GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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PUBLIC HEARING

+ + + + +

WEDNESDAY

SEPTEMBER 29, 1999

+ + + + +

The hearing was convened in Hearing Room 220 South, 441 Fourth Street, S.W., Washington, D.C., pursuant to notice, at 9:30 a.m., Sheila Cross Reid, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

SHEILA CROSS REID	Chairperson
BETTY KING	Vice Chairperson
JERRY H. GILREATH	Board Member
ROBERT SOCKWELL	Board Member

COMMISSION STAFF PRESENT:

SHERI M. PRUITT-WILLIAMS	Secretary, BZA
BEVERLY BAILEY	Office of Zoning
PAUL HART	Office of Zoning
JOHN NYARKU	Office of Zoning

D.C. OFFICE OF CORPORATION COUNSEL PRESENT:

ALAN BERGSTEIN, ESQ.

C-O-N-T-E-N-T-S

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(9:51 a.m.)

CHAIRPERSON REID: The hearing will please come to order.

Good morning, ladies and gentlemen. This is the September 29th public hearing of the Board of Zoning Adjustment, District of Columbia.

My name is Sheila Cross Reid, Chairperson. Joining me today are Betty King, Robert Sockwell, and Jerry Gilreath, representing the National Capitol Planning Commission.

Copies of today's hearing agenda are available to you. They are located to my left near the door.

Now, I have some agendas where that were -- these --

MS. PRUITT-WILLIAMS: Those are revised agendas.

CHAIRPERSON REID: Oh, okay. Revised?

MS. PRUITT-WILLIAMS: You should have one in front of you.

CHAIRPERSON REID: Okay. All right. All persons planning to testify either in favor or in opposition are to fill out two witness cards. These cards are located on each end of the table in front of us.

In coming forward to speak to the Board, please give both cards to the reporter, who is sitting to my right.

An order of procedure for special exception and various cases will proceed as follows.

One, statement of witnesses for the applicant.

Two, government reports, including the Office of Planning, the Department of Public Works, ANC, et cetera.

Three, persons or parties in support.

Four, persons or parties in opposition.

Five, closing remarks by the applicant.

Cross examination of witnesses is permitted for persons or parties with direct interest 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 the persons present not engage members of the Board in conversation.

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

The Board will now consider any preliminary matters. Preliminary matters are those which relate to whether a case will or should be heard today, such as requests for 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 the case today or if you believe that the Board should not proceed, now is the time to raise such a matter. Any preliminary matters?

MS. PRUITT-WILLIAMS: Yes, Madame --

CHAIRPERSON REID: Staff, preliminary matters?

MS. PRUITT-WILLIAMS: Yes, Madame Chair. We have a couple of preliminary matters on Application 16483, appeal of Georgetown Homeowner's Alliance. They are requesting a postponement or continuance of the case.

You have a letter in the file from the Applicant's attorney.

CHAIRPERSON REID: Un-huh.

MS. PRUITT-WILLIAMS: I believe there's a representative here.

CHAIRPERSON REID: Anyone who's affiliated with Case 16483 please come forward.

Do you have a microphone there?

MS. KING: They're over here.

CHAIRPERSON REID: I guess they were cleaning.

MS. KING: Why don't you take a couple of those?

MS. PRUITT-WILLIAMS: We make you work for your continuance.

MS. KING: Just use one of them and we'll fix it later.

MS. McCARTHY: Good morning, Madame Chair.

We have requested a continuance on this case.

MS. KING: Ellen, we need your name, address.

MS. McCARTHY: Oh, for the record, my name is Ellen McCarthy. I'm with the law firm of Robbins, Kaplan, Miller & Soressi (phonetic). We represent the Georgetown Homeowner's Alliance.

We have requested a continuance in this case because we've been working with two different sections of the city administration to try to resolve this problem without having to bring it

before the Board.

I believe you also have a letter in your file from the Corporation Counsel's office, which is also -- I've received a fax of a letter from the Corporation Counsel's office requesting a continuance in this matter as well.

MS. KING: I move that we grant the continuance, Madame Chair. I'm always in favor of people working out their differences without having to come to this Board.

MR. GILREATH: I'll second the motion.

CHAIRPERSON REID: All right. Are we going to set it for a date certain?

MS. PRUITT-WILLIAMS: That's what I was going to ask. Is the Applicant ready to -- I mean, the first available date we have at this point would be December 1st.

MS. McCARTHY: I think that would be fine.

MS. PRUITT-WILLIAMS: Okay. So this will be on the December 1st afternoon agenda.

CHAIRPERSON REID: Do we not have someone from the George Washington -- Georgetown Homeowner's Association.

MS. PRUITT-WILLIAMS: Well, that's who Ms. McCarthy is representing.

CHAIRPERSON REID: Oh, I'm sorry. You're the counsel --

MS. McCARTHY: They're our clients.

CHAIRPERSON REID: -- for the Georgetown Homeowner's Association. I'm sorry.

Then the other side is who?

MS. PRUITT-WILLIAMS: The other side is the Zoning Administrator, Mr. Loranko (phonetic).

CHAIRPERSON REID: Okay. He was here earlier.

MS. PRUITT-WILLIAMS: Who is aware now of the --

CHAIRPERSON REID: He was here earlier, but he had -- you discussed this with him --

MS. PRUITT-WILLIAMS: Yes.

CHAIRPERSON REID: -- to see if there was dates that would be appropriate?

MS. PRUITT-WILLIAMS: He said any time he was fine.

CHAIRPERSON REID: Oh, really?

MS. PRUITT-WILLIAMS: Yes.

CHAIRPERSON REID: Okay.

MR. BERGSTEIN: Well, he's also being -- excuse me. I'm sorry.

He's also being represented by Corporation Counsel, and I believe the

representation is that there's been communication between the party and Corporation Council and they can work out dates.

But is there any other party or intervenor, anyone who's requested party status as a matter of right who has not been brought into this discussion of a continuance?

(No response.)

MS. PRUITT-WILLIAMS: Well, we haven't had the hearing yet. So no one has requested party status, at least not in writing from the file.

MR. BERGSTEIN: Okay. That's fine.

MS. McCARTHY: But you were asking if the property owner had been an intervenor? Yeah, probably not.

CHAIRPERSON REID: Okay. So what's the date certain so that we can include that in the motion?

MS. PRUITT-WILLIAMS: December 1st.

CHAIRPERSON REID: Okay. Ms. King, would you like to modify your motion to that?

MS. KING: Yeah, fine, until December 1st, continued until December 1st.

MS. McCARTHY: Okay. Thank you.

CHAIRPERSON REID: All in favor?

(Chorus of ayes.)

CHAIRPERSON REID: Opposed?

(No response.)

MS. PRUITT-WILLIAMS: The next preliminary issue is Case 16490, from Meristar, and they're requesting a continuance. This is also represented by Ms. McCarthy.

CHAIRPERSON REID: Okay.

MS. McCARTHY: Madame Chair, I believe in this instance that the relaxation of the zoning code, the zoning regulations, which was passed as part of the regulatory reform by the Zoning Commission, I believe, two weeks ago, will probably moot this matter because we only needed a variance for a .67 percent.

But until the final order is written and all of the details come out, we thought it was better to just wait and see, again, if there was no need to go through the BZA hearings.

MS. PRUITT-WILLIAMS: The order -- turn off the mics., one of them, yeah.

Yes, the Zoning Commission has passed the reform, regulatory reforms, but it has not yet been published in the record. So it's not effective, but once it is effective, all applicants that have been filed prior to that date will be under the old regs. So that would not affect this

project.

MS. McCARTHY: Okay, but we have not actually filed for a building permit. We knew that we were going to exceed the --

MS. PRUITT-WILLIAMS: But you have an application in with us.

MS. McCARTHY: Right.

CHAIRPERSON REID: Do you want to withdraw the application?

MS. PRUITT-WILLIAMS: Yeah.

CHAIRPERSON REID: Would that be the best thing?

MS. McCARTHY: Well, yeah, but I don't know for sure if in the final version that was passed our issue has been mooted out.

MS. PRUITT-WILLIAMS: Okay.

MS. McCARTHY: So we may need to continue.

CHAIRPERSON REID: But given the information from Ms. Pruitt-Williams, do you think that it would be more prudent for you to withdraw and then you can reapply?

MS. PRUITT-WILLIAMS: Well, you don't want to lose your queuing space.

MS. McCARTHY: Right.

CHAIRPERSON REID: Oh. So you just want

to --

MS. McCARTHY: Right, if we could just stay in the queue.

CHAIRPERSON REID: Table it.

MS. McCARTHY: Right.

CHAIRPERSON REID: We can keep it in the queue, but table it until you know whether or not --

MS. McCARTHY: Right, right, and then if we need to reapply under the new regs., we will do that, but if the regulations do not change --

CHAIRPERSON REID: If you don't have to.

MS. McCARTHY: -- that particular provision and we still need to go before you --

CHAIRPERSON REID: Okay.

MS. McCARTHY: -- then we prefer to stay in the queue.

CHAIRPERSON REID: Okay.

MS. KING: What is the Meristar Hotel Group? Is that the Latham Hotel?

MS. McCARTHY: The Latham Hotel.

CHAIRPERSON REID: So in this instance you don't want to continue to a date certain or do you just want to continue it, have it continued?

MS. McCARTHY: Right, that would be fine. We don't need a date certain. Well, actually maybe you should say -- maybe you should give us a

date certain because, you know, within a couple of weeks we'll know when the order is published.

CHAIRPERSON REID: Okay.

MS. McCARTHY: So we'll know whether we want to go forward or not.

CHAIRPERSON REID: So you do want to go --okay.

MS. PRUITT-WILLIAMS: The order, I believe, will be in this week's Register.

MS. McCARTHY: Okay.

MS. PRUITT-WILLIAMS: Or next week. We can also put it on December 1st.

MS. McCARTHY: Right, right, and as soon as we know if the issue has been mooted out, we will certainly let the Board know that we don't need to go forward, and you can use the space for another case.

CHAIRPERSON REID: Okay. Let use know as soon as you are aware of it, please.

Okay.

MS. PRUITT-WILLIAMS: Somebody in the audience, I believe, Madame Chair.

CHAIRPERSON REID: Come forward, please, to the table and give your name and your address, sir.

MR. MOLTON: Hello.

CHAIRPERSON REID: Un-huh.

MR. MOLTON: Good morning. My name is Elliot J. Molton. I'm a resident at 1061 Thomas Jefferson Street, N.W., in Washington, D.C.

I'm here representing myself. I am not an attorney. I'm a private citizen, and a group of interested homeowners, property owners, and individuals that work in the neighborhood surrounding the Meristar Hotel.

I am here to present with this Commission, and I'm asking you for directions on how to do this, a petition containing signatures of a number of individuals, 45 to be exact, requesting their concerns be addressed by the Commission to disapprove and reject this application.

I have this here for you, Madame Chairman. Would you like for me to come and bring it to you?

CHAIRPERSON REID: Just one second, please.

MR. MOLTON: Thank you.

CHAIRPERSON REID: In this instance, Ms. Pruitt-Williams, since it's being continued, do we accept this information at this time or do they have to get in before --

MS. PRUITT-WILLIAMS: Well, you should

not accept this information. The file is open. So if he wants to have it put in the record, he can take it next door, and it will become part of the file, and then you will get the copies at that time.

CHAIRPERSON REID: Okay. Well, wait a minute.

MS. PRUITT-WILLIAMS: But we're not having the hearing. You've already decided to continue it.

CHAIRPERSON REID: Let me see and make sure I understand the answer to my question, which was would we accept the information that he's submitting to us at this time or wait and he can submit it later around the time of the hearing, and you said that, no, we would not accept it, but --

MS. PRUITT-WILLIAMS: The Board should not accept it directly.

CHAIRPERSON REID: Ms. Pruitt-Williams, I think that it's fairly -- it's fairly known that we never accept anything directly. So when I say can we accept it, then it's understood, I would think, it would be through staff.

MR. BERGSTEIN: May I make a suggestion?

MS. PRUITT-WILLIAMS: Correct, but I guess my understanding -- well, what I meant was we will --

MS. KING: Alan Bergstein has something to add to this debate.

MS. PRUITT-WILLIAMS: Fine. Let Alan handle it.

MR. BERGSTEIN: What I would suggest is rather than accepting anything, because the case has not begun and may never begin --

CHAIRPERSON REID: Un-huh.

MR. BERGSTEIN: -- is to let this gentleman know when the next time -- I guess December 1st -- is for the hearing. At that time if there is no hearing, then you don't have to worry about accepting anything because it just becomes moot because of the change in the regulations if it does fall within what's being talked about.

Otherwise if we do have a hearing, what will happen, sir, is that you'll have an opportunity either to request party status or to be a witness, and at that time, he can put forth the material, and then at that time the Appellant would have an opportunity to argue whether or not what he's providing to you is relevant or not in terms of your record.

CHAIRPERSON REID: Un-huh.

MR. BERGSTEIN: So rather than accept something that the other party hasn't had an

opportunity to object to or not as to whether or not it should be in the record, my suggestion is then that this gentleman come back on December 1st. Either there will be a hearing or not be a hearing. If there is a hearing, he can request the party status or the ability to testify as a witness, and at that point he can submit that and the Appellant or the Appellee, as the case may be, can make objections as to whether or not it should be introduced into the record.

MS. KING: But in any case, it would probably be to the gentleman's advantage to write a letter requesting party status to the Board of Zoning Adjustment so that that can be part of the package that we receive so that -- that the members receive. I won't be a member then.

MR. MOLTON: May I -- excuse me, sir.

MR. GILREATH: Madame Chair, if the case does go forward at the December meeting, that looks like a rather substantial document that he has. We would not really have an opportunity to read it through. We could listen to his verbal testimony, but we would not have the benefit of reading the test itself. So is there a problem there?

CHAIRPERSON REID: Well, I agree, Mr. Gilreath. That was my thought. If it's going to be

submitted, now, procedurally is it not true, Mr. Bergstein, that the record at this point -- at this point, this is when the citizens are allowed to submit information or materials into the record, and if it goes forward, we will receive it, but if it doesn't go forward, we won't. Is that --

MR. BERGSTEIN: Well, there's really nothing that permits anyone other than the Appellant -- I'm going to look at applications -- to submit materials before the hearing. That's part of the application or the appeal.

The problem is that when you do a contested case, it means that everybody has an opportunity to shape the record and to state what should or should not be in the record. That's why you rule on evidence.

CHAIRPERSON REID: Un-huh.

MR. BERGSTEIN: And if you say anything that gets submitted before you have a hearing is in without a chance for anybody to object, but then once you begin the hearing, people can object, it's not really consistent with what a contested case is about.

MS. KING: But, Alan, in contested cases, we frequently have volumes, volumes of argument, of written argument from both sides of the

case.

MR. BERGSTEIN: Only if they're a party. I mean that's one of the issues. I mean no --

MS. KING: No, but I mean before we open the hearing for the first time, we get volumes of stuff from both sides and petitions and letters, arguments and so forth on both sides of the case. I think that this gentleman should be encouraged to hand in his material now in the knowledge that the case may never come before this Board.

CHAIRPERSON REID: Right.

Excuse me. I'm sorry. You were -- you were --

MS. PRUITT-WILLIAMS: That was my original thought. This gentleman can submit this. We will make it part of the record file. Then the Appellant or rather -- yeah, the Appellant would have the opportunity to respond in writing prior to the hearing. You would have all of that information, and then if we get any additional information before this is heard, we will again package it and send it to you.

CHAIRPERSON REID: Right, and we'll have a --

MS. PRUITT-WILLIAMS: If you have it -- if you wait until the hearing, you will have not the

opportunity to have gone through it, and that was my original suggestion, that, yes, he submit it to staff through the office there to become part of the public record.

As Ms. King says, we take in everything, and that way -- with the understanding that, you know, this case may fall off, given changes in the regs.

CHAIRPERSON REID: Yeah, I agree because if, in fact, for some reason it is withdrawn or it does not go forward, then it would not be put in our package --

MS. PRUITT-WILLIAMS: Correct.

CHAIRPERSON REID: -- and we would not read it.

MS. PRUITT-WILLIAMS: Right.

CHAIRPERSON REID: I would think that that would be the correct procedure at this time, for you to submit it to staff. Okay?

MR. MOLTON: Thank you very much for --

CHAIRPERSON REID: Then it will become part of the record.

MR. MOLTON: Thank you very much for that, and in support of that position of mine, I would like to read just a sentence from your August 19th letter that said, "All interested parties will

be given an opportunity to express their view. However, you may submit written views about this case. All written views should be sent to the address below and must be received by the Board before the hearing on the case is concluded."

You will notice that the signatures on the petition are in advance of today, which is the first time that we have noticed that this has become -- have asked a continuance. So I have this document here. The cover letter requests interested party status, as well as a couple of other actions on your part, and my question is: to whom should I deliver this document? May I do that right now?

CHAIRPERSON REID: Yes.

MR. MOLTON: Thank you very much.

CHAIRPERSON REID: Thank you.

MR. MOLTON: Thank you very much.

CHAIRPERSON REID: All right. Are there any other preliminary matters?

MS. PRUITT-WILLIAMS: No, ma'am, not from staff.

CHAIRPERSON REID: All right. Then Staff if you'd please call the first case of the morning.

MR. HART: The first case of the morning, 16479, application of Hamid Samadani,

pursuant to 11 DCMR 3107.2, for variance from the use provision of Section 330.5, Subsection C, for the conversion of a building, and from Section 401.3 of the 900 square foot per apartment unit requirement, to convert a two-family flat into a three-unit apartment building -- sorry -- in an R-4 district at premises 923 10th Street, N.E., Square 957, Lot 810.

Those persons planning to testify in this application step forward and raise your right hand for the oath.

(The witnesses were duly sworn.)

MR. HART: Please come forward.

MS. SAMADANI: Do you want to hear from me?

CHAIRPERSON REID: Yes. Your name and your address, please.

MS. SAMADANI: Yes. This is Ms. Yasreb Samadani, and I'm coming in behalf of my son, Hamid Samadani.

