFFIS: Oh, 1.4 seems to show it.

MR. BONSTRA: Third floor, fourth floor, I believe fifth floor have cut-in balconies.

CHAIRPERSON GRIFFIS: Okay. And they are actually hatched, meaning they have a graphical --

MR. BONSTRA: Yes.

CHAIRPERSON GRIFFIS: Okay. I see.

VICE CHAIRPERSON MILLER: So how many units have balconies and how many don't?

MR. BONSTRA: Well, there are 38 units total. Twenty-three have private balconies, which is over two-thirds -- almost two-thirds.

CHAIRPERSON GRIFFIS: Thirty-eight, 23. The chimney is off the property, isn't it?

MR. BONSTRA: That's correct.

CHAIRPERSON GRIFFIS: A huge stack.

MR. BONSTRA: This stack right here?

CHAIRPERSON GRIFFIS: Yes.

MR. BONSTRA: It's off the property.

CHAIRPERSON GRIFFIS: Maybe that could be used as the rope course. Oh, that's a different application. Okay.

MR. BONSTRA: I should say a total of 31 units have either outside balconies and/or private roof decks.

CHAIRPERSON GRIFFIS: What was that?

MR. BONSTRA: Thirty-one of the 38 --

CHAIRPERSON GRIFFIS: Oh, 31 of 38 have private --

MR. BONSTRA: Have either private balconies and/or private roof decks.

CHAIRPERSON GRIFFIS: And/or roof decks. So if you add all the private roof decks and the balconies, 31 --

MR. BONSTRA: Thirty-one out of 38.

CHAIRPERSON GRIFFIS: -- you're cutting seven people out.

MR. BONSTRA: So we feel that's a substantial effort to provide space that people will use quite frequently.

CHAIRPERSON GRIFFIS: Yes. I imagine it being nonconforming to the height in the photograph in the record that this has a pretty nice view, doesn't it?

MR. BONSTRA: No question.

CHAIRPERSON GRIFFIS: Yes. Okay.

MR. BONSTRA: Another aspect of the project that we are showing, on the private decks -- and this has been cleared with DCRA -- we actually have shown private hot tubs, and along with that, we are allowed to put a toilet facility as well as ancillary storage, and that's allowed by the building code.

CHAIRPERSON GRIFFIS: I saw that in this filing. That intrigues me. It's an interesting analysis that ties a lot of things together. You're telling me there's something to do with building code. We didn't understand what that actually is. And then there's something to do that ties us back into the regulation, because clearly in the regulations we look at penthouses that can accommodate restroom facilities that are accessories -- this isn't the right language, but they are accessory to a pool. Okay. So how do we get where we're going here?

MS. PRINCE: We get where we're going under Section 411.1. The regs do specifically address rooftop swimming pools and toilet rooms and storage accessory to those pools. "Swimming pool" is not a defined term in the zoning regulations, so we turn to

the building code. The building code acknowledges that spas and hot tubs constitute swimming pools. So the Zoning Administrator was comfortable with the concept that rooftop spas are swimming pools for purposes of the regulations and are, therefore, entitled to have the accessory storage and toilet rooms associated with them.

CHAIRPERSON GRIFFIS: I see. Okay.

MS. PRINCE: Now, having said all that, the toilet rooms, the storage, the spas, everything is well within the .37 FAR.

CHAIRPERSON GRIFFIS: Right. You don't get any sort of additional --

MS. PRINCE: No.

CHAIRPERSON GRIFFIS: -- space, height, anything of that nature in your penthouse --

MS. PRINCE: No.

CHAIRPERSON GRIFFIS: -- under 411 with that in regards to it. So water sports are okay. I see. Okay. So clearly, if I understand this correctly, what we have is obviously an undefined term in the regulations, but it's spoken to in terms of what is allowable within a penthouse structure. That undefined term is a pool.

The pool, then, if you try and start to

define it, which this Board has done and others before us have done, is, well, let's go to the building code and find a building -- some sort of construction authority that starts defining these terms, which is actually very useful, and in the building code, then, with its responsibilities of what it will be for building code requirements, a spa or -- what are these? Hot tubs? Hot tubs are actually classified under the building codes as pools and therefore have their own requirements that would have to be dealt with and obviously then substantiate the definition in the zoning regs as being a pool. Okay. I think I understand.

MR. BONSTRA: If I could just add one thing. Beyond what we have talked about as those ancillary spaces, the penthouse does contain mechanical equipment. All of the units, the fifth-floor units are served by mechanical units which are located in the penthouse, in the mechanical penthouse.

CHAIRPERSON GRIFFIS: Ms. Miller?

VICE CHAIRPERSON MILLER: No. I just want to clarify, the hot tubs are for private use or are they counted toward the residential rec space for the whole building?

MS. PRINCE: Private use and they are not counted toward the residential rec space. I think under the regulations, there has never been a question that a swimming pool, a rooftop swimming pool is permitted, and they are done all over the city. This is a slight twist on that concept that has apparently been done before where instead of one roof top swimming pool, we have multiple spas. But it does not count toward the residential rec space requirement.

MEMBER MANN: Is there elevator access to the roof?

MR. BONSTRA: No, there's no elevator access to the roof.

MEMBER MANN: There's no elevator access to the roof. How is it that the roof deck can count towards residential recreation space if it's not accessible by elevator?

MR. BONSTRA: We have two means of egress to the rooftop, but we do not have an elevator access to that area.

MEMBER MANN: So the roof cannot be counted as residential recreation space. It doesn't go towards the requirements, then; is that correct?

MS. PRINCE: I'm not aware of a requirement that to count toward residential rec

space, the rooftop has to be accessible by elevator. It's my understanding there are two means of egress, but we're not aware of an elevator requirement.

CHAIRPERSON GRIFFIS: I think perhaps what is coming up here, in our regulations, what we have is the phrase "The residential rec must be made accessible to all those in the building" or whatever the wording is. We have had, in fact, different applications that have addressed this in different ways, and I think that's really why this is an excellent question of, can you count it as residential rec according to our requirements if you are not providing an elevator which would rise it to the level of ADA accessibility?

Is that correct, Mr. Mann?

MEMBER MANN: That's correct. We have had several cases recently that have discussed exactly that point.

VICE CHAIRPERSON MILLER: I just want to bring your attention to the provision we're referring to. It's 773.9: Residential recreation space shall be physically accessible to all residents of the building served by that space.

CHAIRPERSON GRIFFIS: So I guess one question is whether we're talking about in our

building regs if we're talking about ADA accessibility or is it, you know, you can't count your private balcony as residential rec because it's not accessible for everybody.

MS. PRINCE: It has always been my understanding that that accessibility requirement is exactly what Chairman Griffis just stated. It's accessibility versus closed off for private use only. A private roof deck associated with an individual unit is not accessible to all residents of the building whereas a roof deck that is open to all members that's not private, as is the case with the peripheral roof deck here, is accessible to all members of the building.

I think it's a building code question that you're asking regarding whether an elevator has to access the roof, roof deck. I don't think there is anything in the zoning regulations that require elevator access.

VICE CHAIRPERSON MILLER: I think the only provision that we're thinking about is the one that I read, 773.9, and you're saying that can be interpreted as not having to require the general residential rec space, not the private residential rec space but, say, the general areas say on a roof deck, to be accessible

to the --

MS. PRINCE: I think this is the same language that would be used to preclude the individual balconies in the units from counting toward the residential rec space requirement.

CHAIRPERSON GRIFFIS: It's a differentiation between private and anyone can use it.

MS. PRINCE: Right.

CHAIRPERSON GRIFFIS: Is that what you're saying?

MS. PRINCE: That's what I'm saying.

CHAIRPERSON GRIFFIS: That's what our regulations lay out. Obviously the use of accessibility has different implications these days based on our federal regulations and building codes.

Now, clarify, then, to the Board, if you can in this instance what is the threshold of which you would need an elevator to access the roof deck? And we're not trying to put you on the spot here. If you don't know, you don't know, we move on and we figure this out, but we are asked this question all too many times in terms of what is being provided for residential rec, and especially on the roof, and some folks have indicated that if an area was provided for public use, then they would have to provide an

elevator based on ADA requirements, and that -- you know, I'm talking about a totally different application, but that created all sorts of issues for them, and so we looked at it that way. It seems like we're looking at it from a different perspective in this one.

But is there a threshold that you're aware of where all of a sudden, the occupancy might require or the diversity of provisions of the residential rec --

MR. BONSTRA: No. Actually, it's not linked to an occupancy load. Only egress is on the fire stairs. As far as the elevator itself, we have an existing condition.

CHAIRPERSON GRIFFIS: Actually, hold that thought for two seconds.

MR. BONSTRA: Okay.

(Pause.)

CHAIRPERSON GRIFFIS: Okay. A quick crash review of past cases and elements that were before the Board I think has clarified quite a bit. So what I think, unless the Board has other additional questions, I think we leave it as is in terms of elevator going to the roof and all that. That is a building code requirement that you're going to have to

get into, you know. Certainly -- well, there it is.

Mr. Mann does have follow-up questions, though, on the space and dimensions provided on the roof.

MEMBER MANN: Does the roof deck space need to meet the minimum 25-foot dimension requirement in order to be counted as recreational space?

MS. PRINCE: It does, and I think we have discussed this with the Zoning Administrator and they take the position that you consider the space as a whole, so it can have little jogs in and out. But they will look at the footprint of the proposed rec space as a whole. So you can have nooks and crannies of residential recreation space as long as it's part of a larger whole.

MEMBER MANN: That was the indication that you got on this particular case --

MS. PRINCE: On this particular case.

MEMBER MANN: -- from the Zoning Administrator?

MS. PRINCE: Yes.

VICE CHAIRPERSON MILLER: I think it's the first we've heard about the zigs and zags, you know.

MS. PRINCE: I think the -- it's my understanding that the section of the regulations that

imposes a minimum dimensional requirement on residential rec space is to prevent an owner from going through a building and picking out tiny little pieces of space that are not contiguous and arguing that those count toward the residential rec space requirement.

CHAIRPERSON GRIFFIS: Let's get clarification on this. I don't have the regs right in front of me anymore, I just put them away, but it seems to me that the dimensional requirements says "no dimension shall be less than."

MR. BONSTRA: We discussed that specific issue with Mr. Noble, Denzil Noble, and Faye of the Office of Zoning --

CHAIRPERSON GRIFFIS: Ms. Ogunneye.

MR. BONSTRA: Ogunneye.

CHAIRPERSON GRIFFIS: Yes.

MR. BONSTRA: And we understood that the intent was that we would not have non-contiguous spaces that were of a small size. They looked at it as an overall, as long as there were overall substantial dimensions, that there could be dimensions that were less than 25 feet.

CHAIRPERSON GRIFFIS: Interesting. Okay.

MR. BONSTRA: And we have that

confirmation.

CHAIRPERSON GRIFFIS: That's an interesting one to be definitive on, especially when the direct language of the regulation 773.7 does say "shall have no dimension less than 25 feet." Okay. So if you back out all the residential rec that you have provided on the roof that does not meet a 25-foot dimension, what do you have?

MR. BONSTRA: I can provide that. I can't answer that right now.

CHAIRPERSON GRIFFIS: Okay.

MR. BONSTRA: I would have to go through and --

CHAIRPERSON GRIFFIS: From my understanding, the amount that we're actually looking at, what -- is it possible just to point to the -- maybe I can do it here. It's A1.8; is that correct?

MR. BONSTRA: A1.6.

CHAIRPERSON GRIFFIS: I'm sorry. Can you point out again the areas, then, that are the publicly accessible residential rec? It's on the north side.

MR. BONSTRA: The areas are shown hatched on A1.6.

CHAIRPERSON GRIFFIS: Right. But some of those are private.

MR. BONSTRA: The only private areas --

CHAIRPERSON GRIFFIS: Oh. I understand.

MR. BONSTRA: -- are the white areas. Everything else --

CHAIRPERSON GRIFFIS: I understand.

MR. BONSTRA: Everything hatched is residential recreation.

CHAIRPERSON GRIFFIS: You mean you give the good views to the general public in the building?

MR. BONSTRA: It's not the general public; it's the occupants of the building.

CHAIRPERSON GRIFFIS: Right. The private general.

MR. BONSTRA: It's the private. These are 38 residents that will have access to the roof.

CHAIRPERSON GRIFFIS: I see. All of them will have access to the residential rec space, all 38.

VICE CHAIRPERSON MILLER: There's more than 38.

CHAIRPERSON GRIFFIS: More than 38 what?

VICE CHAIRPERSON MILLER: Thirty-eight units. There's more than 38 individuals.

CHAIRPERSON GRIFFIS: Who can tell? Hey, might have one person that buys ten units. We could take all day with this one if we wanted to. All

right.

So what you have is -- oh, I see what is happening, then. And what they were saying was the overall dimension, which is you're making 25, but you've actually carved up some private and some, well, publicly accessible, which is, I mean, obviously the phraseology.

MS. PRINCE: When you look at the plan, you can see that you could eliminate some of the areas that don't meet the minimum 25-foot dimension, but that would just be reducing the size of the residential rec space for no apparent reason.

One thought I have overall because, you know, we have a plan, this is the plan that we're seeking approval of. These interpretation issues concerning roof decks have been a quagmire for applicants, for this Board, for everyone. We are seeking approval of this plan. We have cited ourselves for relief from the residential recreation space requirement. We believe that we only need relief such that we will provide approximately 80 percent of the required amount of residential recreation space.

If for any reason this Board is uncomfortable in counting any portion of the roof

deck, the Board is free to not count it, in which case we need more variance relief. However, we will be bound to this plan.

CHAIRPERSON GRIFFIS: There's a more expeditious way to do this without redoing the plan, which I don't think was what the Board is really asking, but a full understanding. What I think we start including in the fact of what counts towards the 15.9 percent provision of the residential rec is actually granting relief to the minimum dimension requirement, and that's all wrapped up in the same test in the same residential rec requirement. Is that a way to proceed?

MS. PRINCE: I'm simply saying that we have noted that we are not meeting the requirement.

CHAIRPERSON GRIFFIS: Right.

MS. PRINCE: We believe we're short by a certain extent for certain reasons.

CHAIRPERSON GRIFFIS: Right.

MS. PRINCE: If you have other reasons that lead you to believe we're short by a greater extent, it's still the same section.

CHAIRPERSON GRIFFIS: And we're still talking about the same square footage that's going to be utilized.

