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,

NOVEMBER 14, 2000

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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 10:05 a.m., Sheila Cross Reid, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

SHEILA CROSS REID	Chairperson
ROBERT N. SOCKWELL	Vice Chairperson
RODNEY L. MOULDEN	Board Member
ANN M. RENSHAW	Board Member

ZONING COMMISSION MEMBER PRESENT:

ANTHONY J. HOOD	Commissioner
KWASI HOLMAN	Commissioner

OFFICE OF ZONING STAFF PRESENT:

Sheri Pruitt,	Secretary, BZA
Beverly Bailey,	Office of Zoning
Paul Hart,	Office of Zoning
John Nyarku,	Office of Zoning

OTHER AGENCY STAFF PRESENT:

John Fondersmith,	Office of Planning

D.C. OFFICE OF CORPORATION COUNSEL:

Marie Sansone, Esq.

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(10:05 a.m.)

CHAIRPERSON REID: Good morning. The hearing will please come to order.

Ladies and gentlemen, this is the November 14th public hearing of the Board of Zoning Adjustment of the District of Columbia. My name is Sheila Cross Reid, Chairperson. Joining me today is Robert N. Sockwell, Ann Renshaw. Rodney Moulden, representing the National Capital Planning Commission, will be here shortly. He has not yet arrived. And representing the Zoning Commission is Anthony Hood.

Copies of today's hearing agenda are available to you. They are located to my left near the door. All persons planning to testify either in favor or in opposition are to fill out two witness cards. These cards are located at each end of the table in front of us. When coming forward to speak to the Board, please give both cards to the Reporter, who is sitting to my right.

The order of procedure for special exception and variances is: 1) statement and witnesses of the applicant; 2) government reports, including the Office of Planning, Department of Public Works, etcetera; 3) report of the Advisory Neighborhood Commission; 4) parties or persons in support; 5) parties or persons in opposition; 6) closing remarks by the applicant.

Cross examination of witnesses is permitted by the

applicant or parties. The ANC within which the property is located is automatically a party in the case.

The record will be closed at the conclusion of each case, except for any materials specifically requested by the Board, and the staff will specify at the end of the hearing exactly what is expected.

The decision of the Board in these contested cases must be based exclusively on the public record. To avoid any appearance to the contrary, the Board requests that persons present not engage the members of the Board in conversation.

Please turn off all beepers and cell phones at this time, so as not to disrupt these proceedings.

The Board will now consider any preliminary matters. Preliminary matters are those which relate to whether a case really should be heard today, such as requests for postponement, continuance, or withdrawal, or whether proper and adequate notice of the hearing has been given.

If you are not prepared to go forward with a case today, or if you believe that the Board should not proceed, now is the time to raise such a matter. Are there any preliminary matters?

MS. BAILEY: Yes, Madam Chair. Good morning. The staff does have one, and that is the application of Clay and Alisa Sell, Application 16616. The applicant is requesting that the hearing on that case be rescheduled. Is someone here in the

audience for Application 16616?

Please come to the microphone. Sir, please identify yourself, and make your request to the Board. You may turn your microphone on, please.

MR. HOUSTON: My name is Andre Houston. I'm an architect, and I'm representing the Sells. We submitted a letter asking for a continuance because they were out of town when the issue came up before the ANC.

CHAIRPERSON REID: Okay. You want to get on the next available date, sir?

MR. HOUSTON: That's correct.

CHAIRPERSON REID: Okay.

MR. HOUSTON: We've discussed this with the ANC.

CHAIRPERSON REID: Okay. Ms. Bailey?

SECRETARY PRUITT: Excuse me, sir. Just one -- did you get anything in writing from the ANC indicating that they were okay with the postponement?

MR. HOUSTON: No, they didn't give us anything in writing.

SECRETARY PRUITT: Just curious. Thank you.

MR. HOUSTON: But we've discussed it with them and with the Capitol Hill Restoration Society. We've posted the property. It's all -- it's all done as if --

MS. BAILEY: Mr. Houston, do you know -- Mr. Houston?

MR. HOUSTON: Yes.

MS. BAILEY: Do you know when the ANC will be meeting to discuss the application?

MR. HOUSTON: Well, I told them that once you gave us a date then we'd tell them when the date was, so they could schedule a meeting before the date.

SECRETARY PRUITT: Madam Chair, it appears the first available date is like February 13th.

CHAIRPERSON REID: All right. Is that okay with you?

MR. HOUSTON: That's fine, yes.

CHAIRPERSON REID: Okay.

SECRETARY PRUITT: So we will not renotice.

MR. HOUSTON: That's fine.

SECRETARY PRUITT: So I just wanted to -- so you will be in contact with the ANC?

MR. HOUSTON: Yes, we will. Now, should we repost the property?

SECRETARY PRUITT: I would suggest yes, please, because it would just be a precaution.

MR. HOUSTON: Do we get a new --

SECRETARY PRUITT: Fifteen days in advance.

MR. HOUSTON: -- a new orange poster from down here?

SECRETARY PRUITT: Correct.

MR. HOUSTON: Okay.

SECRETARY PRUITT: Fifteen days in advance of the hearing on February 13th.

MR. HOUSTON: And reaffidavit the thing, and so forth.

SECRETARY PRUITT: Please.

MR. HOUSTON: Okay.

CHAIRPERSON REID: Okay. Then, by consensus -- Board members, any comments, objections, to continuing this case until February 15th?

SECRETARY PRUITT: 13th.

CHAIRPERSON REID: 13th, year 2001. Okay.

VICE CHAIRPERSON SOCKWELL: Madam Chair, this case was a self-certified case, and --

CHAIRPERSON REID: And? Okay.

VICE CHAIRPERSON SOCKWELL: -- there might be some issues that come up because of that and the way the ordinance was interpreted.

CHAIRPERSON REID: Did you have any comments for this particular applicant?

VICE CHAIRPERSON SOCKWELL: I would suggest to the applicant that they go back and look at the definitions under the zoning ordinance that determine whether or not a house is a row house or a semi-detached house by definition.

CHAIRPERSON REID: Okay. Let's see, this was --

just one second, sir. Okay. Okay. That's fine. All right. Thank you.

Okay. Are there any other preliminary matters this morning?

MS. BAILEY: No, Madam Chair, not from staff.

CHAIRPERSON REID: Okay. All right. Then, can you call the first case of the morning?

MS. BAILEY: Application 16615 of Sharon O'Reilly, pursuant to 11 DCMR 3104.1 for a special exception under Section 223 for relief from the percentage of lot occupancy and side yard and court requirements for an addition to an existing single-family dwelling in an R-3 District at premises 3208 Volta Place, N.W., Suite 1255, Lot 225.

All those wishing to testify, would you please stand to take the oath. Please raise your right hand, sir.

(Whereupon, an oath was administered to those planning to testify.)

Please come forward.

Madam Chair, all requirements have been met concerning the posting of the property. There is no request for party status. We do not have a report from the Office of Planning. We do have a report from ANC-2E, and they have indicated that there is no objection to the application, and the case is now ready to go forward.

I believe you have the file, and the case is now

ready to go forward.

CHAIRPERSON REID: Okay. Thank you, Ms. Bailey.

Is there anyone else here that's really with this particular case? All right, sir. There does not appear to be any opposition in this case. Are you aware of any?

MR. HOUSTON: Excuse me?

CHAIRPERSON REID: Are you aware of any opposition --

MR. HOUSTON: No, I'm not.

CHAIRPERSON REID: -- in this case? All right. Then, given the fact that there is no opposition, there's no one here to testify either in support or in opposition to this application, then you could basically expedite it, just give us the salient points, and we can dispose of it fairly quickly.

MR. HOUSTON: Very good. Would you like me to begin testifying or --

CHAIRPERSON REID: Yes. Give your name and your address.

MR. HOUSTON: My name is Andre Houston. I'm an architect. My office is at 1053 31st Street, S.E.

This is a semi-detached house in an R-3 District which currently covers more than the required percent of lot occupancy. In the back it looks like this. It has a small, very narrow deck at the top which is hard to stand on even it's so narrow.

What the person would like to do is to extend that --

CHAIRPERSON REID: Excuse me, sir. Do we have that picture?

MR. HOUSTON: Yes, you do.

CHAIRPERSON REID: Oh, that's the -- hold that up again. I didn't recognize it because it was --

VICE CHAIRPERSON SOCKWELL: No, that's a different picture.

CHAIRPERSON REID: No, that's not the same.

MR. HOUSTON: Well, it's --

CHAIRPERSON REID: Wait a minute. Oh, that's the -- oh, okay. That's this one?

VICE CHAIRPERSON SOCKWELL: That is not the same photograph.

MR. HOUSTON: Well, if it's not the same photograph, it's almost the same photograph.

VICE CHAIRPERSON SOCKWELL: Yes, but it's not the same photograph. Pardon me. Any photographs that you use as evidence should be submitted to the Board through staff for our use.

MR. HOUSTON: All right. Then, you can look on --

VICE CHAIRPERSON SOCKWELL: The photograph that's most similar is a photograph that shows the back side of the fence as well as the side of the fence. That photograph appears

to show, if you will hold it open again --

MR. HOUSTON: That's true.

VICE CHAIRPERSON SOCKWELL: Yes, thank you.

MR. HOUSTON: It's from a slightly different angle, so I'll withdraw it.

CHAIRPERSON REID: Yes. Yes. That's a different picture than the one that we have in the file. Okay. So now, go ahead with --

SECRETARY PRUITT: Excuse me. Mr. Houston?

MR. HOUSTON: Yes.

SECRETARY PRUITT: You can submit that for the record, if you'd like. You wouldn't get it back.

CHAIRPERSON REID: Is that the only one you have?

MR. HOUSTON: That's fine. This is the only one I have. I'd be happy to submit this if it --

VICE CHAIRPERSON SOCKWELL: We could make photocopies of it in black and white, which would probably be sufficient.

SECRETARY PRUITT: So if you could -- we can do that for you right now, sir.

MR. HOUSTON: The applicant wishes to project a balcony two and a half feet out from the step back portion, so that a -- so that she can have a -- she can put a chair out there, essentially. It's, at this point, so narrow that you can't put any furniture out there. And it would look like this.

I believe there's a picture; or, if not, then I know --

CHAIRPERSON REID: Don't have that. Don't have that, sir. Anything that you use to make your case, we would have to have copies of it.

SECRETARY PRUITT: Or you can submit it for the record at this time.

MR. HOUSTON: Why don't I submit this for the record. I believe there's a very similar --

CHAIRPERSON REID: Drawing here? No.

MR. HOUSTON: It was submitted, I know.

MEMBER RENSHAW: Mr. Houston, if you could submit that, that would be --

MR. HOUSTON: That's fine.

MEMBER RENSHAW: -- very helpful. Thank you.

VICE CHAIRPERSON SOCKWELL: The items did not make it into our member packages.

SECRETARY PRUITT: Excuse me. Do you have any more that you'd like to submit for the record and we can copy them all at once?

MR. HOUSTON: Well, unless -- did the plans make it into your -- do you --

SECRETARY PRUITT: We a reduced set of, I believe, plans.

VICE CHAIRPERSON SOCKWELL: The Board members don't have the plans in our packages.

MR. HOUSTON: Just for future reference, am I supposed to bring copies for all the Board members of everything in the future or -- because I did submit all of this stuff.

SECRETARY PRUITT: In particular to large-scale plans, because we don't have the capacity to recopy those, or half-scale plans, yes. But it's on 8-1/2 by 11. We can copy up to 8-1/2 by 11.

MR. HOUSTON: All right. So these plans are submitted. I don't need to submit these plans again, of what --

SECRETARY PRUITT: We should -- if we have them, we don't -- we are not able to distribute them to the Board members. So they should be associated with the file.

Ms. Bailey, do you know --

MS. BAILEY: There are some plans in the file.

SECRETARY PRUITT: It's just that we can't photocopy them to go out to the Board members. It's the same -- I believe they're the same plans you have right there.

MR. HOUSTON: Yes, I believe they are.

The projection doesn't go to the ground, as you can see from the photograph it -- from the perspective. However, it counts as coverage, whether it goes to the ground or not, and, consequently, is in violation of the zoning ordinance because it is an addition to a building which already has -- which is already greater than the percent of lot occupancy permitted by the Code. It also creates side courts and side yards which are

not in conformance by virtue of its shape.

The projection is two and a half feet. If this were a sun screen -- a sun screen is allowed to project 40 inches, and a cornice is allowed to project two feet, so that the zoning ordinance envisions projections of this size as being permissible. It just so happens that this doesn't fit the use definition strictly of the projections which are mentioned in the zoning ordinance.

CHAIRPERSON REID: I'm sorry. The last thing you said is it doesn't do what?

MR. HOUSTON: Because it is used as a balcony, although it could be construed as either a cornice or a sun screen as well, the zoning officials have said it doesn't conform strictly to the definition, then, of a sun screen or a cornice; and, consequently, it cannot come in under that exception.

But I did want to point out to the Board that the zoning ordinance does permit projections of this sort, which, in fact, are bigger than this for projections which are the same shape and size as this. In fact, this project would -- since it has a floor which would be -- a grating would be less -- would be more transparent than the projections permitted by the zoning ordinance.

CHAIRPERSON REID: Okay. So -- so -- are you done?

MR. HOUSTON: Yes.

CHAIRPERSON REID: Okay. So, basically, if I

understand it correctly, you're saying that it is -- the regulations have classified it -- classified this as a semi-detached house.

MR. HOUSTON: Yes, I have.

CHAIRPERSON REID: But it looks like a row house.

VICE CHAIRPERSON SOCKWELL: Under what circumstance did you make the determination -- as a self-certified case, I believe, is that correct?

MR. HOUSTON: Yes.

VICE CHAIRPERSON SOCKWELL: That this was semi-detached?

MR. HOUSTON: Because there's a very narrow side yard.

VICE CHAIRPERSON SOCKWELL: Do you know what the definition of "side yard" is, sir? Minimum is five feet; maximum would be -- the minimum under the zoning ordinance is eight feet. For preliminary -- excuse me -- for previously existing buildings that predated the 1958 ordinance, a five-foot side yard is acceptable.

Anything less than five feet is not considered a side yard under the ordinance. Your side yard is approximately 1.6 feet; and, therefore, it's not a side yard by definition. Therefore, your house is, by definition, a row house.

MR. HOUSTON: That may be, in which case it still --

VICE CHAIRPERSON SOCKWELL: It is. It is, by definition, a row house, sir.

MR. HOUSTON: All right. In which case it still is in excess, as is explained in the explanation submitted with the application. Since a row house is 60 percent lot occupancy, this is --

CHAIRPERSON REID: Okay. So, then, now we have determined that it is a row house; it's not a semi-detached house.

VICE CHAIRPERSON SOCKWELL: It is a row house.

CHAIRPERSON REID: As such, this row house, then, exceeds the lot occupancy by -- what, by about .5 percent, half a percent? Is that correct? 60.5?

VICE CHAIRPERSON SOCKWELL: Yes, it --

CHAIRPERSON REID: Half a percent is what we're talking about here?

VICE CHAIRPERSON SOCKWELL: It's minor.

MR. HOUSTON: Roughly, yes.

CHAIRPERSON REID: Yes. Okay. Now, as such, then we go now to the extent of the non-conforming -- let's see, it puts it -- it's a non-conforming -- the property is non-conforming.

MR. HOUSTON: Yes.

CHAIRPERSON REID: Now we go to the addition. You're extending the non-conformance, and so then we have to go

to --

MR. HOUSTON: Yes.

CHAIRPERSON REID: All right. How this affects -- how the regulations define this particular non-conformance. Okay. So, are we still talking about a half a percent?