I'd like to bring to your attention this is a great country. Everything is made for the people, but sometimes a little mistake seeps through, and I'm glad we are correcting it.

If you -- I have enough document here that present to you all. When we got this property

--

CHAIRPERSON REID: Okay. Excuse me just one second, please, Ms. --

MS. KING: Would you pull the microphone closer to your mouth?

CHAIRPERSON REID: -- Samadani?

MS. SAMADANI: Samadani, yes.

CHAIRPERSON REID: All right. You're appearing on behalf of your son, correct?

MS. SAMADANI: Yes. I have his authorization that I am --

MS. KING: It's in the file.

CHAIRPERSON REID: Your are Yasreb?

MS. SAMADANI: I am Yasreb Samadani.

CHAIRPERSON REID: Okay, okay.

MS. SAMADANI: Yes.

CHAIRPERSON REID: All right.

MS. SAMADANI: And --

MR. HART: Excuse me, Ms. Samadani.

MS. SAMADANI: Yes.

MR. HART: Would you please give us your address?

MS. SAMADANI: The address of the property is --

CHAIRPERSON REID: No, your address.

MS. SAMADANI: My address is 10913

Brookwood Avenue, Upper Marlboro, Maryland, and the property is 923 10th Street, N.E., Washington, D.C.

MR. GILREATH: Madame Chair, would I ask staff a question?

CHAIRPERSON REID: Un-huh.

MR. GILREATH: Has this conversion already occurred? The unit now is three apartments and you applied for a certificate of occupancy and they said that you had to get this variance, or is this something to -- the conversion is to be done in the future?

The impression I had, perhaps it had already occurred.

MS. SAMADANI: It was. That's why I was going to bring to your attention it's a little mistake has been gone through.

MR. GILREATH: Okay.

MS. SAMADANI: When we did it, it was three unit, and you see, I have another piece of paper here. When they come for certificate of occupancy, they will tell you what needs to be done, and when you do it, they come and give it to you, and it was two bathroom upstairs, two kitchen upstairs, and then downstairs.

And now by mistake they give me two unit. It has been all the time three units. When

the -- now I'm filing for -- because he has two properties, and it goes above the four units. I'm filing for rental accommodations. They come to the conclusion this has been -- this should be two. I said, "No, it's three."

Now we are correcting it, and it's all done, and Ms. --

MS. KING: Ms. Samadani, I think what Mr. Gilreath is asking: did you do the conversion or was it already converted when your son bought the house?

MS. SAMADANI: When we bought the house, was three unit. We fixed it up because it was a wreck, but then we fixed it up, and we went to the certificate of occupancy, and we got it, but they made two instead of three. That was miss --

MS. KING: Who is "they"?

MS. SAMADANI: Plumbing and -- no, they all give it to me for three, but when it went -- I don't know -- somebody.

MS. KING: I'm sorry. You have a three -- your son bought a wrecked three unit apartment building.

MS. SAMADANI: And we fixed it up.

MS. KING: Is that what you're saying?

MS. SAMADANI: Yes, ma'am.

MS. KING: Okay, and what was the certificate of occupancy when you bought the apartment building?

MS. SAMADANI: There was no certificate of occupancy at that time. They didn't fix it up. We asked for it, and they came and looked. The plumbing, electrician, and the construct.

MS. KING: And they said you were zoned only for two units; is that correct?

MS. SAMADANI: They didn't say that.

MS. KING: Who is they? Is this --

MS. SAMADANI: The inspector.

MS. KING: -- the city that came?

MS. SAMADANI: The inspectors.

MS. KING: The inspectors came?

MS. SAMADANI: Yes. And, see, nobody know -- I didn't notice that time, but I have here one of the -- when the inspector came, they asked the things be corrected so they give me the certificate, and --

MS. KING: The certificate of what?

MS. SAMADANI: Occupancy for three units, and then the --

MS. KING: This is the plumbing inspector?

MS. SAMADANI: All of them.

MS. KING: The plumbing inspector, the electrical inspector.

MS. SAMADANI: The electric.

MS. KING: All of those people have nothing to do with zoning. They can say that your unit -- your building is fine for plumbing, electric, structural, whatever, but that has nothing to do with zoning.

MS. SAMADANI: No, but I was going to bring to your attention it was three unit all the time.

CHAIRPERSON REID: Okay, but how is it then that on your certificate of occupancy for September the 5th, 1991, it says two units?

MS. SAMADANI: Well, that's when it happened. I went to --

MS. KING: Did you own the house in '91?

MS. SAMADANI: My son is -- both house -- my son has one. This is one that is his, and he has another one, and I have one, but that doesn't have nothing to do with this one.

CHAIRPERSON REID: Okay, but this particular one, did you -- no one noticed for all these many years, for eight years that the certificate of occupancy said two units?

MS. SAMADANI: Yeah. See, the reason we

noticed it, because he has now more than four units, and we are going to get --

CHAIRPERSON REID: Rent control.

MS. SAMADANI: Yeah.

CHAIRPERSON REID: You come under rent control now.

MS. SAMADANI: And then they come across that this is two unit. I said, "No, it has been three unit all the time."

So they said why isn't that corrected. I said I'd be glad to, and they asked me $800. I give it to them, and then they ask me -- and we went to the Board of the -- all approved it, if you'd see on my file.

CHAIRPERSON REID: I don't see how you could not know that you had a certificate of occupancy for two units. When you get -- that's the whole point of your acquiring the certificate of occupancy, is for a specified use, and then when you got it, you're saying no one looked at it? I don't -- I just don't understand. You didn't look at it.

And not only that, but isn't this supposed to be posted?

MS. SAMADANI: We are -- we are right now posting and doing everything, and that's how they come up across to that. This has been all the

time three. It had tenant, all of them, and from beginning.

MR. SOCKWELL: Ms. Samadani.

MS. SAMADANI: Yes.

MR. SOCKWELL: When the $800 expenditure --

MS. SAMADANI: Yes.

MR. SOCKWELL: -- was made, what did the building permit application say on the page, on the first page where it asks present use and proposed use of the property?

Under present use did the application say three units? Under proposed use did the application also say three units, or did it say something else?

The other thing is that in the letter dated August --

CHAIRPERSON REID: Well, Mr. Sockwell, please, let her answer that question.

MR. SOCKWELL: Okay.

CHAIRPERSON REID: Because then we can all keep on top of where we're going.

MR. SOCKWELL: Right. That documentation is not in our file.

MS. SAMADANI: Yeah, we have -- I have everything -- you want it -- in my file.

CHAIRPERSON REID: Do you have that application that he's requesting?

MS. SAMADANI: Do you want to look at this one that --

CHAIRPERSON REID: No, no.

MR. SOCKWELL: No. When you had inspections done, you spent $800.

MS. SAMADANI: No, right now they ask me to pay $800, not at that time.

MS. KING: For the BZA.

MS. SAMADANI: The BZA is all -- this is all approved by the BZA meeting. They all approved. There is no objection on that.

I have copy that you have in your file.

MR. SOCKWELL: All right. What I was looking at --

MS. SAMADANI: Yes, sir.

MR. SOCKWELL: -- there were two things I was looking, one of which is a letter from the Advisory Neighborhood Commission 6A, dated August 29th of this year, where in the second paragraph, it states that on May 12th, 1999, Ms. Yasreb Samadani came before the 6A Commission Zoning and Licensing Subcommittee and presented Application 16479.

MS. SAMADANI: Un-huh.

MR. SOCKWELL: Members of the Zoning and

Licensing Committee discussed that Ms. Samadani's application was for a variance to allow a three-family unit apartment building, which was provided for by Section 330.5(c) and 401.3 of the zoning regulations, for the property located at 923 10th Street, N.E.

MS. SAMADANI: Un-huh.

MR. SOCKWELL: "Ms. Samadani explained that the present property is used as a two family unit. She paid $800 to convert the present property into a three unit apartment building."

On the basis of that statement, they apparently endorsed the change from a two-unit to a three-unit building. What you're telling us today seems to be somewhat different from that which the Advisory Neighborhood Commission believed to be true on August the 29th.

I'm just trying to get -- I think we're trying to get a true understanding of what happened, but the documentation does not --

MS. SAMADANI: Well, I don't mind if -- all I am asking, let me just have the document for three. The past is gone. That was mistake, and nobody caught it. Just let and be done by three unit and go on.

CHAIRPERSON REID: What was the mistake?

MS. SAMADANI: The mistake, I don't know why.

CHAIRPERSON REID: No, no. What -- excuse me, Ms. Samadani.

MS. SAMADANI: Yes.

CHAIRPERSON REID: Now -- now, one thing we really do need to clarify --

MS. SAMADANI: Yes.

CHAIRPERSON REID: -- okay, is if there was a mistake, then by whom? Okay? That's number one.

Number two, Mr. Sockwell just brought out the fact that when you went to the Advisory Neighborhood Commission 6A, you specified that you wanted a variance to allow a three unit -- a three-family unit apartment building at 923 10th Street, and you said on that date, according to this documentation from the letter, dated August 29th, and from ANC 6A, that the building was presently, as of August 20 -- as of the date that you came there, a two-unit building.

So now how is it that --

MS. SAMADANI: The certificate of occupancy --

CHAIRPERSON REID: No, no. Excuse me.

MS. SAMADANI: Yeah.

CHAIRPERSON REID: Before you go there, we need to be very clear on who's making the mistakes and where is the misunderstanding or the incongruity coming in. Okay?

MS. SAMADANI: Okay.

CHAIRPERSON REID: Did you go there and ask them for their support for a -- for a variance for a three-unit apartment building, and did you tell them that the building was currently two unit?

MS. SAMADANI: See, it -- in the -- when you look at the occupancy here, it says two unit.

CHAIRPERSON REID: No, no, no, that's not the question.

MS. SAMADANI: The document I have in my hand --

CHAIRPERSON REID: Ms. -- Ms. --

MS. SAMADANI: So that was my --

CHAIRPERSON REID: -- San -- hello.

MS. SAMADANI: That was somebody --

CHAIRPERSON REID: Ms. Samadani.

MS. SAMADANI: Yes, ma'am.

CHAIRPERSON REID: You have to ask --

MS. SAMADANI: Sure.

CHAIRPERSON REID: If you are going to have any -- any -- any possibility of getting your variance --

MS. SAMADANI: Yes, ma'am.

CHAIRPERSON REID: -- then you must answer our questions specifically as they're asked.

MS. SAMADANI: Okay.

CHAIRPERSON REID: My question was: did you represent on that day that the property was used as a unit-family unit?

Now, you understand. I think that you understand the scope of my question clearly enough to just give me a yes or no answer.

MS. SAMADANI: It says in here, but I'm not going to lie. The house always was three unit, but if you want to --

CHAIRPERSON REID: No, no, I --

MS. SAMADANI: Okay, yes.

CHAIRPERSON REID: And that -- unless we want to just completely --

MS. SAMADANI: Yes.

CHAIRPERSON REID: -- just --

MS. SAMADANI: Yes.

CHAIRPERSON REID: -- abort this particular hearing --

MS. SAMADANI: Okay, yes.

CHAIRPERSON REID: -- because I'm getting a little bit put out about the fact that I keep asking you a question that requires yes or no

and you keep going someplace else.

MS. SAMADANI: Yes, ma'am. Yes.

CHAIRPERSON REID: Did you or did you not represent at that time that the building was two units.

MS. SAMADANI: Okay. Yes.

MR. SOCKWELL: When you receive your tax billings, your tax billings describe the property as a two-unit building or a three-unit apartment or a single family dwelling?

MS. SAMADANI: The tax --

MR. SOCKWELL: The Office of Tax and Revenue here in the District.

MS. SAMADANI: I will pay tax for the -- at the end when tax -- the bookkeeper was paying tax by that, by the rent that I was collecting.

MR. SOCKWELL: But do they call the building for property tax records a two-unit building or a three-unit building or a single family?

MS. SAMADANI: I didn't get anything from them.

MS. PRUITT-WILLIAMS: Excuse me, Madame Chair. I think the main issue here is there may be physically three units in that apartment. However, the certificate of occupancy on record is for two

units.

MS. SAMADANI: Yes.

MS. PRUITT-WILLIAMS: Now, if it's been three units for a million years, that doesn't matter. It's what the C of O is on it right now, and what it's supposed to be even though it may not be what the certificate is.

MS. SAMADANI: Right.

MS. PRUITT-WILLIAMS: Our job here is to see whether or not this can be -- if a variance for three can be within the zoning regulations, and it really doesn't matter if it is three or not. You have to judge on what we have here before the zoning -- that was before the Zoning Administrator that came to us, which states that the current certificate of occupancy is for two.

So this applicant needs to prove that there is something unique and exceptional that there is a need for three.

MS. SAMADANI: Yes, exactly. That's how I want.

CHAIRPERSON REID: Thank you, Ms. Pruitt-Williams. However, I still feel that there is -- when you're looking at -- as Board members, we're looking at our package, and we're trying to get our arms around what the case is in this

instance.

MS. PRUITT-WILLIAMS: I agree, but I mean just --

CHAIRPERSON REID: And -- and what we're seeing is discrepancies all over the place.

MS. PRUITT-WILLIAMS: Correct.

CHAIRPERSON REID: And before I can make a decision I need to have some clarification on what, in fact, I am actually dealing with here. Yes --

MS. PRUITT-WILLIAMS: Well, the C of O of record is for two.

CHAIRPERSON REID: -- and part of the --

MS. SAMADANI: Yes.

CHAIRPERSON REID: -- part of the testimony that Ms. Samadani has given this morning is that there was a mistake. All right. So with this being the case, I still need to -- who made the mistake?

MS. SAMADANI: I have feeling I did because --

CHAIRPERSON REID: Who are you say -- huh?

MS. SAMADANI: I think I did it because my English is not as strong as my Persian is, and when I read the document I don't pick up all the

important points.

CHAIRPERSON REID: Ms. Samadani, that may be. I find that -- I find that somewhat --

MS. SAMADANI: You find that --

CHAIRPERSON REID: -- difficult because it appears to me you impress me as being a very intelligent person.

MS. SAMADANI: Thank you very much.

CHAIRPERSON REID: And you have very good command of the English language, and even if you didn't, then this is in writing. So --

MS. SAMADANI: Yes.

CHAIRPERSON REID: And also, when you went to the ANC meeting, you were very much aware of the fact that the building was three units, and you told them it was two units, English -- English misunderstanding aside. You understood that very clearly, what you did that day.

So now what we have before us is a situation where there's a certificate of occupancy for two units. You're asking -- you're telling the ANC that you have a two-unit building and you have a three-unit building. So they're supporting you for a variance to make, if I'm not mistaken -- now, is this correct? -- to make a three-unit building out of a two-unit building when it already really

exists. That's a little different.

So their letter, this basically nullifies the intent of the letter, does it not, because --

MS. KING: No.

CHAIRPERSON REID: -- it is not based on --

MS. KING: No, it doesn't.

MR. SOCKWELL: It seems to me that the letter is based upon the ANC's perception of what was done and what existed, which is different what we're getting to the extent that if the building was a two-unit building at the time, if your son purchased the building as an apartment building, it had units in it when he purchased it?

MS. SAMADANI: Yes. It had -- it had a one on the first floor and two on top floor.

MR. SOCKWELL: Was it vacant when he purchased it?

MS. SAMADANI: Yes.

MR. SOCKWELL: How long had it been vacant?

MS. SAMADANI: The owner was dead, and the children, they didn't take care of it. It was wreck. So when we purchased, we just cleaned it up, and when we finished, we applied for this.

And I just wanted to show you one little -- but it's all right. It makes it more complicated. Just please let me --

MR. SOCKWELL: No, it couldn't get more complicated.

MS. SAMADANI: This is what I was -- can I show this?

CHAIRPERSON REID: Okay. Well, tell us what it is before you show it.

MS. SAMADANI: This has been -- you know, when you asked the city -- you come and file; they come and electricity, electrician and --

CHAIRPERSON REID: Right. The inspectors.

MS. SAMADANI: You know, when they came and they point out what we need to be done, it -- and then you get the contractor to do it, this is the bill I get, contractor, Two bath upstairs, two kitchen upstairs. So it was three unit, but --

CHAIRPERSON REID: What does that do for you --

MS. KING: What is the date of that letter?

MS. SAMADANI: This is when I asked for certificate of occupancy, is '91, 9/3/91. You have it.

MS. KING: And you got a certificate of occupancy, but did you apply for a certificate of occupancy --

MS. SAMADANI: Yes, we --

MS. KING: -- for three apartments?

MS. SAMADANI: -- did three. They give me two.

MS. KING: Do you have a -- do you have a copy of your application from 1991 for permission to have three apartments?

Your application for your certificate of occupancy from 1991, do you have it with you?

MS. SAMADANI: That, we couldn't even find it in my file because when they brought things from one office to another office, so many things was missing, but I have in all the approved things; anything you want I have.

MS. KING: That's all not germane.

MR. SOCKWELL: Well, actually there's something I can say.

MS. KING: Madame Samadani.

MR. SOCKWELL: The woman who signed your certificate of occupancy's name was Dee Peters. She's no longer with the C of O office, but at that time and even up to the present, certificate of occupancy mistakes are made. Important

documentation is left off of C of Os. This are misrepresented on C of Os, and there are times when the client, including myself, have not noticed these things immediately primarily because the information I gave I expected to be correct, and the information I got back wasn't

So there is a history that something like this could have happened, and I would like to see your documentation.

MS. SAMADANI: Yeah, and then I appreciate that you're correcting it because I don't want anything against the law.

MR. SOCKWELL: Yeah.

MS. PRUITT-WILLIAMS: Ms. Samadani, you need to --

MR. SOCKWELL: I'd like to get copies of it entered into the record if we could.

MS. PRUITT-WILLIAMS: Yeah. Could you hand it to me, please?

CHAIRPERSON REID: The documentation that she is submitting, if I'm not mistaking, that is from a contractor to do the work. That's not from the government.

MR. SOCKWELL: It also has D.C. government green stamps on it, which would be the --

CHAIRPERSON REID: Oh, it does?