MS. PRINCE: Yes.

CHAIRPERSON GRIFFIS: I think obviously the intent of that 25-foot dimension is to accommodate the useful areas without, you know, as you say carving out four-by-four little spaces all the way through the building.

MS. PRINCE: Which I think is something that was probably tried.

CHAIRPERSON GRIFFIS: Sure.

MS. PRINCE: And I think that -- I suspect that that's where that came from. I don't know. I don't know the background of the section.

CHAIRPERSON GRIFFIS: We have closets everywhere that are residential rec only. Okay.

I think we're pretty clear. We can move ahead with this unless -- yes, Ms. Miller.

VICE CHAIRPERSON MILLER: I just want to note that without the calculations, we just don't know the extent of the variance that we might be granting with this change in how we're counting, and that if we got that recalculated --

MS. PRINCE: If we excluded the entire roof deck, all of the square footage on the roof such that none of it counted, the building would be providing approximately 3,000 square feet of

residential recreation space as opposed to the 10,000 feet that's required if none of the roof deck were permitted to be counted.

CHAIRPERSON GRIFFIS: And actually it's difficult to look at it that way because if we start saying, okay, that's excluded, then we look for the relief of just 3,000. And say we were to approve that, well, then, they don't go and provide the rooftop. I mean, they are not required to. They have just gotten relief from providing that residential rec on --

MS. PRINCE: Except that we'll have a Board-approved set of drawings and --

CHAIRPERSON GRIFFIS: Right. Which will show decks and, you know, all that stuff. I understand what you're saying.

MS. PRINCE: Yes. I mean, we're obviously committed to providing it as we have shown it, so we want some credit for it, whatever that credit would be.

CHAIRPERSON GRIFFIS: Okay. Any other questions? Clarifications? Anything else?

(No response.)

CHAIRPERSON GRIFFIS: Okay. Let's move on, then, to the Office of Planning's report.

CHAIRPERSON GRIFFIS: Right.

REPORT FROM THE OFFICE OF PLANNING

BY STEPHEN MORDFIN

MR. MORDFIN: Good afternoon, Chairman and members of the Board. I'm Stephen Mordfin with the Office of Planning, and the subject application is for the adaptive reuse of an existing vacant industrial building to a 38-unit apartment house, and the subject property is located within the C-2-A Zone District.

The existing structure was built in 1951 and predates the adoption of the zoning regulations. It is nonconforming for building height, rear yard, FAR and roof structures. Its conversion to residential use makes it nonconformant for a lot occupancy and the proposed layout of the building requires variances for residential recreation space and for the enlargement of nonconforming structures devoted to conforming uses.

A special exception is necessary to permit a penthouse addition onto the existing nonconforming roof structures. The site is unique because the industrial building that was constructed upon it prior to the -- because of the industrial building that was constructed upon it prior to the adoption of the zoning regulations.

The extraordinary and exceptional situations are that the existing building cannot be made to conform to C-2-A regulations concerning building height, rear yard, FAR or lot occupancy, without the removal of a portion of the building, and that due to existing nonconforming roof structures, the applicant cannot construct a penthouse without a variance to permit additions to nonconforming structures or a special exception to allow for changes to a legally nonconforming structure.

A variance to residential recreation space is required. The design of the site is unique in that the majority of the units will be provided with private recreation space.

The Office of Planning recommends approval of variances to building height, FAR, lot occupancy, residential recreation space, rear yard, and to permit the expansion of a nonconforming structure. The Office of Planning also recommends approval of a special exception to permit a penthouse addition onto the existing nonconforming roof structures.

That concludes the presentation of the Office of Planning.

CHAIRPERSON GRIFFIS: Good. Thank you very much. Again, an excellent report, especially

with all these aspects that needed to be touched upon.

Are there questions from the Board? Ms. Miller?

VICE CHAIRPERSON MILLER: Yes. I'm struggling with the general question regarding all the variances except for the residential rec requirement, whether or not they are necessary in this case, and I'm just wondering if Office of Planning has an opinion whether there is, for instance, a policy that I'm not aware of, a rationale that would go against saying that these variances aren't necessary, like there would be no circumstances in which you wouldn't need a variance to convert a commercial warehouse to residential use, you know, in this case where the lot occupancy as it is is up in the 90 percentage and the requirement for the residential rec is 60, just to use that example.

MR. MORDFIN: The Office of Planning had included all of those other variances as a part of this application in that as long as the applicant was coming before the Board just to ensure that there would be no questions that anybody would have in the conversion of this building and to ensure that the building would be able to be converted to the residential uses as proposed.

VICE CHAIRPERSON MILLER: I guess I want to take it one step further, because I heard the applicant say something to the effect that the ZA was looking to the Board as an advice-giving body on this kind of issue, and I'm just wondering for future cases, you know, whether that's something we might decide. If it weren't necessary at all, then individuals might not be sent to this Board unnecessarily. So, on the other hand, I'm wondering, though, if there is another side to this whereas these variances might be necessary.

MR. MORDFIN: Well, I don't see that these variances are necessary. The purpose of including them was just to ensure that nobody would question that the use of the building -- the conversion of the building was possible.

VICE CHAIRPERSON MILLER: Thank you.

CHAIRPERSON GRIFFIS: Good.

Any other questions from the Board?

(No response.)

CHAIRPERSON GRIFFIS: Does the applicant have any cross-examination for the Office of Planning?

MS. PRINCE: No cross-examination.

CHAIRPERSON GRIFFIS: Thank you.

VICE CHAIRPERSON MILLER: I'm sorry. I

have one more question.

Did the applicant make all the changes to your satisfaction that you are recommending in your OP report?

MR. MORDFIN: Yes.

CHAIRPERSON GRIFFIS: Good. If there are no further questions, then let's move on to the ANC report. Of course, we did have indication that there is no report of the ANC because they lacked a quorum to hold the vote on this. I don't have any other government attendant information on this building unless the applicant is aware of any other submissions.

MS. PRINCE: We are aware of no other submissions.

CHAIRPERSON GRIFFIS: Are you aware of any other submissions, surrounding neighbors, areas?

MS. PRINCE: No other submissions whatsoever.

CHAIRPERSON GRIFFIS: Okay. That would reflect what is reflected in our case files, in which case let's go to the applicant for any closing remarks unless Board members have questions immediately at this point. Why don't we do so?

MS. PRINCE: Thank you for your time this

afternoon and this morning. We would appreciate your immediate approval of this application, if possible. The project is ready to start. I would like to confirm and clarify with the Board that we're seeking your approval of the plans that we have put before you.

Should the Board decide that the residential recreation space on the roof is deficient in any way, especially with our acknowledgement that it is not accessible by elevator, we would like to clarify and confirm that that is the space we will provide and the space we are asking this Board to approve.

This project is ready to go forward immediately. It is in for permit, as a matter of fact, with the assumption that the relief will be granted by this Board and we're waiting for an order from the Board so that we can proceed with the interior work and proceed forward with the project.

CHAIRPERSON GRIFFIS: Good. Thank you very much.

I think we can proceed with this today; however, let me ask you one question, and this is probably more of a legal question, but it has a direct application to this instant case, and that is, if the

Board felt -- and I don't know, but hypothetically if the Board felt that, in fact, four of the variances that you are here for were not required, how would the Board deal with that?

Conceivably one is we would not grant the variance, kick it out and say you're here unwarranted today or however the legal wording would go. Is that the only other way?

MS. PRINCE: I think that a very helpful thing for this Board to do would be to grant my variances and my special exception and to state on the record that you are granting them because they have been requested and, you know, you would like to expedite the application. However --

CHAIRPERSON GRIFFIS: So you're saying that a statement from this Board on the record in this application would hold weight with others --

MS. PRINCE: Exactly.

CHAIRPERSON GRIFFIS: -- but would not necessarily be reflected in the processing of this application.

MS. PRINCE: Exactly.

CHAIRPERSON GRIFFIS: I see.

MS. PRINCE: It would provide guidance for us to show to the Zoning Administrator in future cases

that the Board is questioning whether certain types of these variances are, in fact, required.

CHAIRPERSON GRIFFIS: Okay.

Board members, let's take this up for deliberation if there are no objections --

MS. GLAZER: Pardon me, Mr. Chair.

CHAIRPERSON GRIFFIS: Yes.

MS. GLAZER: I'm sorry to interject, but another option, as the Board is well aware, is to say that this application is self-certified. The Board is not required to take a position or give advice about the necessity of the relief and the Board has done that in the past, I'm certain, and stated that the relief -- that the request is self-certified, that the Board is not stating one way or another whether it's required. That is just an option for the Board.

CHAIRPERSON GRIFFIS: Right. It doesn't send the same message that I'm hearing the Board wanting to send, though. Okay. I think the Board is very clear in the fact that we don't need to address this issue at all of whether we interpret or not or whether the Zoning Administrator should make a decision and then if it's not correct, it will come to us.

What I heard Board members talking about

was their concern of us being looked at by the Zoning Administrator as an interpretive body, not of decisions, not of final decisions that are made, but actually interpretive of what the decisions should be. So it's putting us into a role of which we usurp in an appeal, but an appeal is based on a final official authoritative decision, and then we judge whether there was error in it and we can go through the analysis of how we might have decided in that capacity.

But looking at this in the preliminary, let's say, looking at it and analyzing this as to whether it should come for variances, looking at the regulations as if it should go to the BZA for review I think is problematic for this Board. I think there is an excellent balance between this Board and the Zoning Administrator.

The Zoning Administrator is to look at these projects to assess it with the regulations and make a definitive decision, and they have no difficulty in sending projects to the Board for relief when it is warranted and there should be no fear that they should not make decisions. They should make the decisions, and if people feel it's in error, then there is the process that it can be appealed and then

that appeal comes to us.

It does seem to slow down and rather ask an awful lot of us if we get an awful lot of applications that are coming in kind of saying, well, we need you to first decide whether we should be here, and then second decide, if we should, whether we should get it or not.

I guess we could take another extra week or day of the week and set up like an interpretive window in the Office of Zoning and each one of us could take a schedule time and do interpretations for like a nickel or something. That's a really long joke, for the record.

Okay. I think, first of all, let's dispense with this because the application is immediately before us, and would move approval of 17198, the application of 701 Lamont LLC, and that is for first the special exception for 11, the variance under 770, variance under 771, 72, 73, 74, and 2001.3 respectively. Of course, that is the maximum height, FAR, lot occupancy, residential rec, and rear yard requirements, and, of course, 2001.3 goes to the additions and enlargements to nonconforming structures, and I would ask for a second.

VICE CHAIRPERSON MILLER: Second.

CHAIRPERSON GRIFFIS: Thank you very much.

As I started out in this, and I think actually the filing really brought it home, I mean, this does look like a fundamental textbook application regarding Clerics of St. Viator which established the fact that an existing structure can be the basis of uniqueness and practical difficulty, and if this isn't practically difficult, to have an existing building that is taller than is allowable but you're not adding to the height, I really don't see what is, which obviously lends our discussion back to, then, why are we actually granting for relief for a condition that exists and that is not changing.

But under undue caution, I think it is appropriate to go with the variance relief that is before us and make note, as Board members feel it appropriate, make note of the fact of perhaps how redundant, or maybe that isn't even the word, maybe just rise to the level of unnecessary requests for relief in terms of aspects that are not changed and are, in fact, existing.

Others?

VICE CHAIRPERSON MILLER: I would just like to note generally that I think it is appropriate for us to look at whether the proposed variances as

well as other than the recreation requirement as well as the special exception is appropriate for us to determine as being unnecessary in this context. I think we can do it. I don't think we need to do it just in the context of an appeal. I think we could grant the variances but issue an opinion saying that we don't find them to be necessary or required, and we have a record before us, we have Office of Planning's opinion on this, we have specific facts, briefing by the appellant. So I have no problem doing that. I don't think we have to wait for an appeal of this kind of a decision.

CHAIRPERSON GRIFFIS: Okay. And that's not what I meant to derive. What I was saying, our capacity to act as the Zoning Administrator comes under appeal, not that "Let's wait and see if these come to appeal." This Board has, in fact, in the past had requests for relief that came before us that we said, "You don't need the relief that you're seeking" and has set it off.

I don't know if it has just been too long of a day, I'm too hungry, I don't really feel like looking at all of the aspects of implications of saying that for this particular application, but I think it's fairly important and fundamental, in my

opinion, that an existing condition that isn't changing I don't see rising to the level of coming and being asked for relief.

For instance, if we go to 223 cases, we have additions to nonconforming structures and they come in for a certain conformity. We don't grant relief for their nonconformity; we grant relief in the special exception to 223 for the addition to that nonconformity.

In fact, we have had applications that came in that were one nonconformity, and it came up, "Well, you've got five others." Well, we don't grant relief for those five others. It's an existing condition, it's not changing, and we don't get into it. But that's as far as my mind can take me today.

VICE CHAIRPERSON MILLER: Okay. The other thing I would like to say, then, is I guess different from an appeal in that this can be looked at by the Zoning Administrator as precedent. You know, we're not ruling on these types of variances can never come before the BZA or something; we're just showing how it's inappropriate in this case and can be used as a guide by BZA for future cases.

CHAIRPERSON GRIFFIS: Excellent wording. You must have legal training. I, on the other hand,

do not. However, we have a motion before us. It has been deliberated. Are there any other deliberations, opinions, comments?

(No response.)

CHAIRPERSON GRIFFIS: Very well, then. The motion is before us, it has been seconded. I ask that all those in favor signify by saying aye.

(Chorus of ayes.)

CHAIRPERSON GRIFFIS: And opposed? Abstaining?

(No response.)

CHAIRPERSON GRIFFIS: Very well.

Ms. Bailey.

MS. BAILEY: Mr. Chairman, clarification or just for my understanding, the relief is being granted as outlined in the Office of Planning's report; am I correct?

CHAIRPERSON GRIFFIS: I'm sorry?

MS. BAILEY: The relief is being granted as outlined in the Office of Planning's report?

CHAIRPERSON GRIFFIS: I'm not sure of the distinction. The relief is being --

MS. PRINCE: May I interject? I think I can clarify.

CHAIRPERSON GRIFFIS: Yes.

MS. PRINCE: We cited ourselves for fewer areas of relief than the Office of Planning cited in its report. For example, the Office of Planning said we needed a height variance even though we're not changing the height of the building.