SECRETARY PRUITT: Madam Chair, based on my understanding of reading it it's -- the proposed addition will be 63 percent, so that's a three percent increase. And he's actually coming in under Section 223, which is a special exception. And so -- I'm looking for 223 right now, which talks about -- geez.

CHAIRPERSON REID: Okay. So --

SECRETARY PRUITT: Additions to one-family dwellings.

CHAIRPERSON REID: -- lot occupancy is half a percent --

SECRETARY PRUITT: Three percent.

CHAIRPERSON REID: No, wait a minute. I'm trying to get an understanding of this, Ms. Pruitt. The actual percentage of lot occupancy of the current structure is 60.5 percent.

SECRETARY PRUITT: So it would be one -- a 2.5 increase. Is it the proposed -- if you go down to the one, two, three -- third paragraph, first line, the proposed addition, the percent lot occupancy will be 63 percent. That would be the

total once the --

MR. HOUSTON: That's correct.

CHAIRPERSON REID: Oh, I see. I'm sorry. The current -- the actual percentage -- in other words, it is -- the non-conforming aspect of it --

SECRETARY PRUITT: It's already non-conforming.

CHAIRPERSON REID: That's what I'm saying. That's a half a percent.

SECRETARY PRUITT: Right.

CHAIRPERSON REID: So they're asking -- he's asking for two and a half percent more now.

SECRETARY PRUITT: Correct.

CHAIRPERSON REID: Now, these cases -- is there two percent? Is that --

SECRETARY PRUITT: That's the Zoning Administrator, not us.

VICE CHAIRPERSON SOCKWELL: That's the Zoning Administrator's discretion --

SECRETARY PRUITT: Less than --

VICE CHAIRPERSON SOCKWELL: It's an area -- area variance.

SECRETARY PRUITT: It's an area variance.

MR. HOUSTON: The Zoning Administrator would not exercise his prerogative to waive this through on any of those percentages, I can --

CHAIRPERSON REID: Okay. Well, wait a minute. What are you all saying, this is not an area variance?

VICE CHAIRPERSON SOCKWELL: Well, it is, but the Zoning Administrator's --

CHAIRPERSON REID: Because it's one percent more than the two percent?

SECRETARY PRUITT: Yes.

VICE CHAIRPERSON SOCKWELL: The Zoning Administrator is limited to a two percent --

CHAIRPERSON REID: I know. That wasn't what my question was. Because it's one percent more, that's why he's here?

SECRETARY PRUITT: Actually, half a percent more. The Zoning Administrator is limited to two percent.

CHAIRPERSON REID: Right. It's 60.5 -- 60-1/2, so it's two and a half percent over. So that's why he's here, because of that half a percent?

SECRETARY PRUITT: Correct.

MS. SANSONE: If I could jump in for a second, it seems to me if it's a non-conforming structure --

VICE CHAIRPERSON SOCKWELL: Right.

MS. SANSONE: -- wouldn't he also need a variance from Section 2001.3? And that was -- the original application asked for that variance.

VICE CHAIRPERSON SOCKWELL: Right.

MS. SANSONE: Because the Section 223 special exceptions do not apply to non-conforming structures. They just cover -- they also require that separate variance.

CHAIRPERSON REID: Wait a minute. 223. Wait a minute, wait a minute, let -- wait a minute. I'm getting confused here. Ms. Pruitt says it comes under 223, and you're saying that he doesn't?

MS. SANSONE: I'm saying that he also would need a variance for this lot occupancy --

CHAIRPERSON REID: In addition to --

MS. SANSONE: -- in addition to the --

CHAIRPERSON REID: Okay.

MS. SANSONE: But it's such a minor --

CHAIRPERSON REID: Okay.

MS. SANSONE: -- deviation, and it's -- the description in the public notice pretty well encompasses what the project was intended to do.

MR. HOUSTON: I discussed this issue with the -- goodness, what is her name?

SECRETARY PRUITT: Ms. Press? Jerrily Kress with the --

MR. HOUSTON: Yes, Jerrily Kress. And it was her opinion that the sense of the special exception was such that this was a special exception, even though this particular issue that has been brought up is -- technically requires a -- could be

interpreted as requiring a variance from one of the regulations.

Since that regulation is linked to the other three regulations which specifically come under the special exception, then the sense of the issue is that this is a matter for a special exception rather than a variance.

CHAIRPERSON REID: Okay. Well, Ms. Sansone, you said -- okay. Now, the agenda -- the notice specifies that there is a special exception under Section 223. And then you said something about a variance?

MS. SANSONE: Madam Chair, this has been -- we have had some confusion over the relationship between Section 223 and then the Section 2001.1 series, because the regulation that authorizes the special exception for additions to one-family dwellings did not originally -- it does not extend to the circumstances where you have a non-conforming dwelling.

So what this means is the applicants need to apply for the variance from the non-conforming provision in Chapter 20 and their special exception, and that was in the application and originally in the self-certification form.

Earlier this fall, there was some discussion back and forth, and confusion with the Zoning Administrator, do we need both -- relief from both provisions? Just one? But I believe where we ended up was that you needed the variance from the non-conforming provision to have complete relief, as well as

the special exception covers your other area variance, or other area requirements.

And what I'm suggesting here is that even though the notice only pertains to Section 223, because it's describing the project adequately, that the Board should also, you know, consider the variance aspect for the non-conformity here. And that way the applicant would have the complete relief; there won't be an issue with the building permit.

CHAIRPERSON REID: Without it being advertised, we can -- we can go ahead and do that, are you saying? We could then have him to ask for relief under the variance as well today?

SECRETARY PRUITT: Madam Chair, he did originally apply for the variance.

CHAIRPERSON REID: Okay. I'm looking at his --

SECRETARY PRUITT: In his self-certification form --

CHAIRPERSON REID: Yes.

SECRETARY PRUITT: -- also it was scratched out apparently.

CHAIRPERSON REID: Right. That's what I don't understand. Did they tell you --

MR. HOUSTON: I originally applied for a variance. I wasn't aware of the special exception, because it wasn't published.

CHAIRPERSON REID: Well, who did the --

SECRETARY PRUITT: Madam Chair, if you'd let -- I think I can clarify a lot of this.

CHAIRPERSON REID: Okay.

SECRETARY PRUITT: When self-certifications come in --

CHAIRPERSON REID: All right. Let's pay attention to what she's saying, please. Mr. Sockwell, let's -- okay. Go ahead.

SECRETARY PRUITT: When self-certifications come in, as Mr. Houston, is that --

MR. HOUSTON: Yes.

SECRETARY PRUITT: -- Houston -- he came in with his self-certification. The people up front actually register whatever they have on there. They don't verify or check.

CHAIRPERSON REID: Right.

SECRETARY PRUITT: Strictly, it's not the Zoning Office's job.

CHAIRPERSON REID: Right.

SECRETARY PRUITT: We are to accept it, lock, stock, and barrel. And if there are some incorrections -- or inaccuracies in it, the person needs to come back through the system again.

What Mrs. Kress has been trying to do to avoid that, because we have such a hard workload, and it's unfair to people to make them keep going through the system, is prior to

putting out the public hearing notices, she goes through every file and she looks at them, and she reviews them with the information that was submitted.

And at that time, sometimes you see it crossed out. That is her mark. Those are her markings of crossing it out. And I gathered she already -- she spoke with Mr. Houston about what he wanted to do, because depending upon what set of regulations you have, you are correct.

The Section 223 is a relatively new one, and since, you know, the Office of Documents only reprints them every five years, you have to get all of the amendments in order to get that particular section.

CHAIRPERSON REID: Okay. So --

SECRETARY PRUITT: And that's how you will see special -- I mean, self-certifications come in one way, and they'll be crossed out and advertised another way.

CHAIRPERSON REID: Wait, wait.

MS. SANSONE: If I can jump in again --

CHAIRPERSON REID: Let me just get a clarification real quick. You're saying that the applicant asked -- came in and self-certified for an area variance. Then, Ms. Kress reviewed it and then determined that, no, not an area variance. She crossed that out, and then she then determined that it should be a special exception.

SECRETARY PRUITT: Correct.

CHAIRPERSON REID: And that's why he's here today.

However, Ms. Sansone?

MS. SANSONE: Yes. Well, I was going to jump in that this has been confusing back and forth, and we've had applicants -- the ZA sometimes requiring both the variance and the special exception, and sometimes just the special exception.

But my understanding was the place where we were at last was that for now they need the variance and the special exception, and we would entertain later on amending -- and it's on our list of regulations to look at amending -- this Section 2000, to allow special exception relief for these wanted family additions.

But -- and I know this has gone back and forth with the Office of Zoning and ZA several times, but my understanding was the last position was you needed both types of relief, where these are non-conforming structures, because otherwise you're not covered under Section 2001.

SECRETARY PRUITT: And that may be true, because you have to remember that these public hearing notices go out at least 50 days or 52 days before the hearing. So that it would have been published, and we could have had another discussion.

CHAIRPERSON REID: That's fine. I have no problem with that. I don't think anyone -- any of the other Board members have any problem with that. However, what we have is,

again, a situation where the applicant has asked for the variance -- or at least that's been crossed out -- and then has been changed by the Zoning Director -- Office of the Zoning Director, who has -- says it's only a special exception. It's been noticed and advertised as a special exception only.

And then we come here today, and then you say, "Oh, then, no -- yes, we do need a variance." That is extremely confusing to -- not only to us, but also to -- I'm sure to the applicant, and to anyone else who happens to be here today.

I just know in my heart of hearts that we can do better than this.

MR. HOUSTON: I did discuss this issue at some length with Ms. Kress, this exact issue you --

CHAIRPERSON REID: Right. But then you come here today, and then you're being told by Corp Counsel that, oh, you really do need to have a variance as well.

MR. HOUSTON: This is correct.

CHAIRPERSON REID: So you're not prepared for that. Perhaps you can do it.

MR. HOUSTON: I'd be happy to answer both, if it's possible.

CHAIRPERSON REID: Well, given the situation, Mr. Houston, then I feel that there is some responsibility from the D.C. Government to try to assist you, as best as possible.

And what we'll do here today is, given the fact

that there is so much confusion going back and forth, I guess if we're going to err let's err on the side of caution, and go ahead with doing both the variance and the special exception. That way we'll cover all bases --

MR. HOUSTON: Thank you.

CHAIRPERSON REID: -- and there will be hopefully no further confusion. And that being the case, then let's look at what we can do to see how you are able to demonstrate that you meet your burden of proof for a variance, so that we can, you know, see how we can proceed with that.

Now, the special exception portion of it is here in the file. We have read over it. There is no problem with that. There is no opposition. So let's move now to looking at the variance and see how you are able to meet your three-prong test for a variance, which you know is -- the first of which is -- there's something unusual or unique about the property. I think that -- let me just try to go through it real fast. I think that that within itself is non-conforming.

So that within itself -- Mr. Sockwell, work with me with this, please.

VICE CHAIRPERSON SOCKWELL: Yes.

CHAIRPERSON REID: Does that satisfy the litmus test as being unique or unusual, something inherent in the land, the fact that it's non-conforming, exceeds the occupancy that is currently in the regulations at this time? Would that be

appropriate?

VICE CHAIRPERSON SOCKWELL: When was this house built?

MR. HOUSTON: I'm not sure. It appears to have been built in the '50s or '60s.

VICE CHAIRPERSON SOCKWELL: Okay.

MR. HOUSTON: There doesn't seem to be any record of -- how it got built with that side -- with what could be interpreted as a non-conforming side yard is beyond me.

VICE CHAIRPERSON SOCKWELL: But it really -- yes, it really isn't a -- it's in an R-4 --

SECRETARY PRUITT: R-3.

MR. HOUSTON: 3.

VICE CHAIRPERSON SOCKWELL: -- R-3 District. The -- if it is a -- for all intents and purposes, a row house, then it would not have been required to have a side yard if that --

CHAIRPERSON REID: Mr. Sockwell?

VICE CHAIRPERSON SOCKWELL: Give me a second to think about it.

CHAIRPERSON REID: Is it unique? Is this property unique? This is what we have to determine. Is it -- could it -- is it unique --

MR. HOUSTON: If I can testify to that, yes, many --

VICE CHAIRPERSON SOCKWELL: Let me --

CHAIRPERSON REID: Please make your case.

MR. HOUSTON: Like many properties in Georgetown, there are no other properties which look like it. It's a -- it's not part of a repetitive pattern of townhouses in that area. That's all.

VICE CHAIRPERSON SOCKWELL: I don't believe that because -- because this is classified as a row house, and could have been developed as a row house, it doesn't necessarily have to attach to its adjacency.

But if a side yard were to have been provided when the house was built, if it were built under the zoning ordinance that we have since 1958, then it would have been required to have an eight-foot side yard. Had it preexisted the '58 zoning ordinance, it could have had a five-foot side yard, or maybe even less.

But under the zone that it's in, and based upon the other houses, it is a row house within a row that just happens to have a space between it and the adjacent structure. And in terms of its property line, the definition of side yard, really -- I mean, it doesn't have a side yard per se. It's just separated.

CHAIRPERSON REID: Is it unique?

SECRETARY PRUITT: Madam Chair, if you look at your map, please disregard the lot at the top. The actual site is on the sort of northwest -- I mean, northeast corner here, 225. It is an unusually shaped lot for that square.

VICE CHAIRPERSON SOCKWELL: Where is the --

CHAIRPERSON REID: Where are you showing us?

SECRETARY PRUITT: It should be in your file.

CHAIRPERSON REID: Unusually shaped lot. In what way, Ms. Pruitt?

SECRETARY PRUITT: Well, if you look at it -- that's not the lot. That's my point. This is the lot here.

CHAIRPERSON REID: Oh. What's this?

SECRETARY PRUITT: That's a mistake I -- see, the lot is -- it's less than. It's got an angle.

CHAIRPERSON REID: I see. I see. That's very clear. It's very clear.

Okay. I think that we -- do we all agree that the property is unique, and that, number one, it's non-conforming; and, number two, it is irregularly shaped?

MR. HOUSTON: Yes, it is.

CHAIRPERSON REID: Okay. All right. Then, the next test is, is there a practical difficulty in being able to comply with the existing zoning regulations?

MR. HOUSTON: The practical difficulty -- excuse me?

CHAIRPERSON REID: Excuse me. Board members, he's trying to testify.

Okay. Continue, sir.

MR. HOUSTON: The practical difficulty which the

applicant is trying to overcome is that the porch, as it's presently constructed, is too narrow to be useful; and that by projecting it another two and a half feet it then becomes useful.

I believe that there's a photograph of the porch in the submission of -- which you all have, and you can see that it's not particularly useful -- that it's not a useful space.

CHAIRPERSON REID: Okay. The practical difficulty -- let's try to clarify this a little bit more. The existing zoning regulations require that that balcony not be more than what?

MR. HOUSTON: The existing zoning regulations prohibit a balcony.

CHAIRPERSON REID: Oh, okay.

MR. HOUSTON: Prohibit -- they count a balcony as part of the -- of an encroachment on a yard, and they count it as part of percent of lot occupancy, even though it does not go to the ground.

CHAIRPERSON REID: Okay. But --

MR. HOUSTON: If the projection were the same size and the same shape, and if it could be characterized as only a sun screen, which I might add it could be if the railing were to -- there were a railing added that would prevent you from walking on it, then it would be -- then the Zoning Administrator would have no problem in calling this a sun screen, in which case it would be permissible under the zoning.

But because it has a double use, the Zoning Administrator felt he did not have the authority to let this be called only a sun screen. And, consequently, it remains in violation.

CHAIRPERSON REID: Okay. But this -- is this what the percentage variance difference is, the two and a half percent, or the one-half percent?

MR. HOUSTON: It's actually the -- now this is an interesting point. The reason that the last -- that it does not conform to the section for which a variance is required, because that section, whether inadvertently or not was not included in the special exception, the increase there is a half a percent.