MR. SOCKWELL: -- approvals. It looks like it had approvals.

CHAIRPERSON REID: Okay.

MR. SOCKWELL: It looks like there was a copy of an approval. That's why I wanted to see --

CHAIRPERSON REID: Now, my question --

MS. KING: From electricians and plumbers?

CHAIRPERSON REID: My question, Mr. Sockwell --

MR. SOCKWELL: From D.C. government inspectors is what it looked like.

CHAIRPERSON REID: -- to you, Mr. Sockwell, is if the D.C. government approved -- well, how can they approve -- give a permit for a three unit and then it's given the occupancy for two?

MS. KING: But it seems to me that when I have had electrical and plumbing inspectors come to my house, they haven't checked up on whether I'm complying with zoning. They're checking up on whether I'm complying with the code as far as plumbing and electricity is concerned.

CHAIRPERSON REID: Well, no, my question is the permits. When they give you a permit to work --

MS. SAMADANI: After, yeah.

CHAIRPERSON REID: -- does their granting of the permit have to be in line with the regulations that govern the certificate of occupancy?

MR. SOCKWELL: Yes, because Zoning has to sign off on the application for construction.

CHAIRPERSON REID: Okay, okay. That's what I thought.

MR. GILREATH: Madame Chair, I'd like to ask the Applicant a question.

In 1991 after you renovated or you son renovated the apartments and so forth and you went down, either you or he went down and applied for a certificate for occupancy, did you tell those people specifically this was a two-family flat or they misinterpreted or used the information from the contractors? Who -- where did this information, two-family flat, on your certificate of occupancy in 1991 -- who gave that information? Did you or your son or was this an interpretation of the -- what was it? -- the Zoning Office or whoever issues these things?

MS. SAMADANI: The inspectors.

MR. GILREATH: Did they make a determination based on the contractor's work?

MS. SAMADANI: See, the house is two flat, but one -- one flat is one apartment and second flat is two apartment, and we add deck, and I have approved everything.

MR. GILREATH: Yeah. Well, did you go down with your -- who went down to the --

MS. SAMADANI: I did.

MR. GILREATH: -- Department of Consumer and Regulatory Affairs?

MS. SAMADANI: I went.

MR. GILREATH: Did you? When they ask you the purpose of this, did you say two family or three units?

MS. SAMADANI: Three units.

MR. GILREATH: You told them three?

MS. SAMADANI: Yes.

MR. GILREATH: And they put down two.

MS. KING: And where -- you don't have a copy of that application where you said three units?

MS. SAMADANI: I don't believe so.

MS. KING: You have all of this other paper work, but not that, not that?

MS. SAMADANI: No.

MS. KING: You've saved every piece of paper except the application.

MS. SAMADANI: Which one is application?

Is it a special -- maybe I do. Is this the application?

CHAIRPERSON REID: Give it to him.

MR. SOCKWELL: That would be a certificate of occupancy application.

CHAIRPERSON REID: For what date? What date is that?

MR. GILREATH: Is that 1991?

MS. SAMADANI: It's 12/15/91.

MR. SOCKWELL: Yeah, that'll work.

CHAIRPERSON REID: Okay.

MR. SOCKWELL: Well, actually the certificate of occupancy was issued in September of '91, the original one. So that would have to be after this C of O was issued.

The thing is that there are two issues -- three issues. Let me start with the documentation that you presented to our record.

One, this documentation dated 9/91 is a contractor's receipt for the installations, but the permit that was issued based upon the drawings that you have copies of were strictly for what appears to be a second floor addition, without any description of the use of that second floor addition.

MS. SAMADANI: That addition --

MR. SOCKWELL: So the addition in itself

does not qualify your home or your house for an additional unit. It just says that you were building a structure to the rear of the house that increased its size. That was apparently approved in August of 1990, signed on by Carl Marshall who was the structural engineer with the District of Columbia, one of them, and who is still employed there.

But nothing in this documentation supports the fact that you have three units. The question I would ask and would have to be -- that would have to be documented is that when this certificate of occupancy was issued, was it issued in error or was it issued as a name change C of O for a change of owner to an existing building that had a certificate of occupancy previously for a two-unit or possibly a three-unit use?

If the C of O that predated your September 5th, 1991 certificate of occupancy says two units and all that was done was a change of ownership from someone else to your son, then the certificate of occupancy of the previous owner will say exactly what this says.

MS. SAMADANI: The addition --

MR. SOCKWELL: With the -- with the one difference that the name will be different.

MS. SAMADANI: The addition was done to extent the second apartment, to make kitchen for them, and that's what we added to it.

CHAIRPERSON REID: But when you purchased the building you said -- did I not hear you --

MS. SAMADANI: But it was a wreck.

CHAIRPERSON REID: Excuse me.

MS. SAMADANI: You couldn't even see that, yeah.

CHAIRPERSON REID: Right, but did you not say that there were three units when you first purchased the building?

MS. SAMADANI: It was three units in there.

CHAIRPERSON REID: Okay. Now, does that not say two units, Mr. Sockwell?

MR. SOCKWELL: This certificate of occupancy --

MS. SAMADANI: Yeah, is the one that they give it to me.

MR. SOCKWELL: This is actually what's called -- this is a registration claim of exemption with the Housing and Environmental Regulation Administration rental accommodations people.

CHAIRPERSON REID: Rent control.

MR. SOCKWELL: Yeah, this is an exemption. This is an exemption form for a -- for a housing occupancy that does not have to meet rent control because it is less than four units.

CHAIRPERSON REID: Right.

MS. SAMADANI: Yes.

MR. SOCKWELL: So this states specifically under number of bedrooms two.

MS. KING: Signed by your son.

CHAIRPERSON REID: And what's the date there?

MR. SOCKWELL: Yeah, and it says exempt. The date is 12/15/91. This was issued after the September 5th, '91 certificate of occupancy, as it should have been. In September you got the right to occupy the building under your son's ownership. In December you applied for an exemption from rent control so that you could charge whatever rents you felt necessary because the units were less than the minimum required --

MS. SAMADANI: Yes.

MR. SOCKWELL: -- for rental control registration.

So you actually were operating a two-unit building, and your son signed this document stating that it was two units.

CHAIRPERSON REID: No, no, they were operating a three-unit building.

MR. SOCKWELL: No, it says here two.

CHAIRPERSON REID: No, no. But the point being, Mr. Sockwell --

MR. SOCKWELL: Oh, okay.

CHAIRPERSON REID: -- that the building, in fact, was a three unit building.

MS. SAMADANI: Yes.

CHAIRPERSON REID: And they represented that there was only two units in that building to the Rental Accommodations Office so as not to trigger the rent control law.

MR. SOCKWELL: Well, rent control wasn't triggered till four.

MS. SAMADANI: The rent is over four.

CHAIRPERSON REID: I understand that, but apparently they were -- it appears that there was an attempt to keep the number down.

MR. SOCKWELL: Actually because four would have been the kicker, it would not have made a difference for them to have shown three units.

CHAIRPERSON REID: But we don't know -- we don't know which --

MS. KING: No, but it would have made a difference. I mean they have a certificate of

occupancy for two. Two is a matter of right in that zoning area. They said that they only had two. I mean, all along it appears that you have said that you only had two until something triggered your need to have a permit to have three and you came to us.

MS. SAMADANI: Yeah, because he --

MS. KING: There doesn't appear to be a mistake at all. Your son signed a document that said that there were only two units.

MR. SOCKWELL: The only -- the only other issue about this, and it has nothing to do with us, and that is that if there were three units for which rent was being collected, then if only two units existed for the sake of taxation, and that is income tax, then only two units of rent would have to be ever represented to the government.

But I believe that from what we see here it is not my ability to say that this was ever a registered, properly licensed three-unit building. It was always registered and properly licensed as a two-unit building.

MS. SAMADANI: Always registered like that, the way all these paper shows. That's why I want a variance, make it three.

CHAIRPERSON REID: But why didn't you at the time that you initially applied in 1991, because

it was three units, why didn't you apply for three units then?

MS. SAMADANI: Because he has another house and now we go under rent control. I did that one and I try to do this one. They say it's two. I said it's three. So I'm changing the --

CHAIRPERSON REID: Okay.

MS. SAMADANI: -- changing --

CHAIRPERSON REID: Right. Now, let us now go into the merits of this particular case because we're going nowhere with that, that line of discussion. I think we've heard enough about that.

But the fact of the matter, Ms. Samadani, is that you have to demonstrate that you meet three tests in order to be able to get a certificate of occupancy, and are you familiar with that three pronged test?

MS. SAMADANI: Say it again, dear.

MS. KING: Okay.

CHAIRPERSON REID: The purpose of your being here --

MS. SAMADANI: Yes.

CHAIRPERSON REID: -- is that you are going to have to demonstrate to us that you are able to meet a three pronged test.

MS. KING: A three part test.

CHAIRPERSON REID: A three part -- I call it three pronged -- three part test.

MS. SAMADANI: Okay. What is that?

CHAIRPERSON REID: All right. First of all, you have to show that -- this is the user area.

All right. You have to demonstrate that there is something unique, unusual about your property such that you aren't being able to comply with the existing zoning regulations because you have some type of practical difficulty.

MS. SAMADANI: This is a corner house, large house, has front entrance of -- back entrance. The third apartment, they have two doors. They can go front to back, and they have balcony and steps down from the back yard, and they can come even from the hallway. So they are all capable to run and they are separate. They have separate bathrooms, separate kitchens, separate doors. They're all family, their own.

CHAIRPERSON REID: But where the -- no. The practical difficulty. You're demonstrating just the opposite. What you need to demonstrate is that there is something that is unique or unusual inherent in the property, the land itself.

MS. PRUITT-WILLIAMS: Excuse me, Madame Chair. I'm sorry to interrupt.

Just for clarification on the record, this is not an area variance but a use variance.

MS. KING: That's what I thought.

MS. PRUITT-WILLIAMS: Right. Well, there are a little different standards -- that's all -- to be addressed.

CHAIRPERSON REID: I think that the use variance would be an undue hardship.

MS. PRUITT-WILLIAMS: Correct.

CHAIRPERSON REID: I spoke to her of a practical difficulty which is germane to an area variance; is that not correct?

MS. PRUITT-WILLIAMS: Right, but this is a use variance.

CHAIRPERSON REID: Oh, oh, oh.

MS. PRUITT-WILLIAMS: That's why --

CHAIRPERSON REID: Oh, I'm sorry. I'm sorry. I misunderstood you.

MS. PRUITT-WILLIAMS: Right.

CHAIRPERSON REID: Okay.

MS. PRUITT-WILLIAMS: So that she is going to -- she said initially area.

CHAIRPERSON REID: Who said area?

MS. PRUITT-WILLIAMS: She said it originally. I concurred and then I --

CHAIRPERSON REID: Okay. Thank you.

MS. PRUITT-WILLIAMS: -- thought about it and I looked back.

CHAIRPERSON REID: Thank you. Okay. So now --

MS. PRUITT-WILLIAMS: I just wanted to be sure that we have the --

CHAIRPERSON REID: -- well, the difference here --

MS. PRUITT-WILLIAMS: -- right evidence on the record.

CHAIRPERSON REID: -- is a use variance is even a more difficult or is a higher standard which you have to be able to achieve, and that is that you have to show where compliance with existing zoning regulations will somehow incur you -- you will incur an undue hardship.

MS. KING: Do you have your book? Let me borrow your book? What is --

MS. SAMADANI: Can you explain a little bit --

MS. KING: -- 401.3?

MS. SAMADANI: -- more? I don't want to give answer that be against me.

CHAIRPERSON REID: Okay. Why is it that you feel that you can't -- that you cannot comply with the existing zoning regulations? I guess that

-- cut to the chase.

MS. PRUITT-WILLIAMS: The existing regulations would allow you to have a two-family flat.

MS. SAMADANI: Un-huh.

CHAIRPERSON REID: Why do you feel that you should be entitled to have three?

MS. SAMADANI: I have three tenant. They live there for a long time. They comfortable. You cannot kick --

CHAIRPERSON REID: No, no, Ms. Samadani. You have to remember that you're already in violation.

MS. SAMADANI: Okay. So --

CHAIRPERSON REID: So you're in violation already. Okay?

MS. SAMADANI: Okay. So what should I --

CHAIRPERSON REID: And have been in violations. What should you say?

MR. GILREATH: Madame Chair, I'd like to suggest that Applicant consider -- I don't want to give her a leading question -- but it seems to me that you could plausibly argue that if you're permitted to have only two units, you render about a half of your second floor is unrentable unless

you're going to tear out the kitchen and make it a three or four bedroom upstairs.

MS. SAMADANI: Yeah, that is all done.

MS. KING: What is the square footage of each of the upstairs apartments, Ms. Samadani?

MS. SAMADANI: That I will bring it to you because I don't know.

MS. KING: Today is your hearing.

MS. SAMADANI: Okay. There are -- back in the apartment upstairs has bedroom, dining area, kitchen.

MS. KING: What is the square footage? That's one of the --

MS. SAMADANI: You've got me there.

MS. KING: -- one of the questions because I think there is also an area -- isn't 401.3 an area variance? And we need to know what the square footage is.

MS. SAMADANI: I don't -- it doesn't show on this map here?

CHAIRPERSON REID: What?

MS. KING: I don't know. What are you looking at?

MS. SAMADANI: This is one map in here we have.

MS. KING: Do you have the plans for the

upstairs?

MS. SAMADANI: I have plans. You all have in your file. I have plans for all -- all of them, from time they start this house and plans later on up through --

MS. KING: Well, then from the plans can you tell what the square footages of the upstairs apartments?

MS. SAMADANI: You've got -- you ask the wrong person.

MS. KING: Well, you're the only person I can ask.

MS. SAMADANI: Can somebody figure this, please?

CHAIRPERSON REID: Okay. Wait, wait, Ms. Samadani.

MS. SAMADANI: Yes, dear.

CHAIRPERSON REID: I need to speak to staff.

Ms. Pruitt-Williams, the Board members are somewhat confused about the actual type of variance there is. There seems to be some discrepancy as to whether it's area, use or both.

MS. PRUITT-WILLIAMS: Both, and if you look at the zoning --

CHAIRPERSON REID: But didn't you just

say it was use?

MR. SOCKWELL: You just said it was use.

MS. PRUITT-WILLIAMS: Well, you have to do a use and an area. You have a 900 square foot area --

CHAIRPERSON REID: But that's not what you said.

MR. SOCKWELL: But you didn't say that.

MS. PRUITT-WILLIAMS: I realize that. After looking at this and the Zoning Administrator's --

CHAIRPERSON REID: Okay. All right. What we need to do is this. Let's try -- this case within itself is rather confusing. So for any input from staff, we would then ask that you please make sure that you give us the correct information because what we are going to be basing our opinions and our discussion on is the information that we're being fed through you.

So now what we have is a situation where she has to -- she has to comply with both standards?

MS. PRUITT-WILLIAMS: Yes.

MS. KING: Yes.

MS. PRUITT-WILLIAMS: And if you read the Zoning Administrator's letter, it's very clearly stated there, and the way it's advertised, it should

have also said use variance -- I mean area variance. It says a use variance from 33.5, which is use, and Section 401 is area, and it was not stated as specifically as an area variance there. It should have been.

But that Section 401.3 is for area, and that's the 900 square foot per apartment unit.

MS. KING: So presumably your apartments are less than 900 square feet; is that correct?

MS. SAMADANI: Well, the back one -- no, we extended. We have got a deck and --

MS. KING: No. I mean, why are you here --

MS. SAMADANI: Yes.

MS. KING: -- for a variance from the 900 square foot requirement if your apartments are 900 or more square feet? So they're less; is that correct? They're less than 900 square feet?

CHAIRPERSON REID: Do we have a drawing of the units?

MR. GILREATH: I thought the problem was there were three units. Maybe the square footage is a factor, too, but I think the Zoning Administrator said you have three units there. Therefore, you've got to --

MS. KING: Yeah, but, Jerry, we've got

another issue, which is that the apartments are less than 900 square feet.

MR. GILREATH: That may be another problem, yes.

MS. PRUITT-WILLIAMS: There are two issues, as Ms. King has stated, that you have to look at, and that's --

MS. KING: One is the zoning only permits two apartments and she's got three.

MS. PRUITT-WILLIAMS: Correct.

MS. KING: And the other is that at least one of the three apartments is less than 900 square feet.

Now, we need you to make a case under the zoning regulations why we should, you know, allow your petition, and you haven't made it. You have to show us for the area variance --

MS. SAMADANI: Yes.

MS. KING: -- that there is a unique or unusual situation or circumstance relating to your land, land.

MS. SAMADANI: Un-huh.

MS. KING: Okay? You have to show for the use variance that there's an undue hardship or a practical difficulty for you to use your property in the permitted way. Why can't you use it in the

permitted way?

You have to demonstrate that there's no substantial detriment to the public good. That you have --

MS. SAMADANI: There is no such -- yeah, there is --

MS. KING: Wait a minute. Let me finish.

You have essentially done that by getting the Advisory Neighborhood Commission, and you have to show that you won't substantially impair the intent, purpose, or integrity of the zoning regulations and maps.

You have done one of the four things that you have to do. Now, you need to do for us the other three things.

MS. SAMADANI: So what's the other three things?

MS. KING: What is the unique or unusual situation with regard to your land?

MS. SAMADANI: The unique one is in the corner it's very big house. It's really larger than other houses, and there is not -- it is -- you see the pictures. I have the pictures. It's long land.

MS. KING: In fact, you made it longer when you bought it.

MS. SAMADANI: And we made it longer and I got permit for that longer, too.

MS. KING: But why can you not use it for the purpose that it was intend -- you know, why can you not -- why can it not be used for the permitted purpose, which is two apartments? It could be, could it not?

MS. SAMADANI: Well, then now I made it for -- that larger, and you can't permit me to do it while you stop me.

CHAIRPERSON REID: No, wait a minute. Ms. (pause) --

MS. SAMADANI: Samadani.