I suggest that you cannot give us relief that we didn't request because we're not advertised for it.

CHAIRPERSON GRIFFIS: Oh. I'm sorry. And that's what I actually probably stated.

MS. PRINCE: Right. You listed the Office of Planning's areas of relief, which I think Mr. Mordfin himself will say were overly cautious and beyond the scope of what we had requested.

CHAIRPERSON GRIFFIS: Right.

MS. PRINCE: I also wanted to clarify that we are seeking a summary order in the interest of moving the project along. So I appreciate all of your conversation and effort, but we would appreciate a summary order.

CHAIRPERSON GRIFFIS: Sure. Okay. Well, you know, it seems to fall on the point of what we're saying. I mean, is there any burden if the -- oh, well. No, I think we're granting relief for what was requested.

MS. BAILEY: Thank you, sir.

CHAIRPERSON GRIFFIS: Pay no attention to what I said. Go ahead.

MS. BAILEY: The Board has voted 5-0-0 to approve the application. Mr. Griffis made the motion, Mrs. Miller seconded. Mr. Etherly, Mr. Parsons and Mr. Mann are in agreement. It is a summary order.

CHAIRPERSON GRIFFIS: Yes. I believe we can waive our requirements and issue as summary order on this, and I think the Board can take up, first of all -- we do have the official transcripts on this which will have some standing for that discussion that we had regarding the relief process.

I think Ms. Miller also brought up a point of maybe we put together a position paper of some sort and I think we can facilitate that. You did actually say something of that nature.

VICE CHAIRPERSON MILLER: Position paper?

CHAIRPERSON GRIFFIS: Well, whatever it was that you -- the official opinion paper. You know what they teach in law school, stuff. So I think we can make that happen, but it's obviously going to be outside of the issuance of this order.

VICE CHAIRPERSON MILLER: I would like to request, like in the previous case, that maybe we

could add one line -- we could make this more of a hybrid summary order -- reflecting, perhaps, that while we didn't find that relief was necessary for those specific variances and special exceptions, that we were granting them. Something to reflect to the Zoning Administrator --

CHAIRPERSON GRIFFIS: We're really moving forward on these hybrids.

VICE CHAIRPERSON MILLER: -- officially that that's our position.

CHAIRPERSON GRIFFIS: Good. Good. Yes. I think if that's legally allowable, we should do it. Okay. Everyone clear?

COMMISSIONER PARSONS: Yes.

CHAIRPERSON GRIFFIS: Ms. Bailey, thank you very much.

Thank you all very much. Appreciate your patience being down here this morning.

Is there any other business for the morning session, Ms. Bailey?

MS. BAILEY: No, Mr. Chairman.

CHAIRPERSON GRIFFIS: Excellent. Then let's adjourn the morning session of 27 July '04.

(Whereupon, at 12:50 a.m., the morning session adjourned.)

A-F-T-E-R-N-O-O-N S-E-S-S-I-O-N

(1:50 p.m.)

CHAIRPERSON GRIFFIS: Good afternoon, ladies and gentlemen. Let me call to order the afternoon session of the 27 July 2004 Board of Zoning Adjustment in the District of Columbia. My name is Geoff Griffis, Chairperson. Joining me today is the Vice Chair, Ms. Miller, and also Board member Mr. Etherly. Representing the National Capital Planning Commission is Mr. Mann. Representing the Zoning Commission with us this afternoon on part of the cases is Mr. Parsons.

Copies of today's hearing agenda are available for you. They are located where you entered into the hearing room. You can pick one up and see where you are in the chronology of the cases.

A couple of very quick things to go through. First of all, all proceedings before the Board of Zoning Adjustment are recorded. They are recorded in two fashions at this point. One is the court reporter, who is sitting to my right, and the second is we are broadcast live on the Office of Zoning's website.

Attendant to that, there are several things. First of all, when coming forward to speak to

the Board, you will need to fill out two witness cards. Witness cards are available at the table where you entered into and also the table in front of us. Those two cards go to the recorder who, as I say, is sitting to my right.

I would ask that you turn off cell phones and beepers at this time so we don't disrupt the proceedings, and when coming forward, of course, you are going to need to speak into the microphone in order to be recorded into the transcript, and I ask that you say once as you start talking your name and your address for the record.

The order of procedure this afternoon for special exceptions and variances is first we hear the case presentation by the applicant. Second, we hear government reports. Third, we will have the Advisory Neighborhood Commission report. Fourth, we will hear persons or parties in support of an application. Fifth, we will hear persons or parties in opposition to an application. Sixth, finally, any closing remarks, summations, or rebuttal testimony by the applicant.

Cross-examination of witnesses is permitted by the applicant and parties in a case. The ANC within which the property is located is

automatically a party in the case and therefore is a full participant and can participate in cross-examination.

The record will be closed at the conclusion of the hearing except for any material that is specifically requested by this Board, and this Board will be very specific of what information is to be submitted and when it is to be submitted into the Office of Zoning. After that material is received, of course, it should be obvious that the record would then be finally closed and no other information would be accepted.

The Sunshine Act requires that this Board conduct all hearings and procedures in the open and before the public. This Board may, however, enter into executive session both during or after a hearing on a case and that would be for the purposes of reviewing the record or deliberating on a case. This would be in accordance with our rules of procedure and the Sunshine Act.

The decision of this Board in contested cases must be based exclusively on the record that is created before us here today. So two things attendant to that. Of course, you want to get everything into the record that you want us to look at and deliberate

on, and second, we ask that today, while you are here, please do not engage Board members in conversation so it does not give the appearance that we are receiving information outside of the record.

PRELIMINARY MATTERS

CHAIRPERSON GRIFFIS: At this time, we will consider any preliminary matters. Preliminary matters are those which relate to whether a case will or should be heard today, such as requests for postponements, continuances, or withdrawals, or whether proper and adequate notice has been provided.

If you are not prepared to go forward with a case today or you believe the Board should not proceed with a case on our agenda for this afternoon, I would ask if you would come forward and have a seat at the table in front of us as an indication of having a preliminary matter.

Not noting anyone coming towards the table, let me ask -- you have a preliminary --

MR. AKOPIAN: Yes.

CHAIRPERSON GRIFFIS: I am just going to have you come forward. Take your time. Have a seat. You're going to need to turn on the microphone and you're going to tell me your name and your address.

MR. AKOPIAN: My name is David Akopian. I

am representing Lee Bauer. He gave me power of attorney.

CHAIRPERSON GRIFFIS: Okay.

MR. AKOPIAN: This is the first time. I didn't know whether I should present with the witnesses or how I should present, so I'm alone today.

CHAIRPERSON GRIFFIS: Do you have witnesses to call?

MR. AKOPIAN: No. No. You said you have to fill the witness cards.

CHAIRPERSON GRIFFIS: Oh.

MR. AKOPIAN: I'm not sure what is it all about.

CHAIRPERSON GRIFFIS: Okay. So a procedural question is not a problem. You're the only person that's going to present the case today, correct?

MR. AKOPIAN: Yes. That's right.

CHAIRPERSON GRIFFIS: Okay. That's absolutely fine. What you need to do for yourself only is actually, now that you're sitting here, the cards are right in front of you, take two. You can go back, have a seat, fill them out, and when you are ready to come forward, you are going to give them to the recorder and then we will get rolling on your

case. You are I believe the second case in the afternoon.

MR. AKOPIAN: Second case.

CHAIRPERSON GRIFFIS: So plenty of time to get those filled out.

MR. AKOPIAN: Okay.

CHAIRPERSON GRIFFIS: Any other questions?

MR. AKOPIAN: No. That's it.

CHAIRPERSON GRIFFIS: Okay. Great.

MS. BAILEY: Mr. Chairman, is that the second or the -- he's representing Mr. Lee Bauer?

CHAIRPERSON GRIFFIS: Is my schedule all off? Okay. So you're the first case, so you will have to fill them out even faster.

MS. BAILEY: And also, Mr. Chairman, if I might, we didn't receive an affidavit of posting in this case. An affidavit of posting, as of Friday, it wasn't in the file. I'm not sure if it is now. The filing is in front of you, Mr. Chairman, if you could --

CHAIRPERSON GRIFFIS: Good. While we get that together, are there any other preliminary matters that you are aware of, Ms. Bailey, on any of the other applications?

MS. BAILEY: Just swearing the witnesses

in, Mr. Chairman.

CHAIRPERSON GRIFFIS: Indeed. Okay. That's what I thought we would do, was do that, we'll call your case and we'll get to the questions that we need to ask you. So if you would remain standing, and I would ask that anyone else in the room that is going to provide testimony this afternoon if they would please stand and give your attention to Ms. Bailey and she is going to administer the oath.

(Witnesses sworn.)

CHAIRPERSON GRIFFIS: Okay. Why don't we call the case, then?

APPLICATION OF LEE C. BAUER

17090 ANC-2B

MS. BAILEY: Application Number 17090 of Lee C. Bauer, pursuant to 11 DCMR 3103.2, for a variance from the nonconforming structure provisions under Subsection 2001.3, and a variance from the accessory garage alley setback requirements under Subsection 300.2(b) to allow a roof deck addition to a freestanding accessory garage in the Dupont Circle Overlay R-5-B District at premises 2116 O Street, Northwest, Square 69, Lot 146.

MR. AKOPIAN: Should I start?

CHAIRPERSON GRIFFIS: Absolutely. Have a

seat. We have one preliminary matter.

Ms. Bailey has indicated that the affidavit of posting was not filed in the application, meaning that you attest to the fact that this was placard, posted correctly. Are you aware that the affidavit is not in the record?

MR. AKOPIAN: No. No. He just asked me a few days ago and I didn't have much time to ask him any questions.

CHAIRPERSON GRIFFIS: Okay.

MR. AKOPIAN: So I came just with his power of attorney and --

CHAIRPERSON GRIFFIS: Okay. What is your relationship to the project?

MR. AKOPIAN: I did the project for him.

CHAIRPERSON GRIFFIS: Did it meaning what?

MR. AKOPIAN: Preliminary project so that he will see how it will work. It's not the final project --

CHAIRPERSON GRIFFIS: I still don't understand. So you built it for him, tore it down, and now you're back?

MR. AKOPIAN: No. No, no.

CHAIRPERSON GRIFFIS: Okay. Tell me what you --

MR. AKOPIAN: I'm working for Joseph Passonneau, who is an architect, --

CHAIRPERSON GRIFFIS: Oh, I see.

MR. AKOPIAN: -- who is his neighbor, who has a similar deck with special exception built a long time ago.

CHAIRPERSON GRIFFIS: I understand. So you work in Mr. Passonneau's office?

MR. AKOPIAN: Yes. I was working. Right now I'm not working, but I was working for him.

CHAIRPERSON GRIFFIS: I see.

MR. AKOPIAN: Lee Bauer is a neighbor, asked me to prepare a preliminary project to see how it would work in his area, similar to what we have for Joseph Passonneau.

CHAIRPERSON GRIFFIS: Okay. I don't know what we do with this.

Ms. Bailey, there is no affidavit that it was posted; is that correct?

MS. BAILEY: No, sir. Mr. Chairman, I didn't check this morning, but if you could double check the file in front of you, Mr. Chairman, to be absolutely sure.

CHAIRPERSON GRIFFIS: Okay. Trusting that you have been thoroughly this, which I know you have,

there is no current filing of affidavit without going through the entire official record, which is right in front of me.

MS. BAILEY: No, sir.

CHAIRPERSON GRIFFIS: Okay. Let me ask you a couple other questions.

MR. AKOPIAN: Yes, sir.

CHAIRPERSON GRIFFIS: Did you bring -- have you prepared to provide us with the variance test today showing us how this property is unique, what the practical difficulty is, and whether it would impair the intent and integrity of the zone plan or the public good?

MR. AKOPIAN: I could explain how it started, how we did the project, why we did the project, why he wants to improve his lot.

CHAIRPERSON GRIFFIS: Okay. How about can you tell me about -- are you prepared to tell me why this property is unique and what the practical difficulty of complying with the zoning regulations is?

MR. AKOPIAN: No. It's not a unique property. You cannot say that it's a unique property.

CHAIRPERSON GRIFFIS: Okay. Before you go any further, let me just point out something that I

think the Board members agree with me here, but they can obviously voice their disagreement if not.

I don't see any case presentation here in terms of the test for the variance which you are here for. In fact, even more so to this is the Office of Planning's report is recommending denial of this application because nothing has been presented in terms of exceptional situation or uniqueness. So this is what I think we ought to do with this. First of all, we also don't have an affidavit for posting. I don't think you're ready to go today. I think we ought to put this off and give specific direction on what you should submit when you come back to present the case.

MR. AKOPIAN: Okay.

CHAIRPERSON GRIFFIS: Now, have you reviewed the Office of Planning's report?

MR. AKOPIAN: I reviewed the Office of Planning report. It is based on the project I prepared. The project I prepared is not supposed to be submitted with obligation because he originally applied for a building deck improving his lot without any consideration -- any particular project, and the Office of Planning considered particular project as if it's already down for a build, but it is not.

CHAIRPERSON GRIFFIS: I don't understand any of that.

MR. AKOPIAN: Okay. You could apply for a special exception to build a deck on your property, right, without particular project.

CHAIRPERSON GRIFFIS: What do you mean by not particular project?

MR. AKOPIAN: Without any project, just application to build a deck similar to property -- neighbor's property.

CHAIRPERSON GRIFFIS: No, that's not correct.

MR. AKOPIAN: You are supposed to supply a project for that?

CHAIRPERSON GRIFFIS: You mean in terms of drawings and what you're actually thinking of doing?

MR. AKOPIAN: Yes.

CHAIRPERSON GRIFFIS: Absolutely. Perhaps let me just say maybe you're thinking of more when you go for a design review at Historic Preservation where you kind of talk about concept and things of that nature. This is not a design review board; this is a zoning relief review board.

MR. AKOPIAN: Yes.

CHAIRPERSON GRIFFIS: We have strict

regulations of zoning. Really what we require are permit-ready documents. If you are going for a setback from the center line of an alley, I need to see exactly where that wall is going. We need to know exactly what that dimension is because that's what you're asking for relief for.

MR. AKOPIAN: It is possible to show.

CHAIRPERSON GRIFFIS: Yes. I know. To document it, yes. I think you're showing graphically, that's fine. That's what you have to present: why is this property unique; out of that unique quality on the property, what is the practical difficulty that arises, the practical difficulty in complying with the zoning regulations. So something is unique about this project that won't allow you to set back from the center line of the alley the appropriate dimension.