So even though when it's made bigger, it -- it goes up to three percent increase, which cannot be excused by the Zoning Administrator. The half a percent in fact, if this point were pushed, could have been excused by the Zoning Administrator, because that would have forgiven it from being required to have a variance from the fourth of the -- that particular refinement of convergence of -- was not realized, and so it wasn't asked for, particularly since Ms. Kress' interpretation was different.

But I think that whoever had said earlier that there was no -- there was no -- that it was perfectly clear to everyone what was happening, and there was no attempt at all on the part of the applicant to disguise what they were doing or even to pretend that they didn't need a variance, since a

variance was originally applied for, that in good faith the -- I think we would ask the Board of Zoning Adjustment to accept the way it has been presented, and to grant whatever variances and/or -- special exceptions and/or variances they feel are required.

CHAIRPERSON REID: Okay. All right. Mr. Sockwell?

VICE CHAIRPERSON SOCKWELL: Mr. Houston, I have two questions. One, is this house one of a group of houses that were built at the same time, or is this house a house that was built independently?

MR. HOUSTON: I believe it's one of a pair.

VICE CHAIRPERSON SOCKWELL: And --

MR. HOUSTON: It appears to be one of a pair which was originally built in the Victorian times and then was added onto.

VICE CHAIRPERSON SOCKWELL: It appears from your photograph that the adjacent property has the identical balcony that yours has, separated by a wood lattice screen.

MR. HOUSTON: This is correct.

VICE CHAIRPERSON SOCKWELL: Okay. So the utility of your balcony is not -- or lack thereof is not unique to your property, but it is shared by the adjacent property, both of which were extended at the same time, and share a common rear wall.

MR. HOUSTON: Yes.

VICE CHAIRPERSON SOCKWELL: And in looking at the

site plan of squares, which was shown to us, there may be some difference between the rear yard of your property and the shape of the end of it from the adjacent property that might be to its left or to its right.

But all of the lots on this square seem to be a mixture of various shapes and dimensions, which tends to take the uniqueness of your lot away. There are no -- I mean, yours is not uniquely shaped. It's just one of many unique or unusual shapes that seem to exist within this square.

As well, yours does seem to have access to an alley system, which seems not to be available to many other lots. So there are uniquenesses among all of the properties, and I'm not sure how we should proceed on uniqueness.

CHAIRPERSON REID: Okay. Mr. Sockwell, the litmus test in regard to uniqueness is not as it pertains to all of the properties on the block being inherently unique within themselves. The definition of uniqueness is unique in regard to size, lot shape, lot shadowness, or topography, or the like, and as it pertains to that particular lot. Now --

VICE CHAIRPERSON SOCKWELL: Well, it has to be unique in context with something else or there is no --

CHAIRPERSON REID: May I finish?

VICE CHAIRPERSON SOCKWELL: Yes.

CHAIRPERSON REID: The lot -- a typical lot in the District of Columbia is a rectangular-shaped lot. Now, other

lots that are on a particular block that happen to all not be of that same type of dimension does not mean that those lots are not unique because of the fact that they all have irregular shaped lots. It means, rather, that all of the lots are within themselves unique.

So you can't look at -- at the -- at the map and say, "Well, this -- your lot is not shaped -- your lot is irregularly shaped, but also the lot beside it is irregularly shaped, and this lot right here is irregularly shaped, and so that means that everyone is unique." You can't use that. You can't go -- you can't use that as a rationale for uniqueness.

Uniqueness only -- particularly pertains to is -- is that particular lot a departure from what is typical in a lot, as far as real estate, as far as taxes, and as far as architecture is concerned, in the District of Columbia.

And as such, it gives people who have these types of properties cause for applying for a variance under the existing zoning regulations.

VICE CHAIRPERSON SOCKWELL: So, Madam Chair, what you're saying is that if a lot happens to be extremely large as compared to the adjacent properties, then that lot would be unique, to the extent that it could have a much larger --

CHAIRPERSON REID: Sure.

VICE CHAIRPERSON SOCKWELL: -- home, under any -- under any circumstances.

CHAIRPERSON REID: If you have -- on a given block you have -- all of the lots are -- give me an average wide dimension -- 5,000 square feet. All right. All of the lots are 5,000 square feet on that particular square, and then you have one that's 20,000 square feet. Then, that 20,000 square feet lot would be a departure from what would be common to that particular square, and, yes, it would then be unique.

VICE CHAIRPERSON SOCKWELL: But how does that create a hardship for the owner?

CHAIRPERSON REID: No, that's the first test. This is why you have a three-prong test. The first test is uniqueness, and then you go to the practical difficulty. Hardship is only in a use variance. And then -- and then it's up to the applicant to then, after going -- after demonstrating the first test, then he has to go to the second phase of the test, prong of the test, which is the practical difficulty.

And he has to show that, as well as it -- if that -- that granting the relief does not cause any adverse impact, and that it does not impair the integrity or intent of the zoning regulations or map.

So right at this point we're talking about the practical difficulty, and this is where I think that there -- it's kind of -- this is a kind of gray area, because he's saying that the way that the -- the way that this balcony -- what do you call it? It's not really a balcony. What do you call it?

VICE CHAIRPERSON SOCKWELL: No, it's a balcony.

MR. HOUSTON: It's a balcony, I think.

CHAIRPERSON REID: But I thought you said that balconies are not allowed.

VICE CHAIRPERSON SOCKWELL: That's not what he -- it's a projection.

CHAIRPERSON REID: Okay.

VICE CHAIRPERSON SOCKWELL: It's a projection.

MR. HOUSTON: It's a projection into a required open space.

CHAIRPERSON REID: It's a projection --

VICE CHAIRPERSON SOCKWELL: It's a projection into a required open space.

CHAIRPERSON REID: -- required open space.

VICE CHAIRPERSON SOCKWELL: As opposed to a projection.

CHAIRPERSON REID: But it's not called a balcony, but it is really a balcony, but the fact of the matter is that it's too shallow to be a balcony? It's to --

MR. HOUSTON: No, no, no.

CHAIRPERSON REID: It's not wide enough to really be a real --

MR. HOUSTON: It can be used -- in addition to its use as a sun screen, or as a cornice, it can also be used as a balcony. In other words, you can walk on it.

CHAIRPERSON REID: Okay.

MR. HOUSTON: And because of that, the zoning technician said that it would -- it could not come under strictly the definition of a sun screen only. If it were a sun -- if it could be defined strictly as only a sun screen, then it would come within the exception of 40 inches for a sun screen projecting into required open space.

A cornice projection is I think 24 inches into required open space. But because -- because it is also a balcony --

VICE CHAIRPERSON SOCKWELL: See, the word also, if I might interrupt, Madam Chair, is not the issue here. It can be -- if you build anything out there, it will be whatever its structure allows it to be, or whatever purpose it is intended for. However, a sun screen is a sun screen. An awning is an awning. A cornice is a cornice. And a balcony is strictly a balcony.

And to use it in context with other things which it is not is not really what you're asking for. You're asking for a balcony. Regardless of the fact that a sun screen or awning can extend four feet, regardless of the fact that a cornice can extend 24 inches, this is a balcony.

MR. HOUSTON: I don't dispute that.

VICE CHAIRPERSON SOCKWELL: You are asking for a balcony, and I think we should just keep it at that. But you

keep saying a sun screen this, and because --

MR. HOUSTON: No. I --

VICE CHAIRPERSON SOCKWELL: -- that in the zoning, and the zoning technician said such and such. I think that we need to just deal with the meat of the issue.

MR. HOUSTON: I am making those points because --

VICE CHAIRPERSON SOCKWELL: They are different uses, sir. The use as a cornice -- if you can walk -- if you could walk on the top of your awning, and it's not a balcony, has no railing, it's still an awning. But in this case, you are asking for a balcony and that's justified, but let's just call it what it is.

MR. HOUSTON: I'm not -- I am calling it a balcony. I've always called it a balcony. I'm making those --

VICE CHAIRPERSON SOCKWELL: But I think you're confusing my Chairperson because you keep referring to these other things, and we generally know what those things are. It's just that in this case the balcony for which you have requested relief is merely two and a half feet of extension into a required rear yard, which is less than the required rear yard in the zone anyway I think by about six inches. Isn't that about right?

CHAIRPERSON REID: Okay.

MR. HOUSTON: Yes. The reason I brought it up was because it -- because of the requirement for a variance that it -- that it be in line with the intent of the zoning requirements.

And I brought up the projection issue and its similarity to other projection issues as -- to demonstrate that the zoning ordinance did permit projections, and, consequently, that this was in the spirit of those kinds of projections. That's why I brought it up.

CHAIRPERSON REID: Okay. So the practical difficulty, this is where -- this is actually I think the area that may cause a little -- you know, this is what you're really going to have to be able to defend, why there's a practical difficulty.

Now, your contention that the use of that area causes a practical difficulty -- there's a practical difficulty because of the use, that it cannot be used -- can you go over that again, please?

MR. HOUSTON: The practical difficulty is that it can't be used -- you can't bring any furniture out on it. It's too skinny as -- to be used as a proper balcony, as you can see from the photograph, one of the photographs which was included in the submission.

I'd also like to ask the Board to take into consideration when evaluating whether this is a proper hardship that had this interpretation of the requirement for a variance been made clear to me before this meeting, I could have then asked the zoning technician, on the basis of the one percent rule, to waive this particular requirement, which he probably

would have done as -- as is typical, if you follow me.

CHAIRPERSON REID: And then you wouldn't have to have a variance?

MR. HOUSTON: And then I would not have to have a variance. Then I'd be back in the special exception.

CHAIRPERSON REID: Is that true?

MR. HOUSTON: However, I did not pursue that because I was told by Ms. Kress that this whole thing --

CHAIRPERSON REID: Oh, boy.

MR. HOUSTON: -- came under a special exception, and it was kind of a --

CHAIRPERSON REID: Okay.

MR. HOUSTON: -- common sense -- it was a discussion. She kind of poo-pooed -- "Oh, dear, don't get -- this is -- you're getting ludicrously technical, Mr. Houston. Obviously, the sense of this special exception includes your property." That was the sense of the conversation.

CHAIRPERSON REID: Okay. Because, Mr. Houston, here's where the difficulty is. And what I am -- what I see is obviously a situation where you've been kind of pushed in different directions.

To be perfectly honest with you, your contention that the practical difficulty is the fact that you can't put furniture out there and use it is -- would not be really a valid practical difficulty per se, because that goes to -- anyone who

wants a variance could come in and say, "Oh, well, I just want extra space because I want to use it for this, or I want to use it for that, or I want to put my car" -- and that within itself, just the desire alone is not --

MR. HOUSTON: I understand the tenuousness of it. And that's why --

CHAIRPERSON REID: Yes.

MR. HOUSTON: -- I'm asking the Board to consider the other aspects of this --

CHAIRPERSON REID: Sure, sure.

MR. HOUSTON: -- particular case.

CHAIRPERSON REID: Sure, sure, sure.

MR. HOUSTON: Particularly how we arrived at it, and that in --

CHAIRPERSON REID: Sure.

MR. HOUSTON: -- that I think you would all agree that had this been straightened out before, the Zoning Administrator would have eliminated this by the one percent rule.

CHAIRPERSON REID: Hold on one second.

Ms. Sansone, is that true?

MS. SANSONE: Madam Chair, the Zoning Administrator has -- the minor flexibility rules do not extend to non-conforming structures. That's why we have this mess here that -- the structure is non-conforming. But -- so I don't think you can waive -- his authority just does not go to these non-conforming

structures. That's a matter, really, that the Zoning Commission needs to address in the rulemaking.

CHAIRPERSON REID: Oh, okay.

MS. SANSONE: But I think Mr. Houston's practical difficulty test is also not as strict as -- in many cases, because he is asking for such a small deviation. So it's kind of a sliding scale as to how difficult the hardship that needs to be shown, or how difficult -- you know, how much of a practical difficulty. He is asking here something that's so minimal, his burden --

CHAIRPERSON REID: Okay.

MS. SANSONE: -- of proof is really a lot less, and --

CHAIRPERSON REID: Okay.

MS. SANSONE: And the inability to use this existing property in a safe and useful manner would seem to be a difficulty, where he's not really asking for an extremely large deviation.

CHAIRPERSON REID: Okay. All right.

MR. HOUSTON: Thank you.

CHAIRPERSON REID: I think -- I think that -- let's move on, and then we can make a determination on this, you know, ourselves.

As to the adverse impact, Mr. Houston, I think that you testified earlier that you had had no complaints. We have no

complaints. There has been no opposition. There's not --

MR. HOUSTON: It's been in front of the ANC.

CHAIRPERSON REID: Yes. It does not appear --

MEMBER RENSHAW: Madam Chair?

CHAIRPERSON REID: Excuse me. I'm getting to the ANC. It doesn't appear to obstruct the air or space from -- of any other abutting property owners, or things of that nature.

MR. HOUSTON: This is true.

CHAIRPERSON REID: Okay. So now we go to the government reports. We don't have an Office of Planning report, but we have an ANC report. And the ANC-2E has also weighed in as having no objection.

MR. HOUSTON: Yes.

CHAIRPERSON REID: With a unanimous vote. And typically with the ANC they are afforded great weight, which we will grant them, because of the fact that they did have a vote in a -- did have a vote, and it was unanimous, that they have no -- no objection. Yes?

MR. HOUSTON: Go ahead.

MEMBER RENSHAW: Madam Chair, the ANC-2E's letter stated that -- and it was dated November 1, 2000 -- "In the light of the information provided, ANC-2E has no objection to granting of the special exception, assuming the neighbors' support for the project is as described."

And in the material that Mr. Houston, I gather,

submitted, he stated -- and this is on Exhibit Number 15, it said, "The owner will contact the neighbors and will attend both the ANC and local citizens group meetings to explain the proposed addition."

And I wondered if the owner did have, for our records, a signoff by the neighbors that they are in agreement with this addition.

MR. HOUSTON: Yes. The owner -- I asked the owner to get that signoff, and she was finally able to get it last night. I picked it up and inadvertently forgot to bring it this morning. However, if you would like to make this conditional on my -- I can go home and get it.

CHAIRPERSON REID: We could do that.

MEMBER RENSHAW: Yes, I would like to --

MR. HOUSTON: I simply put it in the -- in the wrong brief case.

MEMBER RENSHAW: It should be in the files.

CHAIRPERSON REID: You can fax it.

MR. HOUSTON: All right. I have it.

CHAIRPERSON REID: Okay.

MR. HOUSTON: It was -- I told her this was important, and she got it.

CHAIRPERSON REID: Mr. Sockwell?

VICE CHAIRPERSON SOCKWELL: And just one thing, Madam Chair. The ANC's letter was not a letter of support. It

was a letter of non-objection; and, therefore, the great weight is somewhat different when they did not say, "Yes, we endorse the project." They just said that, "We don't have any problem with it." And that's --

CHAIRPERSON REID: Mr. Sockwell --

VICE CHAIRPERSON SOCKWELL: And that's only because you said you'd give the great weight, but, again, there wasn't anything --

CHAIRPERSON REID: Mr. Sockwell --

VICE CHAIRPERSON SOCKWELL: -- particular to give weight to.

CHAIRPERSON REID: Mr. Sockwell, thank you very much for that very insightful acknowledgement. However, the fact of the matter is that we have a letter from the ANC. The ANC has said that they have no objection. The great weight to which I attributed to the ANC was predicated upon their position.

And as such, we can afford great weight to them not having any objection. Not -- unless there is any other dispute about this with any of the Board members, that's a given. Thank you very much.

VICE CHAIRPERSON SOCKWELL: You're very welcome, Madam Chair.

CHAIRPERSON REID: Persons or parties in support? Persons or parties in opposition? Seeing none, we'll now move to closing remarks by the applicant.