CHAIRPERSON REID: -- Samadani. One of the criteria also of your test, your satisfactory test for a use variance is that it cannot be a self-imposed hardship. So you can't use the fact that you enlarged the place, the building, as a basis for saying, "Well, my building is much larger. So, therefore, I should be entitled to a variance."

MS. SAMADANI: Well, there is not -- the other side that we enlarged is a parking lot for church. It's no neighbors there.

MS. KING: That also is not germane.

MS. SAMADANI: So actually it won't interrupt any -- any parking lot for neighbors

doesn't incumber nobody. Next to that is church, and we have the map. I don't know if you have the copy of the map.

MR. SOCKWELL: Ms. Samadani.

MS. SAMADANI: Yes.

MR. SOCKWELL: Ms. Samadani, may I ask you one question?

MS. SAMADANI: Yes.sir.

MR. SOCKWELL: I'm over here. What initially prompted you to seek relief from the Board of Zoning Adjustment? You had operated the property from September of 1991. You had an addition built in 1991, and everything seemed to have been going smoothly for eight years.

Why then did you suddenly have to come before this body? Was there an inspection, not prompted by you, or was there some other issue that came up?

MS. SAMADANI: Yes, sir. My son has another house, and that's rental, too. So this goes on rent accommodation. I applied for it. Then we came across that, this mess. I never knew that was filed. So I want to correct it. I want everything be legal. I wanted nobody come to me why this, this is all putted (phonetic) up the wall and correct it? And I'm asking you please let me do. It's done.

Correct it. This is for the people and the tenants.

CHAIRPERSON REID: You've been directing --

MS. KING: Excuse me. Excuse me. I want to clarify something if I may from Mr. Sockwell's question.

The fact that her son now owns more than three apartments means that whether the building is four units or two units or three units, he now is subject to rent control?

MR. SOCKWELL: I would assume it's on the multiple of unit.

MS. SAMADANI: Yes. Yeah, they go --

MS. KING: It doesn't matter if they're all on the same premises, I mean?

CHAIRPERSON REID: No, no. It's totally in the city.

MS. KING: If you own -- if you own more than four units wherever they are.

MS. SAMADANI: In D.C.

MS. KING: I see. So what triggered all of this was that --

MR. SOCKWELL: He bought the new building.

MS. KING: -- he bought the new building. He was under rent control, and it turns

out that all of the documentation for the last eight years has been wrong.

MS. SAMADANI: I just want to make everything perfect and relaxed --

MR. SOCKWELL: Well --

MS. SAMADANI: -- because it's in --

MR. SOCKWELL: Well, under rent control you would now have to register --

MS. SAMADANI: Yes.

MR. SOCKWELL: -- your rents.

MS. SAMADANI: Three, yes.

MR. SOCKWELL: And because you had exceeded the minimum for non-registered properties, now you knew that you would be in tax problems if you didn't register all three units in this building, as well as the other units, because if they ever came to inspect or if there was ever a problem, you would have to go before the rental people and explain why you had three units that you were collecting rent from but were only showing two units.

MS. SAMADANI: Well, when I pay tax, I pay tax from my total income.

MR. SOCKWELL: Yeah. Yes, that's understood. I mean I'm not -- I'm not questioning that. That's not really our --

MS. SAMADANI: Sure.

MR. SOCKWELL: -- our issue there, but the question is that for registration purposes --

MS. SAMADANI: Yeah.

MR. SOCKWELL: -- you can't collect rent from three units --

MS. SAMADANI: Yes.

MR. SOCKWELL: -- and not tell them about it.

MS. SAMADANI: I want to correct the whole mistake.

MR. SOCKWELL: So, yes, you did, in fact, have to correct your registration.

MS. SAMADANI: Un-huh, and that's why I applied, and that's how all of these things started.

MR. SOCKWELL: But the correction was not because the certificate of occupancy branch of the District of Columbia issued an improper certificate of occupancy. It's because you were operating three units --

MS. SAMADANI: No, because I make mistake.

MR. SOCKWELL: -- and suddenly you needed to show that those three units existed because your certificate of occupancy and what you were doing --

MS. SAMADANI: Shows different.

MR. SOCKWELL: -- didn't match.

MS. SAMADANI: Okay.

MR. SOCKWELL: Okay?

MS. SAMADANI: Yeah.

MR. SOCKWELL: That's what happened. They didn't match.

MS. SAMADANI: Yeah, but I like to correct --

MR. SOCKWELL: And I understand that, and we'd certainly -- I mean there's no problem with that. The question that is before us, first of all, is your use changes --

MS. SAMADANI: Sure.

MR. SOCKWELL: -- for the purpose of registration with the District of Columbia when you add another unit to your building. That use now has to bring the building before this body --

MS. SAMADANI: Sure.

MR. SOCKWELL: -- in order for us to ratify that.

MS. SAMADANI: Okay.

MR. SOCKWELL: Okay? That we understand.

The other thing is --

MS. SAMADANI: And let me sleep

comfortable because I am very -- I don't want anything against the law.

MR. SOCKWELL: Okay.

I have been good all the time, 37, 38 years in this country, and I love this country.

CHAIRPERSON REID: But, Ms. --

MR. SOCKWELL: I understand that.

CHAIRPERSON REID: -- Ms. Samadani, it's not difficult to determine --

MS. SAMADANI: Yes.

CHAIRPERSON REID: -- at the time that you applied. You know how to count, that you had three units rather than two units, and you represented that you had two units.

Mr. Gilreath.

MS. SAMADANI: That's what it is, yes.

MR. GILREATH: Well, Madame Chair, there is much uncertainty here. I am not -- when she applied, she or her son, for this original certificate of occupancy, it was -- she said it was a two-flat building.

MS. SAMADANI: Right.

CHAIRPERSON REID: No, it was three.

MR. GILREATH: Well, no. It says --

MS. SAMADANI: No, two flat.

MR. GILREATH: -- two --

CHAIRPERSON REID: That's the whole point. There was three flats there and they applied for two.

MR. GILREATH: No, the office says two-family flats and then it gives the number of units, and it listed only one on the second floor. Now, whether or not this was simply an oversight or lack of language fluency on her part or there's misunderstanding there, I don't really know what weight to give to that.

And also the question of 900 square feet per unit, I'd have to know more about that. So I'm not in a position to make a judgment --

MS. KING: Oh, certainly not. We haven't heard -- she hasn't made her case.

MR. GILREATH: Yeah. Well, what I'm saying is that if the Board were agreeable and she were, if she would take our concerns about this 900 square feet, go back and regroup and perhaps seek some kind of expert advise and come back, and if she can dot more of the Is, maybe I could consider that.

Right now I'm in no position to hear about this. I don't know what to say. I hate to simply turn her down on it. I can't --

CHAIRPERSON REID: Ms. Samadani, basically what the Board members are saying to you,

that given what you have submitted here today, there is no way that we would be able to grant you your -- to approve your application because you have not met the burden of proof or made your case.

So what Mr. Gilreath is suggesting is that you go back, consult with staff, and determine what you need to do to come before us --

MS. SAMADANI: Okay.

CHAIRPERSON REID: -- because at this point in time, we would have no choice but to turn it down, and Mr. Gilreath is showing some compassion by saying go back and see if you can come with something better --

MS. SAMADANI: Okay.

CHAIRPERSON REID: -- and then we'll take another look at it. We'll give you a second chance. We'll take another look at the whole picture and to see what we can do.

MS. SAMADANI: Can I do it today?

CHAIRPERSON REID: No.

MR. SOCKWELL: No.

MS. SAMADANI: Because I lost my -- hour's job today and then --

CHAIRPERSON REID: No.

MR. SOCKWELL: May I ask you -- may I ask her one question?

CHAIRPERSON REID: All right.

MR. SOCKWELL: I looked at your electrical contract work --

MS. SAMADANI: Yes.

MR. SOCKWELL: -- from September of 1991, and it's obvious that the things that were being done here, such as the installation of ground fault interrupters, which are electric fixtures that are shock protected, the correction of smoke detector deficiencies, and things like that were all very good things to do. There's no question about that. Some of the things that were done here were certainly for the safety of the residents.

And it doesn't tell me -- it does tend to tell me that there were two bathrooms on the second floor. It does tend to tell me that there were two kitchens there, but you need to give me -- if I would ask for more documentation, I would like to see the certificate of occupancy that existed before your son bought the building. That information should be in the city's records at the Certificate of Occupancy Branch.

MS. SAMADANI: They didn't have it. I went in there.

MR. SOCKWELL: You're sure?

MS. SAMADANI: Because I went to all --

starting from --

MR. SOCKWELL: But in their records.

MS. SAMADANI: I have more than they have it.

MR. SOCKWELL: Their records will have been shipped -- if they have them, they would have been shipped to one of two record centers, either the one in Suitland or the one, I think, on Vernon Street.

MS. SAMADANI: No, it's the corner building that they moved recently.

MR. SOCKWELL: Yeah. Well, there were two record centers, one for more recent, one for later -- earlier records.

But anyway, I'm just saying that you need to give us a little bit more documentation.

MS. SAMADANI: So if I just ask, let me variance it, what is the problem that you're not approving it?

MS. KING: You haven't made your case. I -- I -- I --

MS. SAMADANI: So how do I live with --

CHAIRPERSON REID: We're sending it to staff.

MS. KING: I read you the four points that you have to prove.

MS. SAMADANI: Okay. One point is -- okay.

MS. KING: One is proved. The rest are not. You haven't even touched on.

CHAIRPERSON REID: You have to go --

MS. KING: So what you need to do is consult with the staff next door, get some advice on how to prove your case, but you have not proved your case at all.

CHAIRPERSON REID: And I would also suggest that you go back to the ANC and that you represent to them exactly what, in fact, you're doing there at that site as opposed to what you told them initially. You need to go back and be forthright with them and tell them exactly what you're asking them to approve because what they have submitted to us was support of something different.

MS. SAMADANI: Mr. Purnell said it's not problem.

CHAIRPERSON REID: Because of what you told him. You need to tell him --

MR. SOCKWELL: Or how he understood what you said. Let's say that --

MS. SAMADANI: He went and saw. He went and looked at the place.

MR. SOCKWELL: I understand that, but

what his letter says is entirely different from what you told us at the beginning of the hearing.

MS. SAMADANI: Yeah, he put a little -- well, may I didn't say it right that time.

MR. SOCKWELL: Yeah, because here's what he sees. He sees you attempting to turn a two-unit building into a three-unit building.

MS. SAMADANI: Okay. Do it, sir.

MR. SOCKWELL: But what you're saying -- what you said initially was the city made a mistake, called it a two-unit building when it wasn't.

MS. SAMADANI: No, my interpretation --

MR. SOCKWELL: That may well be the case, but you haven't proven that.

CHAIRPERSON REID: Mr. Sockwell, she said --

MS. SAMADANI: My interpretation --

CHAIRPERSON REID: Excuse me. Excuse me.

MS. SAMADANI: -- is mistake.

CHAIRPERSON REID: She said that she made the mistake, not the city.

MS. SAMADANI: Not the city.

MR. SOCKWELL: Okay.

MS. SAMADANI: I made mistake.

CHAIRPERSON REID: Okay. Mr. Gilreath.

MR. GILREATH: Well, make an attempt to get the original certificate of occupancy application, I guess, prior to 1991. If you go to the appropriate office there and they say they no longer have records, could you get a simple statement from them? Have the official --

MS. KING: In writing.

MR. GILREATH: -- to say that these documents are no longer available? That would suggest or tell me that you've made a good faith effort. So at least show us that you made the attempt to get these past records.

MS. SAMADANI: And, see, there are so many -- I'm sure you all have in front of you because I made tons of copies, but I know nobody has time to go through these things.

MS. KING: We go through everything, Ms. Samadani.

MS. SAMADANI: I know you do, but see, when I ask -- everybody I call and said if I need a lawyer. They said, no, because everything is so clear. I don't want to lie. It was three unit all the time. It's fixed for a three unit, and the apartment, all of them have separate -- Ms. Rocket (phonetic) come from city. She looked, and she -- her letter is her. She said it three unit, all

done.

And I just want your permission. Let me do it or get my license and operate it and put it under rental control and sleep well because this makes me very uncomfortable that I'm done something that is wrong.

MR. GILREATH: Well, we're not saying you've done anything wrong, but to prove --

MS. KING: Yes, we are.

MR. GILREATH: -- your case and grant relief to you, you've going to have to go through a certain procedure, and if you will check with our staff, they will advise you.

MS. SAMADANI: So what is it that I have to say? Let me tell you. What did I say that was wrong? I could correct it right --

MR. GILREATH: Well, for example, we don't know whether all of those units is 900 square feet or not. If they aren't, we have a problem with that.

MS. SAMADANI: What is it, sir?

MR. GILREATH: Nine hundred square feet for each unit.

MS. SAMADANI: I went to a lot of things to do these things, mapping and everything.

MR. GILREATH: Well, there's no

question.

MS. KING: Madame Samadani, you have two choices.

MS. SAMADANI: Yes, sir -- ma'am.

MS. KING: You can -- Mr. Gilreath's suggestion, the Board is willing to let you make your case, come back on another occasion and make your case.

MS. SAMADANI: Okay.

MS. KING: Your other alternative if you persist in saying that you want a decision today is that 99 percent chance that you will be denied.

MS. SAMADANI: I don't want to be denied.

MS. KING: Then fine. You need to go next door. You need to talk to the staff. You need to make your case. There are four issues that you have to prove to us.

MS. SAMADANI: Okay.

MS. KING: You have to prove that there is something unique or unusual about your land.

You have to prove that it would be an undue hardship or practical difficulty for you to use the building as is permitted for a maximum of two units.

You have to show that there is no

substantial detriment to the public good, and Ms. Reid has asked that you go back to the ANC, tell them what the real situation is, and get an updated letter from them.

And finally, you have to prove that you won't substantially impair the intent, purpose, integrity of the zoning regulations and maps.

Now, those are what you -- that's what you have -- that's the legal proof you have to present to us so that we can make a decision in your favor.

MS. SAMADANI: So why they didn't tell me before so I bring it all in here today for you?

MS. KING: It was -- it was in the letter from the Zoning Administrator, the references to the law.

MS. SAMADANI: And can I say something else? That the zoning meeting that they asked me to some was for somebody else by mistake. They called me to come there, and because I had everything --

MS. KING: What zoning meeting is that?

MS. SAMADANI: That one that you have from --

CHAIRPERSON REID: The ANC?

MS. SAMADANI: AND, yeah, and then when they find out I have all the document with me, they

said, "Okay. Let's do yours," and they did. They did advance of time.

MR. SOCKWELL: Ms. Samadani.

MS. SAMADANI: Yes, dear.

MR. SOCKWELL: You provided us, among other documents, and I didn't want to bring this up, but I will; you provided us with three leases, lease agreements. At least your son did --

MS. SAMADANI: Yes.

MR. SOCKWELL: -- or whoever presented this. What this on the surface looks like is three leases showing three units.

MS. SAMADANI: Yes, sir.

MR. SOCKWELL: But two of the leases are the same lease. So there are actually only two leases in this documentation. The second lease to Mr. Charles --

MS. SAMADANI: Femster.

MR. SOCKWELL: -- Femster is duplicated --

MS. SAMADANI: Oh, no, that's he moved from upstairs downstairs.

MR. SOCKWELL: Oh, he did?

MS. SAMADANI: I made -- I have it.

MR. SOCKWELL: Okay.

MS. SAMADANI: Those are no problem.

MR. SOCKWELL: Because everything on this lease --

MS. SAMADANI: Sorry.

MR. SOCKWELL: -- is the same, 100 percent, every word.

MS. SAMADANI: He moved from downstairs to first floor.

CHAIRPERSON REID: Okay. Do you have three units leased at this time?

MS. SAMADANI: I have lease, yeah.

CHAIRPERSON REID: We need to see the three leases, one lease for each unit.

MS. SAMADANI: Yes.

CHAIRPERSON REID: Okay. Now, look. What we need to do is stop beating a dead horse. I think that you understand what we're asking you for. If you don't, then staff will certainly clarify for you.

There is no more I don't think that we can do today. You understand that. There's more. Ms. King has reiterated I know at least three or four times. I have stipulated what you need. So at this point we need now to have you go and to --

MS. SAMADANI: Get those and bring it.

CHAIRPERSON REID: Yeah, to regroup and to come back to us with something more substantial

that perhaps would be quantitative enough for us to be able to or qualitative enough for us to be able to grant you -- to prove -- I don't know. I don't know, but at this point you certainly could not do it.

MS. SAMADANI: Okay. Don't say no. I will do whatever you all tell me.

CHAIRPERSON REID: Well -- well, the thing about it is you need to -- you need to talk to staff and they can guide you.

MS. PRUITT-WILLIAMS: Excuse me, Madame Chair. I'd just like to get clear for the record. We have rescheduled this. This can be reheard again on December 8th. That will be the new hearing date.

MS. KING: I will not be hearing it, of course.

MS. SAMADANI: Are you talking next year?

MS. PRUITT-WILLIAMS: This year.

MR. SOCKWELL: Of this year.

MS. PRUITT-WILLIAMS: December 8th.

MS. SAMADANI: December.

MS. PRUITT-WILLIAMS: And we will not send you a notice. So you need to remember that now. This will be your only notice that this is coming on December 8th.

MR. SOCKWELL: What time?

MS. PRUITT-WILLIAMS: In the a.m.

MS. SAMADANI: Do you know what day? What day is that?

MS. PRUITT-WILLIAMS: It's Wednesday. Our hearings are always on Wednesdays.

MR. GILREATH: And I'd like to suggest that if your son has to have access to some lawyer for some of his dealings, it might be to your benefit to at least seek someone's advice. You don't want to accrue a large legal bill, but I think you'd benefit from a little bit of legal advice and guidance on this.

MS. SAMADANI: Yeah. I could bring Mr. Hassler (phonetic). I asked -- I asked do I need bring a lawyer with me. They say, no, everything is up -- nobody rejected. Nobody from neighborhood came here to say, no, we have a parking problem and all those. They said just come.