MR. AKOPIAN: If it's only about setback, it is possible, if it's only about setback. But there are many other questions that's impossible to overcome.

MEMBER ETHERLY: Mr. Chairman, I was going to suggest, perhaps to kind of move us along, I would agree with you that clearly the application unfortunately is just simply not ready to move forward at this time. That will leave us one or two options.

Conceivably an option is just to dismiss the case outright which, without the affidavit posting, probably is somewhat of a stronger case. But I think at minimum the other option is scheduling this for a date in the future and offering some limited guidance on what will be needed so this case is ready to move forward at the appropriate point in time.

Clearly we do not have an ANC report. While we do have I believe two letters in opposition, which might suggest that there has been some type of at least public discussion or public knowledge of the proposed project, I just don't think we're ready to move forward today.

CHAIRPERSON GRIFFIS: Okay. Thank you. I would concur, and maybe I can start with the guidance so that when you come back, you will at least know what you need to do and you can assess your case.

Number one, we were talking about a posting. The applicant should have gotten a letter saying that they are required to do a posting that you are applying for these variances 15 days prior to the hearing, and the applicant would need to submit an affidavit attesting that, in fact, the posting was done. Many people take pictures of the posting as well as additional proof. Number two is the

permit-ready documents that the Chairman was referring to; and number three, there's a legal test to meet a variance, and you need to do that, and the Chairman was leading you through that as well. And if you have any other questions, you can ask the Office of Zoning or even Office of Planning.

MR. AKOPIAN: Who do I contact with in regard to these questions?

CHAIRPERSON GRIFFIS: Pardon me?

MR. AKOPIAN: Who could I speak with?

CHAIRPERSON GRIFFIS: What we are going to do right now, we are going to set this for October 19th in the morning. That's your official notice of the hearing. October 19. It will be one of the cases that we hear in our morning session.

I want you to, when you leave, to go over to the Office of Zoning just at the front desk and they are going to showy exactly everything that you're going to need to do, from the test to the posting to everything else.

MR. AKOPIAN: Okay.

CHAIRPERSON GRIFFIS: And that means next time we see you, this is going to be clean as a whistle and we will get through it very quickly.

MR. AKOPIAN: Okay. Hopefully.

CHAIRPERSON GRIFFIS: Indeed. Thank you very much.

MR. AKOPIAN: Thank you.

CHAIRPERSON GRIFFIS: I'm sorry you had to come down here to hear this, but there it is.

Okay. That being said, we have rescheduled this application. Let's move to the next in the afternoon, Ms. Bailey.

APPLICATION OF INTERNATIONAL REAL ESTATE AND HIGH TECH INVESTMENT GROUP

17176 ANC-2F

MS. BAILEY: Application Number 17176 of International Real Estate and High Tech Investment Group, pursuant to 11 DCMR 3103.2, for a variance from the lot occupancy requirements under Section 772, a variance from the rear yard requirements under Section 774, and a variance from the nonconforming structure provisions under Subsection 2001.3 to construct an addition to an existing apartment building in the C-2-A District at premises 1320 9th Street, Northwest, Square 367, Lot 823.

CHAIRPERSON GRIFFIS: Good afternoon.

MR. GLASGOW: Good afternoon.

CHAIRPERSON GRIFFIS: Let's roll right into this.

MR. GLASGOW: All right. Good afternoon, Mr. Chairman, members of the Board. For the record, my name is Norman M. Glasgow, Jr., of the law firm of Holland & Knight, representing the applicant in the above case, 17176.

Here with me today are Mr. Fred Sadedi, the applicant in the case; Mr. Faramarz Sabouri, the architect; and Steve Sher, land planning expert witness.

Once again, we are prepared to stand on the record and answer any questions that the Board may have on this case or we can go through our presentation depending upon how the Board wishes to proceed.

CHAIRPERSON GRIFFIS: Very well. I think we can get through this fairly expeditiously. This is the Blagden alley contributing building which was going to -- actually, as it comes across immediately, it sounds like, my goodness, they are asking a lot to be put on this, but really when you break it down from the submissions that I have seen, it's fairly small in nature of the requests and really it relies on or is based on the fact of the existence structure and the carriage house.

So, I don't know. If Board members feel

they want a full presentation, I'm happy to go that way, or we can take limited statements and get through this by questions. Mr. Mann? Good. Okay. Let's go through this expeditiously, then, and obviously we will get the questions in that we need.

MR. GLASGOW: All right. As the Chairman indicated, the property is located in the Shaw Historic District. The applicant has worked with the Historic Preservation Review Board, with Steve Callcott, the staff member, and has received the approval of the Historic Preservation Review Board for the proposed addition.

We have also worked with the Advisory Neighborhood Commission and have their unanimous support. I think that the letter of the ANC is in the record.

We do have three variances that we're asking for. One is the rear yard, and that's because we -- right now we have no rear yard and are putting a small addition on top of the existing carriage house. That all has been approved. We are putting the stairwell up to the residential recreation space, and that ends up being part of -- we have a 1 percent increase in our lot occupancy, and we have a court that is already nonconforming, and we change that by a

minuscule amount of square footage.

CHAIRPERSON GRIFFIS: Okay. So you're not providing a rear yard right now, and, in fact, that's what your written submission is.

MR. GLASGOW: That's correct.

CHAIRPERSON GRIFFIS: The building provides no rear yard. That's exactly what you state. The existing building.

MR. GLASGOW: The existing building has no rear yard.

CHAIRPERSON GRIFFIS: So you are here for relief from a rear yard that doesn't exist.

MR. GLASGOW: That is partly because of some of the vagaries of the regulations. They allow, within a rear yard, you can have a two-story carriage house structure, and we are putting the third story on that. We're in a C-2-B zoning district, we can have a 50-foot height.

CHAIRPERSON GRIFFIS: Right.

MR. GLASGOW: C-2-A. C-2-A zoning district. We can have a 50-foot height. We're well under the height, we're well under the FAR.

CHAIRPERSON GRIFFIS: I see. Okay.

MR. GLASGOW: So we have a technical situation there, but we do not have a rear yard right

now. If you go out physically to the lot, there is no rear yard.

CHAIRPERSON GRIFFIS: I see. Okay. And then the lot occupancy, of course, just for quick reiteration, is because they have an overhang and it's 50 or so square feet that's increasing in terms of the lot occupancy.

MR. GLASGOW: That's correct.

CHAIRPERSON GRIFFIS: Okay.

MR. GLASGOW: Yes. So it's very minor what the areas of relief are technically even though we have three variances.

If there are any questions, we can have the architect go through the plans and Mr. Sher can cover anything with respect to the practical difficulty and those matters.

CHAIRPERSON GRIFFIS: Any questions at this time? Okay. I think we're pretty clear.

MEMBER MANN: Mr. Chairman, I have a question.

CHAIRPERSON GRIFFIS: Yes. I'm sorry. Mr. Mann, go ahead.

MEMBER MANN: Regarding the Historic Preservation Review Board, I noticed that it has been I believe almost three years since that approval was

done. Will there be a need to revisit HPRB or can their former decision stand as it is?

MR. GLASGOW: As long as you don't change the plans, their approvals don't have a time limit like the BZA orders do.

CHAIRPERSON GRIFFIS: And just so it doesn't send out any flags, because you've said, you know, it has an existing carriage house which is two stories and this Board has seen many that want to add a story onto a garage and they can't do it in certain districts and zones, this is, first of all, a single building, it's not an accessory structure.

MR. GLASGOW: That is correct.

CHAIRPERSON GRIFFIS: Okay. And secondly, there is no -- does this fall under a carriage house and this would be an additional level that wouldn't be allowable?

MR. GLASGOW: No. No. This --

CHAIRPERSON GRIFFIS: I'm confusing you probably because obviously that's part of the regulations in a residential district.

MR. GLASGOW: That's right. Yes. And it has to do with alley lots, some of those things and all of that.

CHAIRPERSON GRIFFIS: Okay.

MR. GLASGOW: And we don't have any of that situation.

CHAIRPERSON GRIFFIS: Okay. Very good. Okay. Let's proceed, then. What else do you need to tell us.

MR. GLASGOW: Maybe we ought to have Mr. Sher give just a quick summary of the practical difficulty and how we meet the burden of proof and see if you all have any questions from that.

CHAIRPERSON GRIFFIS: Excellent.

TESTIMONY OF STEVEN E. SHER

MR. SHER: For the record, my name is Steven E. Sher, the Director of Zoning and Land Use Services with the law firm of Holland & Knight.

As Chip indicated and as the Board has already intuited, this is a single building, goes all the way from the front to the alley at the back. If there was a separation between the garage building at the back, it would be in a rear yard, it would be a different story, but it's all one building, so it runs to the alley, so you've got to measure the rear yard from the very back of the building, which is on the alley line. There is no rear yard there now, and so it's a nonconforming structure.

The reason we need a variance is we're

adding a third floor over the existing two floors, and the third floor doesn't set back, either; it falls the same line of the building all the way up.

The reason for that is essentially that that garage is 22 feet deep. If you had a setback 15 feet, you would have only seven feet left to build on, so you don't have enough space to build there unless you're able to follow the footprint of the existing building, and structurally it makes more sense to do that anyhow.

So we have a partial third floor that we're expanding across the building to the rear, we've got an overhang, as the Chairman indicated, over a piece of the court where you get to that narrow part of the building which is only about -- if you had to do a complying court, you would be like eight feet worth of building that you could build on. So the narrowness of the lot, the configuration of the existing building, create the exceptional situation and the inability to size an addition that is within the height and within the FAR. There is no more density on this lot than is permitted under the regulations. We're less than the 2.5 FAR. But it's just how you put it on the lot given the constraints of the existing building that creates the need for the

variances. That's the 50-word-or-less explanation.

CHAIRPERSON GRIFFIS: Well said.

Questions?

VICE CHAIRPERSON MILLER: Just to understand this rear yard concept a little better, if you put the third floor on top of this carriage house and you set it back, would that count as rear yard even though it's three stories up?

MR. SHER: Well, you still -- you technically would not have a rear yard because the rear yard has to be open to the sky from the ground up and the building is already there and it's not going to be a rear yard. But when you look at Section 2001.3, which allows additions to nonconforming structures, you can build an addition without coming to the Board if the addition itself complies. So if the addition complied with the rear yard setback and we weren't over the lot occupancy and it wasn't Tuesday in July, we might be able to do this as a matter of right, but we are over the lot occupancy, we don't have the rear yard, it is Tuesday in July, and that's why we're here.

CHAIRPERSON GRIFFIS: The universe is in order.

Anything else?

(No response.)

CHAIRPERSON GRIFFIS: What else can you tell us?

MR. GLASGOW: Do you all have any questions concerning this, because we believe this is pretty straightforward because it all stems from the existing building.

CHAIRPERSON GRIFFIS: Okay. Let's keep going through this. We will go to the Office of Planning, which has a report, obviously, attendant to this, and an excellent one at that, and that may invoke a couple more questions, and let's proceed.

A very good afternoon, sir.

REPORT FROM THE OFFICE OF PLANNING

BY TRAVIS PARKER

MR. PARKER: Good afternoon, Mr. Chairman, members of the Board. My name is Travis Parker with the Office of Planning. Taking a cue from the applicant and the Board, I will keep my remarks short.

The variances involved here are the result of the existing conditions on the lot and the historical nature of the building. This is a building that would not -- that the applicants are not allowed to modify significantly or take down, and this results in an exceptional situation and practical difficulty

on the property.

For those reasons, the Office of Planning finds that it meets the test. It would not result in a substantial detriment to the neighborhood since all of these situations are existing on the current building.

The only additional comment I would make is, in an overabundance of caution, the Office of Planning recommended consideration of a court width variance as well. The existing court does not meet the requirements and the building is getting higher around the court and we consider this to affect the court. The height is in direct relation to the court itself, and even though it would not require additional court width, it does not meet the height that -- or the width that would be required. So we recommend approval of a variance of court width if it is deemed necessary in addition to approval of the other variances.

CHAIRPERSON GRIFFIS: Excellent. Thank you.

The court width requirement is always an interesting one. We have seen several iterations on it, and this seems to be a straightforward aspect of it. But clearly there is a nonconforming court now.

MR. PARKER: Correct.

CHAIRPERSON GRIFFIS: And then as you add height to it, the court dimension is calculated by the height or the depth of the court.

MR. PARKER: Correct.

CHAIRPERSON GRIFFIS: And so what you're saying is as you add height and it's a nonconforming court, aren't you in need of relief for a nonconforming court.

MR. PARKER: The only issue is that they do not reach the height required to expand on the minimum court width required. The existing building and the proposed building both would require the same court because there is a minimum court requirement and they are not going over the height that would require them to go above the minimum court requirement.

The court requirement doesn't change; my office just considered additional height on the court to affect the court directly, and therefore we figured it was appropriate to add that variance to the list.

CHAIRPERSON GRIFFIS: So you're saying that the court dimension required is 15 feet.

MR. PARKER: Correct.

CHAIRPERSON GRIFFIS: The existing condition is 10.8 feet.

MR. PARKER: Correct.

CHAIRPERSON GRIFFIS: And even with the addition, it's still going to be 10.8 and 15 feet.

MR. PARKER: Correct.

CHAIRPERSON GRIFFIS: Interesting. Boy, it's a day of these. So basically we have a nonconforming aspect that isn't changing, but relief is being requested of it or indicated it might be requested.

MR. PARKER: Similar to the rear yard, although there are extenuating circumstances there as well.

CHAIRPERSON GRIFFIS: Okay. Interesting. We just had an application this morning with 16 variances all based on existing conditions that weren't changing. That's why it's so fresh in my mind.

All right. I think in undue caution, exactly as we have treated that one, let's take it into discussion. The applicant has briefed it in their written submission. I think it's pretty clear what the practical difficulty -- well, you know, I don't think they really say this, but one of the practical difficulties would be removing the building in order to make it conforming.

(Laughter.)

CHAIRPERSON GRIFFIS: You know, I didn't say that to be funny, actually. It kind of looked that way, didn't it? You know, we have to take out five feet, right? That's interesting. It's a 22-foot-wide property, you've got a 15-foot required court, but the court required was only because the building is there. Okay. Sometimes it all makes good rational sense.