MR. HOUSTON: Move to what?

CHAIRPERSON REID: Closing remarks by the applicant. You have closing remarks.

MR. HOUSTON: I think the matter has been aired. I think everyone understands the issue.

CHAIRPERSON REID: And you're asking for?

MR. HOUSTON: I am asking for certainly a special exception, and, if a variance is required, as this Board appears to determine, I'm asking for the variance, too.

CHAIRPERSON REID: Okay. And would you like to have a bench decision/summary order?

MR. HOUSTON: Yes.

CHAIRPERSON REID: Okay. Okay.

MR. HOUSTON: And I would -- if you want to make this contingent on me bringing down a letter, I'd be happy to do that.

CHAIRPERSON REID: Okay. All right. Thank you very much.

Board members?

VICE CHAIRPERSON SOCKWELL: I would move that we -- if I may -- move that we approve the application for a special exception and variance, but that we might correct the references made where I think that side yard and court issues were raised in the applicant's statement. I'm not sure that those really applied in this situation.

MR. HOUSTON: The way the zoning technician -- if I may -- has explained it to me, he feels they do, because it is -- it creates a non-conforming side yard technically.

CHAIRPERSON REID: Okay.

MR. HOUSTON: And it --

VICE CHAIRPERSON SOCKWELL: Well, there was no side yard for --

CHAIRPERSON REID: Let me jump in. Let me jump in real quick. Now, let's do this. In the interest of the time, as well as the fact that there has been so much confusion, then can -- Ms. Pruitt?

SECRETARY PRUITT: Yes.

CHAIRPERSON REID: Can you -- can staff make sure that whatever order -- however the order is worded, that it will correctly reflect what the intention is, whatever that is? I'm really not exactly sure -- with Ms. Sansone, and perhaps with some consultation with Mr. Sockwell, just get it right.

SECRETARY PRUITT: Correct.

CHAIRPERSON REID: Thank you.

SECRETARY PRUITT: We will make sure that is done.

CHAIRPERSON REID: Okay. Then I will second it.

MEMBER RENSHAW: And, Madam Chair, just to leave the record open for the receipt of the neighbors' signoff, please.

MR. HOUSTON: All right.

CHAIRPERSON REID: Yes. Yes.

All in favor?

(Chorus of ayes.)

Mr. Hood? Okay. Opposed?

(No response.)

MS. BAILEY: Staff would record the vote as four to zero to approve the application. Motion made by Mr. Sockwell, seconded by Mrs. Reid. Ms. Renshaw and Mr. Hood to approve; Mr. Moulden, not present, not voting.

CHAIRPERSON REID: Thank you.

Next case, please?

MR. HOUSTON: Thank you.

MS. BAILEY: The next case is Application Number 16617 of Peter Bell and Sharon Workim Bell, pursuant to 11 DCMR 3103.2 for variances from Sections 402, 403, 404, and Subsection 2001.3 for relief from the floor area ratio, the percentage of lot occupancy, rear yard setback requirements, and increasing the non-conforming aspects of the structure to permit an addition to an existing single-family dwelling in an R-5-B District at premises 1726 18th Street, N.W. The property is located in Square 133 on Lot 133.

Please stand to take the oath. Raise your right hand, please.

(Whereupon, an oath was administered to those planning to testify.)

Please come forward.

Madam Chair, we did not receive an OP report or an ANC report on this particular project. This project is, again, self-certified, and the property was posted and the affidavit properly filed.

CHAIRPERSON REID: Thank you very much.

Mr. Houston?

MR. HOUSTON: Yes.

CHAIRPERSON REID: You're like a one-man band today, aren't you?

(Laughter.)

MR. HOUSTON: Yes.

CHAIRPERSON REID: We looked up there, and we thought -- we said -- we wondered where everyone was for these cases this morning.

MR. HOUSTON: I know.

MEMBER RENSHAW: It's a very efficient use of his time.

(Laughter.)

MR. HOUSTON: Yes. Well, Ms. Kress was very good to schedule me in this --

CHAIRPERSON REID: Yes, that's great.

VICE CHAIRPERSON SOCKWELL: Only Wilkes, Artis came up as often as you at the same hour, same day, same --

MR. HOUSTON: I'm very flattered.

(Laughter.)

CHAIRPERSON REID: Okay. All right.

Go ahead.

MR. HOUSTON: This is one of the owners of the property --

CHAIRPERSON REID: You need to give your name and address again for this --

MR. HOUSTON: My name is Andre Houston. I'm the architect and -- for this project.

Briefly, this is a row house with a very narrow five-foot wide rear yard. It's on a corner property, so the rear yard -- the five-foot section of the rear yard, the five-foot length of the rear yard, also fronts on the side street.

The hardship of this property I want the owner to address because they are able to speak more directly to this.

CHAIRPERSON REID: Okay. Can you start with the -- usually we're going kind of --

MR. HOUSTON: All right. Do you want to --

CHAIRPERSON REID: The first prong is the uniqueness.

MR. HOUSTON: All right. This is -- all right. This is -- it's a property which is unlike other -- well, actually, the neighboring properties -- the neighboring property is similar to this, although it's not a typical row house property because it is much shorter than most row house

properties. It's only 35 feet deep. It's also a corner lot.

The proposal here is to build across the rear yard an extension to the basement, and this will solve the hardship which I want the owner to address.

CHAIRPERSON REID: Is this a use variance or an area variance?

MR. HOUSTON: No, it's an area variance.

CHAIRPERSON REID: So it's a practical difficulty.

MR. HOUSTON: It's -- I'm sorry. The practical -- it's a practical --

CHAIRPERSON REID: Right.

MR. HOUSTON: -- difficulty, yes. The practical difficulty imposed by the topography of the site.

CHAIRPERSON REID: Okay.

MS. BELL: My name is Sharon Bell. I'm one of the owners of 1726 18th Street, N.W., and the practical difficulty is really very simple. Because of the way the house is situated, the back area, which is below grade and, as Andre said, is five-feet wide by the width of the house, is a dank, confined space. And it's drained by a drain that also vents the plumbing for the house. So, in effect, what you've got is an open sewer in this area.

And if you look out the windows you see a sworn of mosquitoes and other insects just hovering around the sewer. Andre is advising -- so it's obviously unhealthy and unsanitary,

not just for me but for the immediate neighborhood.

Andre is advising that the appropriate way to remedy this problem is to enclose the space in such a way that it can't be seen from the street. We have spoken to the -- my neighbors. I have letters of support from my neighbors that I could submit for the record. The ANC has spoken to the neighbors. Nobody has expressed any objections to the proposal.

My understanding is that the ANC did have a vote at its October meeting, and although they said they never vote to support a project, they voted to -- not to oppose the project. So I'm asking for your approval to enclose the space to remedy an unhealthful and unsanitary condition.

CHAIRPERSON REID: Okay. You have no opposition, no letters of opposition.

MS. BELL: Right.

CHAIRPERSON REID: Okay. Then, obviously, this another case that we can expedite, hopefully. The last case we said that, but we got -- you know, it got a little ensnarled in that -- in that red tape.

MR. HOUSTON: This is not a special exception. The percent of lot occupancy would be 100 percent.

CHAIRPERSON REID: Okay. Then, let's move forward.

Board members, do you have any questions? If not, then we can just kind of like get through this pretty quickly.

VICE CHAIRPERSON SOCKWELL: Madam Chair, I

understand fully the conditions that the applicant faces. The house is situated so that the yard opening has only a northern exposure, which prevents any sunlight from coming in, morning, afternoon, or evening, winter or summer, to any extent.

The yard is sunken. The collection of water and the lack of evaporation are all very easy to understand. The solution recommended by the architect seems to be a very workable and reasonable one. The only suggestion that I make is that they make sure that whatever -- however they cap that drain, that they leave a cleanout at some point, so that the drain can be accessed, and seal it well.

CHAIRPERSON REID: Are you making a motion, Mr. Sockwell?

VICE CHAIRPERSON SOCKWELL: I move we approve this without further discussion.

CHAIRPERSON REID: All right. Thank you very much, Mr. Sockwell. I just want to note for the record there is no one here in opposition or in support. There's no Office of Planning report. However, we do have -- we don't have an ANC report; that will be ANC-2B.

However, in the absence of them submitting a report, and the assumption is that they have no objection. If they did, they would let us know usually. So we would note that there is -- has not been any objection from the ANC.

And is there a second for the motion?

Ms. Bell, did you have closing remarks?

MS. BELL: You're on a roll. Keep going.

(Laughter.)

CHAIRPERSON REID: No closing remarks. So let me ask, would you like a summary order/bench decision?

MR. HOUSTON: Yes.

CHAIRPERSON REID: Okay. Then, could I have a second to the motion made by Mr. Sockwell?

MEMBER RENSHAW: Second.

CHAIRPERSON REID: All in favor?

(Chorus of ayes.)

Opposed?

(No response.)

See, that was record, wasn't it?

MR. HOUSTON: Thank you.

MS. BELL: Thank you very much.

MR. HOUSTON: Thank you very much.

CHAIRPERSON REID: Two minutes?

(Laughter.)

MS. BAILEY: Still will record the vote as four to zero. Motion made by Mr. Sockwell, seconded by Mrs. Renshaw. Ms. Reid and Mr. Hood to approve. Mr. Moulden, not present, not voting.

CHAIRPERSON REID: All right. That concludes the morning session. We will start the afternoon session at 1:00.

Thank you.

(Whereupon, at 11:15 a.m., the proceedings in the foregoing matter went off the record.)

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

(1:23 p.m.)

CHAIRPERSON REID: Good afternoon. We ask your indulgence for our lateness this afternoon in starting. However, we did have to wait for Board members and such. It kind of interrupted our time schedule.

This hearing will please come to order. Ladies and gentlemen, this is the November 14th public hearing of the Board of Zoning Adjustment of the District of Columbia.

My name is Sheila Cross Reid, Chairperson. Joining me today is Robert N. Sockwell and Rodney Moulden, who will be here shortly, Ann Renshaw; and Kwasi Holman, representing the Zoning Commission.

Copies of today's hearing agenda are available to you. They are located to my left near the door. All persons planning to testify either in favor or in opposition are to fill out two witness cards. These cards are located at each end of the table in front of us. When coming forward to speak to the Board, please give both cards to the Reporter, who is sitting to my right.

The order of procedure for special exception and variances is: 1) statement and witnesses of the applicant; 2) government reports, including the Office of Planning, Department of Public Works, etcetera; 3) report of the Advisory Neighborhood Commission; 4) parties or persons in support; 5) parties or

persons in opposition.

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

The record will be closed at the conclusion of each case, except for any materials specifically requested by the Board, and staff will specify at the end of the hearing exactly what is expected.

The decision of the Board in these contested cases must be based exclusively on the public record. To avoid any appearance to the contrary, the Board requests that persons present not engage the members of the Board in conversation.

Please turn off all beepers and cell phones at this time, so as not to disrupt these proceedings.

The Board will make every effort to conclude the public hearing as soon as possible, before 6:00 p.m. If the applications are not completed at 6:00 p.m., the Board will assess whether it can complete the pending case or cases remaining on the agenda.

At this time, the Board will consider any preliminary matters. Preliminary matters are those which relate to whether a case really should be heard today, such as requests for postponement, continuance, or withdrawal, or whether proper and adequate notice of the hearing has been given.

If you are not prepared to go forward with a case

today, or if you believe that the Board should not proceed, now is the time to raise such a matter. Are there any preliminary matters?

MS. BAILEY: Yes, Madam Chair. Staff does have a preliminary matter. That's the application -- for Application Number 16611. In short, this is The Burke School. There is a request from the ANC, and also from the applicant, that this application be postponed.

CHAIRPERSON REID: Okay. Are there any -- is anyone representing The Burke School here? Please come forward.

MR. FEOLA: Thank you, Madam Chair. For the record, my name is Phil Feola with Shaw Pittman, representing the applicant, The Edmund Burke School, in this matter.

And it's probably more appropriate for the ANC to come up here, since it was their request, which the applicant has agreed not to oppose and essentially support the continuance.

CHAIRPERSON REID: Will the ANC come forward?

MR. KOGAN: Thank you, Madam Chair. My name is Phil Kogan. I'm an ANC Commissioner in ANC-3F.

We requested additional time. We had met with the applicant several weeks ago, and several members of the community, some concerned neighbors, were at that meeting. And we discussed with the applicant some alternatives that they might consider in their proposed project, in order to mediate the impacts of that project on the neighborhood.

And the applicant did get back to us with a proposal that we received I think on November 3rd, and we shared that among the neighbors and started to consider it and develop a response to it. But it wasn't until last Friday evening, November 10th, that we received the traffic impact analysis that goes along with that alternative proposal.

And that really gave us only three full days before the hearing in order to study it, review it, get it out to everybody, and prepare a response that we could present to the Board and to the applicant. And that is the basis for requesting a continuance.

CHAIRPERSON REID: Okay. Was there any discussion as to a date certain?

SECRETARY PRUITT: Yes, Madam Chair. I have actually spoken with both Mr. Feola and Mr. --

MR. KOGAN: Kogan.

SECRETARY PRUITT: -- Kogan. I'm sorry, we talk every day. And it looks like the first available date will be January 23rd. We can put it on first thing in the --

CHAIRPERSON REID: Was that a date that you agreed with, as far as its availability of both entities?

MR. KOGAN: Yes, that -- that date would be acceptable to us.

MR. FEOLA: Obviously, the school would like to have it sooner, but we were told that that's the soonest it can

be. So it's -- and it's an acceptable date, therefore.

CHAIRPERSON REID: All right. Thank you.

MR. KOGAN: Madam Chair --

CHAIRPERSON REID: Did you wish to -- yes?

MR. KOGAN: -- if I can raise one other point. We have today about 10 or 12 neighbors who came because we thought there would be a hearing, but also we thought there might be an opportunity to request party status. And if we could request that of the Chair, we'd like to be able to make that request today.

These are people who have filed for party status and who have changed their plans and made themselves available today, so that they could come in here and confirm their party status.

CHAIRPERSON REID: Okay. They were not aware of the fact that you were asking for a continuance?

MR. KOGAN: They were aware of the request for a continuance. We thought -- we weren't quite sure last night that there would be a continuance, and we thought that, based on the information we had, there would be an opportunity to request party status today.

CHAIRPERSON REID: Well, I'm going to open that to discussion, because what gives me a little pause is that if we -- if we continue it to a date certain, then I don't want people to come and request party status at that time.

So that if we do grant party status today, then that would be, you know, on the -- we would not open it up for party status determinations again. And I'm just a little concerned about the fact that if, in fact, it's being continued, and there are people who are not here today but who wish party status, it would be cut off.

Board members, I'd like to hear some discussion.

MEMBER RENSHAW: Could I get an idea from Commissioner Kogan how many people are requesting party status today?

SECRETARY PRUITT: Excuse me, Madam -- Ms. Renshaw. I'd just like to -- in your file, we actually have --

MEMBER RENSHAW: I've got a list.

SECRETARY PRUITT: That's the list that we have that have -- those are the people who --

MEMBER RENSHAW: Right. But I'm wondering how many on that list are here today.

MR. KOGAN: I think -- I think there may be half to three-quarters that are here today. Is that accurate? So that there would be some people that are not here today that would be interested in requesting party status.

MEMBER RENSHAW: Madam Chair, couldn't we take those who are not here today at the top of the session on January 23rd?

CHAIRPERSON REID: Frankly, I don't think that it

would be efficient to do that twice. I mean, once we -- I think that we should do party status all at one time. Either we do it today, or we hold it until the commencement of that particular case and do it as a preliminary matter.

VICE CHAIRPERSON SOCKWELL: Madam Chair?

CHAIRPERSON REID: Yes.