MS. KING: All of that makes no difference. The law says that you have to meet those four burdens of proof.

MS. SAMADANI: Okay.

MS. PRUITT-WILLIAMS: Excuse me. Also, Ms. Samadani, before you leave, my understanding is the Board is specifically asking you to provide them

a copy of the original C of O in 1991 and in the absence of that copy, a letter from DCRA stating that the records are not available.

MS. KING: No, prior to 1991.

MS. PRUITT-WILLIAMS: Prior to 1991. Excuse me.

MR. GILREATH: We want both. We'd like the original application in '91, plus the prior one.

MS. PRUITT-WILLIAMS: Okay. So they want the original application in '91 and the C of O prior to that, and if DCRA does not have those records available, a letter stating that they are unavailable; and that you go back to your ANC and present the case as it is with three -- for three units so that we can get a corrected ANC letter.

Those are the two things I understand that the Board specifically requested. Oh, and the lease for three units; is that correct?

MR. SOCKWELL: Yes.

MS. PRUITT-WILLIAMS: And then whatever else you need to make your case.

And Mr. Nyarku isn't here right now, but John Nyarku is the staff person assigned to you. So if you call and ask to speak to him, he can help you.

MS. SAMADANI: So you need three --

three --

CHAIRPERSON REID: Repeat it one more time, please.

MS. PRUITT-WILLIAMS: Certainly.

MS. SAMADANI: Three leases and you want I go to NAC (sic). They correct the letter.

MS. PRUITT-WILLIAMS: Right. Present your case to the ANC with the correct information that it is --

MS. SAMADANI: Correct information.

MS. PRUITT-WILLIAMS: -- and then also to check with DCRA to see if you have --

MS. SAMADANI: DCRA, if they have it. If they don't have anything in their file, they give me a letter.

MS. PRUITT-WILLIAMS: Correct.

MS. SAMADANI: If they have it, I get it and bring it.

MS. PRUITT-WILLIAMS: Right, and you want the application for '91 and then the C of O prior to
'91. So we want two separate items.

MR. GILREATH: Yeah, the prior C of O to your son's C of O, which was issued in September; the one that existed on the building previously.

MS. SAMADANI: That's in your file.

MR. SOCKWELL: No, no.

MS. KING: No.

MR. SOCKWELL: Just the one -- the only one that we have is the one that your son --

MS. SAMADANI: Oh, prior.

MR. SOCKWELL: Prior.

MS. SAMADANI: Before.

MR. SOCKWELL: Now, you will want to see Ema Thompson, who is Chief of Records Management, at 941 North Capitol Street, Second Floor, Room 2100.

MS. SAMADANI: Ema Thompson?

MR. SOCKWELL: Un-huh.

MS. SAMADANI: And what building, sir?

MR. SOCKWELL: 941 North Capitol Street.

MS. SAMADANI: And what floor?

MR. SOCKWELL: Suite 2100 on the second floor.

MS. SAMADANI: Twenty-one --

MR. SOCKWELL: Tonight is a late night for them. They will be open until 8:00 p.m. She may not be there, but someone will.

MS. SAMADANI: If I go now, they will be there?

MR. SOCKWELL: They will be there.

MS. SAMADANI: Okay.

MR. SOCKWELL: Ema Thompson is currently

detailed partially to the permit control desk, which is on the back side of that floor. So she may not be able to come out front, but you can find her.

MS. SAMADANI: And what she can give me?

MR. SOCKWELL: She can tell you how to get the documents that you need.

MS. SAMADANI: Those that are --

MR. SOCKWELL: And she would be the --

MS. SAMADANI: -- the prior ownership.

MR. SOCKWELL: Yes, and she might have to be the person who would have to sign if the documents are not available.

MS. KING: And your son's application, as he signed it, for the 1991 certificate of occupancy that says there are two units in the building.

MS. SAMADANI: Well, that's in there, in your file.

MS. KING: No, we don't have the application. You gave us the application to the Rental Housing, but not to DCRA.

MR. SOCKWELL: Yeah. The certificate of occupancy application that he filled out so that he could have use of the property --

MS. SAMADANI: Oh, that one.

MR. SOCKWELL: -- is what should have

generated the certificate of occupancy form.

MS. SAMADANI: So I get it from --

MR. SOCKWELL: Yeah, whatever he asked for should have been what they gave him. If he asked for three units, it's on there, and if he asked for two units, it's on there. If the previous holder of a certificate of occupancy had two units registered, then that's what the certificate of occupancy says.

Even if your son purchased the property with three units and didn't realize that it wasn't registered as a three-unit building --

MS. SAMADANI: Un-huh, that it didn't have -- oh, that's --

MR. SOCKWELL: -- by the previous owner, then his certificate of occupancy was a name change, and the units that existed were just transferred over into his name. That's what we're looking for. We want to know what the history of this was. It's been very difficult to follow the thread of your argument. So this will give us more substantial information from which to make a decision.

MS. SAMADANI: So I get all the real copies and bring it to you.

MR. SOCKWELL: Please.

CHAIRPERSON REID: Thank you, Ms.

Samadani.

MS. SAMADANI: Thank you very much.

CHAIRPERSON REID: Next case of the morning, please.

MS. PRUITT-WILLIAMS: The next application is the Application 16484, application of Dareck and Iris Parks, pursuant to 11 DCMR 3107.2, for a variance from the side yard setback requirements under Section 405.1 to allow proposed construction of a single family detached dwelling in an R-1-B district at premises 7545 Alaska Avenue, N.W., Square 2955, Lot 61.

All those planning to testify, could you please stand and raise your right hand?

(Whereupon, the witnesses were duly sworn.)

MS. PRUITT-WILLIAMS: Please be seated.

MR. SOCKWELL: Before we get started on this application, in reviewing the documentation, Section 405.9 was cited as part of the argument for relief.

MS. KING: No, this is the Parks case.

MR. SOCKWELL: No, wait a minute. Which one is this one?

MS. KING: This is Dareck and Iris Parks.

MR. SOCKWELL: You're Parks? Oh, I'm sorry.

MS. KING: Yes.

MR. SOCKWELL: Forgive me.

MS. KING: One, six, four, eight, four.

MR. SOCKWELL: Oh, I got the wrong file out.

(Pause in proceedings.)

CHAIRPERSON REID: Okay. Are we ready?

MS. PARKS: Yes.

CHAIRPERSON REID: I'm sorry. Please give your name and address.

MS. PARKS: Iris and Dareck Parks, 4407 Sixth Place, N.E., Washington, D.C. 20017.

MS. KING: Are you actually living there or is that the vacant lot?

MS. PARKS: I'm actually living there. The vacant lot's address is 70 --

MS. KING: Oh, Alaska Avenue. I beg your pardon. Of course.

MS. PARKS: Alaska Avenue.

MS. KING: Yeah, I see that.

MS. PARKS: The vacant lot.

MS. KING: Right.

CHAIRPERSON REID: Un-huh. Go ahead.

MS. PARKS: Good morning, Board members.

First, I want to thank you for the opportunity to present our case before you this morning. We, Dareck and Iris Parks, are the owners of the vacant lot located at 7545 Alaska Avenue, N.W., Washington, D.C.

The reason we are before you this morning is to seek your approval for variance, side yard setback, for the purpose of building a single family home in the not so distant future.

We are cognizant of the zoning code, 11 DCMR 3107.2, under Section 405.1, as it relates to the required side yard setback of eight feet and eight feet between each single family dwelling. My husband and I are requesting a variance, side yard setback of three feet, thus making it eight feet and five feet.

Referring to the plat I'm sure you have a copy of, as you can see, our lot is located near a 15 feet public alley. We're requesting three feet next to the alley, leaving five feet from the alley.

MS. KING: She wants a variance at three feet from the eight foot requirement.

CHAIRPERSON REID: Correct.

MS. PARKS: Also I provided you four photos, one of which shows a house across the alley. As you can see, it sits right on the alley.

CHAIRPERSON REID: Which one is that?

MS. PARKS: That's the white one.

CHAIRPERSON REID: Oh, I see.

MS. PARKS: Do you see that one?

CHAIRPERSON REID: Yes.

MS. KING: Right to the property line.

MS. PARKS: Right, exactly to the alley.

A three feet side setback would not impede on the public alley or the neighbor across the alley, five feet from the public alley and 20 feet from the neighbor across the alley.

The D.C. Municipal Regulation 3107.2 stipulates the conditions of a variance, and I would read a portion of that that I think apply to our case.

"As set forth in D.C. Code 5424(g)(3), 1981, where by reason of exception, no narrowness, shadowiness, or shape of a specific piece of property at the time of the original adoption of the regulation" -- I end my quote there. We by reason of exception -- we submit by reason of exception the shape is unusual.

Referring to the plat again, as you can see, there are two different widths. The front is 50 feet wide and the rear is 53 feet wide.

CHAIRPERSON REID: Where is that?

MS. PARKS: The plat.

CHAIRPERSON REID: Where on the --

(Pause in proceedings.)

MS. KING: Also, the alley behind the lot goes at an angle so that it's an odd shaped lot; is that right?

MS. PARKS: Yes, it is.

CHAIRPERSON REID: So basically you're saying that the lot that you are thinking about building the property on -- is that Lot 6 -- what is that lot?

MR. PARKS: Sixty-one.

CHAIRPERSON REID: Sixty-one is irregularly shaped, a trapezoid shape.

MS. PARKS: Yes.

MS. KING: Right.

MR. PARKS: That's correct.

CHAIRPERSON REID: With that -- okay, all right.

MS. PARKS: Referring to the zoning requirement chart, I think it's entitled -- where is it?

CHAIRPERSON REID: All right. So establishing that it's unusual or irregular or something that is unique about this property.

Now go on with the next part of the

test, and that is how is there a practical difficulty for you to comply with existing zoning regulations.

MS. KING: No, that's a use variance, and they want an area variance.

CHAIRPERSON REID: Area is practical difficulty. Use is undue hardship.

MS. PARKS: Okay.

CHAIRPERSON REID: Okay. So?

MS. PARKS: Well, we have a sizable lot as you can see on the notes and computations that we got from the Office of Zoning, North Capitol Street. It stipulates the occupancy of the lot. We are well within reason requirements of the lot.

It would be more feasible and economical to build a house, what we're requesting, as opposed to try to add onto it later as our children grow older and out grandkids, and this is why we are requesting the variance.

If you refer to the layout, I'm not sure if you have a copy of our plan. Our proposed house plan is comparable to the homes in the neighborhood. The existing home are traditional colonial style, and their widths vary from 30 feet wide to 45 feet wide. So it's not that we will stand out like a sore thumb.

And you look at in terms of the city will benefit from the property taxes and will attract middle income families to stay in the city if we decide to sell.

Together my husband and I have paid D.C. property taxes for over 20 years.

The neighbors will benefit from our new home because it will subsequently enhance the neighborhood.

MS. KING: You have some letters of support and a petition from your neighbors saying that they don't anticipate any detriment to the community from this, your building this property; is that not correct?

MS. PARKS: That is correct, and we've also received a letter from the ANC.

MS. KING: Oh, do you have it? I -- oh, yes, I've got it. I've got it.

MS. PARKS: Yes.

MS. KING: So that covers the issue of no detriment to the public good in your neighborhood.

MS. PARKS: That's correct.

MR. GILREATH: Madame Chair, could the Applicant explain why you need this additional three feet, making it five feet? That means you can build

your house three feet further toward the alley. Why do you need this additional three feet? Could you provide adequate space out there or is there some kind of hardship if you don't get this additional three feet of width to your house?

MR. PARKS: Well, the reason for the three feet on the alley side is that the lot is large enough to accommodate building a normal size house there. On the alley side, the alley is, according to the plat, is 15 feet wide. So from the property line into the house at eight feet or five feet wouldn't affect or impede on the traffic or the pedestrians walking through or driving through the alley there.

MR. GILREATH: Well, are you saying you can't build a normal size house if you meet this eight by eight setback requirement, three feet, and if you go all the way across the lot, the square footage is going to make your house much smaller and it's not going to really be sellable or what? How does this diminish the value of your house?

MS. PARKS: Well, we currently live in a house of that size now, and the reason we purchased the lot is to build a more spacious home.

CHAIRPERSON REID: And also you like staying in the District of Columbia.

MR. PARKS: Correct.

MS. PARKS: I would love to stay.

CHAIRPERSON REID: I thought I would try to, you know, give you a little help here.

MS. PARKS: Yes. Thank you very much.

(Laughter.)

CHAIRPERSON REID: Obviously I can see that you are, you know, grappling with this, and you know, we're accustomed sometimes to seeing people come down with, you know, attorney and, you know, architects and grandiose presentations, and when you don't we understand that.

MS. PARKS: We're saving our money for the house.

MS. KING: Well, I think Ms. Parks has done the best job I've ever seen somebody do without benefit of counsel.

CHAIRPERSON REID: Yeah. So I mean, we --

MS. KING: She's done a damned good job.

MS. PARKS: Thank you.

CHAIRPERSON REID: And we try to -- in those instances, we try to kind of, you know, help you along, to try to --

MS. PARKS: Thank you.

CHAIRPERSON REID: -- help make your

case if we can see that there is some merit to it.

MR. PARKS: Madame Chair, you're correct in your understandings. We did look at other property, but I, after years of insisting I wanted to stay in the District of Columbia and not to move to the neighboring jurisdictions because this is a beautiful place to be, present and future.

MR. SOCKWELL: And while Mr. McGee probably gave you some very good information for your hearing, because he's an emotional person he didn't want to come down here himself.

(Laughter.)

CHAIRPERSON REID: Explain to me about that.

MR. SOCKWELL: The issue on your lot occupancy, just so you'll know, there are two things. One, the fact that you have a slightly irregular lot line is not particularly unusual. Most properties in the District that's not on a square block will have similar issues of that sort.

Obviously you're using less of the lot than the allowable 40 percent.

MR. PARKS: Correct.

MR. SOCKWELL: Which from that standpoint does not put you at a request for variance for a nonconforming structure, and at the

same time, your lot is in excess of the 5,000 square feet that would be the minimum for the type of house that you're trying to building, and that's all fine.

So there are other issues within the code that one as this committee would look for, and those are the fact that you are adjacent to a public alley. That adjacency is to a 15 foot public alley. In the building code anything that is less than ten feet from another property separation distance would require some more significant fire safety separation issues to be met.

You have a -- you have a guaranteed 15 foot separation between your house and the next adjacent property regardless of what size your side yard is. Had your site been a corner lot, no side yard -- corner lot with two streets rather than a street and a public alley -- the code would have allowed you by matter of right not to have a side yard at all under the current zoning ordinance.

The fact that the public alley is generally narrower property line to property line than most public streets is why the -- is probably why the zoning code did not address that in its allowances, but it is obvious that with the five feet that you're asking for, which is a very normal side yard in older buildings which do not meet the

current ordinance, you're not any less than many acceptable minimums.

When existing houses with a five foot side yard are expanded, usually toward the rear, the Zoning Administrator has historically, to my experience, granted that the five foot side yard as opposed to eight can be continued, depending upon how the building's adjacency to the opposite side is handled.

So I see relevance to your case. I'm just telling you that.

CHAIRPERSON REID: And now the practical difficulty aspect of it?

MR. SOCKWELL: Practical difficult aspect of it. It is sometimes the architect's design that determines whether or not you meet or don't meet the ordinance. As opposed to creating a situation that must be remediated, the design could have accommodated the eight foot side yard. You're using 38 percent of the site. You had another percentage point of site, two points to use.

It is for you to explain as best possible how your need for space, especially within the first floor, I'm sure, is very important with regard to that extra three feet. Are you putting a fireplace on one side or the other or is the

fireplace to the rear?

MR. PARKS: The present design, the fireplace is on the -- it would be the left side, the alley side.

MR. SOCKWELL: Okay.

CHAIRPERSON REID: But is there something -- you know, we have to scale this hurdle -- is there something that would create for you a practical difficulty to have -- to not comply, which then means that you would not -- you don't want -- you want to have less than the eight foot side foot require -- I mean side yard requirement. So what is it other than the fact that you want more space in your house that would cause a problem for you not being able to -- to -- to address that?

Were you about to say something, Ms. King?

No, it just -- it seems to me that this is a very benign case. The lot width is 50 feet. The house width, if there was eight yards -- eight feet on each side would only be 34 feet wide. It seems to me to ask for a 37 foot wide house is very benign. It's asking very little, particularly since, you know, that width is going to give a great deal more light and air to the house than if they extended it backwards and had it be the -- they're

not exceeding the lot occupancy at all. It's simply the side yard.

And next to the side yard is the alley, which means that there's plenty of insulation for their neighbors, and it just seems to me that they've made their case.

CHAIRPERSON REID: Okay.

MR. SOCKWELL: Well, the issue that I have is not one of whether it is benign. I agree with you totally that it is a benign case from that standpoint, but the issue is that we as the Board, I believe, have to hold to the standard --

CHAIRPERSON REID: Yeah.

MR. SOCKWELL: -- of proof that the request is based upon a certain hardship.

The designer is always the one who must make the decision how the property is to be designed, how that house is going to fit that lot, and if -- it is the designer's responsibility to create something that meets code when it is not preexisting.

If you had an existing deficiency, side yard, five foot side yard, and you wanted to put an addition onto an existing house that would not increase for the length of the addition that side yard deficiency, there's a likelihood that that

would be acceptable, and within, I think, a five percent variation the Zoning Administrator can make the decision on zoning code issues.

But this is a little beyond that because you're probably about a 30 foot variation to the side yard requirements. So my question is, as all the things that I've said are true, you've got an alley; you've got this guaranteed distance, et cetera. We have to feel that we are granting you relief from a particular hardship in --

CHAIRPERSON REID: Practical difficulty.

MR. SOCKWELL: Yeah, practical difficulty, and you've got to try to prove to us, if you would, because we just -- if we allow it without feeling that you have made your case well, then it means that less valid instances of the same may be something that we can't rule effectively on.

MS. KING: Mr. --

MR. SOCKWELL: So I'm just asking for that.