Let's proceed. You know, I'm flexible whether we throw this in or not. I'm tending to not indicate that there is a required relief from the variance although I think it's excellent to bring this up because, you know, it actually isn't -- like I said this morning, we had a very similar aspect to this, so it seems to be a continuing theme.

Okay. What else. Any other questions of the Office of Planning from the Board?

(No response.)

CHAIRPERSON GRIFFIS: I think the report is excellent and I appreciate the summation, and it is all in here. I know the Board has read it and begun its deliberation on it, so I think we can rely heavily on it.

Does the applicant have any

cross-examination of the Office of Planning?

MR. GLASGOW: No, sir.

CHAIRPERSON GRIFFIS: Are there any other government reports attendant to this? I'm not showing any. We do have and have noted Exhibit Number 31, which is a Historic Preservation memo which did go through, and, has been indicated by the applicant, the actual plans that we're looking at were those that were approved by HPRB and they are now pursuing those plans.

ANC-2F. Is there a representative from the ANC here?

(No response.)

CHAIRPERSON GRIFFIS: ANC-2F is not represented today; however, they did submit Exhibit Number 28, which was dated May -- oh. The letter is dated May 18; the vote was taken on May 5th, 5-0-0 to approve. I believe it does meet the requirements for granting great weight before us.

Are there any comments from the Board on the ANC letter submissions? Questions?

(No response.)

CHAIRPERSON GRIFFIS: Does the applicant have any comments on the ANC?

MR. GLASGOW: No, sir.

CHAIRPERSON GRIFFIS: Okay. Thank you.

Let's move, then, to -- is there anyone here to give testimony in support of Application 17176? Any opposition?

(No response.)

CHAIRPERSON GRIFFIS: Not noting any persons either in support or in opposition, we go to any sort of closing remarks you might have, Mr. Glasgow.

MR. GLASGOW: Mr. Chairman, if we may, we would like to request a bench decision and summary order.

CHAIRPERSON GRIFFIS: Not an unheard of request.

VICE CHAIRPERSON MILLER: I just want a clarification on the court width variance question. I thought I was hearing that the court width was staying the same, and then I was looking at the application and it looks like it says it will be reduced from 10.8 to 8.8 feet.

CHAIRPERSON GRIFFIS: It's indicated that the two-foot overhang is projecting into the court.

MR. SHER: That's correct. On the third floor only that addition hangs two feet over what would otherwise be the court.

CHAIRPERSON GRIFFIS: Is that an allowable projection to an open space required?

MR. SHER: No.

CHAIRPERSON GRIFFIS: It isn't?

MR. SHER: It's not an eave, it's not a cornice, it's a piece of the building.

CHAIRPERSON GRIFFIS: So it does change the dimension of the court, which would make the court variance requirement needed. That means you're reducing the -- the first argument is, okay, you have a nonconforming, it's not changing the requirement, it's still there, and this would be the reduction. That's interesting. That's why I had this note on this. Is that correct? Are we looking at that correctly?

MR. SHER: The reason that we didn't think that we needed a court variance was because the width of the court, as Mr. Parker indicated before, the required width of the court doesn't change regardless of whether the building goes up, whether we have the addition or it doesn't have the addition because we have this 15-foot minimum requirement for the width of a court regardless of how -- not regardless, but until you get to a height of 60 feet, it doesn't change that. We're below that. We have asked for the

variance from 2001.3 for the addition to the nonconforming structure.

CHAIRPERSON GRIFFIS: Oh, I see.

MR. SHER: If the Board thinks that we need a court variance, we're happy to have a court variance. We didn't think we needed it.

CHAIRPERSON GRIFFIS: Clearly stated, what you're saying is under 2001.3. Courts are covered.

MR. SHER: Yes.

CHAIRPERSON GRIFFIS: That's the point. It's almost redundant if we go into the specificity of it.

MR. SHER: That's what it is. You can say we may need a court, you could say we don't need a court variance.

MEMBER MANN: Wouldn't the rest of the variances be covered under that as well, under that logic?

MR. SHER: No, because we are -- the lot occupancy changes by virtue of the requirement and the increase in the coverage of the building, and the rear yard -- if we had brought the building out to the end of the lot -- I'm sorry. If we had done the other thing, if we had set the building back 15 feet from the end of the lot, then we might not have needed the

rear yard variance. But we didn't in this case.

MEMBER MANN: But didn't we just decide that the court is getting two feet narrower technically?

MR. SHER: Yes.

MEMBER MANN: So a variance -- I mean that --

MR. SHER: Either way. I think it can go either way, whatever the Board wants to do.

CHAIRPERSON GRIFFIS: Okay.

VICE CHAIRPERSON MILLER: Mr. Sher, I'm looking at the regulation. Tell me what you think about this. 2001.3(b)(2): Enlargements or additions may be made to the structure provided the addition or enlargement itself shall (2) neither increase or extend any existing nonconforming aspect of the structure. So doesn't that extend the nonconforming court?

MR. SHER: And that's why we asked for the variance.

VICE CHAIRPERSON MILLER: From 2001.3.

MR. SHER: From 2001.3, correct.

VICE CHAIRPERSON MILLER: Okay.

MR. PARKER: I think the Office of Planning has expressed a problem before with using a

variance from that section as a catch-all to avoid applying for the individual variances.

CHAIRPERSON GRIFFIS: Very well. Let's move ahead as if we have a variance for the court in front of us. We can make a note of -- there it is -- undue caution that, you know, just that two-foot projection, which is very minimal in terms of actually an overhang. It's not even a structure that's encroaching on the open space, but as Office of Planning has said, as is true, it needs to be open to the sky.

Of course, there is a question about, well, it was not advertised for a variance from a court, but it was advertised for two variances and they are both area variances, and I think it covers if someone had concerns that the advertising and announcements would have sufficiently drawn their attention to this and what was involved in it. So I don't think any sort of delay on this in terms of readvertising would be necessary unless others feel differently. Okay. Very well.

Let's move ahead. I would move approval of 17176, the International Real Estate and High Tech Investment Group, and that is pursuant to a variance from the lot occupancy, which is Section 772, a

variance from the rear yard requirements, 774, a variance from the nonconforming structure provision in Section 2001.3, and that being paralleled with a variance for the court, which I believe is 776, for undue or total assurance of everything that we're looking at is, in fact, what we have deliberated on and looked to the tests and they have met those tests.

MEMBER ETHERLY: Seconded.

CHAIRPERSON GRIFFIS: Thank you so much.

There is a motion before us. It has been seconded. Further discussion on this?

(No response.)

CHAIRPERSON GRIFFIS: I think the applicant's filing with the Office of Planning can be relied upon greatly in terms of making the test for all the variances here: One, the existing structure, the historic and contributing nature of the structure, and the other information that we have in the record.

Any other deliberations, questions, discussion of the Board?

(No response.)

CHAIRPERSON GRIFFIS: Very well. I would ask for all those in favor to signify by saying aye.

(Chorus of ayes.)

CHAIRPERSON GRIFFIS: Opposed?

(No response.)

CHAIRPERSON GRIFFIS: Very well. Thank you all very much.

MR. GLASGOW: Thank you.

CHAIRPERSON GRIFFIS: Thank you.

Good. Why don't we record the vote. I think we can waive our regulations and issue a summary order on this.

MS. BAILEY: Yes, Mr. Chairman. The Board has voted 5-0-0 to approve the application as advertised. The motion made by Mr. Griffis, seconded by Mr. Etherly. Mr. Parsons, Mr. Mann and Ms. Miller are in support, and that's with the issuance of a summary order.

CHAIRPERSON GRIFFIS: Thank you.

MS. BAILEY: Next case, Mr. Chairman?

CHAIRPERSON GRIFFIS: I think we're ready.

APPLICATION OF BENJAMIN AND LOUISE GODDARD

17199 ANC-2F

MS. BAILEY: Application 17199 of Benjamin and Louise Goddard, pursuant to 11 DCMR 3103.2, for a variance from the floor area ratio requirements under Section 402, a variance from the lot occupancy requirements under Section 403, a variance from the court requirements under Section 406, and a variance

to permit an addition to a nonconforming structure under Subsection 2001.3, which now exceeds the FAR and lot occupancy requirements. This is to construct a one-story rear addition to an existing three-unit apartment building in the R-5-B District at premises 1310 Rhode Island Avenue, Northwest, Square 242, Lot 79.

CHAIRPERSON GRIFFIS: Good afternoon.

MS. GODDARD: Good afternoon.

CHAIRPERSON GRIFFIS: Would you just state your name and your address for the record.

MS. GODDARD: Louise Goddard, 1310 Rhode Island Avenue, Northwest.

CHAIRPERSON GRIFFIS: And with you is?

MS. GODDARD: Is --

MR. DELAVE: Good afternoon. My name is Paul Delave. I'm working with Louise as a design consultant to present the project.

CHAIRPERSON GRIFFIS: Excellent. If you are ready to move ahead, we will turn it over to you.

MS. GODDARD: I'm sorry if I'm not going to be following the way that it goes because I have not done this before.

CHAIRPERSON GRIFFIS: That is absolutely okay. We are very patient and I will walk you through

it.

Basically what you are here for, of course, is a couple of variances, and the lot occupancy, the court requirements, the addition, and the FAR, the floor area ratio.

MS. GODDARD: Yes.

CHAIRPERSON GRIFFIS: So what you're going to tell us is the unique aspects of this property.

MS. GODDARD: Okay.

From what I can -- as is in the report from your office --

CHAIRPERSON GRIFFIS: Actually, let's be clear. Which report? We haven't issued a report.

MS. GODDARD: There was a report from --

CHAIRPERSON GRIFFIS: Office of Planning?

MR. DELAVE: Steve Cochran from Office of Planning.

MS. GODDARD: Yes.

CHAIRPERSON GRIFFIS: Good.

MS. GODDARD: That we're only one of two structures that are 17 feet wide, and with walls, inside, it's about 15, 14 to 15, and that that makes us unusual for the neighborhood because we're so narrow. Our kitchen is quite narrow and quite small, and so we are asking for a variance to push the

kitchen out, and we will need a court variance because at this point -- do you want to -- I'm going to let Paul speak. He's better than I am.

TESTIMONY OF PAUL DELAVE

MR. DELAVE: One of the primary --

CHAIRPERSON GRIFFIS: This is a three-unit building, is that correct?

MR. DELAVE: Yes. The C of O is for, as it states, a three-unit apartment building. There are two studio apartments in the basement. The Goddards use those currently just for friends and family and for --

CHAIRPERSON GRIFFIS: So this is your primary residence.

MS. GODDARD: It's our primary residence and we do not rent.

CHAIRPERSON GRIFFIS: Okay. That doesn't really matter. But there isn't a different unit on every floor, and one unit is trying to expand.

MS. GODDARD: Oh, no.

CHAIRPERSON GRIFFIS: Okay.

MR. DELAVE: The kitchen would primarily be for the main living unit, which Mr. and Mrs. Goddard live in. So the narrowness of the lot and the existing nonconformities -- the building already, even

without, you know, adding any more -- anything else to it is nonconforming in FAR, court, and lot occupancy. So the proposal that we're making to make it a more functional kitchen for them is, and Mr. Cochran's report states, very minimal additional relief to an already nonconforming structure.

CHAIRPERSON GRIFFIS: Right. Okay. Let's get to the specifics of it. Of course, 1.8 is the allowable FAR for this zone district; is that correct? Well, it is. And the existing structure has 2.7, and you're adding how much more that adds back into the FAR?

MR. DELAVE: We're asking for about a net increase of only about 65 square feet, and that increases the net FAR by only I think about --

CHAIRPERSON GRIFFIS: Okay. By .4.

MR. DELAVE: By .4, right.

CHAIRPERSON GRIFFIS: Or .04. So 65 square feet.

MR. DELAVE: Yes.

CHAIRPERSON GRIFFIS: So that's where you're meaning it's very minimal.

MR. DELAVE: Yes.

CHAIRPERSON GRIFFIS: Okay. And that is because of why?

MR. DELAVE: The layout of the existing kitchen is very I guess -- it's very dysfunctional. There's only clearance between some of the counters of only two to two and a-half feet. The Goddards --

CHAIRPERSON GRIFFIS: So the FAR is all coming and the lot occupancy is coming and the open court is all coming because you pushed the building back a little bit because you don't have the width, you need the length to make it a functional kitchen and a functional room in the back.

MR. DELAVE: That is part of the reason and, you know, just to get a reasonable workspace between counters.

MS. GODDARD: At present, we can't even bring through the back door a chair. The way that it's configured, there is a permanent island, there is a radiator, there is -- the way it's configured inside, we tried to bring furniture into the kitchen. We couldn't do it. We couldn't even bring in a new refrigerator. We had to come in through, you know, through a window, through the front door and bring it around. It is just very hard, very difficult to work in.

CHAIRPERSON GRIFFIS: I see. Kind of useless space back there.

MS. GODDARD: Yes.

CHAIRPERSON GRIFFIS: All right. Okay.

Ms. Miller?

VICE CHAIRPERSON MILLER: I might be jumping ahead, but Office of Planning says that you can do this, it seems, as I read it, without the FAR variance and without the lot occupancy variance, and can you explain, you know, why you can't or what it would look like or what the problem is just with those two variances?

MR. DELAVE: We did bring boards. We worked directly with Mr. Cochran. He initially expressed basically the same question, you know, can you do this without these other variances. So I can walk you through that.

MS. GODDARD: I think the reason that we're asking for the original plan and that we didn't go to the one that didn't increase was that it is still going to be difficult to make a workable eat-in kitchen with modern appliances in that way.

CHAIRPERSON GRIFFIS: There is a practical difficulty in creating this kitchen that's useable based on the unique dimension of the property.

MS. GODDARD: Exactly.

CHAIRPERSON GRIFFIS: Okay.

MS. GODDARD: And I guess the other thing I would like to bring up is that the entire neighborhood is unique in the sense that --

CHAIRPERSON GRIFFIS: Okay.

MS. GODDARD: All over Washington, D.C.

CHAIRPERSON GRIFFIS: Why don't we move away from that.

MS. GODDARD: Okay. All right.

CHAIRPERSON GRIFFIS: Okay.

MS. GODDARD: I will bring it up later.

CHAIRPERSON GRIFFIS: You were going to walk through this whole issue of what it would look like if you tried to conform; is that correct?