VICE CHAIRPERSON SOCKWELL: My thought about this is that since these are individuals not requesting party status as a group, then we will have to go through the party status for each individual at one time or another. It might be more efficient actually to start now and break it into two components. It would be less of a time-consuming effort on the date of the hearing, but that's just my thought on it.

CHAIRPERSON REID: Okay. Any other discussion?

Okay. So you want to -- am I hearing that you want to do part of it today and part of it on the day of the hearing? I don't -- I don't -- I mean, it's just my personal opinion, but I don't think that's the most efficient way. However, you know, I would -- I mean, I'm open.

VICE CHAIRPERSON SOCKWELL: Well, we have but two cases on the docket for the afternoon, and that shouldn't force us to push too late into the -- into the day. But whatever you propose I'm willing to go along with.

CHAIRPERSON REID: All right. And then we do party status today, and then we'll have record -- from the individuals

who will then be granted party status. And then, again, when we actually hear the case --

SECRETARY PRUITT: Well, Madam Chair --

CHAIRPERSON REID: Excuse me. Whoever else who may decide to come at that time, we will then have to do it all over again.

SECRETARY PRUITT: That's the question. You know, party status must be requested 15 days -- or 14 days prior to the hearing. And if you continue a hearing, do you also continue the party status time? That's a determination the Board has to make because there's really no set policy or regulation.

I mean, this -- in going back and reading the transcript from the last time it was continued, party status -- let's start back. If we were to hear the Burke case when it was originally continued, party status had to be in well before that hearing. And there were problems with that; that's why, one, the hearing was postponed.

At that time, the Board decided to postpone the time for party status to file, and we actually even gave them a little extra day -- extra time. It should have been on the 1st of November, but the Board extended it to the 6th.

So the question is, if you continue this again, which we are, to the 23rd, are you once again continuing the time for party status to be submitted?

VICE CHAIRPERSON SOCKWELL: I would suggest that

because of the additional time that was granted all parties expecting to participate would have submitted by that point, and that all we're doing is taking those who are legitimately filed for party status who are here today and determining whether or not they shall be granted such, and then those who are not present who have already qualified themselves would be handled at the January 23rd meeting, but not a -- not to put in a timeframe for additional parties to appear.

SECRETARY PRUITT: I just wanted that clear because it --

VICE CHAIRPERSON SOCKWELL: And file. I mean, this is strictly to get the people who are here through the process, since they took the time out to be here. And those that did not come, probably because they knew that a postponement was inevitable or intended, get those at the beginning of the hearing on the 23rd. But not to open the door for more applicants for party status, because everyone who should have wanted to become a party knew what the dates were.

CHAIRPERSON REID: Well, it seems like -- it seems to me that there's a contradiction here, and I asked if the people who are -- when Mr. Doggins --

MR. KOGAN: Kogan.

CHAIRPERSON REID: -- Mr. Kogan first requested it that -- this issue of party status, I asked if -- were the people notified there would be a continuation. And then I guess the

fact of the matter is that if -- it was not certain and --

MR. KOGAN: It was unclear. I had talked to the staff yesterday morning --

CHAIRPERSON REID: And such --

MR. KOGAN: -- and Sheri Pruitt and I had a conversation. But at that point there was no decision by the Board, and I did not find out until 7:30 in the evening when I called Mr. Feola at home that it was very likely that the Board would agree to a continuance.

But in that conversation, it wasn't clear as to what the procedure would be today on party status, and it -- it appeared that there was a possibility that there would be a party status, so I let people know that and told them that possibility existed. And I think people showed up with that in mind.

CHAIRPERSON REID: Okay. I'm sorry. Let me see the list. I don't see my list.

Okay. All right. The people who -- so what you're saying, Board members, as I understand it, is many of the people who are on the list for party status are here. They have already requested. And those are the ones that we're considering.

But there are some who requested party status who are not here, and what you're saying is, given the situation on the next hearing date, or on the hearing date, then we would take up those people who had already applied for party status but had not been considered.

MEMBER RENSHAW: Yes.

CHAIRPERSON REID: And not allow any new persons to apply for party status. I have no problem with that.

Ms. Pruitt, I have no problem with that. Does that -- is that what you were --

SECRETARY PRUITT: That's what I was trying to -- yes, because there is no set policy or regulation that deals with that issue.

CHAIRPERSON REID: I mean, just in being -- in all fairness, we don't want to eliminate anyone, you know, inadvertently.

SECRETARY PRUITT: But this case has been continued once, so it's not that it's not --

CHAIRPERSON REID: Okay.

SECRETARY PRUITT: Also, just for your information, your party status is with your executive summaries that were given out this morning. There's a listing.

CHAIRPERSON REID: Okay. All right. Thank you.

All right. So, then, those persons -- okay. People who -- we'll do it now, and then we'll do the rest later.

So those people who are here, who are requesting party status, will you come forward, please? Oh, wait a minute. I have -- I'm sorry. We'll do it at the time we call the case. I'm sorry. We won't do it now because it's -- this is a rather

lengthy process, and it would not be fair to the other -- there are two other applications before you, and it's taken up just before the case -- as the case is called.

MS. WISEMAN: I have a court conference later on. Can I --

SECRETARY PRUITT: Excuse me, ma'am. You've got to come speak on the record, please.

VICE CHAIRPERSON SOCKWELL: Give your name and address.

MS. WISEMAN: I'm Julie Wiseman. I'm at 2932 Upton Street. I actually have a court conference in another matter. If you're going to reserve party status for some people, can I just do it at the January 23rd hearing, then? Is that okay?

SECRETARY PRUITT: Yes. Based on what --

CHAIRPERSON REID: What's your name again?

MS. WISEMAN: Julie Wiseman.

CHAIRPERSON REID: Okay. So you want to come back?

MS. WISEMAN: Yes.

CHAIRPERSON REID: Okay. All right. And then the rest of you will -- yes?

MS. COLLINS: I will also need to come back.

CHAIRPERSON REID: And what's your name?

MS. COLLINS: My name is Susan Collins. I'm at 2943 Upton.

VICE CHAIRPERSON SOCKWELL: Where are you listed?

CHAIRPERSON REID: I don't see you on the list. Oh, okay. All right. Okay.

MS. GIORDANO: Cynthia Giordano. I'm with Arnold & Porter law firm, different firm than the letterhead that I submitted the request on, representing the property owners immediately to the north of the subject property.

I don't think it's in my client's best interest for me to stay here for two hours and wait, so I would prefer to come back and take this up.

CHAIRPERSON REID: Who are you representing?

MS. GIORDANO: The Etcerras, LLC.

CHAIRPERSON REID: Okay.

MS. BAILEY: Ms. Giordano, could you please submit that request on the correct letterhead?

MS. GIORDANO: Okay.

CHAIRPERSON REID: Okay. At any rate, those of you who are applying for party status, which there are quite a few people, typically, we ask that if -- in the first place, party status is granted to people who have a unique situation that makes you more aggrieved than everyone else. That gives you that special designation. And it just seems so strange to have so many people who are uniquely aggrieved, number one.

Number two, is it -- it would be far better for us if when you are asking for party status that you can -- if your concerns are similar, that you can, you know, join together and

have one spokesperson, rather than have -- because once you get party status, then that allows you the opportunity to cross examine, and you can imagine how long and protracted the case will be if all of these people get to ask all of these different questions, as opposed to, you know, kind of joining together and seeing where you have similar questions or similar concerns and being represented by one or two people. Yes?

MS. BAILEY: Madam Chair, as you can see from the list, most of the persons who are requesting party status are within the 2900 block of Upton Street. So most of the residents live on Upton Street, close in proximity to the site. I'm not sure if that helps in terms of the residents getting together with a particular spokesperson.

MS. WISEMAN: I can actually speak to that. I'm Julie Wiseman again. We have organized, and you are not seeing the entire street that is opposed to this. This is a subgroup of the street, and we will organize among ourselves, so that you don't have six people cross examining. We understood --

CHAIRPERSON REID: Please.

MS. WISEMAN: -- from your last time -- and we have -- we have taken steps, so that that will not happen.

CHAIRPERSON REID: Okay.

MR. BROWN: Before you move on, Madam Chair, Patrick Brown from Greenstein, DeLorme & Luchs. I'm counsel for the Van Ness South Tenants Association, which by definition we've

done -- we've consolidated the interests of a thousand residents in 625 units and have requested party status.

At this point, I guess we're the only group so requesting that's been challenged by the applicant. It's certainly not in my client's interest for me to stay here all afternoon, and I would ask that we defer decision of the party status to the hearing date, and perhaps Mr. Feola and I can reach a resolution of it, because I think there's an ample opportunity for party status.

CHAIRPERSON REID: Thank you, Mr. Collins.

Anyone who would rather not wait and to have it taken up before the next hearing, we've already said that -- that we can do that. You don't have to stay here.

If you wish to have your party status established today, then we will take it up as a preliminary matter in the sequence that the cases have been allotted this afternoon, and there are two before we take up Burke School -- I mean, Edmund Burke School. So it's up to the individuals. You don't have to stay, not unless you just want to.

MR. BROWN: That's fine.

CHAIRPERSON REID: Because, you know, once we determine that we would -- we would give an opportunity to anyone who is on this list to be considered at the beginning of the hearing, that automatically gave them the choice as to whether or not they wanted to leave or to stay.

MR. BROWN: I'm not aware if I'm on -- my organization is on the list.

CHAIRPERSON REID: You're on the list.

MR. BROWN: Thank you very much.

MR. FEOLA: Madam Chair?

CHAIRPERSON REID: Oh, I'm sorry. The people who are here don't know if they're on this list or not? Okay. Yes?

SECRETARY PRUITT: Yes. Well, most people do. You know, this list is predicated on a cutoff date, which was November 6th.

CHAIRPERSON REID: Okay.

SECRETARY PRUITT: So anyone who got anything in prior to November 6th is on this list.

CHAIRPERSON REID: Okay. If you don't know or if you're not sure whether or not --

SECRETARY PRUITT: You can check with staff.

CHAIRPERSON REID: -- you're on the list, then you can just check with staff in the Office of Zoning. Is there someone in there who can answer that question for them?

SECRETARY PRUITT: Well, that -- Ms. Bailey has been the one who has been pulling this together.

CHAIRPERSON REID: Well, Ms. Bailey, if you could have that list put on the -- at the desk, so that if people want to check, you know, while we are doing the first two cases --

MS. BAILEY: Yes.

CHAIRPERSON REID: -- then they can check and see whether or not their name is on the list, whether or not they have to stay.

Yes, Mr. Feola?

MR. FEOLA: Madam Chair, Phil Feola for the applicant. I forgot to ask as part of the continuance -- as Mr. Kogan, Commissioner Kogan, indicated, part of the reason for the continuance is that the school came up with an alternative plan that addressed some of the concerns the neighbors made.

The BZA hasn't seen that plan because it happened after our prehearing submission was due. So I'm going to ask permission to file -- leave to file an amended plan that the ANC and everybody that's been up here today has seen, but you all haven't seen it. But I need the Board's permission, because technically we can't file anything without -- after that prehearing submission.

CHAIRPERSON REID: Okay. Ms. Pruitt, then, it's permissible for us to waive the rules to accept that?

SECRETARY PRUITT: It's not that we're waiving the rules. It's just more -- it's like bringing in an exhibit during the hearing, so, yes.

CHAIRPERSON REID: Okay. Board members, any objection? If not, then it's permissible, and --

MR. FEOLA: I figured you should have it if the neighbors have it. We will be talking about --

CHAIRPERSON REID: As you well know, anything that could be done to try to come to some type of reconciliation, or some meeting of the minds, or some compromises in this highly contested case would be very much appreciated.

And in the interim, for the time that -- from now until the time that you actually meet, we have the hearing, hopefully you will continue to talk and to try to work it out, hammer it out, and come to some -- come closer together at least, so that when we have the hearing you can present to us some agreements or some further planning -- you know, something to kind of mitigate some of the differences that we know are evident at this time.

Thank you.

MS. BAILEY: Madam Chair, you ready for the first case of the afternoon?

CHAIRPERSON REID: Just one second. Ms. Giordano has -- wanted to make a statement.

MS. GIORDANO: I just wanted to know what time the hearing is going to take place on the 23rd.

SECRETARY PRUITT: It can be scheduled for the first one in the morning, 9:30.

MS. GIORDANO: Thank you.

CHAIRPERSON REID: Okay. Is that it? Okay.

Yes. The first case of the afternoon?

MS. BAILEY: Application Number 16634 of Ira

Clements, pursuant to 11 DCMR 3103.2 for variances to allow an addition to an existing non-conforming structure that does not meet the lot width and lot area requirements, and exceeds the lot occupancy allowance, and will create a new non-conforming rear yard (paragraphs 2001.3(a), (b), and (c)); and a variance from the maximum allowable lot occupancy requirements (Subsection 403.2); and a variance from the minimum rear yard requirement (Subsection 404.1). This is for a deck addition to a row dwelling in an R-3 District at premises 4904 4th Street, N.W. The property is located in Square 3252 on Lot 112.

Please stand to take the oath, and please raise your right hand.

(Whereupon, an oath was administered to those planning to testify.)

Thank you. You may be seated.

Madam Chair, the Office of Planning did not file a report on this application. Also, there was not a report from the ANC. That's ANC-4D. We did receive the affidavit of posting, and the property was posted. Affidavit of posting was filed and the property was properly posted.

This particular application was dismissed at a previous hearing, and it is to be reconsidered today. The case is now ready to go forward.

MR. COOPER: Good afternoon, Madam Chair. My name is Robert Coopers. Members of the Board, my name is Robert

Cooper with the law firm of Jackson & Campbell, and I'm here on behalf of the firm representing Mr. Ira Clements, who is seated directly to my right. Mr. Clements is the owner of the property at 4904 4th Street, N.W.

I understand from Ms. Bailey's comments that -- one point of clarification. This matter was previously filed by Mr. Clements and his son, Michael Clements, several years ago. It came for a hearing back in -- if I'm not mistaken, in 1997. We appeared for that hearing and was told that the case would not go forward that day, because there was another protracted hearing, and that the matter would be postponed indefinitely.

We were not sure what that meant, but we didn't hear anything for several years. The next notice we received from the Board was that because we did not provide affidavits, and because certain deadlines had not been met, the case was dismissed. I then filed a motion to reinstate the matter, explaining to the Board why this matter had not previously gone forward, and fortunately the matter was reinstated, which brings us here today.

As Ms. Bailey stated, this application was brought to request variances, several variances. Interestingly enough, this particular lot, along with all of the neighboring lots, are all in violation of the current zoning regulations with respect to R-3 zoning and with respect to the lot occupancy, minimum lot, and minimum width.

This particular lot is only 18 feet in width, which, as required, as you know, in R-3 is a 20-foot width. The minimum lot for an R-3 is 2,000 square feet for a row house, and this is a row dwelling. What is provided is only 1,350 square feet, and as far as lot occupancy is concerned, the requirement is for no less than 60 percent. The house alone is a bit over 66 percent of the lot occupancy.

So as it stood prior to the erection of this deck was already, as stated, a non-conforming structure, as are all of the properties in that particular neighborhood.

As I understand from the earlier file in this matter, which was Case Number 16288, there was a request, and I believe Mr. Clements' son provided a photocopy of the zoning map, I presume, or the lot map -- lot and square map, which showed all of the various lots. That was apparently something that the Board had requested. And as I understand it, it is within that package of documents.

Now, as I understand it, the request was made back in 1997 pursuant to a notice from the District of Columbia Department of Consumer and Regulatory Affairs that the deck which had been erected several years earlier was in violation of the various building codes because it was erected without a permit.

Now, I can have Mr. Clements provide testimony, if you would like, as to how that occurred. But I think it's fairly clear that, unfortunately, that activity in our city occurs far

too often, where decks are built or additions are built, and things of that nature, without a permit.