MS. KING: Mr. Sockwell, it seems to me that the question of light and air when you're dealing with a family home, and we all know that the sides of buildings even if they're eight feet apart are not going to get a hell of a lot of light and air, the major light and air enters your house from

the front and the back on these oblong lots where the houses face the street, and it seems to me that a practical difficulty in a family home is not having adequate light and air.

MR. SOCKWELL: Well, typically it would be eight plus eight, which would be 16 feet because you'd have the side yards --

MS. KING: I understand.

MR. SOCKWELL: -- for two adjacent houses.

MS. KING: I understand, but they -- but they --

MR. SOCKWELL: We have 20 in this case total.

MS. KING: -- have shown us photographic proof that there is not eight feet on their neighbors. One of their neighbors has built exactly to the property line.

MR. SOCKWELL: The likelihood is that the house preexisted the zoning ordinance.

MS. KING: Absolutely. I'm sure it does.

MR. SOCKWELL: And so it's not applicable. It is a grandfathered case.

CHAIRPERSON REID: Okay. Now -- now that you've heard your case debated for you, then

what you need to do is to tell us how you deem the -- deem yourself having a practical difficulty in complying with the existing zoning regulations.

MS. PARKS: Well, as I stated earlier, my husband and I, it is more practical at this point in our life to build a house a little bigger than what we've lived in for over 20 years in the District of Columbia, and this gives us the opportunity to do that.

CHAIRPERSON REID: Why is it more practical?

MS. PARKS: It's a more spacious home.

MR. GILREATH: Madame Chair, she indicated earlier, at least as I understood her, that I presume that with the children maturing and so forth and grandchildren, that for them it would be a practical difficulty for the grandchildren and so forth.

CHAIRPERSON REID: Un-huh.

MR. GILREATH: The house they have now would not be adequate for that.

CHAIRPERSON REID: Okay. So you're saying --

MS. PARKS: And then we have aging parents, and there will come a day that my husband and I may have to care for our parents. This is

hopefully the last home we will purchase in the District, and we want --

CHAIRPERSON REID: Okay.

MS. PARKS: -- to --

CHAIRPERSON REID: Let me see if I understand what you're saying, and that is that you have a house now in the District.

MS. PARKS: Un-huh.

CHAIRPERSON REID: And it's not practical for you to build a house the same size --

MS. PARKS: Correct.

CHAIRPERSON REID: -- because of the extended and growing family requirements that you have. Okay. That's all I need.

Okay. Now, let's move now to the government reports. We don't have one. The ANC?

MS. KING: The ANC met on June 1st, ANC 4A. The minutes indicate that no exemptions were presented by the community. Therefore, the ANC took no objection to this case.

CHAIRPERSON REID: Okay.

MS. KING: There's no indication as to whether or not there was a quorum, but -- but nevertheless they have written a letter in support.

CHAIRPERSON REID: No. Their letter --

MS. KING: With no objection.

CHAIRPERSON REID: No objections.

MS. KING: They have no objection to it.

CHAIRPERSON REID: So basically the interpretation that we as a Board take when we get letters from the ANC saying they don't object means that you're adversely -- you know, that they are not in opposition to your case, which is good.

We would not be able to give the great weight that we usually afford an ANC because they don't have a vote or a quorum, but nonetheless, we will take their position into consideration.

All right.

MS. PARKS: There's -- excuse me, Madame Chairman. There's also a letter from one of the neighbors there.

MS. KING: There's a letter --

CHAIRPERSON REID: This is for ANC right now.

MS. PARKS: Oh, okay.

CHAIRPERSON REID: I'm getting -- I'm going to person and parties in support of the application. Is there a support letter you're referring to?

MS. PARKS: Yes.

CHAIRPERSON REID: Okay. Now.

MS. KING: We have letters from Eva

Russell and Jason Washington, who live at 7546, which is --

CHAIRPERSON REID: I don't have it.

MS. KING: They were just handed to us today.

CHAIRPERSON REID: Oh, okay.

MS. KING: And also from Russell Smith, who lives at 7542.

CHAIRPERSON REID: Un-huh.

MS. KING: So those would be the --

CHAIRPERSON REID: In support?

MS. KING: One of the neighbors across the street, one of the neighbors --

MS. PARKS: Both of them, I believe, is across the street.

CHAIRPERSON REID: And to your -- oh, okay. And to your knowledge -- first, let me say are there any persons or parties here in opposition to this particular application?

Okay. Then what we have to do is have them to come up to give us their position on it, and then we'll have you come back up with closing remarks.

Have you been sworn?

MS. PROCTOR: Yes.

CHAIRPERSON REID: Okay.

MR. WINSTANLEY: There's two of us.

CHAIRPERSON REID: All right. The two witnesses or three?

MR. WINSTANLEY: Two.

CHAIRPERSON REID: Okay. Both come up at the same time, please.

MR. WINSTANLEY: Okay. My name is Gerard Winstanley. I live at 7541 Alaska Avenue, N.W., Washington, D.C. 20012.

I am the neighbor to the -- to the right if you're looking from the front, from the street at this property.

MS. KING: Is that on the alley side or the non-alley side?

MR. WINSTANLEY: No, on the non-alley side. So the side where the variance is not being requested.

I haven't seen the plans for this house yet. So I have little to comment from that point of view. My comments are generally to do with the neighborhood.

Shepherd Park is a very attractive neighborhood. It's got lots of trees, lots of gardens. It's one of the reasons why we moved there. We think that there is adequate land. This plot is 50 feet wide. It's over 100 feet long.

It's 5,800 square feet. I believe that is sufficient size to build a residence, keeping within the zoning requirements and making it acceptable property and keeping sufficient garden and maintaining the character of Shepherd Park.

That's all I have to say. I look forward to having the Parks as neighbors. I hope we have a long and fruitful relationship with them, but I believe this house could be built within the zoning regulations.

CHAIRPERSON REID: Thank you very much, sir.

Yes?

MS. PROCTOR: I'm Sondra Proctor. I live at 7553 Alaska Avenue. I'm the one on the alley. I've lived there 21 years.

It has been a wonderful neighborhood to be in. We are -- I am personally concerned about changing the character of the neighborhood. I come simply as a person who will share the alley access with the Parks. I have not had the pleasure of meeting the Parks yet. So I hope that we will be good neighbors.

I am questioning the need for a variance. I believe that my house was built; the house that Mr. Winsmith (phonetic) lives in is --

MS. KING: Would you pull the microphone to your mouth so that we can hear you better?

MS. PROCTOR: Surely.

MS. KING: Thank you.

MS. PROCTOR: His house was built first in Shepherd Park. This was an area that was built as cottages.

My house was built second in Shepherd Park. At that time there was no alley, I believe. I believe the alley was taken from the properties so that the house where I am would not have been on an alley.

I am simply here to say why can we not stay within the code.

MS. KING: Your house goes to the alley?

MS. PROCTOR: It does, yes.

MS. KING: And do you have documentation that you land -- that you used to have an eight foot side yard and that the land was taken? Do you have that documentation?

MS. PROCTOR: No, ma'am, I do not. I was told --

MS. KING: So you're just supposing that that happened.

MS. PROCTOR: I was told that by the original owner. I'm the second owner of the house.

CHAIRPERSON REID: They told you what?

MS. KING: When was the house built?

MS. PROCTOR: 1928.

CHAIRPERSON REID: Repeat that you were told what now?

MS. PROCTOR: I was told by the original owner that when they moved there, there was no alley. They had a driveway there, and that that driveway went to the garage, which is on the alley.

MS. KING: But the house was always built, whether it was an alley or a driveway, was always built right to --

MS. PROCTOR: Yes, ma'am.

MS. KING: -- the road.

MS. PROCTOR: Yes, ma'am.

MS. KING: Whether it was a private driveway or --

MS. PROCTOR: Whatever it was.

MS. KING: -- an alley.

MS. PROCTOR: Yes.

MS. KING: So there was no side yard --

MS. PROCTOR: That's right.

MS. KING: -- for your building.

MS. PROCTOR: That's right, and I'm just --

MS. KING: At all, ever.

MS. PROCTOR: -- saying this to be honest. No.

CHAIRPERSON REID: Okay. So what then are you saying? Wait. Excuse me.

Your house is right on the alley. You have no side yard.

MS. KING: I understand that.

CHAIRPERSON REID: You have no side yard. Is that what you're saying?

MS. PROCTOR: That's right.

CHAIRPERSON REID: And you're concerned about changing the character. So now --

MS. PROCTOR: I'm concerned about I have enjoyed for the past 21 years the light that does come in my side, and I don't know the height of the house to be built. I understand --

MS. KING: The height will be the same regardless of whether they have an eight foot side yard or a five foot side yard. You all are not going to have a vacant lot next to your house.

MS. PROCTOR: I understand.

MS. KING: Okay. So the height has absolutely nothing -- the only issue before the Board of Zoning Adjustment is whether it's a five foot or an eight foot side yard.

MS. PROCTOR: All right. I also would

ask why we cannot build a house within the rules.

MS. KING: Thank you very much.

MS. PROCTOR: Thank you.

CHAIRPERSON REID: Okay. Any comments?

MR. GILREATH: Are we ready to -- for a motion?

CHAIRPERSON REID: No, comments.

MR. GILREATH: I have no comments.

CHAIRPERSON REID: All right. Then thank you very much.

Mr. Sockwell? I'm sorry.

MR. SOCKWELL: Just -- just --

CHAIRPERSON REID: I'm sorry.

MR. SOCKWELL: -- just a comment here or there.

CHAIRPERSON REID: It's all right if you have a comment, question.

MR. SOCKWELL: Mr. Stanley, is it?

MR. WINSTANLEY: Winstanley.

MR. SOCKWELL: Winstanley.

MR. WINSTANLEY: Yes.

MR. SOCKWELL: Is that W-y-n-n?

MR. WINSTANLEY: W-i-n-s-t-a-n-l-e-y.

MR. SOCKWELL: Okay. Winstanley. You're the neighbor on the right, and --

MR. WINSTANLEY: Yes.

MR. SOCKWELL: -- your -- your view of the Parks' house is one that would not have any variation from the requirements.

MR. WINSTANLEY: That's correct, yes. My concerns are purely with the character of the neighborhood.

MR. SOCKWELL: Yes, but those concerns really are not part of what this hearing was scheduled for with regard -- except that on the opposite side where it won't necessarily affect you, not directly anyway. There might be a less wide side yard.

MR. WINSTANLEY: Yes, indeed.

MR. SOCKWELL: The design of the house is probably the most obvious and most important aspect that would affect the character of the neighborhood.

MR. WINSTANLEY: Yes, indeed.

MR. SOCKWELL: Because should the Parks build a nice, square box with steel sides and a little roof and tiny slit windows and some neon surround at the front door, there would be a major character change to your neighborhood.

MR. WINSTANLEY: Indeed, yes.

MR. SOCKWELL: But any loss in possible light and ventilation, direct route for dragonflies

and sparrows down the alley won't affect you at all.

MR. WINSTANLEY: Indeed. You're totally correct.

MR. SOCKWELL: So I'm just trying to understand the depth of your concern.

MR. WINSTANLEY: I haven't seen any plans for the house. So --

MS. KING: Do you have eight foot side yards on either side of your house?

MR. WINSTANLEY: On one side I do. On the other side I do not.

MS. KING: What is the other side?

MR. WINSTANLEY: It is about ten feet from my house to my neighbor's house.

MS. KING: So -- and how much of that is your property?

MR. WINSTANLEY: Five feet.

MS. KING: So your house would be identical in width and in placement on the lot to the proposal of the Parks?

MR. WINSTANLEY: I believe so, and that's because the house was grandfathered before the zoning --

MS. KING: No, no, I understand that. I just -- I don't quite understand how your argument that this is -- that the Parks' house is going to

destroy the character of the neighborhood, you know, holds water if, in fact, your side yards are identical to their side yard or their proposed side yard.

MR. WINSTANLEY: My other wide has a larger garden side to it.

CHAIRPERSON REID: I think that what I'm hearing from these two witnesses, Ms. King or Board member, is that there's a concern about maintaining the integrity of the neighborhood.

MS. KING: No, I understand that.

CHAIRPERSON REID: Notwithstanding the fact that their building of the house may -- may add to the character. That's yet to be determined, but nonetheless, as citizens they felt the need to come down and to voice their view as to what their -- you know, things that they deem to be concerns.

MS. KING: No, I understand perfectly, but I just was --

CHAIRPERSON REID: -- appreciate that.

MS. KING: -- curious as to what the -- what Mr. Winstanley was describing as the character of the neighborhood.

CHAIRPERSON REID: Thank you. Thank you very much.

All right. Closing remarks by the

Applicant.

MS. PRUITT-WILLIAMS: Excuse me. Could you please fill out witness cards and give them to the -- thank you.

MS. PARKS: In closing, my husband and I understand the neighbors' concern, and if sharing our plans with them would make a difference to how they feel today, we do have a set of the plans. They're more than welcome to review them, and we look forward in being their neighbor.

CHAIRPERSON REID: Ms. Parks, I think that's a very good point that you're making, and why not -- you have not seen the plans at all?

MR. WINSTANLEY: No.

CHAIRPERSON REID: Why not give them a couple of minutes to look at your plans at this time?

MS. PARKS: Sure.

CHAIRPERSON REID: And -- go ahead.

MR. GILREATH: Does Shepherd Park either citizens association or some kind of organization there review plans or you just simply get approval and then build it?

MS. PARKS: Just get the approval.

MR. GILREATH: Okay.

MS. KING: The Advisory Neighborhood

Commission, however, has weighed in on the subject.

MR. GILREATH: Okay.

MS. KING: And that is the official body.

MR. GILREATH: Okay, fine. All right.

CHAIRPERSON REID: All right.

MR. GILREATH: Did they see the plans, the Advisory Council?

CHAIRPERSON REID: And perhaps to be able to try to -- sure -- to assist them in having a better understanding of what is going there, just show them that and kind of explain it to them because I think that what we're experiencing here is, you know, kind of a concern of the unknown, yeah.

So we'll give you a couple of minutes.

MS. PRUITT-WILLIAMS: Madame Chair, do you want to adjourn shortly so that they can talk freely or do you want this on the record?

CHAIRPERSON REID: Do you need about five minutes? Would five minutes be appropriate or would you need -- okay, sure. We'll adjourn for five minutes and let you have a discussion, and then once you have been assured that your concerns have been met or your concerns have been removed, then if you might consider removing your opposition or not.

You know, it's up to you, but I think that once you see what they are actually going to do and you can ask them questions, what have you, then it would give you a better footing in order to be able to make your decision.

Okay. Thank you.

(Whereupon, the foregoing matter went off the record at 11:52 a.m. and went back on the record at 11:56 a.m.)

CHAIRPERSON REID: The meeting will come back to order.

And I'm seeing some handshakes over there. So hopefully that's an indication that you've reached some meeting of the minds there.

MS. PARKS: It's not that we didn't try to. We met Laverne Saturday, and she told us to come back, and Ms. Proctor wasn't home.

CHAIRPERSON REID: Okay.

MS. PARKS: Mr. Winstanley didn't want to sign our petition, I guess, because he wanted to come down here.

CHAIRPERSON REID: Okay. So what is the outcome of your sidebar?

MR. PARKS: From talking to the --

MS. PARKS: Well, maybe they should say.

CHAIRPERSON REID: Okay. I would like

to hear your -- just come up for a moment and tell us what -- what your comments -- give us your comments.

MR. SOCKWELL: These are the people that are going to be sharing your barbecue.

(Laughter.)

MR. SOCKWELL: And you'll be gardening with them and sharing their tomatoes and hopefully green beans this year and not mosquitoes.

MR. WINSTANLEY: Well, I'm reassured that it's not a steel building with neon across the ceiling. So --

(Laughter.)

MR. WINSTANLEY: -- it's very tasteful, and on my side of the property line I'm comfortable with my eight foot setback.

CHAIRPERSON REID: So are you withdrawing your opposition?

MR. WINSTANLEY: Yes.

CHAIRPERSON REID: Thank you. Okay.

MS. PROCTOR: Hi. The house will be longer than the two houses on either side. I think it is a lovely home. I wish it could be within the code.

MS. KING: But the length is not -- it's the width that is the --

MS. PROCTOR: That's right.

MS. KING: Oh, I see.

MS. PROCTOR: It's that.

MS. KING: So your problem is with the width.

MS. PROCTOR: That's right.

MS. KING: Okay.

MS. PROCTOR: But if I could build a house like that, I would do it in a flash.

CHAIRPERSON REID: Do you think that it's going to complement or be an asset to your neighborhood, in your view?

MR. SOCKWELL: Before you answer that question, may I say this? It doe snot utilize the maximum square footage of the lot.

MS. PROCTOR: I understand that. That was one of our questions.

MR. SOCKWELL: Yes. And so realistically their use of land has been fairly judiciously handled. They have not tried to overpower the lot in square footage relationship, and that's very important to consider.

MS. PROCTOR: Right.

MR. SOCKWELL: The side yard issue certain has its ramifications, but I think that, having seen the plans, you've decided at least to

what extent this house is more or less than the neighborhood, your immediate neighborhood can handle, and hopefully that's your decision base.

CHAIRPERSON REID: Okay. Did you wish to change your position? Did you wish to withdraw your opposition?

You don't have to. I'm just asking if you'd like to.

MS. PROCTOR: No, I would not like to.

CHAIRPERSON REID: Okay.

MS. PROCTOR: Thank you.

CHAIRPERSON REID: Thank you.

MS. PROCTOR: But I think it's a lovely home.

CHAIRPERSON REID: Okay. Thank you.

Okay. Come back up, please.

Okay. Closing remarks.

MS. PARKS: In closing, we hope that we have proved our case, and we hope that you will approve our request for the variance.

CHAIRPERSON REID: Okay. Are you requesting a summary order, a bench decision? Do you know what that is, first?

MS. KING: Well, summary order we can't have with opposition, can we?

CHAIRPERSON REID: A party is in

opposition.

MS. KING: Oh, a party in opposition. Yes, you are. The answer is yes.

MS. PARKS: Yes.