MR. DELAVE: Yes. This second scheme shows a six-foot-wide court, which is still technically noncompliant with the court because of the narrowness of the lot, the 17-foot lot, and creates a quite narrow galley kitchen. From the outside edge to outside edge is just over ten feet, so, you know, inside width is something, you know, between nine and a-half feet, something like that, which for, you know, two standard counters and for workspace and to get some degree of mobility working around, you could say in a small apartment, you know, sort of could work as a galley kitchen. In this case, we --

CHAIRPERSON GRIFFIS: So based on the existing condition, the unique condition, to do something that is useful to the owner outside of a studio apartment kitchen, and this is a single-family residence, it becomes practically difficult, there is a practical difficulty in doing that and complying with the regulation.

MR. DELAVE: Yes, that's correct.

MS. GODDARD: Yes, sir.

MR. DELAVE: We believe that.

CHAIRPERSON GRIFFIS: Okay. That's Louise Goddard, correct? Ms. Goddard?

MS. GODDARD: Yes, sir.

CHAIRPERSON GRIFFIS: Great. I absolutely agree with your comment previously that this is a very unique city. It's one of the best cities in the world. However, the uniqueness factor, of course, is particular to our review of an application. So I know one can always say, you know, "I have the best neighborhood and it's intriguing and unique," and all of it is unique, but nonetheless, we look to specifically why your property is unique and contrast to others similar. It doesn't mean it's the only one that ever happens in the entire city, but what is it that's unique to it. I think it's laying out in terms

of the overall neighborhood and in this zone district to have -- I think Office of Planning is stating the fact that it's uniquely narrow.

MS. GODDARD: Yes.

CHAIRPERSON GRIFFIS: Okay.

Ms. Miller, questions?

VICE CHAIRPERSON MILLER: No.

CHAIRPERSON GRIFFIS: Excellent.

Let's move on, then, to the Office of Planning report.

REPORT FROM THE OFFICE OF PLANNING

BY STEVE COCHRAN

MR. COCHRAN: Good afternoon, Mr. Chairman. For the record, my name is Steve Cochran, representing the Office of Planning.

The Office of Planning has a mixed recommendation on this report. We're recommending that the Board approve the request for the variance for the open court dimensions and request for a variance from Section 2001.3 to permit the addition but only if the addition is constructed in a way that does not require an FAR variance from Section 402.4 or a lot occupancy variance from Section 406.1.

Let's compress the lot occupancy and FAR variances. OP believes that it is not unique. If you

turn to page 5 of our report, you will see that, I mean, it's generally a flat, rectangular, 1500-square-foot lot. It has ample depth. The only respect in which it may be unique is with respect to width, and that has a later implication.

But with respect to lot occupancy and FAR, the width does not make it unique because the applicant has demonstrated that it has been able to meet the ADA-related needs of the applicant by constructing an addition that is longer than the existing addition but that does not need to be wider than the existing addition.

With respect to the practical difficulties or hardship, again, OP believes that the applicant could reconstruct the addition in a manner that would provide the requested access for ADA compliant needs and not increase the existing nonconformities.

Remember, the building already is over its FAR, lot occupancy, and open court requirements. What we're suggesting in our report is that the building can be constructed, the addition can be constructed in a way that it does not increase the FAR or lot occupancy nonconformity, that all it has to do is increase its nonconformity with respect to open court requirements.

Clearly the rear addition needs to be made wider. It's difficult to do that in a 17-foot lot and respect to the open court requirements -- I'm just summarizing now --

CHAIRPERSON GRIFFIS: Yes, but how do you put an addition on, make it wider, and not impact the FAR?

MR. COCHRAN: Because you are already 144 square feet over. Now, you can keep the same amount of nonconformity with respect to FAR and lot occupancy.

CHAIRPERSON GRIFFIS: But see, you're saying --

MR. COCHRAN: You're talking about 64 square feet here of difference. I realize that a number of the neighbors have supported the addition. The ANC hasn't weighed in, as far as I know. It wasn't in the record.

CHAIRPERSON GRIFFIS: But you're saying take down the footprint that's there and just build back on the same footprint.

MR. COCHRAN: No, not on the same footprint; the same amount of nonconformity, different footprint. You clearly have to widen it, but not impact the FAR.

CHAIRPERSON GRIFFIS: So it won't be as deep.

MR. COCHRAN: Correct.

CHAIRPERSON GRIFFIS: I suppose somewhere up there that's what you're --

MR. COCHRAN: The wheelchair access, as I understand it, has to do with how wide does an aisle need to be in addition to, of course, getting up to the right elevation, et cetera, and we recognize that you can't possibly do a kitchen addition in the footprint that is there now. But you can do a kitchen addition within the existing amount of nonconformity of FAR and lot occupancy. All you need to do is change the width.

CHAIRPERSON GRIFFIS: And what's served doing that?

MR. COCHRAN: Pardon me?

CHAIRPERSON GRIFFIS: What's served? Just not increasing the FAR?

MR. COCHRAN: You're respecting the integrity of the zone plan. To us, this seems like a matter of preference. It may well be a better kitchen, but it is not an unusable kitchen even for ADA requirements if you keep the existing amount of nonconformity, if you don't increase the nonconformity

with respect to FAR and lot occupancy, and we have a set of plans where the applicant -- at least the applicant's architect demonstrated that these needs could be met.

This is a relative abstraction in OP's recommendation here. We recognize that it would not likely have a negative impact on neighboring properties. Neighboring properties have submitted testimonials to that effect. What we're talking about here is the integrity of the zone plan and whether the applicant has adequately demonstrated a need to increase nonconformity with respect to lot occupancy and FAR. We believe the applicant hasn't demonstrated that. In fact, the applicant has demonstrated that they can do it.

CHAIRPERSON GRIFFIS: Why are you asking them to demonstrate a need? They just need to demonstrate a practical difficulty in complying; they don't need to demonstrate a need. I don't understand where you're getting that.

MR. COCHRAN: Excuse me. In our view, they have not even demonstrated the practical difficulty.

CHAIRPERSON GRIFFIS: Okay. Do you have copies of those drawings that are supposedly showing

us what it would look like if you conform to the FAR?

MR. DELAVE: We just submitted one copy to Mr. Cochran and the ones on this Board, but we have not -- there are not at this moment copies available.

CHAIRPERSON GRIFFIS: Okay. Can you walk us through this, then? I can't really -- maybe my eyes are too tired, but I can't see what you want us to see there.

MR. DELAVE: Okay. As Mr. Cochran said, this revised scheme basically takes down what is in these dashed lines here, which is the existing brick pantry, which is only about eight and a-half feet wide on the exterior walls, and then this lower is an elevated roof screened porch but not interior space.

CHAIRPERSON GRIFFIS: Did you count that in terms of lot occupancy?

MR. DELAVE: Yes, we did.

CHAIRPERSON GRIFFIS: Did you count it in towards FAR?

MR. DELAVE: Yes.

CHAIRPERSON GRIFFIS: Mr. Cochran, are you talking about utilizing all that square footage and putting the addition on and that wouldn't impair the zone plan?

MR. COCHRAN: I'm talking about utilizing

exactly the amount of square footage that they have now in the combination of the pantry --

CHAIRPERSON GRIFFIS: Is it all that dashed red line? Is that what you were talking about?

MR. DELAVE: This --

CHAIRPERSON GRIFFIS: No, no, no. It's to Mr. Cochran.

MR. DELAVE: Excuse me.

CHAIRPERSON GRIFFIS: Is that the square footage you were thinking about that they just needed to reconfigure and pull it back?

MR. COCHRAN: That's correct.

CHAIRPERSON GRIFFIS: So all of that. Okay. Let's go.

MR. DELAVE: Yes, just to clarify that, this area that I'm outlining represents 144 square feet of space.

CHAIRPERSON GRIFFIS: Okay.

MR. DELAVE: And this area, which is slightly wider -- well, this area, which is the new proposed, represents 144 square feet of space.

CHAIRPERSON GRIFFIS: Okay. So you get a single door, not a double door, and not as wide.

MR. DELAVE: Yes.

CHAIRPERSON GRIFFIS: You have the same

run of cabinets and counters and all that?

MR. DELAVE: No. It's --

CHAIRPERSON GRIFFIS: Not really.

MR. DELAVE: It's a shorter addition and, you know, primarily it's much narrower, which --

CHAIRPERSON GRIFFIS: Good.

MR. DELAVE: -- given, you know --

CHAIRPERSON GRIFFIS: Not good. I understand.

MR. DELAVE: Okay. Given, you know, typical wall construction and cabinet depths, this only leaves about just over five feet of space as an aisle, which, again, you know, is not unworkable, but given the applicant's desire for this to be more accessible and for more mobility inside, that's pushing the limits, I think, of a workable kitchen for someone who is impaired. Not impossible but I think more difficult.

CHAIRPERSON GRIFFIS: Is this being outfitted for someone? There's a lot of accessible and all that. There's somebody that is gong to utilize this kitchen that has a particular physical handicap.

MS. GODDARD: I do have family -- my mother-in-law's foot was just amputated and there's

family that --

CHAIRPERSON GRIFFIS: Okay. So there's family that visit --

MS. GODDARD: Yes.

CHAIRPERSON GRIFFIS: -- that's going to utilize and that's part of your life.

MS. GODDARD: Yes.

CHAIRPERSON GRIFFIS: Okay.

MS. GODDARD: And we would like to stay there until we are old.

CHAIRPERSON GRIFFIS: That's an interesting point.

The deck that you have on the proposed addition on that top page, which will need to be submitted into the record -- just keep that right there on your right side, the proposed addition -- did you count that in towards lot occupancy?

MR. DELAVE: No.

CHAIRPERSON GRIFFIS: Okay. Good. And then so the 144 square feet is what we're talking about that would comply with what Office of Planning's recommendation is. Okay.

Board members, everyone clear on that? Very well.

What else, Mr. Cochran?

MR. COCHRAN: We feel that it's important to judge this by the standards of what it is, which is an apartment building. It is not something that comes under Section 223, so it has to be judged by the apartment building standards.

With respect to the enlargement or the addition, we feel that it is unique with respect to width but not otherwise; that there is a practical difficulty for the addition, but there is not a practical difficulty for enlargement; that the public good would not be impaired by the addition even as it is imposed here, but that the intent of and integrity of the zone plan would be impaired.

VICE CHAIRPERSON MILLER: Mr. Cochran, I just want to ask you a question. The way I read the variance test, it doesn't just say impaired; it says substantially impaired. I'm not an architect, but when I look at figures like 0.04 percent, that doesn't sound to me like substantially impairing the intent of the zone plan. Do you want to respond to that?

MR. COCHRAN: All I can do is allude to the camel's nose under the tent. It's the burden of the applicant to demonstrate that there is a practical difficulty. The applicant has a five-foot six-inch wide aisle in the kitchen. The applicant has

double-load counterspace. The applicant would have a nice kitchen even with ADA needs if the applicant did it without increasing the nonconforming. The applicant would have a yet nicer kitchen if the applicant did it with the proposal that it submitted first as opposed to the one it gave to OP later.

VICE CHAIRPERSON MILLER: I'm sorry. I just don't -- I'm not questioning the practical difficulty issue at this point and I don't want a prolonged, you know, a big dialogue on this, but it seems to me that there should be a difference between impairing the intent of the zone plan and substantially impairing the intent of the zone plan. So when I look at just figures that seem fairly minor and no neighbors being concerned, it looks to me like it's not substantially impairing. So that's my question.

COMMISSIONER PARSONS: Ms. Miller, I agree with you if you're wondering if you're all alone out here.

CHAIRPERSON GRIFFIS: Okay. I think we're clear on that.

Last question for the applicant. The width dimension of the proposed kitchen as shown and the sheet with your talks with Mr. Cochran, what is

the dimension?

MR. DELAVE: Well, this revised plan which we submitted later, the outside wall dimension is ten-foot four and a-half inches and the original one that was submitted --

CHAIRPERSON GRIFFIS: Is twelve-foot four and a quarter inches.

MR. DELAVE: Yes.

CHAIRPERSON GRIFFIS: Okay. That puts it into some perspective and I think -- very well. Is there anything else, Mr. Cochran?

MR. COCHRAN: No, sir.

CHAIRPERSON GRIFFIS: Great. Thank you. Excellent report.

Let me reiterate where I think Mr. Cochran is coming from and -- well, I should just say, this is what I gleaned from Mr. Cochran's Office of Planning report, and that is it's not really getting into the aspect of, all right, it's 64 square feet, you know? This should take us five minutes to get through and figure out and decide to approve or not approve.

Mr. Cochran is looking at a larger picture, especially when he's talking about impairing the intent or the integrity of the zone plan, because we look at -- it is 0.04 lot occupancy or FAR increase

and the lot occupancy is minimal, but if you look at that exponentially or in a different scenario where you have an R-5-D property which was conforming over a huge lot, even that small portion would be a large impact.

Now, the other aspect to look at in the frame is I think what he was trying to get to is, look, this is a three-unit building, it's an apartment building, it's not a single family, it's a little bit different dimension, even though it's used that way. That's fine. I'm going to move on from there. But there's 1.8 FAR that's allowable. This is already almost -- it's plus 1, it's 2.7, and then they are adding onto the 2.7. I think that's where Mr. Cochran is coming from, is the bigger picture of what the impact would be if someone looked at this and said, well, my goodness, they were over 1 FAR, and they got to add more to it.

So for clarity and obviously the fullness of the record, that's something that I think we ought to take under advisement from the Office of Planning in how they looked at the test being made for the lot occupancy and the FAR.

Okay. I don't have any other government reports attendant to this. The site is located in the

Logan Circle Historic District. How far have you gone with HPRB?

MR. DELAVE: I had a meeting, an initial review with Steve Callcott. It was not formally submitted, but he expressed general positive comments about this. I only presented him the original larger slide.

CHAIRPERSON GRIFFIS: Right. And so you're anticipating going to the Historic Review Board?

MR. DELAVE: Yes.

CHAIRPERSON GRIFFIS: Mr. Callcott is the best one over there to work with.

Now, in terms of what we're looking at in terms of the proposed no FAR and lot occupancy, are the elevations the same? The design is essentially the same? Can you still fit that little bay window, the banding, the other stuff, or does that really start to seriously impact what is happening?

MR. DELAVE: The general aesthetic of the exterior is pretty similar, just a smaller, narrower version. We did not include bay window in the narrower version just in the spirit of trying to minimize all these nonconformities, and as you said, the primary aesthetic from the back, it's a more

enclosed feeling -- you know, single door versus double, a double door.