But it was built. An inspector came by at some point later, informed him that they had to go down and file and request a permit. The permit application was apparently filed, and they were referred -- properly referred by the Zoning Administrator back here to the Board of Zoning Adjustment for the various variances.

I had an opportunity to go through the file, and there were two letters in the file addressed to the Board with respect to this application. The first is a letter from one of Mr. Clements' neighbors, two doors down, at 4908 4th Street, N.W., a Dr. Margaret Stewart, who, in a nutshell, has asked that -- or stated that she has no objections to the existing structure and its application being granted.

The other letter in the file comes from a neighbor across the street and down -- across and down the street. I can't seem to put my hands on it right now.

CHAIRPERSON REID: Which letter are you referring to? Was it a letter from -- a letter of opposition?

MR. COOPER: Yes. There was one letter in opposition.

CHAIRPERSON REID: That was from Mr. Raymond Smith.

MR. COOPER: Mr. Raymond Smith. And I read the letter several times, and it seemed more of an inquiry to the

Board as to how it could be approved if it's not something permitted, as opposed to a straight out objection to this application going forward.

And, as stated, there was no correspondence from the Advisory Neighborhood Commission, nothing from the Advisory Neighborhood Commission. I called them when we got a hearing date to inquire as to whether they would make a -- have a position and had no -- received no response from the ANC.

I also have some photographs of other properties in and around the 4900 block of 4th Street, which have very similar decks appended to the homes, and the lots are very similar to Mr. Clements' lot. And I know this may be testimony, but I personally had the files of the Department of Consumer and Regulatory Affairs researched to determine whether permits had been granted for these properties, and whether BZA approval had been granted for them. And absolutely none of them had permits for these decks.

And I have photographs showing that there are a number of decks in this area, and that this particular deck would not cause any greater intrusion into the community than all of the existing decks on various properties.

So if you would like, I can have Mr. Clements, if necessary, provide some testimony as to the necessity for the deck and the reasons why the deck was erected. I know you have a number of other cases before you, and there's really no

opposition other than the one letter in the file. But we are requesting, obviously, that the Board grant Mr. Clements these three stated variances for the non-conforming lots.

COMMISSIONER HOLMAN: Yes. What would be helpful to me is if I could hear some statements that relate to the issue of variance that state why the variance should be granted according to the criteria. That would be kind of helpful.

CHAIRPERSON REID: Mr. Cooper?

MR. COOPER: Yes.

CHAIRPERSON REID: In the submission that we have before us, we were looking for what is required as a basis for your being here, and that is for you to demonstrate to us how you meet the three-prong test for variance relief.

And the Board members are saying that this is what they would like to hear, because that is the only way that -- that is the criteria that we utilize to make a determination as to whether or not the relief that you're requesting will be, in fact, granted.

MR. COOPER: Okay. Well, as stated previously, the current configuration of the structure and this lot, because of its exceptional narrowness, its shadowness and shape, the -- without the deck, the property is a non-conforming structure.

CHAIRPERSON REID: Okay. But what is the exceptional -- you're saying that the property has exceptional narrowness and shadowness. Can you demonstrate to us how that's

so?

MR. COOPER: The lot is only 18 feet wide. The zoning regulations require that a lot in an R-3 be at a minimum of a 20-foot width. So the structure is, as noted, a non-conforming structure. So any addition or any -- any alteration to this property would be a requirement of a variance, because of its -- the exceptional narrowness of this particular lot.

CHAIRPERSON REID: But along with that, coupled with that, Mr. Cooper, is the requirement that it be demonstrated that there is something that is unusual or unique about this property, unlike the properties that are adjacent to it.

And when you were speaking earlier you said that all of the properties were like that. What you want to establish -- let me see if I can kind of help to guide you through this.

What you want to establish is how this property -- or there is something unique and different about this property that's inherent in the land itself that makes it unique and different from any of the other properties surrounding it, by virtue of the fact that it has those kinds of characteristics -- shadow, narrow, topography, configuration, and the like.

MR. COOPER: I always -- and maybe this is my lack of knowledge on this, but I always understood those to be "ors." That here in this particular circumstance all of these lots are exactly the same. This particular lot is of no peculiarly exceptional with respect to any of the other lots, except for

that all of them are in violation of --

CHAIRPERSON REID: Okay. Mr. Cooper, let me -- it's just the opposite. It's just contrary to what you just said, and that's what you have to establish.

SECRETARY PRUITT: Madam Chair, could we break for a second, please?

CHAIRPERSON REID: Yes. You want to take a five-minute recess?

SECRETARY PRUITT: Yes, please.

CHAIRPERSON REID: Okay.

(Whereupon, the proceedings in the foregoing matter went off the record at 2:00 p.m. and went back on the record at 2:07 p.m.)

CHAIRPERSON REID: Okay. Mr. Cooper --

MR. COOPER: Yes, ma'am.

CHAIRPERSON REID: -- part of what we were trying to ascertain was rather than wasting a lot of time is that it -- it became readily apparent that perhaps given the fact that this is probably your first time here --

MR. COOPER: No, no, no. I've been here before.

CHAIRPERSON REID: You know, you're very good at throwing life savers back.

(Laughter.)

MR. COOPER: It's been a while. It's been a while, Ms. Reid. It's been a while, Madam Chair.

(Laughter.)

It's been a while.

CHAIRPERSON REID: Let's try again. You're not ready? And what we thought would be the best thing to do, given the fact this is an old case, allow -- we're going to adjourn this case and allow you time to talk to staff, and let them kind of give you some guidance as to what you need to be doing here today in order to make your case, because the path that you're going down is -- it can get you into difficulty, more difficulty than what you need to be getting into.

And as such, we thought we'd let -- we'd take the next case and give you time to talk to staff, and let them kind of assist you in putting this together, so that we could -- you know, we could still hear the case today, but there's no sense in us, you know, going through a lot of discussion and also a lot of questioning that would perhaps incriminate -- not incriminate, but make the case --

(Laughter.)

-- do more damage to you than it can do -- help to you today. So that's what we've talked about doing.

MR. COOPER: No doubt. That's not a problem.

CHAIRPERSON REID: Okay.

VICE CHAIRPERSON SOCKWELL: Madam Chair, may I just correct the record? In one statement that Mr. Cooper made about the violation of the applicant's house, the applicant's house is

merely in non-conformance with the zoning ordinance that we have today. It is grandfathered because it is an existing building.

MR. COOPER: Correct.

VICE CHAIRPERSON SOCKWELL: So it is not in violation.

MR. COOPER: Correct.

CHAIRPERSON REID: Okay. So then what we're going to do is allow you, while we take up the next case, the time to meet with and talk to and kind of get things better structured, and then allow you to come back and to put on your case.

Ms. Pruitt and Mr. -- okay. Mr. Hart, staff -- and other staff will assist you in the Office of Zoning.

MR. COOPER: Thank you.

CHAIRPERSON REID: You're quite welcome. That doesn't preclude anyone else that you might wish to confer with during the interim.

MS. BAILEY: The next application is number 16625 of the May Department Stores Company, pursuant to 11 DCMR 3103.2, for variances from the requirements of the Downtown Development District to construct an office building, also under Subsections 1702.7(c) and 1703.3 from the parking requirements to provide all-day commuter parking, and to provide ground floor leasable space for certain retail and personal services in a DD/C-4 District at premises 719 13th Street, N.W., Square 288, Lot 810.

Please stand to take the oath. All those wishing

to testify, please stand to take the oath.

(Whereupon, an oath was administered to those planning to testify.)

VICE CHAIRPERSON SOCKWELL: The Chair has stepped from the room. I will be handling the hearing until the Chair returns.

Mr. Collins, you are representing the applicant. Would you like to begin your case?

MR. COLLINS: Yes, thank you. Mr. Sockwell, and members of the Board, my name is Christopher Collins with the law firm of Wilkes, Artis. I'm here representing the applicant in this case. With me to my left is Jim Evans with Tishman Squire Properties. I'm sorry, to my right, your left. And to my far right is Mr. Rod Garrett from SOM Architects.

We are here for -- requesting relief from -- for two variances to construct an office building above the existing Hecht's department store building at 12th, 13th, and G Streets, N.W., in downtown Washington.

This application is unique in a number of respects. You've never seen an application like this, and you are likely never to see one again. This is an application which will result in the construction of an office building on top of an existing department store while the department store is still running.

The development site is three-dimensional. It sits -- as the architect will describe further, it is the air rights

above the department store and comes down, cascades down the back of the department store, the north side, and touches the ground. Very -- relatively little of this office building will actually touch the ground.

The regulatory framework is also unique to this site. The majority of the site is known as Disposition Lot 3 in the downtown urban renewal plan. Lot 56, which you've seen in our -- one of our exhibits -- Lot 56 and half of a north-south stub alley is together known as Disposition Lot 3, which is divided into Parcel 3A, which is the Hecht's department store building, and Parcel 3B, which is the air rights.

Lot A-10, which is also part of the development site, is not in the urban renewal plan and was added to this development site relatively recently and really is the catalyst which allows this project to go forward.

The plan -- the urban renewal plan envisioned this office building a number of years ago. As a matter of fact, the Hecht's department store was built to accommodate a building on top of it. The original intention was that when the office building was constructed the lobby would be retrofit down through the retail space into the building.

Well, May Department Stores Company did not want to do that, for one reason of which was this is the highest revenue-producing -- one of the highest revenue-producing department stores in the whole May Company chain, not just Hecht's

department stores but the whole May Company chain. So the loss of retail space was something they were not interested in.

By acquiring Lot A-10 to the north, this really allowed this project to go forward, to give the office building its own independent, separate ground-level presence to accommodate the lobby space, the entrance, the loading, the parking, things like that.

We're asking for two variances. I'll explain them briefly, and the architect will go into more detail. The first is for the retailer service requirement. In the downtown development district, we're required to provide a certain amount of ground floor retail. Given the small size of the developments -- of the site, Lot A-10, it's not possible to accommodate .5 FAR retail and also accommodate the other necessary elements of the office building.

The retail requirement does not apply to Disposition Lot 3 by virtue of a ruling that was obtained in the 1990s from the Zoning Administrator and was confirmed by the Corporation Counsel's office that it does apply to successors and assigns. Because of a combined lot development with the Hecht's department store and the building next -- across the street on 11th Street, 700 11th Street, the retail requirement is satisfied as to Disposition Lot 3. However, not as to Lot A-10, and that's why we're here for that variance.

For parking, there is in -- the zoning regulations

say that for a disposition lot in an urban renewal plan, the parking requirements of the urban renewal plan govern. So for Disposition Lot 3, the parking requirements are set forth in the urban renewal plan.

For Lot A-10, we're governed by zoning, so we're asking for a variance from that portion of the parking that will be on Lot A-10. We're providing an above-ground lot for all -- garage for all-day commuter parking.

The regulations allow an above-grade garage, but only if it's to be used for retail or residential use. If it's all-day commuter parking, a variance is required and that's why we're here -- for Lot A-10.

As you see, as the architect will describe, that above-grade parking lot -- garage will be virtually imperceptible from the street.

Unless there are any questions at this point, I'd like to go to my first witness, who is Mr. Jim Evans of Tishman Squire Properties.

COMMISSIONER HOLMAN: Mr. Chair, if you don't mind, I'd like to make a disclosure. It's not, hopefully, an earth-shattering one, but Mr. -- the applicant reminded me that at one point I was Chair of the Redevelopment Land Agency, and, in fact, at an earlier point I was involved with the city in negotiating some of the original portions of this deal.

I don't think that it in any way inhibits my

ability to be fair and objective, but I thought I should make that statement for the record in case any of the Board members or the applicant had any concerns.

VICE CHAIRPERSON SOCKWELL: Thank you, Mr. Holman.

As well, I would like to disclose that at one time this project was in the office in which I am employed, WDG, and I did some zoning research with regard to it. But I do not believe that any of the work that I did at that time would compromise my ability to be fair and impartial in judging this project.

MEMBER RENSHAW: What can we say but off with their heads?

(Laughter.)

VICE CHAIRPERSON SOCKWELL: Give it back. No.

(Laughter.)

MR. COLLINS: You'd lose a quorum if we did that, so maybe we can wait until after the --

(Laughter.)

MR. EVANS: I'm Jim Evans. I'm managing director with Tishman Squire Properties. We are the contract purchaser of Parcel 3D, the air rights, and Lot A-10, of the May Company, which obviously is the Hecht's department store located at -- on G Street between 12th and 13th Streets, N.W.

We're incredibly excited about being able to move forward with this development. It's really going to be about a 400,000 square foot office building that sits atop the Hecht's

department store. I think the project is very unique, as Mr. Collins said. It's the air rights above the department store. It sits right atop the Metro Center.

It's three-dimensional, which allows the lobby access to be down at the lower level, but the first office level really is the equivalent of the seventh office level, if this were a traditional office building. And I think Mr. Garrett can go into the details of that.

I think the real key to this whole transaction is that with the May Company being able to acquire Lot A-10, it has allowed this project to move forward because, as Mr. Collins said, they are incredibly concerned with their retail sales in this department store, and this is one of their most successful.

The original design that originally had the lobbies punched out required a lot of disruption to the retail space, and you had to work in stage and phase, but you definitely impacted the retail sales area. So that really precluded this thing from moving forward. That now goes away or -- and really minimizes any disruption to the site.

I won't say there won't be any disruption to the site because it's going to be a major project moving forward on top of this department store. And I think, really, the two variances that we've asked really -- on Lot A-10 are really to allow commuter parking above grade to accommodate the office building and also eliminate the retail requirement on A-10. So I

think you'll hopefully support this after we review the design of the project.

VICE CHAIRPERSON SOCKWELL: Thank you, Mr. Evans.

Are there any questions of the Board members? If not, at this time, I will turn the hearing back over to the Chair, and we will go with your next witness.

MR. GARRETT: My name is Rod Garrett. I work with Skidmore Owings & Merrill. We're the architects for the project. I'd like to step up and go through some exhibits, if I can. I'm not sure how to keep --

VICE CHAIRPERSON SOCKWELL: You'll have to keep the microphone close to you. If that's a problem, you can use a light pen, which I can provide you.

MR. GARRETT: Actually, if you have a light pen, that would be fine. And I can get -- can I have somebody -- if I can have somebody else to -- that would be great. Thank you.

VICE CHAIRPERSON SOCKWELL: There's an extra charge for that.

MR. GARRETT: Okay.

(Laughter.)

VICE CHAIRPERSON SOCKWELL: Just push the little button. There you go.

MR. GARRETT: Great. We have a very unique site for this project. As it's been described already, it's two parcels, Parcel A-10 and Lot 3, which combine to make the whole

project.

However, there is a series of, as Chris suggested, two zoning regulations specifically regarding parking. Lot A-10 is under the D.C. zoning regs, and Lot 3 falls under the RLA development, which was done in conjunction with Block 5 and Block 2 over here; all of -- the RLA controlling that whole, complete package.

We have been working with the RLA Design Review Board -- let me just -- to develop a three-part scheme, which essentially is the existing Hecht's department store -- this is a 13th Street elevation -- the office building, which is directly on top of Hecht's; and then the piece directly behind, which actually acts as the entry as well as the mechanism by which to go into a lobby and then go up to the office building above Hecht's.

The acquisition, as Mr. Collins said earlier, of this 60-foot piece behind Hecht's was really the catalyst to allow that to happen. All that can happen without the interruption of the functioning Hecht's department store, which is incredibly important, as it's the last major downtown department store all of us appreciate.

It was very important as we were developing this project to integrate this project into the Metro Center fabric. We felt that integration of the materials, as well as the sort of three parts that -- that kind of tie into the whole Metro Center

area, both this project as well as the ones on either side to the east and west, all of that we thought was very important for the consistency to fulfill the Metro Center plan.