CHAIRPERSON REID: Board members, I'd move approval of this application.

MS. KING: I would second your motion.

CHAIRPERSON REID: I think that the Applicant has met the burden of proof. They've demonstrated that they -- there's a practical difficulty in them blending with the existing -- the original zoning regulations.

There does not appear to be -- the ANC has no objection, and there is some concerns in this particular instance, but I did not hear evidence of adverse impact, which is what we're particularly concerned about in regard to traffic, parking, noise, lights or the like, and I don't think that it impairs the integrity of zoning regulations or map.

MS. KING: And --

CHAIRPERSON REID: Go ahead.

MS. KING: And I would add, Madame Chair, that as Mr. Sockwell pointed out, the land occupancy, although the building is three feet wider than the applicable zoning allows, the total land occupancy is considerably less than they have as a

matter of right, and therefore, I think that I hope very much that any adverse impact on any abutting neighbors will be mitigated by the fact that their using much less space than they would be permitted.

MR. GILREATH: Madame Chair, I don't even feel that there's adverse impact. The fact that this reduction in the setback from eight feet to five feet adjacent to the alley, I think the alleyway is such that the light and air and so forth will not in any way be significantly reduced. So I don't even see an adverse impact.

MS. KING: No.

MR. SOCKWELL: The slope of the roof on the house will admit light at angles which are normal rather than throw harsh shadows.

There is one thing. You made a statement, and I hope you keep to it, although it has nothing to do with us here. I hope that your grandchildren don't have to visit your aging parents up at Carriage Hill because you won't let them use that extra bedroom.

(Laughter.)

CHAIRPERSON REID: Okay. All in favor?

(Chorus of ayes.)

CHAIRPERSON REID: Opposed?

(No response.)

MS. PRUITT-WILLIAMS: Staff would record the vote as four to zero to approve the motion made by Ms. Reid and seconded by Ms. King.

MR. PARKS: Thank you.

CHAIRPERSON REID: Thank you.

Thank you. That concludes the morning session for the Board of Zoning Adjustment.

We'll readjourn (sic) at one o'clock.

Thank you.

(Whereupon, at 12:04 p.m., the meeting was recessed for lunch, to reconvene at 1:00 p.m., the same day.)

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

(1:12 p.m.)

CHAIRPERSON REID: Good afternoon, ladies and gentlemen. Please excuse our delay.

This is the September 29th hearing of the Board of Zoning Adjustment.

My name is Sheila Cross Reid, Chairperson. Joining me today are Robert Sockwell and Betty King. Jerry Gilreath is representing the National Capitol Planning 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 on each end of the table in front of us.

Upon 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 a special exception and variance cases will proceed as follows:

One, statement of witnesses of the Applicant;

Two, government reports, including

Office of Planning, Department of Public Works, ANC, et cetera;

Person and parties in support;

Four, persons and parties in opposition;

Five, closing remarks by the Applicant.

Cross examination of witnesses is permitted by persons or parties with direct interest in the case.

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

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.

The Board will make every effort to conclude the public hearing as near as possible to six o'clock p.m. If the afternoon case are not completed at six o'clock p.m., the Board will assess whether it can complete the pending case or cases remaining on the agenda.

We ask that you please turn off all cell phones or beepers so as not to disrupt these

proceedings.

The Board will consider any preliminary matters at this time. Preliminary matters are those which relate to whether a case should be heard today, such as a request 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 the 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?

MR. SCHAUER: Madame Chairperson.

MS. PRUITT-WILLIAMS: Mr. Schauer, you have to speak from the mic, please.

MR. SCHAUER: Madame Chairperson --

MS. PRUITT-WILLIAMS: Push it.

MR. SCHAUER: Madame Chairperson, this is in respect to Case 16486, which is at 439 15th Street, S.E. I wanted to raise the issue of improper notice, but I wonder if staff will make that motion instead.

Thank you.

CHAIRPERSON REID: Thank you.

Are there any other preliminary matters?

MS. KING: Is 16504 withdrawn? Is that

correct?

MS. PRUITT-WILLIAMS: That was the staff's --

CHAIRPERSON REID: Did you have a preliminary matter? No.

Staff, preliminary matters?

MS. PRUITT-WILLIAMS: There's two. Let's deal with the quickest one first, as Ms. King had indicated.

You have a letter in your file in reference to Case 16404, requesting a withdrawal of the case -- 504. Excuse me, and that was for George Washington University Law School. They're requesting a withdrawal.

CHAIRPERSON REID: Okay.

MS. PRUITT-WILLIAMS: The second item deals, as Mr. Schauer said, with notice. We know that the -- well, we sent out notices to people within 200 feet of the property, and it was listed in the District Register.

However, the property was not posted due to extenuating circumstances. What staff is suggesting is that after the hearing the Board leave the record open and have the Applicant post the property and then allow comments to come in up until the hearing date -- I mean up until the meeting date

so that everyone who particularly may not have been here would still have an opportunity comment prior to any type of a decision.

CHAIRPERSON REID: All right.

MS. KING: Does Mr. Schauer have any --

MS. PRUITT-WILLIAMS: Objections or concerns?

MS. KING: -- objection to that?

MR. SCHAUER: Madame Chairperson, I feel that notice is central to jurisdiction, that this body will have no jurisdiction without proper notice, and I don't believe that posting after the fact is adequate notice.

These placards are important, and they do bring up community comment in opposition and support, for that matter. It is important that the community know about these things in advance of the hearing, not after it, and I think holding the record open is simply not satisfactory. We would object quite strongly to that.

Thank you.

MS. PRUITT-WILLIAMS: The Board -- just in response, not so much in opposition, but just to let you know that we have -- there are three forms of notice that go out from our office or that we do on each project. Two of the three were met.

CHAIRPERSON REID: And those three were?

MS. PRUITT-WILLIAMS: The three is the posting of the property, the notice from our office to -- that's one type of notice.

CHAIRPERSON REID: No, the three that were met.

MS. PRUITT-WILLIAMS: There are three altogether. Two of them were met.

CHAIRPERSON REID: All right. Well, give us the two that were met.

MS. PRUITT-WILLIAMS: One, the printing in the District Register, and then the mailing to people within 200 feet of the property.

And on this particular property, we did not get any returned mailings or any return from our mailings.

CHAIRPERSON REID: I think that --

MS. PRUITT-WILLIAMS: Just for information.

CHAIRPERSON REID: -- that in this instance we really need to tread very carefully because the purpose of the posting is for the purpose of giving the community the opportunity to come to this hearing to basically be able to testify either in support or opposition should they desire, and within our files we have letters that support

both points of view.

And I don't -- I'm not -- I'm not completely convinced that the two forms of notice that were utilized in this instance were sufficient enough to have given the -- for the notice to have been adequate, and I'd like to hear from other Board members on that.

MR. GILREATH: Madame Chair, I have a similar concern, and I'm wondering. I understand the great loss that I guess the mother has serving -- I guess she's the Applicant now. Is it at all possible for you, ma'am, to --

CHAIRPERSON REID: Do you want to ask her to come up?

Can the persons who are involved in this particular case, could you please come forward to the table?

MS. WALKER: Yes, I'd like to introduce myself. I'm LaNita Walker, and I'm Tosha's mother, and I'm here this week, and --

MS. PRUITT-WILLIAMS: You can sit down.

MS. WALKER: Oh, I can?

I'm here this week on behalf of my daughter's estate and of course, my daughter in her wishes. I submitted a letter to the Board yesterday, and I will submit to you whatever needs

to be done. We will do, I mean.

MR. GILREATH: Well, what -- for us to have the hearing and the property not be posted, we are going to be deprived of potentially some significant input from different parties in the neighborhood, and we understand you've come from North Carolina, and we know it would be, indeed, a hardship for you to go home and come back, but is there any way possible that if we were to postpone this until the property is properly posted and so forth, you could come back so that we could have a full hearing? Because it would be somewhat irregular for us to have a hearing without the people in the immediate area not being duly apprised of what's being proposed.

MS. WALKER: and I certainly can work through that, but I do know that there was a petition that was signed by over 200 people in the neighborhood. I do know that the letter that went out for this hearing -- as a matter of fact, I got my copy from a lady that came and gave me a copy. I had never seen a copy of it until I came up right after the services for my daughter to pick up her belongings.

So these people had got copies of this letter for this hearing.

Also, when I stopped by the property, I mean the people have embraced this enhancement of their neighborhood such that they are telling me that they want to call in. "Where do I call? I want to call in?"

You know, I don't --

CHAIRPERSON REID: They want to do what?

MS. WALKER: They want to call in in support of -- of what is going on in the neighborhood.

MR. GILREATH: Well, that's very possible that once we had the hearing the support and all of the requirements are met. We might decide favorably. However, there is potential for some opposition.

MS. WALKER: Absolutely.

MR. GILREATH: And these people who would be opposed to this, if they had not been aware of it, you know, it kind of puts us in a kind of adverse situation.

CHAIRPERSON REID: Ms. Walker, let me also say that given the circumstances in this particular case, the Board is very sympathetic to the situation, and I don't know if you've read the file, but there are a lot of letters in support, but there are also letters in opposition.

It may -- and I want you to think about this -- it may not be in your best interest to go forward today when there's a possibility of your being able to garner additional support on your behalf because right now, with this issue being raised by Mr. Schauer regarding the posting, it may well be that a lot of people don't -- aren't really aware of exactly what is going to going there.

So, you know, when you come before us, you want to have the best possible case that you can present, and we don't want you to be in any way prejudiced.

MS. KING: Madame Chair, I -- I think given the circumstances, the fact that Ms. Walker is here from North Carolina, the petition that has been submitted would seem to encompass virtually all of the immediate neighbors of this property.

Mr. Schauer is here. There's no --

CHAIRPERSON REID: Schauer.

MS. KING: Schauer. I'm sorry. I beg your pardon.

There's no indication that the ANC did not have effective notice. It seems to me that given the tragic circumstances, that it would be unkind for us not to continue with the process today, and that we could -- we could then --

CHAIRPERSON REID: Leave the record open.

MS. KING: -- keep the record open as you suggest.

CHAIRPERSON REID: Well, Ms. King, have you seen this? This is a more recent submission.

MS. KING: I understand. I'm not suggesting that there's not going to be some opposition, but there -- you know, the fact that so many people have weighed in pro and con seems to me to demonstrate that effective notice has been amply given to the neighborhood.

CHAIRPERSON REID: Okay.

MS. KING: And I have -- you know, I'm not suggesting that I have decided to favor Ms. Walker's petition. I'm simply saying that there's ample evidence that in spite of the fact that the property wasn't posted, that the neighborhood is well aware of what is proposed.

MR. GILREATH: Well, Madame Chair, my only concern would be that if we take an action and say it's favorable and then those in opposition -- would they be in a position to challenge our decision legally saying because it was -- as long as we do this and it's legally sufficient, I have no problem accommodating your view on this, Ms. King.

It's just --

MS. KING: We've done it before, Mr. Gilreath.

MR. GILREATH: Well, if --

CHAIRPERSON REID: Yeah.

MS. KING: We've done it a number of times before.

MR. GILREATH: Well, if this is legally --

MS. PRUITT-WILLIAMS: And leaving the record open for posting would allow anyone -- I mean, leaving the record open and posting the project would allow anyone else who was not here, who did not know about the hearing because of that, to weigh in on the project either pro or con. So I don't think we are --

CHAIRPERSON REID: What would the posting -- would the posting -- what would it stipulate?

MS. PRUITT-WILLIAMS: It would basically say what normally states in the orange sign and a footnote at the bottom stating that the hearing was held; however, that you can comment on this up until so-and-so in writing.

CHAIRPERSON REID: Okay, because typically the poster itself is --

MS. PRUITT-WILLIAMS: Talks about the zoning relief and then the hearing date.

CHAIRPERSON REID: That's the notification of the hearing date.

MS. PRUITT-WILLIAMS: But it also talks about the --

CHAIRPERSON REID: -- zoning relief.

MS. PRUITT-WILLIAMS: Right. So we would put the zoning relief requested, state that there had been a hearing, and then state that comments will be accepted up until a date certain with the decision to follow.

MS. KING: I support that, Madame Chair.

CHAIRPERSON REID: Ms. Walker, how do you feel about -- what is your position or give us your take on all of this.

MS. WALKER: If I understand what you said, you said that the hearing would go on, but you would leave it open so that people would have input back as to their opinion on what's going to happen with the property?

MS. KING: Exactly.

MS. WALKER: Is that what you said?

MS. KING: Would you pull the microphone closer to your mouth so we can --

MS. WALKER: Sure. I think I understand

what you said, is that the hearing would go on, but you would give the opportunity to the community to see a posting and have them have input back into the case as to the pros and cons.

MS. KING: Exactly.

MS. WALKER: Is that what you said?

Well, I think that's fair.

CHAIRPERSON REID: Let's recess. Just give us about three minutes before we make a decision on that.

(Whereupon, the foregoing matter went off the record at 1:26 p.m. and went back on the record at 1:30 p.m.)

CHAIRPERSON REID: All right. We'll reconvene.

Ms. Walker, what we were trying to determine is get like legal advice as to whether or not it would be permissible to go ahead today and to allow the record to remain open, and my understanding is that it is permissible. So if you'd like, your preference is to go forward today.

MS. WALKER: Thank you very much.

CHAIRPERSON REID: Okay.

MS. WALKER: Thank you so much.

CHAIRPERSON REID: What I was saying, just to reiterate it for the record, that counsel

has so advised us that we are within our legal parameters to go ahead with the hearing today and to leave the record open for responses after it has been posted.

So I think that by consensus, the Board members are of the opinion that we can go forward today.

MS. WALKER: And I say thank you very much --

CHAIRPERSON REID: You're quite welcome.

MS. WALKER: -- for your compassion and understanding in this.

CHAIRPERSON REID: So now you may go ahead.

Has the case been called or was this a preliminary matter? Okay. We need to call the case and allow the swearing in, and then we can proceed.

MR. GILREATH: Madame Chair, before we start, I think since they've turned down the volume, it appears that we can keep our mics on --

CHAIRPERSON REID: Okay.

MR. GILREATH: -- because we're constantly leaving them off and on.

CHAIRPERSON REID: Okay.

MR. GILREATH: We might try that and see. I think they turned the volume down, and it

seemed to solve the problem.

CHAIRPERSON REID: Okay.

MS. PRUITT-WILLIAMS: The first case on the afternoon agenda is Application 16486 of Tosha Walker, pursuant to 11 DCMR 3107.2, for a variance from Section 2001.3, Subsection A and C, to allow an addition to a nonconforming structure, Section 401.3 from the minimum lot size, and Section 404.1 from the rear yard setback requirements for the proposed addition and conversion of an existing private garage to a single family dwelling located in an R-4 district at premises 439 15th Street, S.E., Square 1062, Lot 804.

All those planning to testify, could you please stand and raise your right hand?

(Whereupon, the witnesses were duly sworn.)

MS. PRUITT-WILLIAMS: Thank you. Please be seated and proceed.

CHAIRPERSON REID: Give your name and address, please.

MS. WALKER: My name is LaNita Walker, and I'm from Charlotte. The address is 6322 Dougherty Drive in Charlotte, North Carolina.

Of course, I'm here on behalf of my daughter, Tosha, who was working on the project in

the southeast section of Washington.

Tosha -- I mean I don't know where to go from here, but Tosha was extremely compassionate in what she was trying to do, and she had a passion for the neighborhood, to make sure that the neighborhood represented what she wanted it to represent in the conformity of what was going on there.

Just a little bit about here because I think it's so very important. Tosha made a point and she would tell me. I would talk to her five, six times a day every day, but she made a point of embracing the people in the neighborhood, such to where she would hire for just ditch digging and mowing the lawn the people that were local in that neighborhood.

And I was afraid for her, and I would tell her, "Tosh, you can't get too close to that element."

She said, "Mom, I want to give those people dignity there," and she -- and I can show you where she would pay $50 a week to just men hanging around to do little things, to bring them in and help beautify the neighborhood.

Relevant to -- and the letter speaks for itself that I submitted yesterday -- relevant to what has taken place in the structure, this is Rick

Foster, and Rick is the construction -- the structural contractor for the work that Tosha was doing, and I at this point would like to turn it over to him.

CHAIRPERSON REID: Okay.

MR. FOSTER: So I need to speak into this?

CHAIRPERSON REID: Yes. Give your name and address.

MS. KING: And you need to turn it on.

MR. FOSTER: Okay. My name is Derrick Foster. I am -- my home address is 11819 Bishop's Content Street. That's in Mitchellville, Maryland. The zip code is 20721.

My office here in the District is 325 Pennsylvania Avenue. That's in Southeast Washington, D.C.

I have been a licensed residential contractor and general contractor in the District for well over ten years now.

When Tosha actually got involved with deciding what she was going to do in terms of explaining or trying to describe to me what her ultimate objective was in designing and building this carriage house, I thought it was unique. I thought she actually had taken the time to drive me

through the neighborhood and point out various houses and kind of gave me a feel of what she was interested in doing.

I looked at the existing structure, and it is beyond me to understand how anybody could be opposed to that structure and its condition and the condition that it was in when I was brought to the job, to have it moved down.

It was experiencing major structural deterioration. The roof had caved in, and it was nothing less than an eyesore and a structural hazard.

When I got started, I got started on the project. She asked me to come in and to see what I could do to insure that the structure was sound, and I submitted a contract to her to make some sort of effort to try to renovate or create a situation where the structure wouldn't fall on anybody or be a hazard or be a problem to anybody in the neighborhood.

I secured a demolition permit, and I also secured a permit to rebuild several wall sections. I then commenced to do the work.

When we got started doing the work and got the existing or the original steel roof out and made some attempt to try to tear down a wall that

ran parallel to the alley, which I believe is the south wall, the inside wall and the rear wall just basically moved towards the center.

At that point we determined that everything had to come out, and then we would make the decision as to what we would do in terms of rebuilding.