CHAIRPERSON GRIFFIS: Right.

MR. DELAVE: But generally similar intent.

CHAIRPERSON GRIFFIS: I see. Okay.

No other government reports attendant to that. ANC-2F, report of ANC-2F was not available. Are you aware if they're coming in? Did you present to the ANC?

MR. DELAVE: We missed the deadline to do the initial report -- to give the presentation.

MS. GODDARD: They didn't have one in the middle -- we would have to wait until September and we would have to have postponed you.

CHAIRPERSON GRIFFIS: Oh. They didn't have their meeting.

MR. DELAVE: But Mrs. Goddard has spoken directly with several of the members -- Helen Kramer, Cary Silverman -- and there was a letter of support written by --

MS. GODDARD: By the local neighborhood, the Rhode Island West.

CHAIRPERSON GRIFFIS: Oh. Right. We do.

MS. GODDARD: Yes.

CHAIRPERSON GRIFFIS: We have that, yes,

indeed.

MR. DELAVE: And all the neighbors which I believe --

CHAIRPERSON GRIFFIS: Good. Thanks for bringing that to our attention. It's Exhibit Number 27. It's the Rhode Island West Neighborhood Association, and it says officially: To Whom it May Concern: The Rhode Island Avenue Association, the Civic Community Association, Incorporated, and strongly support the application. That's just my summary. Actually, it's worth reading the rest of it:

"While we appreciate the existing residence is already in noncompliance, we feel that the addition being requested is minor and, in our view, would not harm the public order or threaten the integrity of our neighborhood zoning plan." Tim Hillard is the signatory of that.

Okay. Very well. Anything else that we need to make note of? Is there anyone here attendant to this application, 17199, to give testimony, persons in support, persons in opposition?

(No response.)

CHAIRPERSON GRIFFIS: Not noting any here present, we will note that there are several letters, of course, and letters of support, Exhibit 11, 12, 13,

15, 27. Twenty-seven, of course, is what we just noted as the Rhode Island West Neighborhood Association.

If there is nothing else in terms of submissions, I turn to you for any summations, closing remarks, or last questions for the Board. No questions for the Board?

MS. GODDARD: No, sir.

CHAIRPERSON GRIFFIS: Okay.

Ms. Miller?

VICE CHAIRPERSON MILLER: Mr. Chairman, at this time, I would like to move to grant the application, Number 17199 of Benjamin and Louise Goddard, pursuant to 11 DCMR Section 3103.2 for a variance from the floor area ratio requirements under Section 402, a variance from the lot occupancy requirements under Section 403, a variance from the court requirements under Section 406, and a variance to permit an addition to a nonconforming structure under Subsection 2001.3, which now exceeds the FAR and lot occupancy requirements, to construct a one-story rear addition to an existing three-unit apartment building at premises 1310 Rhode Island Avenue, Northwest.

CHAIRPERSON GRIFFIS: Is there a second?

MEMBER MANN: Second.

CHAIRPERSON GRIFFIS: Second from Mr. Mann.

VICE CHAIRPERSON MILLER: Mr. Chairman, I would like to note that I believe that the application does meet the variance test. There's evidence that it's unique and that it's narrow, that there is a practical difficulty with respect to the property and building a workable kitchen that is accessible to handicapped family members in general. Even though this is extending some nonconformities, the additions to the nonconformities I believe are minor and do not impact the public in any detrimental way nor substantially impair the intent purpose or integrity of the zone plan.

CHAIRPERSON GRIFFIS: Very well. Thank you, Ms. Miller.

Others? Deliberation? Additional comments?

(No response.)

CHAIRPERSON GRIFFIS: Very well. We have a motion before us. It has been seconded. I ask for all those in favor of the motion to signify by saying aye.

(Chorus of ayes.)

CHAIRPERSON GRIFFIS: And opposed?

(No response.)

MS. BAILEY: The Board has voted 5-0-0 to approve the application. Mrs. Miller made the motion, Mr. Mann seconded. Mr. Griffis, Mr. Parsons and Mr. Etherly are in agreement.

Is this a summary order, Mr. Chairman?

CHAIRPERSON GRIFFIS: Yes, indeed. Thank you.

MS. BAILEY: You're welcome.

MS. GODDARD: Thank you.

CHAIRPERSON GRIFFIS: Thank you for your patience this afternoon, and enjoy.

MS. BAILEY: Mrs. Goddard, the plans that were discussed that were given to Mr. Cochran, is it possible for us to get a copy of that, please?

MS. GODDARD: The secondary plans?

CHAIRPERSON GRIFFIS: Right. We're going to need the secondary plans, the sheets, too, and actually that whole board that we were looking at as you have shown it in the hearing, I'm going to need it put in for the record.

MS. GODDARD: Okay.

MR. COCHRAN: Excuse me, Mr. Chair.

CHAIRPERSON GRIFFIS: Yes.

MR. COCHRAN: I have a copy that I won't need, so I can just give it to you.

CHAIRPERSON GRIFFIS: Okay. Do you want to put it into the record?

MR. COCHRAN: Sure.

CHAIRPERSON GRIFFIS: Excellent.

Ms. Bailey, Mr. Cochran is going to give you his copy. Do you need more than that? One copy will do. Perfect. Thank you all very much. Thank you, Mr. Cochran.

Let's take a ten-minute break. We will be back in ten minutes.

(Recess.)

CHAIRPERSON GRIFFIS: Very well. Let's resume.

Ms. Bailey, if you don't mind, would you call the last case in the afternoon?

MS. BAILEY: Sure, Mr. Chairman.

APPLICATION OF TYRONE BROWN

17182 ANC-8E

MS. BAILEY: Application Number 17182 of Tyrone Brown, pursuant to 11 DCMR 3104.1, for a special exception to construct a sunroom addition to the rear of an existing single-family row dwelling under Section 223 not meeting the lot occupancy

requirements at Section 403, rear yard requirements, Section 404, and the side yard requirements, Section 405. The property is located at premises 1385 Barnaby Terrace, Southeast, also known as Square 5923, Lot 49, and the property is zoned R-5-A.

CHAIRPERSON GRIFFIS: Very well.

Are you ready?

MR. MITCHEM: Yes.

CHAIRPERSON GRIFFIS: Were you sworn in?

MR. MITCHEM: I was not.

CHAIRPERSON GRIFFIS: Okay. If you don't mind, you can just give your attention to Ms. Bailey.

(Witness sworn.)

CHAIRPERSON GRIFFIS: Excellent. Very well. While you're getting organized there, of course you know that this is a continuation of a previous case. We had looked at the complication of how we were to assess this in terms of a single lot or was this somehow related to the larger development and how was it developed, and maybe more directly, how was this project subdivided in order to bring a single lot, a fee simple lot to us. Is that your understanding?

MR. MITCHEM: My understanding was that we had a continuance. I wasn't for sure on exactly what

that was. This case was just handed to me last night. I reviewed it today for the first time.

CHAIRPERSON GRIFFIS: Great. Why don't you state your name --

MR. MITCHEM: My name is John Mitchem.

CHAIRPERSON GRIFFIS: And your address.

MR. MITCHEM: It is 13230 Marina Way, Woodbridge, Virginia, 22191.

CHAIRPERSON GRIFFIS: And you are representing?

MR. MITCHEM: Patio Enclosures.

CHAIRPERSON GRIFFIS: Okay. So you're not bringing any additional information for us.

MR. MITCHEM: No. I don't even know if they have basically looked at the case and thought it might not even go through. They just told me at the last second to please come, have my information, whatever they had before, and have it. There was a different gentleman that represented us on the first time that we came up for this.

CHAIRPERSON GRIFFIS: Right. We were familiar that they had several before us. Okay. So we have a warm body in front of us. Let's move on. I think it might be most expeditious, then, let's go to the Office of Planning.

There were several things that we had sent out, and the Office of Planning, of course, was going to go and try and find a lot of the information. So let's do that.

MR. MITCHEM: Okay.

REPORT FROM THE OFFICE OF PLANNING

BY KAREN THOMAS

MS. THOMAS: Good afternoon, Mr. Chairman, members of the Board. I'm Karen Thomas with OP. I would just state for the record we received these files that we requested about six weeks ago on Thursday, so we didn't have time to do a written submission.

CHAIRPERSON GRIFFIS: That's fine.

MS. THOMAS: So we will just go through.

CHAIRPERSON GRIFFIS: Yes.

MS. THOMAS: Mr. McGettigan is the one who handled this case and he is on vacation right now, so I tried to do the best I can with what we found in the files.

CHAIRPERSON GRIFFIS: You've got more than we do.

MS. THOMAS: All right. On the issue of the subdivision, each development, each building on the lot based on the site and grading plan was given

an FAR. Each building had its own FAR.

CHAIRPERSON GRIFFIS: Oh. Excellent.

MS. THOMAS: Right. So in the case of what is considered this building for this location we're looking at, that building had an FAR of 0.6. The addition of 156 square feet would increase the FAR to 0.61, and the FAR allowed under R-5-A is 0.9. So on that basis, we would conclude that it is not a substantial increase and we would have no problems with it if you look at it that way.

CHAIRPERSON GRIFFIS: Okay.

MS. THOMAS: I looked at the report. OP's report did not seem to have a problem with it if it was looked at as a 223 as well, so we had no concerns in that regard as well. I will stand on the record as far as the report goes.

CHAIRPERSON GRIFFIS: Okay. Excellent. Thank you. And obviously this isn't your report and you got the information --

MS. THOMAS: Yes. I will try to answer any questions.

CHAIRPERSON GRIFFIS: Let's talk about the lot occupancy because that was one of the other aspects. Was there a given lot occupancy for this specific piece of property?

MS. THOMAS: From the plans, no. Let me see. Not on the plans, but -- yes, the plans just list the square footage as 559 square feet. I guess the lot occupancy would be increased, based on the notes and computations submitted, would increase to 62 percent. The existing would be 48 percent and it would go up to 62 percent. That's in the computation sheet that I have.

CHAIRPERSON GRIFFIS: Okay. All right. Which is in the file. Let's get that in front of everybody, if they have it. From the February 27th, it's the referral from the Zoning Administrator and their calculation on the specific property.

You say that the FAR for this would be .6 or what is designated as .6 and the addition would make it .61?

MS. THOMAS: That's correct.

CHAIRPERSON GRIFFIS: Isn't the Zoning Administrator indicating that it's 1.1?

MS. THOMAS: Well, if you look at for the total lot area of what they consider this lot where this building, this whole building lies, that total area is given as 21,114, and the total building area of that was given as 12,768. So for this portion of the subdivision, the FAR is 0.6, and then if you add

the 156 square feet of which you are increasing the total building by, when you work that out, it comes up to .61. I don't know where they got the 1.1 from.

CHAIRPERSON GRIFFIS: Okay.

MS. THOMAS: Yes, I guess they probably did not have this information and they probably based it on --

CHAIRPERSON GRIFFIS: Just the lot itself.

MS. THOMAS: Just that lot, yes. The lot itself.

CHAIRPERSON GRIFFIS: And I think that's the other difficulty with what we looked at. In that subdivision, this was taken as a single building on a single lot; is that correct? This portion under the R-5 provision?

MS. THOMAS: Yes. Single building on a single lot.

CHAIRPERSON GRIFFIS: Okay. So now we're looking at it being that area was now re-subdivided into fee simple for each of the buildings. So I guess our question as we ended was, one, everything that you have now given us, which is exactly right -- what was the overall calculation when it was first developed. Then the second question goes to, was this subdivided correctly, you know, and if it was subdivided, how are

we supposed to look at this? If this is now fee simple, do we look at it as calculating exactly for the lot that it sits on? Have they lost the ability to do the overall calculation? Does that make sense to everybody?

MEMBER MANN: It makes sense. May I ask something?

CHAIRPERSON GRIFFIS: Yes.

MEMBER MANN: And we probably went over this. On this map, what is Lot 49? It's from the notes and computations --

MS. THOMAS: I was told that it's this one here.

MEMBER MANN: So Lot 49 is --

MS. THOMAS: I was told it's this one.

MEMBER MANN: -- is that smaller portion of what is identified as Building Number 23.

MS. THOMAS: Yes.

MEMBER MANN: But Building -- when you were providing the .6 FAR existing, that was for all of Building 23, not for Lot 49, right?

MS. THOMAS: No. No. That's correct.

MEMBER MANN: I guess that's the part that confuses me, is why are we looking at the FAR for all of a building rather than just for the particular lot?

MS. THOMAS: Well, we don't have provision -- Section 406 and those related sections don't do FAR. They don't have variations from the FAR because it relates to a single-family addition, right, when it's not to FAR.

I will just add that we did send a request to the Zoning Administrator to help with this interpretation and we just didn't get an answer.

CHAIRPERSON GRIFFIS: Right. It is. It's 410. See, my understanding was that this was done under the provisions of 410, which is the special exception for groups of residential buildings in R-5 and R-4, and it would say that in an R-5 District, if approved, the special exception, a group of one-family dwellings, flats, or apartment houses, or a combination of these, with subdivision walls erected from the ground up, from the lowest floor up, may be erected and deemed a single building for the purposes of this title provided that . . . and it goes down all these things. So that's the way you take one big lot -- it's kind of -- you remember our conversation on this before -- it's kind of like a special exception in kind of the outline of a PUD without all the aspects of a PUD, but what it does is it takes the overall volume of the massing allowable in the zone

and it then looks to how you place that massing within the one area. So it kind of all supposedly seems like a single building but isn't.

So the question was whether you could legally then subdivide each and every one of those properties. Can you look at this as a single building but then do fee simple ownerships of platted lots. So how do you do -- you know what I mean? It's kind of like you're doing both things. I'm subdividing all of this, but I'm building it under one lot, under the provision of 410.

But, you know, 410.6 goes to the fact of no subdivision of the property shall be authorized until the Board has determined -- but that's not clear to me whether it's the first original subdivision or is it subsequent, is there anything that precludes subsequent subdivision? So, you know, I guess there's one question we could ask: Was this correctly subdivided? And that may take us years to figure out.

The next piece is we need to figure out how we look at it. Is it overall cumulative, we use the table that Office of Planning has provided in terms of the original development subdivision and then go on that aspect or do you look at what's a matter of right in the zoning district now and take this as its

own building?