We have support for approval and approval from the RLA, the NCPC, as well as ANC and the Office of Planning.

We have a very unique site, as I said in the beginning. We have zoning regulations that overlap on the site, an existing department store, a three-dimensional envelope that actually comes up and over the project. We have a very strict construction phasing and limited site for staging, which would happen in the 60-foot area behind the Hecht's department store in order to keep Hecht's functioning.

If we apply the -- let me just to another plan here. If we apply the strict regulations for which we're asking relief on Block A-10, we would need to have .5 FAR of this piece of Block 10, which is essentially half of that piece.

And as you can see here, we've organized the lobbies on both ends, essentially an elevator core to move us up, and then the loading for both this new project and for the Hecht's existing loading dock, which pretty much fills up, as you can see, that entire 60-foot bar directly to the north of Hecht's. Basically, you just can't get retail into that space. There's nothing left over.

Regarding the above-grade parking for the office workers, the site is basically land-locked. We can't build below

Hecht's. It has, as everybody knows, levels below, and the area below the eastern side -- northeastern side of the site actually has a Metro Center access. So there essentially is not much below grade. That's why we're asking for this relief above grade.

Although there's no real parking requirement for this additional piece, we're proposing a valet parking area, as Chris said earlier, that would happen above the loading docks in that 60-foot piece up until we hit the office level.

I'd like you to consider the spirit of these two requirements as we have as we've been designing this project. The idea of retail requirements in an urban area we think, as architects and designers, is a very positive one.

However, we believe that that has been fulfilled pretty well with the fact that we have -- in fact, this is probably the best diagram you can get where we have the department store completely below this office building. So we think actually the spirit of that rule has been met pretty well in this site.

And the second part of adding retail to a ground floor is to activate the ground floor. Well, the only piece of the ground floor that we're really touching is that 60-foot piece which is actually our lobbies, which is a pretty active component on the ground floor. So we think that that's a relatively good argument.

Regarding the parking above grade, if you consider, again, the spirit of what that code -- why those regulations are there, it's to prohibit large parking garages from landing downtown and sort of canceling the activity along the street. And that's not -- again, not the spirit of what we're proposing here at all.

What we're proposing would actually -- the garage would be tucked in off the alley, held in between the two lobbies, and, as you can see, would essentially be -- this is the alley facade, which you'd never really see this whole facade because there's only 20 feet between this and the next building.

But we're actually taking the corner entry towers and wrapping them back, so the garage piece would actually be this little piece that's tucked in and screened in between those two lobby pieces, these two towers on the corners.

As you can see, this is pretty minimal, and certainly I think meets the spirit of why parking garages above grade -- why that rule was put into place, and we think this is a good solution to that, and we believe that it's a good response.

Concluding, I'd just ask that you grant the application, which would allow this project to proceed and fulfill the goals of the Metro Center master plan and the disposition lots. After 15 years, this project's time has come, and I think this is an appropriate response to a very unique

site.

Thank you.

MR. COLLINS: Madam Chair, members of the Board, that concludes our presentation. I'd like to point out that this is a coordinated project that we're putting together. This project has been reviewed by the National Capital Planning Commission for an urban renewal plan modification, to allow this to move forward.

The RLA's architectural review panel has reviewed and approved this design. The City Council has approved an alley closing for this project, and the ANC has filed a letter in support in this application. We are unaware of any opposition to this case.

We're available for any questions.

CHAIRPERSON REID: Okay. Is there anyone here who will testify in support or in opposition of this particular application? Okay. Thank you.

Board members?

MEMBER RENSHAW: Mr. Collins, just a question. Of the 130 parking spaces in the above-grade garage, are any of them going to be reserved for the shoppers at Hecht's? Or are all of them, 100 percent of the 130 parking spaces, only for those who are in the office buildings?

MR. COLLINS: The number actually is between 130 and 160, depending on how you park them. The number that we

showed was -- or talked about was 130 in the application. There has since been some discussion with a parking consultant who has looked at the layout and determined that more spaces could be in there.

As to the question as to just -- I want to clarify that for the record. But my understanding is that that parking will be open to whoever wants to come and park. But I'll -- Mr. Evans, do you have any --

MR. EVANS: That is correct. I mean, essentially, we're probably going to allocate a majority of those spaces for tenants within the building, but there is going to be visitor and commuter parking available. So that obviously allows people that are going to shop at Hecht's to park there also.

VICE CHAIRPERSON SOCKWELL: So, realistically, the application should state that it is a parking garage for multiple purposes, primarily to be used by the occupants of the future office building, and secondarily, and only secondarily, to be used for commuter parking. Am I correct?

MR. COLLINS: I think you're correct. Even if we only were intending to have one space above grade for commuter parking, we still need the variance. So that's the way we request it. But you're absolutely right. It will be available for anyone in the public who wants to park here, if the space -- you know, on a space available basis.

MEMBER RENSHAW: Thank you, Mr. Collins. I just

wanted to make sure that you were not going to leave out one of your primary audiences, and that is, of course, the shoppers at Hecht's. Thanks.

CHAIRPERSON REID: Okay. Other questions, Board members? Moulden? Holman?

VICE CHAIRPERSON SOCKWELL: How is the ventilation going to be handled in the parking garage?

MR. GARRETT: Well, we have been developing both the system of taking it into the alley, but also intake into the alley, and then up through the garage. It'll be a mechanically ventilated garage. It's not going to be naturally ventilated because we don't have enough exposure to naturally ventilate it, but we will create some louver system along the alley to get as much cross air as we can into the garage.

It's all above the loading dock, so actually any ventilation -- any garage exhaust that would come out into the alley is up, you know, above the 20-foot height limit.

VICE CHAIRPERSON SOCKWELL: If I'm not incorrect, the windows on the opposing building to the north are operable on that face?

MR. GARRETT: I don't know.

VICE CHAIRPERSON SOCKWELL: And if they are, you'll have to make sure that you take that into consideration with your exhaust air scheme.

MR. GARRETT: Okay.

MS. BAILEY: Mr. Sockwell?

VICE CHAIRPERSON SOCKWELL: Thank you.

MS. BAILEY: The perspective that's on the easel, I didn't see a copy of that in the file. Was a copy submitted? And are there other things that you have discussed today that are not in the file?

VICE CHAIRPERSON SOCKWELL: Beverly, I only have four plans. I don't have any of the elevations in my member package.

MR. COLLINS: We have copies of the elevations we can use. We brought them along for explanation purposes. We have copies for the file.

VICE CHAIRPERSON SOCKWELL: But if they are used for explanation purposes, they should be submitted to the file.

MR. COLLINS: They are being submitted.

VICE CHAIRPERSON SOCKWELL: Is the garage intended to be valet parked? You made the discussion of potentially 130 versus potentially 160 spaces, and I think in my experience that much of a difference would generally mean that you're going to change the method of operation in order to accommodate 30 additional spaces.

MR. GARRETT: It will be valet parked. In fact, that's -- the only way that we can make this garage work is by valet parking it. The width is not such that we can actually ramp up to it. We're providing a pair of parking elevators to

have the cars moved up to these parking levels.

VICE CHAIRPERSON SOCKWELL: All right. Thank you very much.

CHAIRPERSON REID: Okay. Persons or parties in support? No. Wrong. Back up. Going too fast.

Government reports. We do have a report from the Office of Planning, in which they are recommending support of this particular project.

MR. FONDERSMITH: Yes.

CHAIRPERSON REID: I'm sorry, Mr. Fondersmith. I didn't see you there.

MR. FONDERSMITH: Oh, okay. I'm sorry.

CHAIRPERSON REID: I mean, I saw you earlier, but I didn't see you sitting there. But go ahead, please.

MR. FONDERSMITH: Okay. Well, we would just -- we would just echo what's been said, that this is an unusual project, both in the physical configuration and in the regulatory framework, and it's -- it is interesting to note that it will bring to close, or to completion, this coordinated effort by the District Government and the private sector to get coordinated development at Metro Center -- at the Metro Center metro rail station -- a process that began in the early 1970s. So it's been almost 30 years.

You've heard the description of the two variances requested, and we -- we detail those somewhat in -- at length I

guess in our report. And we note that certainly the Office of Planning has tried, whenever we can, to get retail space in downtown. I mean, that's the purpose of this provision in the DD district.

But this is a unique circumstance when you look at that lobby, and here we're dealing with the west lobby of 13th Street. As has been said, it's only -- inside it's only about 55 feet by 30 feet, and you have to have the circulation there to the elevators. Obviously, you need that elevator lobby to get up so there's no -- it's an exceptional situation, and there's really no other way to do it.

In the same manner with the parking variance -- and in both of these variances we don't see that there's a precedent being set here, or that there's harm being done to the intent of the zoning regulations.

On the parking regulations, the above grade has been mentioned already. Above-grade limitation, except with a variance, is put in there to discourage parking garages that would be built just for commuter parking.

But in this case where, in effect, the developer feels that this additional parking, or this parking in the building in addition to the spaces that are being allocated to this project across 12th Street, feels that that parking is necessary, really, to make the project feasible.

We, again, believe that that -- that the variance

can be granted without harming the intent of the -- without harming the intent of the zoning regulations.

It's been noted that the -- that some spaces will be available for retail customers, whether they're Hecht's or otherwise, and hopefully this will be one of the garages that will be open in the evening and help support evening activities.

We noted also that in terms of the overall development -- and this doesn't directly relate to the variance, but obviously the development will bring additional employees, probably in the order of 1,900 new employees to this site, providing additional customers both for Hecht's and other retailer in the area.

The office component will add to the District's tax base and have some impact on additional sales and other taxes. And, of course, as has been mentioned, this particular site or this group of sites here -- this one in particular -- probably has the best metro rail access of any location in the whole system. And so there's a benefit there, and there's, of course, a benefit to metro ridership.

So we have recommended support -- recommend both the variance for the retail and the variance for the above-grade parking. We note in here, as has been I think already run through, the other approvals that have been gained -- the alley closing, the downtown urban renewal plan change, which is in process, and the urban renewal plan design review by the RLA

Design Review Committee -- review plan.

And, finally, we've attached the report of the Department of Public Works, which sees only minimal impact on the area's transportation system and has no objection to the proposal.

So we would recommend that the Board grant these two variances.

CHAIRPERSON REID: Okay. Thank you, Mr. Fondersmith, and you included in your report the position of the -- of DPW, and we also have a letter in the file from Mr. Layton, in which he echoed your earlier statement that the Office -- I mean, the Department of Public Works has no objection to this particular project, and that they don't foresee any problems as far as traffic generation is concerned, or from a transportation standpoint, or for parking facilitation, there being any objection or any problems in that particular location.

Are there any questions for Mr. Fondersmith, Board members?

VICE CHAIRPERSON SOCKWELL: Yes. Mr. Fondersmith, in the report under "Parking Variance," you described the 115 spaces that would be provided or apparently already exist --

MR. FONDERSMITH: They already --

VICE CHAIRPERSON SOCKWELL: -- across 12th Street.

MR. FONDERSMITH: Yes.

VICE CHAIRPERSON SOCKWELL: And that they would be

assigned to this new building.

MR. FONDERSMITH: That's right.

VICE CHAIRPERSON SOCKWELL: Now, does that include -- are those 115 the total number of spaces that are in the below-grade garage across the street?

MR. FONDERSMITH: No, they're not, although I do not know -- I mean, in other words, they have been -- they were built, they were used, but under the formula that was outlined -- under the formula that was outlined in the urban renewal plan, they were for an eventual building on this site.

VICE CHAIRPERSON SOCKWELL: So they're not being pulled from another allocation to be reallocated in this direction? They're just per se in temporary use for -- by others?

MR. FONDERSMITH: I guess that's the way you would say it. I mean, obviously, they haven't been sitting empty there. I mean, they've been used. So to the extent that the people from this building who are assigned to those spaces -- that means there will be kind of a -- whoever has been parking there will have to park somewhere else.

VICE CHAIRPERSON SOCKWELL: While Mr. Layton is not here for us to request input from him, I am hopeful that his traffic considerations included the fact that those people who will be displaced from parking have been accommodated in his vehicle trip analysis and other data, because one of the issues

that tends to come up is that once you taking parking away from one user and give it to another, what happens to the previous user?

Does that previous user now seek on-street parking, or look for other perhaps underutilized garages within the neighborhood? Those are issues that we can't answer here without input from Mr. Layton and the traffic people.

MR. FONDERSMITH: Yes.

CHAIRPERSON REID: Are you done?

VICE CHAIRPERSON SOCKWELL: I think that's all I have. Thank you.

CHAIRPERSON REID: Okay. All right. The ANC report. Ms. Renshaw, could you give that report? There is no ANC representative here, or is -- is someone here? Okay.

The letter doesn't have -- is not on ANC letterhead, but, Ms. Pruitt, I think that in a previous case you said that it wasn't necessary? Okay. All right.

MEMBER RENSHAW: We can request of ANC-2C to put it on its letterhead, if the Board would like that.

VICE CHAIRPERSON SOCKWELL: Yes. Generally, we've done that, and appreciate your reminding --

MEMBER RENSHAW: All right. That letter is dated November 1, 2000. It is signed by Norma Davis, who is the ANC Vice Chair, and she writes, "Dear Ms. Reid and Members of the Board: On November 1, 2000, ANC-2C held a public meeting.

Proper notice of the meeting was given by the ANC. The number of members of ANC-2C that constitute a quorum is four, and four members were present at the meeting.

"The applicant's representative made a presentation regarding requested variances for above-grade parking and for ground floor retail. The ANC believes that this is a unique site and that the strict application of the regulation would impose a practical difficulty.

"Finally, the ANC believes that approval of the application would not result in any detriment to the public good. Therefore" -- or accordingly, as she writes, "ANC-2C recommends that the application be granted, and the ANC-2C voted three to one to support the application.

"Both the undersigned and Ms. Doris Brooks, ANC, SMD-2C-03, are authorized by the ANC to present the report." However, they are not here.

And, again, it is signed by Norma Davis, the ANC Vice Chair.

CHAIRPERSON REID: Okay. Thank you very much, Ms. Renshaw. Therefore, ANC-2C will be afforded the great weight to which it's entitled.

All right. There are no persons here in support or in opposition to this case. So we move now to closing remarks by the applicant. Mr. Collins?

MR. COLLINS: Madam Chair, and members of the

Board, thank you for your time today. We've demonstrated, we believe, through substantial evidence and testimony that we meet the three-part test for variance relief in both instances, and we would respectfully request a bench decision, and, if that is so granted, then also a summary order.

Thank you very much.

CHAIRPERSON REID: Okay. Questions, Board members? Okay. Would you wish to act on this today? If so, may I please have a motion?

MEMBER MOULDEN: I make a motion that we approve the application of the May Department Stores Company for variances from the requirements of the downtown development district to construct an office building; also, under Subsections 1702.7(c) and 1703.3 from the parking requirements to provide all-day commuter parking, and to provide ground floor leasable space for certain retail and personal services -- service uses in the DD/C-4 District at the premises of 1719 13th Street, N.W.

CHAIRPERSON REID: Okay. Thank you. Also, you said, for a parking garage?

MEMBER MOULDEN: Yes.

MEMBER RENSHAW: Second.

CHAIRPERSON REID: Okay. And --

VICE CHAIRPERSON SOCKWELL: And just to make sure, it was a variance from the ground floor retail requirement. I think you said "for" as opposed to --

CHAIRPERSON REID: Thank you. Any other comments or discussion?

MEMBER RENSHAW: Just a statement to leave the record open so that ANC-2C will send in its letter on letterhead.

CHAIRPERSON REID: Oh, okay. I concur with my colleagues as well. I think that the applicant has demonstrated very succinctly that it meets it burdens of proof as far as the branch is concerned, and to -- in regard to the uniqueness aspect of it, and the practical difficulty.