VICE CHAIRPERSON MILLER: Just for my own clarification, was it subdivided or are you just looking at it as a subdivision?

CHAIRPERSON GRIFFIS: No. I think I'm absolutely clear. If my memory serves, the last we were looking at this, there's a plat -- yes, these are all plats, these are lots, and we're looking at Lot 45. So this is a single record lot, which seems to tell me that we need to look at it that way, in which case we're not looking at, which is appropriate, Office of Planning is saying, .6 FAR, but we're actually looking at 1.1 with an allowable .9, which is pretty much the same thing. If .6 is allowable and then it's 6.1 or .9 and 1.1, you know, it's --

VICE CHAIRPERSON MILLER: Well, just because I'm not an architect, why is the floor area ratio different if it's looked at individually as opposed to part of the development?

CHAIRPERSON GRIFFIS: That's an excellent question. For the record, I'm going to draw it for you. What ends up happening, of course, is the FAR is taken from the site dimension, right? So if you look at this as we have one large site but we have ten houses on that site, what you're going to do is you're

going to say, I'm going to take this, I'm going to divide it by how much each of these square footage are, and that will give me the overall FAR, and then I'm going to divide it by ten and give each of these an equal portion, okay?

So that being said, they did a large piece of land with a lot of open area, so you get open area because the lot size times the square footage or times FAR tells you how much is allowable. So the bigger lot you have, the more FAR you have, okay?

So then if you go back then, I said, well, all right, we've all got equal portions all the way down, well, now, I'm looking at a subdivided piece. This guy no longer gets the bonus of all of the open area that may have gone into the calculations of the overall, which is why in the big picture -- let's call it the big picture -- the FAR here is .6, but in the small or specific picture of what the actual lot is, it actually is -- what's the existing? 1.1. That's the proposed, isn't it? Provided. Provided existing is 1.1 and we're looking at a 2 percent increase on -- that's a strange thing to do. Two percent. So that's .02? So it's 1.12.

VICE CHAIRPERSON MILLER: So what's the .9? Allowed?

CHAIRPERSON GRIFFIS: Right.

VICE CHAIRPERSON MILLER: Okay.

CHAIRPERSON GRIFFIS: The .9 for the zoning district is what the FAR is allowed.

VICE CHAIRPERSON MILLER: Okay. All right.

CHAIRPERSON GRIFFIS: So let's look at it in square footage because actually that's the way the Zoning Administrator actually looked at it. The allowable square footage, FAR square footage, is 1,021 square feet, the provided existing is 1,264 square feet, and they're looking to add 243 square feet. You disagree?

MS. THOMAS: They are not adding 243 square feet, right?

CHAIRPERSON GRIFFIS: Oh. Yes, that's true.

MS. THOMAS: They're adding 156.

CHAIRPERSON GRIFFIS: Oh, man. This whole thing is a little bit crazy here. One-fifty-six. The 1,264 is provided -- is actually proposed. There is no -- she doesn't have the existing FAR here. That's what we're looking at; is that correct? Do you agree with that?

MS. THOMAS: We don't see the existing

FAR.

CHAIRPERSON GRIFFIS: She's not showing existing FAR. So what she is saying is the Zoning Administrator -- that is, when I refer -- what is indicated by the Zoning Administrator is that there is a 2 percent increase over .9, and that's what gets us at 1.1 FAR.

VICE CHAIRPERSON MILLER: Okay.

MS. THOMAS: That's correct.

CHAIRPERSON GRIFFIS: So actually, it's not a variance for the deck, which is the enclosure, which is 156; she's saying, no, you need a variance from everything above .9.

MEMBER MANN: So we don't know the existing FAR. You just said that, right?

CHAIRPERSON GRIFFIS: Right. I guess you could --

MS. THOMAS: Well, you could calculate it.

CHAIRPERSON GRIFFIS: Yes, 243 minus 156 plus 1,021, to make it nice and clean. I think it's 1,264 minus 156. Let's see what that comes out to be, see if it works.

MEMBER MANN: Well, couldn't we also do 1,264 divided by 1,134?

CHAIRPERSON GRIFFIS: Oh, sure.

MEMBER MANN: I just don't have a calculator with me.

CHAIRPERSON GRIFFIS: I'm just going to have to do it longhand.

VICE CHAIRPERSON MILLER: Which is going to be 1-point-something.

MEMBER MANN: Yes. Yes. It's definitely going to be 1-point-something. So it is already. So it's already over.

CHAIRPERSON GRIFFIS: Right. It would be already over.

MEMBER MANN: Right.

CHAIRPERSON GRIFFIS: How much did you say it was?

MEMBER MANN: The existing number of square feet? I mean the lot area is 1,134.

CHAIRPERSON GRIFFIS: Right.

MEMBER MANN: 1,264 is the proposed number of square feet.

CHAIRPERSON GRIFFIS: Right. Which you get 1.1 FAR. I think the existing square footage is 1,108, which is over the allowable 1,021.

MEMBER MANN: I see. No. Wait a minute. What was that?

CHAIRPERSON GRIFFIS: 1,108, because if

you look, what is being asked is to add 156 square feet FAR, right? So if you subtract that from 1,264, which is what they're saying would be the ultimately provided, it would give you an existing 1,108. The allowable is 1,021, which is a .9. If you want to find out actually the FAR, you would divide that.

Does the Office of Planning have a recommendation of how we should look at this? Should it be just the single lot or the overall part of the 410 provision?

MS. THOMAS: If we look at it as a single lot, what would be the special exception that we would be looking at? I mean, to lot occupancy? For which zone?

CHAIRPERSON GRIFFIS: We would look at the lot occupancy and the FAR for the R-5-A.

MS. THOMAS: R-5-A. And what would the 223 provide for? Does the 223 provide for the R-5-A zone?

VICE CHAIRPERSON MILLER: For the what?

MS. THOMAS: For the R-5-A, does the 223? So they allowed up to 70 percent in the R-5, and like the record said, we had no issue with it as a special exception, as a 223.

CHAIRPERSON GRIFFIS: All right. So we

take it under special exception 223 as a single record lot and because we have the firm belief that this was correctly subdivided, which we have some hesitation believing because it would have subdivided with a nonconforming structure on it, but that may not -- well, for what that's worth.

What do you think about all this?

MR. MITCHEM: You know, I think it's safe to say, since you guys are a little bit confused, I shouldn't feel as bad as I do about not knowing the specifics of this.

CHAIRPERSON GRIFFIS: No, you should feel pretty bad, and let me tell you why -- because this is not what we're supposed to be doing.

MR. MITCHEM: I understand.

CHAIRPERSON GRIFFIS: This is what you should have done coming in, not you personally, but -- I mean, I understand what your situation is and just tell all your friends and neighbors how great people we are pulling this together.

Oh, did I say that on the record? Okay.

Actually, the reason, and very seriously, why we're being so patient is because I think this was well beyond this application in trying to figure it out, and so we're trying to bring clarity just for

what and how we would deal with this because certainly if this is out there, there are others like it, so if we can start to answer this question for ourselves, it obviously will help us expedite other applications that come forward.

I think at this point I think we ought to pursue it as a single record lot, and I think it for several reasons. First of all, it is one. We have a plat and it's a fee simple ownership. Two, I think Office of Planning really helped. We could not have made this type of decision without the information that they have provided. What they have provided as the overall FAR is actually very proportional to what is existing.

If you follow, what I'm saying is if you take it as a large piece of property and it's a .6 FAR, and then we take it up and look at now that it's all subdivided, that open space is not subdividable. You can't subdivide that open space, so you have already preserved that. So the cumulative impact is not going to change, so as we look at the .6 for overall each was proportioned at -- as they're subdivided, they have a smaller lot -- nothing changed, but the FAR ratio changed, and so whether we're looking at it at a .6 or a .1, it's the same

situation.

I think for clarity's sake, as we go through these special exceptions, and if we're going to say it's a variance that might come in this single subdivision, it's going to be easier and more expeditious to look at it as a single record lot, and, more importantly, that's I think probably legally the way we should do it because it is that. Does that make sense? Excellent. Okay. In which case --

VICE CHAIRPERSON MILLER: I just want to make a comment about 223.

CHAIRPERSON GRIFFIS: Yes.

VICE CHAIRPERSON MILLER: It doesn't cover the floor area ratio requirements, I don't believe. It covers the lot occupancy, but not the floor area requirements.

MS. THOMAS: Right. And the report did say that Section 223 does not include relief from Section 402 FAR, and therefore an additional variance would be required. From my conversations with David on this issue, if that came up, he indicated that the Office of Planning wouldn't have any issues with the variance from the FAR. But I don't know if that's something that would need to be discussed with you guys.

CHAIRPERSON GRIFFIS: The original Office of Planning report addressed the variance test. Is that what you're saying, Mr. Mann?

MEMBER MANN: I'm saying I see on page 3 where they talked about it in the second paragraph. Whether or not they actually put it through the tests, I don't see.

MS. THOMAS: We just did the Section 223 test. In the second paragraph, it says that an additional variance would be required from the FAR. In the second paragraph.

VICE CHAIRPERSON MILLER: I mean, it also looks like the applicant didn't address be variance test as well unless I'm missing something. Exhibit 4 addresses the special exception, 223.

CHAIRPERSON GRIFFIS: Well, I can't imagine that they did. It's not advertised for a variance, right?

VICE CHAIRPERSON MILLER: Right.

CHAIRPERSON GRIFFIS: I mean, it came in as a special exception.

VICE CHAIRPERSON MILLER: Okay.

CHAIRPERSON GRIFFIS: I don't see any way we get around the variance. I mean, it doesn't matter, even if we went to the other single structure

in the larger subdivision, you're looking at increasing, well, by their standard, the table, unless -- I mean, I guess one way to look at it, which I don't know if there is justification to look at it, is to say that you -- no, you can't. Okay.

VICE CHAIRPERSON MILLER: So perhaps they need to readvertise this as a variance and we could continue the case and they could, in the interim, address the test for variance for FAR. What do you think?

CHAIRPERSON GRIFFIS: Ms. Bailey? Does that make sense to you?

MS. BAILEY: Yes, sir.

CHAIRPERSON GRIFFIS: Okay. So the outcome is not great, but it's not devastating. Here's the situation. There are two things that we grant. Well, there are a lot of things, but these are the two general ones: special exceptions, which this is what first came in, which is a lesser burden, and then variance, which is a higher burden.

Obviously, through all the iterations of what you just listened to of how was this done and what are we looking at, we have established the fact that we are looking at a single record lot. So all the calculations that we're looking at take just Lot

49, Square 5923, into account, not the larger history of this.

The point being this was advertised when it first came in as a special exception, which is the lesser burden of proof for the test. What we need to do is readvertise this for a variance because our regulations won't let us now change the application and proceed with it.

MR. MITCHEM: Just because it wasn't listed as a variance.

CHAIRPERSON GRIFFIS: That's right. And more importantly, it allows you time to actually present that type of case because it hasn't been presented, unless you are able to present a variance test case today, right now, I think we could get to it, but I think it would probably be more beneficial to have a little bit of time on it to talk about the uniqueness, the practical difficulty, and how this doesn't impair the intent and integrity of the zone plan or the public good.

MR. MITCHEM: Got you.

CHAIRPERSON GRIFFIS: All that's fast. You don't need to write it all down. But we're going to get a date, Ms. Bailey is going to tell us what that date is, and then, before you leave, you just

stop in the Office of Zoning, they're going to tell you how to post it and all that, which you've already done.

MR. MITCHEM: It's right here?

CHAIRPERSON GRIFFIS: Right, just around the corner. And they are going to lay out all the tests for you. There is a great sheet that they have created, it's very, very easy to understand.

MR. MITCHEM: So the next time we actually come in front of the Board, it's going to be for just a variance only?

CHAIRPERSON GRIFFIS: Right.

VICE CHAIRPERSON MILLER: No.

CHAIRPERSON GRIFFIS: No. I mean, you're going -- I mean, the special exception is there. I mean they have -- the application is special exception and variance. You have already submitted for the special exception. I think the file is complete with that one. What you need to add to the application is the variance.

Now, I think one way we could dispense with this is just have this as a submission.

MEMBER MANN: What about the posting requirements?

CHAIRPERSON GRIFFIS: Yes, that's true. I

was thinking of post and then have -- no, it's going to be too complicated.

MR. MITCHEM: As far as the variance goes and having some sort of argument for rear setbacks or side setbacks -- I mean, is it lot coverage?

CHAIRPERSON GRIFFIS: No. Just FAR. FAR. Floor area ratio. That's it. It's a variance for the FAR. As far as we found out today, is what Mr. Mann is saying. That's as far as we went with it. I am getting a little tired here, but Section 402 is the FAR which needs to be related.

Okay. Ms. Bailey, how does it fit in?

MS. BAILEY: October 19th is too far away, Mr. Chairman? No? October 19th it is, in the morning.

CHAIRPERSON GRIFFIS: Excellent.

MS. BAILEY: Is it possible for you to get the information in to us two weeks before that date?

MR. MITCHEM: Two weeks.

MS. BAILEY: And that would make it October the 5th. And the Office of Planning's report, if they intend to do a supplemental, would be due seven days prior to the 19th as usual.

MR. MITCHEM: Thank you.

CHAIRPERSON GRIFFIS: Okay. Whoever put

this together for you before knew how to do in terms of who to contact, but let me just tell you this because this is an important factor. As soon as this is done -- I mean, you ought to do this next week or whenever your schedule permits -- get it to the Office of Planning. Mr. McGettigan will be back from vacation if he still working on this application and work with him because he will then do his report, and the more time you guys have to just talk this out quickly, the more you can dispense with it, and then the record is full and then it's just ours to call the hearing. Okay.

Any other questions I can answer for you?

MR. MITCHEM: Not for me, no.

CHAIRPERSON GRIFFIS: Excellent. Thank you very much. Appreciate your --

MR. MITCHEM: May I go now?

CHAIRPERSON GRIFFIS: Absolutely. Appreciate you coming down and spending the afternoon with us.

Ms. Bailey, is there any other business for the Board this afternoon?

MS. BAILEY: No, Mr. Chairman.

CHAIRPERSON GRIFFIS: It feels like it has been a year here already.

Very well. If there is no other business before the Board this afternoon, I will adjourn the afternoon session of the 27th of July 2004.

(Whereupon, at 4:12 p.m., the afternoon session adjourned.)