And that there is no opposition, so obviously there's no -- and due to the fact that there is no adverse impact, and that it would not -- granting it would not impair the intent and integrity of the zoning regulations or map. All in favor?

(Chorus of ayes.)

Opposed?

(No response.)

MS. BAILEY: Staff will record the vote as five to zero to approve the application. Motion made by Mr. Moulden, seconded by Ms. Renshaw. Ms. Reid, Mr. Sockwell, and Mr. Holman to approve.

CHAIRPERSON REID: Okay. Thank you. Good luck. You should have your order in about two to three weeks, Mr. Collins.

Okay. Mr. Cooper, you can come right up.

Ms. Pruitt, do you have to call it again?

SECRETARY PRUITT: No. You can just call him up.

CHAIRPERSON REID: Okay. Then, we'll readjourn for the Ira Clements case, Number 16634. Okay. Mr. Cooper?

MR. COOPER: Thank you. Madam Chair, members of the Board, Robert Cooper again on behalf of the applicant, Mr. Ira Clements. Thank you for allowing me the opportunity to recess.

The three-prong test for the variance requests made by Mr. Clements will be taken in order, the first being the exception of situation -- that the circumstances of the construction of the deck, and the need for the construction is quite exceptional.

And the -- Mr. Clements' medical condition -- well, go back. Mr. -- the need for the staircase initially -- and I -- I can -- let me get Mr. Clements out. I'll have Mr. Clements provide this testimony to the Board.

Mr. Clements, do you recall what year it was that you had this deck placed onto your property, built on your property?

MR. CLEMENTS: I don't remember what year it was, but it's been -- I know it's been five years.

MR. COOPER: Okay. At least five years?

MR. CLEMENTS: At least five years. I would think so.

MR. COOPER: Okay. How did it come about that you had this construction done at your property?

MR. CLEMENTS: How it came about is that I was -- I was sick. I was unable to walk, and I needed some steps at my rear. They were about to fall down.

MR. COOPER: Okay.

MR. CLEMENTS: And I needed some steps. I wasn't able to try to get -- to try to find somebody to build me some steps. My son said he -- one of his best friends was a good carpenter, and he would have him to build me some steps.

So the carpenter came, and he suggested to me, "Why don't you let me build you a deck." He said, "You don't get around good. You could come out on the deck. You could sit down. You could get sunshine. Why don't you let me build you a deck." So I agreed. I trusted him to know what he was doing as far as permit or whatever. I just put it in his hands, and he built a deck.

MR. COOPER: And did you pay him to build the deck?

MR. CLEMENTS: Sure, I paid him.

MR. COOPER: And he replaced -- as part of the deck construction, he replaced the stairs that were in need of repair?

MR. CLEMENTS: He replaced the stairs, and then he -- and then he put the deck up. He suggested that I get a deck. It would be better for me. By my not being able to get around good, he said it would be good for me, and he wanted to know if

he could put the deck up and I told him yes. And, sure, I paid him, yes.

MR. COOPER: Okay. Before -- there was no deck previous, prior to --

MR. CLEMENTS: There was no deck, no.

MR. COOPER: But there was a staircase?

MR. CLEMENTS: A staircase. That's what I initially wanted done, and he suggested that I have him -- let him put me a deck up, and I agreed.

MR. COOPER: Okay. What is your health condition?

MR. CLEMENTS: What do you mean?

MR. COOPER: Can you describe to the Board your health condition?

MR. CLEMENTS: Oh, I don't walk good at all. I have asthma for one thing, very, very bad. But that's not the worst thing. I had -- I had some brain damage. I had to go to the hospital, and they told me that it was permanent. And after -- after I got out of the hospital, I had to have therapy to learn how to walk again, because the part of my brain that was damaged, it -- it was the part that affects your balance.

MR. COOPER: Okay.

MR. CLEMENTS: So after I got where I could walk pretty good -- I got to where I could walk pretty good -- but then I fell.

MR. COOPER: Okay. Where did you fall?

MR. CLEMENTS: I fell on my front porch coming -- coming back from the grocery store one day with my wife. It was drizzling rain, and the porch was wet.

MR. COOPER: What's the -- how is the -- what's the construction of the porch?

MR. CLEMENTS: It's concrete. I fell and I broke my hip.

MR. COOPER: Okay.

MR. CLEMENTS: And I had to have a hip replacement. So now I don't get around as good as I did before.

MR. COOPER: Okay.

MR. CLEMENTS: I don't get around good at all.

MR. COOPER: And how do you use the deck in the back of your house?

MR. CLEMENTS: I go sit out -- sit out there in the sun.

MR. COOPER: Okay. Do you entertain out there on the deck?

MR. CLEMENTS: Sure. Me and my wife both. It's just me and my wife in the house, just the two of us.

MR. COOPER: Okay.

MR. CLEMENTS: But when we have company, sometimes we go out on the deck.

MR. COOPER: Okay. Madam Chair, I would submit that the first prong of the test for a variance for the

construction of this -- of this deck and the necessary related stairs, obviously, that were already part of the existing structure creates or at least satisfies the exceptional situation requirement under Section 3103.

CHAIRPERSON REID: The what?

MR. COOPER: The exceptional situation.

CHAIRPERSON REID: Which is what?

MR. COOPER: His health condition necessitating --

CHAIRPERSON REID: Okay. Mr. Cooper, did you talk to staff?

MR. COOPER: Yes.

CHAIRPERSON REID: Did they advise you to come with that particular suggestion as a means of relief?

MR. COOPER: That --

CHAIRPERSON REID: On the first prong.

MR. COOPER: Under the -- yes, that was part of the discussion.

CHAIRPERSON REID: Mr. Hart, did you --

MS. SANSONE: Madam Chair, if I might jump in. We advised Mr. Cooper that the circumstances under which the construction occurred could give rise to the exceptional conditions or exceptional situation of the property, which --

CHAIRPERSON REID: I'm sorry, Ms. Sansone. The circumstances by which they were constructed -- by which the deck was constructed -- do you mean that -- in regard to the fact that

Mr. Clements was not well advised as to the location of that deck in his yard, and the person doing it not obtaining the correct permit?

MS. SANSONE: Well, Madam Chair, where the courts have considered these cases of sort of after-the-fact variances, they have allowed the Board to look into the history of how the structure has come into place, and the length of time it's been there, and the consequences of having to remove it.

Those factors can go into the finding that the property has an exceptional condition. The variance statute does not, by its own terms, require uniqueness. One of the elements is that it can have extraordinary or exceptional situation or condition of the property, and the history of that property can go into the finding of exceptional character.

VICE CHAIRPERSON SOCKWELL: Ms. Sansone, if we lean deeply into interpretive theory here, I believe that the way one might want to state this -- and, Mr. Cooper, tell me if this does not fit within what you were attempting to say -- the condition that Mr. Clements found himself in, from a physical standpoint, and because of that condition, his inability to effectively manage the request that he made of his contractor for reconstructing the steps, the -- his potential inability to follow closely the methodology by which his contractor worked, the fact that his contractor may not have received the proper permits, could contribute to the exceptional condition that the

property achieved, i.e. having a deck that was not permitted.

Mr. Clements was in need of assistance and not quite capable of following through to make sure that the assistance he received was adequate and properly handled, under the circumstance that he was infirmed from a physical standpoint at that time. That would be the only way that I can see this as contributing to the exceptional condition of a piece of property and linking back to the condition of the property owner at the time.

CHAIRPERSON REID: Well, let's see. Okay. There is no such thing as a medical variance. While we certainly empathize with Mr. Clements' condition in regard to his illness, that within itself is not a basis for granting a variance.

And then, we go to -- Ms. Sansone said that the -- I believe that she was attributing the exceptional situation or condition to the circumstances surrounding how that particular deck was erected.

Now, remember, we're supposed to be assessing the -- this particular applicant as if the deck was not there in the first place. So it makes it a little nebulous for us to try to take into consideration the circumstances surrounding how it was erected when, as far as we're concerned, it's not even there. So --

MS. SANSONE: Madam Chair, I think this is an after-the-fact variance, and it is appropriate to look at how it

got there. In this case, the applicant's -- his staircase is located where -- there is a slope to this property that's shared by a number of houses, but not the entire square that this piece of property is in.

And that would also factor -- that would be sort of the uniqueness of the property. But his exceptional circumstance really arises from the history. And the courts have allowed the Board to look at that, where otherwise the alternative may be to require the deck to be torn down, which could lead to a waste of money, a waste of property, that does not seem to be otherwise causing an adverse impact.

Those are appropriate things for the Board to weigh and balance one against the other, and perhaps Mr. Cooper has other things to add. But these can all go into making the decision.

CHAIRPERSON REID: Well, Ms. Sansone, again, we are supposed to analyze the case as if that deck was not already erected. Then you get to the aspect of self-imposed practical difficulty, and that's -- we don't want to go there. That's the danger. That's why I was -- I was, you know, saying that.

So in looking at the property itself, now I think that we all agree that the property was non-conforming. And then I think that Mr. Cooper said that there was some exceptional shallowness to the land itself.

Now, it has to be, again, something that is, my

understanding, inherent in the land that causes a practical difficulty. And I think that Mr. Cooper said that it -- while most of the other properties were similar to this property, Ms. Sansone did mention that there was a slope.

MR. COOPER: Yes.

CHAIRPERSON REID: All right. Now, let's talk about the slope. Now, the slope within itself may be the basis for justifying this property being unique or unusual. And then, you go to the practical difficulty aspect of it. Obviously, as Ms. Sansone said, there are some other factors to be taken into consideration.

And under these particular circumstances, while, yes, no, you cannot take into consideration -- we don't have a medical variance. We don't have that per se. Nonetheless, I think that -- I think that -- and this is what we have to discuss here.

I think that in a situation where there is an apparent situation where there has been impropriety or an unethical type of situation where a person who may have some type of medical problem -- be it mental or physical -- had unwittingly had this deck built without the proper permits, and I wasn't aware of that until Ms. Sansone brought that up, that that is something that can be taken into consideration in certain situations.

MS. SANSONE: On a case-by-case basis.

CHAIRPERSON REID: On a case-by-case basis. And it's basically up to this Board to determine whether we feel that that particular criteria can be applied in this particular case. That is -- that's my assessment of it. It'd like to hear from the other Board members.

MEMBER MOULDEN: Is that the plat that you have over there? Can I see that? These lots, in looking at this plat, show that many of the lots are not totally irregular, but they are elongated, and they are narrow lots. And the house is -- is this a row house or -- row homes, right?

MR. COOPER: Yes, these are all row homes along 4th Street.

MEMBER MOULDEN: Right. Okay. And so that they are older homes, older lots. And that is one criteria, the shape of the lot.

Now, the other is that, due to the shape of the lot, and the need for this type of structure, this lot could place a -- well, the Zoning Code could place a practical difficulty on the applicant to design a deck that will meet some serious medical needs. You know, that's one way to look at it, you know.

VICE CHAIRPERSON SOCKWELL: If I might step into this, I think I may be able to solve this without any additional discussion.

First, the property that Mr. Clements owns is 18-

feet wide. The rear yard for Mr. Clements' property is somewhat -- is approximately 21 feet deep, exclusive of the rear deck.

You have an enclosed indoor garage, do you not, Mr. Clements? And that garage has an apron, which encompasses a portion of your backyard.

CHAIRPERSON REID: You have to define "apron."

VICE CHAIRPERSON SOCKWELL: It's a -- the parking access from the alley to the -- to the garage is across his -- his rear yard.

The rest of the rear yard, exclusive of an area which is a dropping off point at the bottom of the steps, is pretty much taken up by the steps themselves. The steps are in a six-foot wide portion of the notch in your deck, and the steps encompass three feet of that and are pretty much centered on the six-foot portion, which makes the portion to either side pretty much useless without stepping onto the drive that you would use to gain access to your garage.

Which means that for you to have any outdoor area in the rear of your house, you would have to either stand on the parking pad, or sit there, or there's no place else to be. And if you need to get your car out, you can't have tables and things moving those things away. And because of your condition, you're not able to lift things very often.

So in order for you to have any outdoor area to use at all effectively, in your condition, you would have to have a

porch or a deck. And that presents serious practical difficulties for outdoor space when you don't have any space available.

So it would seem to me that the practical difficulty here is the fact that you could not create a useable space for yourself in the yard portion of your home; and, therefore, the only way to achieve that would have been to provide some sort of elevated open area for you to use, because there is a pretty high first floor, and the steps just happen to have to go from the first floor to the yard, and they take up a very long area, and they are three-feet wide.

So my feeling is that you've satisfied the practical difficulty and exceptional conditions part of your three-prong variance test, merely by the fact that the existing features of your house preclude the use of the yard for any recreational or outdoor activity.

CHAIRPERSON REID: Thank you, Mr. Sockwell.

Now, as to adverse impact, have you had any complaints about the -- your application from any of the abutting property owners or neighbors?

MR. CLEMENTS: None whatsoever. None.

CHAIRPERSON REID: Okay.

MR. CLEMENTS: I even asked around, and they said they couldn't understand why I couldn't have it because it was -- it wasn't hindering anybody.

CHAIRPERSON REID: Okay. All right. Thank you.

All right. There is no one here in opposition. Before we get to that, ANC -- I don't think there was a letter.

MR. COOPER: No.

CHAIRPERSON REID: The ANC did not send in anything. And when the ANC doesn't send in anything, we assume that they have no opposition to the application. There is no Office of Planning report.

SECRETARY PRUITT: No.

CHAIRPERSON REID: And there's no one here in opposition to or support to this particular application. So then we move now to closing remarks by the applicant.

MR. COOPER: None other than that I adopt statements made by Mr. Sockwell.

(Laughter.)

CHAIRPERSON REID: Okay. Then, Mr. Cooper, are you going to request a bench decision/summary order --

MR. COOPER: Yes, I --

CHAIRPERSON REID: -- so that you can receive a decision today?

MR. COOPER: Yes, I do.

CHAIRPERSON REID: Okay. Board members, may I please have a motion?

VICE CHAIRPERSON SOCKWELL: I move that we grant the requested variance relief, that the applicant has met his

three-prong test, that there are exceptional circumstances with regard to the property, there is practical difficulty, and that there would be no adverse effects to the adjacent neighbors' enjoyment of light, air, and any other relevant negative impacts to be imposed by the proposed deck.

MEMBER RENSHAW: Second.

CHAIRPERSON REID: And it won't impair the integrity or intent or the zoning regulations or map.

Board members, any other comments or questions?

VICE CHAIRPERSON SOCKWELL: Just one comment, and that is that the -- any statements of the existence of other non-conforming/non-permitted decks on adjacent properties were not relevant to this case.

CHAIRPERSON REID: All in favor?

(Chorus of ayes.)

Opposed?

(No response.)

MEMBER RENSHAW: Madam Chair, I just want to thank Mr. Clements for coming today, to stepping forward and meeting the requirements of the permit. And we know it's difficult for you, given your delicate -- more delicate health, but we thank you for making the try at this.

MR. CLEMENTS: Thank you.

MEMBER RENSHAW: Thank you very much.

MR. COOPER: Thank you.

CHAIRPERSON REID: Okay. Can we have the vote recorded, please?

MS. BAILEY: Staff would record the vote as five to zero. Motion made by Mr. Sockwell, seconded by Mrs. Renshaw. Ms. Reid, Mr. Moulden, and Mr. Kwasi Holman, to approve the application.

CHAIRPERSON REID: Thank you. Good luck. You should have your order in about two to three weeks.

MR. COOPER: Thank you.

CHAIRPERSON REID: All right. That will, then, conclude the afternoon session.

(Whereupon, at 3:10 p.m., the proceedings in the foregoing matter were adjourned.)