I was then called back in by my superintendent and Tosha to make -- to give my opinion on what needed to be done. My opinion was to rip it out, get it back in, get the structure back to its original form, and then once we decided what we would do in terms of the rest of the carriage house and the whole -- the whole scope of work that would be involved with completing her, quote, unquote, dream -- that's what I decided that we needed to put the structure back.

Now, and that's where we are. Obviously the garage has now been rebuilt, and it's our understanding there's some opposition to that, and I don't find it to be any different than the overwhelming majority of structures in that particular area.

I have done probably well over 200 projects in the last ten years of rebuilding garages and securing building permits and adhering to

jurisdictional building guidelines, and I don't understand why this project falls in such strong opposition, if any.

I'd also like to add that in all my years of doing what I'm doing, and I am a second generation person doing this, I've been doing this myself since 1978. I am trained in this area to do this work. I have never had the opportunity to work with a person who was more intent on doing what's right.

Besides the fact that she embraced the folks in the neighborhood, she had initiated the process of trying to do what the, quote, unquote, establishment called for. There was no idea that maybe she could get something by at any point in time. She was adamant about doing what she did, and all the time that I was involved in the project, we called in and we had the necessary inspections. We had the approvals. We informed the inspectors what we were doing, and there was no problem.

By me being as busy as I was, I didn't have a lot of time to spend on that job, but I did have competent superintendents there, and it was amazing the amount of referrals. It was amazing at the response we got from people coming by and observing the work that was in progress.

It is not, as you know, a very good neighborhood, and we have a problem. We have had problems, a number of problems, a lot of problems with having equipment, with having materials taken off that job. That job went without incident, and I think that that goes to her credit. I mean she had worked out a situation with those folks in the neighborhood where she was very well respected both by the common folk, the folk that lived there, the folk that could potentially cause some problems, and some of the people who had taken the measures or steps to be a part of a neighborhood in transition.

It just baffles me. I just don't understand how any one person or any body of people could be opposed to her efforts in terms of trying to improve a neighborhood that's, quote, unquote, at best a transitional area.

That's all I have to say. I don't -- maybe we acted a bit quick in terms of getting the structure back up, but unfortunately we had to make a decision. We had to decide what we needed to do. We could not -- when we realized that we could not brace the wall, when we could not install shoring or lagging to keep that structure in place because it was so bad, we had to create a situation where we would get the structure back in some sort of shape

and condition so that it would be --

MS. KING: Excuse me. Could I ask a question?

MR. FOSTER: Sure.

MS. KING: Is there an existing three story structure on this property or is there a two car -- one story, two car garage?

MR. FOSTER: There is an existing two story structure with a basement that is parallel to where this garage --

MS. KING: So this building that we have the plans for has been built?

MR. FOSTER: No. No, it is --

MS. KING: No, no, I'm talking about the garage.

MR. FOSTER: Yes.

MS. KING: You tore down an existing one story garage.

MR. FOSTER: And we --

MS. KING: And you replaced an existing one story garage with another one story garage.

MR. FOSTER: That is correct.

MS. KING: And there's nothing on top of it?

MR. FOSTER: No, ma'am.

MS. KING: Okay. So, I mean, what

you're now applying for is the addition of a two story residence on top of the one story garage.

MR. FOSTER: That is correct.

MS. KING: Okay. So, I mean, let's not -- I mean, is there -- do people want you to tear down the one story garage? Is that what you're suggesting?

CHAIRPERSON REID: No, no. I think --

MS. KING: No, but that's what I'm hearing him saying.

CHAIRPERSON REID: No.

MS. KING: But what people are objecting to is the addition of a two story rental unit on top of the one story garage. Nobody has a problem in the neighborhood with a garage; is that correct?

MR. FOSTER: As I understand, there seems to be some problems with the way in which the new structure was constructed.

MS. KING: Well, the new structure requires zoning permission, and that's why you're here.

MR. FOSTER: That's correct.

MS. KING: Okay, and you'll have to make the case for the zoning permission. You understand that. You know about the burden of proof and the legal requirements, do you?

MR. FOSTER: I understand that, and I even think that we are --

MS. KING: So let's make those points. This is not an emotional question. This is a legal question. You have to demonstrate a unique and unusual situation. You have to demonstrate an undue hardship or practical difficulty if the property continues to be used in its permitted use. You have to demonstrate that there's no substantial detriment to the public good, and you have to demonstrate that you won't substantially impair the intent, purpose, or integrity of the zoning regulations or map.

It's not an emotional issue. It's a legal issue, and the burden is upon Ms. Watson --

MR. FOSTER: Walker.

MS. KING: Walker. I'm sorry.

-- Ms. Walker to make her case on those four points.

MR. FOSTER: But doesn't that situation come about after the fact that -- after we have some conceptual, after we can be able to demonstrate what our intent is?

MS. KING: Well, fine. Your intent is quite clear. We've read all the papers, and we have your plans in front of us.

MR. FOSTER: Okay. So my question is:

how can anybody at this point be opposed to this before we're able to submit the conceptual --

MS. KING: Well, we will hear from the people who are opposed to it.

MR. FOSTER: Okay.

MS. KING: What you need to do is to make the legal case for those four points. You're familiar with them, are you?

MR. FOSTER: I understand, but to this point --

MS. KING: So let's go ad seriatim. Let's start at the beginning with unique or unusual situation.

MR. FOSTER: I don't think that there's anything unique or unusual about this. I mean additions and modifications to buildings is something that's done all the time. Buildings are torn down and --

MS. KING: And there's nothing unique about the land on which this building sits?

MR. FOSTER: No. It's fairly common. It's just like all the rest of the houses in the neighborhood. There's no difference, with the exception of most of the garages in the District are on the rear, especially in this area, and because this is a corner unit and the way in which it's

constructed, the garage, quote, or slash, carriage house was to the side.

The obvious structure itself, I had a structural issue with the wall that is parallel to it because it was in such bad masonry condition. I recommended to Tosha, and this illustration does not support what I recommended, that we go over and we tie into it and we use this, quote, unquote, carriage house to support that existing south structural wall, which is in very bad condition, as was the garage.

So if, in fact, we're able to convince people to give us the opportunity to do this, from a structural perspective or a structural standpoint, by simply creating a bracing system and tying into that existing structure, we can save quite a bit of money by leaving that south wall in place and loading it by various means of -- that -- that we'll demonstrate at some point through our engineering details.

CHAIRPERSON REID: What is your name?

MR. FOSTER: My name is Derrick Foster.

CHAIRPERSON REID: Mr. Foster, when you submit an application for a building permit and you then are referred to this office, then our role is to listen to you make a case to us as to why you

should be allowed to have a special exception or a variance, in this instance a variance for something that is not within the zoning regulations.

Just a moment.

In order to do so, as Ms. King pointed out to you, there are -- you have to demonstrate that you are meeting your burden of proof, which means that you have to show that there is something unique or unusual about the property that would cause -- now, let me ask staff. Just one second, Mr. Foster.

Let me ask staff. Is this a use or an area?

MS. KING: Both.

CHAIRPERSON REID: All right. Ms. King is saying both.

MS. PRUITT-WILLIAMS: I'm sorry.

CHAIRPERSON REID: Because it looks like both to me again. Excuse me.

MS. KING: Yeah, I think it's both use and area, isn't it?

CHAIRPERSON REID: That's what it looks like to me. What do you think, Mr. Sockwell?

MR. SOCKWELL: It looks like it's probably both, but I'd have to --

CHAIRPERSON REID: We need to be able to

call this.

MS. PRUITT-WILLIAMS: Let me look this up directly.

CHAIRPERSON REID: Okay. Well, while she's looking that up, if it's a use -- if it's both, then you have to demonstrate that you comply with -- that you are -- that you should get a variance from both a use and an area, area variance by showing that you have an undue hardship and a practical difficulty.

Now, the other part is that there not be adverse impact on the neighboring community, and then there's not impaired integrity or intent of the zoning regulations or map. So that is your chore.

And what we have to have you kind of focus on are those elements because that is what will make or break your case. Do you see what I'm saying?

MR. FOSTER: Yeah, I understand.

CHAIRPERSON REID: Okay. I just think we have the horse a little bit -- before you even get to that process, if I understand correctly, you're supposed to have some sort of conceptual overview of what you're trying to accomplish, right?

CHAIRPERSON REID: Well, you submitted it, and that was submitted.

MS. KING: We've got it.

MR. FOSTER: Well, I haven't been -- I haven't seen that.

MS. KING: We've got it. We've read it. We've studied it.

MR. FOSTER: I'm sorry. Okay.

CHAIRPERSON REID: We have packages before us that were submitted, and I guess --

MR. FOSTER: I have not seen that. Okay.

MS. KING: This, we have all of this.

MR. FOSTER: Okay. I understand.

MS. KING: We've read all the correspondence. We've looked at the plans.

MR. FOSTER: Okay.

CHAIRPERSON REID: Because the thing about it, Mr. Foster and Ms. Walker, is that when you come before us, then you should -- everything that is in our package you should be aware of because that is what you're going to be speaking to.

MR. FOSTER: I understand.

CHAIRPERSON REID: So it seems like to me that since there is nothing in front of you, that you're kind of winging it.

MR. FOSTER: Well, I haven't been -- I haven't seen that information. That was information

that was, I guess, put together by the architect and Tosha.

CHAIRPERSON REID: Well, this information, these packages that we have formulate the crux of your particular case, and all of these papers and documents we have here are what we're looking at to determine whether or not, in fact, the application should or should not be approved.

And your position is to defend the application.

MR. FOSTER: I under --

CHAIRPERSON REID: You know, since you are here with the applicant. Then that's what your role is supposed to be, to be able to defend that application.

MS. WALKER: Is it possible to see that information?

MS. PRUITT-WILLIAMS: Excuse me, Madame Chair. I can speak to the question of variance right now for you.

CHAIRPERSON REID: Okay, but excuse me one second. Ms. Walker was asking a question while you were.

MS. WALKER: Yes, I'm sorry. Is it possible to see that information that you have in front of you? I don't --

CHAIRPERSON REID: Well, the thing about it, Ms. Walker, is that there is a lot of information. There are the -- there's the application, and there are copies of the letters --

MS. KING: I think I have --

CHAIRPERSON REID: -- of opposition, copies --

MS. KING: -- duplicate copies of almost everything.

CHAIRPERSON REID: -- of -- yeah. Well, what I'm saying is -- what he was asking me is maybe you hadn't had a chance to look at it, but in working with staff, she was not given the package to review so that she would be aware of what was actually contained therein?

MS. PRUITT-WILLIAMS: The file was available. I don't know if we -- she didn't have the opportunity, I think, to look at --

CHAIRPERSON REID: Well, she wouldn't know. She would --

MS. KING: May I suggest that we --

CHAIRPERSON REID: Excuse me, Ms. King.

MS. KING: Excuse me. Sorry.

CHAIRPERSON REID: Please, one at a time.

MS. KING: When you're ready, I'd like

to say something.

CHAIRPERSON REID: No one -- if no one told her, it's not something that lay people would commonly be aware of.

MS. PRUITT-WILLIAMS: Well, no. When I spoke to Ms. Walker, I talked to her about having to talk about the -- she had to prove her variance and that meaning having to deal with the uniqueness of the property, that pronged test.

CHAIRPERSON REID: Did you understand that?

MS. WALKER: Yes, and also conceptual drawing of what it --

CHAIRPERSON REID: Did you understand that there was a package that had been submitted that had --

MS. WALKER: No, I didn't.

CHAIRPERSON REID: -- architectural drawings and --

MS. WALKER: No, Tosha had --

CHAIRPERSON REID: -- a plat map and the statement from Tosha and all the things that were contained in there?

MS. WALKER: No.

MS. KING: Madame Chair, may I make a suggestion?

CHAIRPERSON REID: Yes.

MS. KING: Why don't we recess this case so that Ms. Walker can review the file? Why don't we move on to --

MS. PRUITT-WILLIAMS: Mr. Soiberman's.

MS. KING: -- 16489 and then they can come back and present their proof?

CHAIRPERSON REID: Ms. Walker, would that be okay with you if we take the next case and give you the opportunity to review the file and maybe there's some staff members, to ask questions, what have you, to see if -- you know, because you need to have this information before you or to have knowledge of it so that you could make your case adequately.

MS. PRUITT-WILLIAMS: Madame Chair, Mr. Hart is the staff person assigned to it, and he can talk with you right now.

MS. WALKER: Thank you very much.

CHAIRPERSON REID: All right. Well, let's just table --

MS. PRUITT-WILLIAMS: But I'd like to clear up before they leave --

CHAIRPERSON REID: Oh, sure.

MS. PRUITT-WILLIAMS: -- so that we're doing the correct things.

In reading the regulations, what is required here is under Section 200.1 -- 2001.3 -- excuse me. I misspoke. Let me check this again because I have the wrong section here.

CHAIRPERSON REID: Okay. We'll come back to that.

MS. PRUITT-WILLIAMS: I have the wrong information.

CHAIRPERSON REID: Okay. Well, then we'll table this particular case.

MS. PRUITT-WILLIAMS: When we come back.

CHAIRPERSON REID: And --

MR. GILREATH: Well, I would like to bring to their attention one of the things we're going to have to deal with, according to what the staff prepared for us, is the minimum -- the variance from the minimum lot size. So apparently by putting this on, you would not have enough -- normally enough lot size to accommodate that. So we'd have to grant you a variance.

The second thing is a rear yard setback. Apparently you're going to be closer to the property line than normally would be allowed. So we'd have to grant a variance for that.

And secondly, we have to determine whether the conversion of an existing private garage

to a single family dwelling located in R-1-A district; we have to determine whether that's appropriate or not.

CHAIRPERSON REID: Okay. Now, wouldn't that be use, the conversion aspect of it?

MR. GILREATH: Probably use, but I'm just saying these are the things that they're going to have to --

CHAIRPERSON REID: Right.

MR. GILREATH: -- justify to us because --

MS. KING: Yeah, it's both use and area, I'm sure.

MR. GILREATH: -- these are the things we really have to determine, whether or not we can grant, say you can build this even though you do not have a minimum lot that would normally be required and that you will not meet the rear yard setback, and the others, we'll just have to determine whether or not -- that will be our determination of whether or not a garage can be converted to a dwelling.

But these are the things we've got to deal with. So you can look at the material, and hopefully you could help us on that.

CHAIRPERSON REID: Okay, all right. Then we'll just table that and bring you back up,

Ms. Walker, as soon as we take the next case.

MS. WALKER: Thank you.

CHAIRPERSON REID: Okay. Thank you.

All right then. Now, before the next case, Ms. Pruitt-Williams, you're going to be able to tell us --

MS. PRUITT-WILLIAMS: Yes.

CHAIRPERSON REID: -- if it's a use or area variance.

MS. PRUITT-WILLIAMS: They're all area. I was just verifying. Section 2001.3(a) calls the structure shall conform to the percentage of lot occupancy requirements. That's what that one calls for.

And in 2001.3(b), any addition -- the addition or enlargement itself shall not increase or extend any existing nonconforming aspect of the structure and shall not create any new nonconformity of the structure and addition combined. So those are all area.

CHAIRPERSON REID: Okay.

MS. PRUITT-WILLIAMS: And then of --

MR. SOCKWELL: A is referenced in the --

MS. PRUITT-WILLIAMS: Excuse me?

MR. SOCKWELL: Only Sections A and B are referenced.

MS. PRUITT-WILLIAMS: A and C.

MS. KING: A and C is in the notice.

MR. SOCKWELL: Oh, A and B are in the application.

MR. GILREATH: Ms. Pruitt, are we saying that the --

MS. PRUITT-WILLIAMS: Along with the other two that are listed, which are clearly area, minimum lot size.

MR. GILREATH: Well --

CHAIRPERSON REID: What about -- what about the conversion of an existing private garage to single family dwelling? That's not a use?

MS. PRUITT-WILLIAMS: It's not an issue in this particular case.

CHAIRPERSON REID: So there --

MR. GILREATH: I thought we have to approve that, that they wanted to convert that in an R-4 zone.

MS. PRUITT-WILLIAMS: It's a nonconforming structure. Let me check again against what the Zoning Administrator has sent forward to us.

MR. GILREATH: Well, Madame Chair, as I understand this, this property is already a nonconforming use. It does not have minimal lot

size. It does not have the proper rear yard setback. So we have to determine whether or not it would be justified to build this and continue this nonconforming use?

MS. KING: Add to the nonconforming.

MR. GILREATH: Add to the nonconforming.

CHAIRPERSON REID: Well, that -- that's -- go ahead.

MR. SOCKWELL: There's also a question that I have as to the way the lot was configured. It looks like at one point the garage was an accessory building to the adjacent property. It appears that the two properties have separate lot numbers, but they are 800 lot numbers, and 800 lot numbers do not allow new construction until the property has been subdivided.

So that brings up another question of the situation that evolved around the initial permit apparently that was issued to repair the existing garage, which apparently was in the process of falling down, and during the repairs became a dangerous structure, immediate danger, and apparently they got a demolition permit for that, I assume.

But then I want to see the history of the permit to rebuild the garage because to build a

new structure on an 800 lot is not allowed in the District of Columbia. If it's an existing lot with an existing structure -- the only time than an 800 lot number, which is a tax lot number which means merely for the purpose of paying one's due to the city, one has all property consolidated under a single bill. It doesn't mean that the lot is a contiguous lot by closing the various lines that for its perimeter.

MS. KING: But, Robert, if they didn't tear down all of the walls of the building, if they left one wall standing, that's not a new structure then, is it? It's a restoration or conversion. I mean that doesn't apply, does it, if they left one wall standing?

MR. SOCKWELL: It should It may. There's a thing about roofs being left in place --

MS. KING: Yeah.

MR. SOCKWELL: -- and things like that. To retain one wall and build it back around a wall might be the same thing. I don't know exactly what happened with that. I just wanted to be sure.

MS. KING: No, I don't either.

MR. SOCKWELL: But some of those are issues. They're just --

MR. GILREATH: Well, they could have

done this restoration without a building permit?

MR. SOCKWELL: Huh-un.

MR. GILREATH: The impression I had, he just said that once one of the walls collapsed or something, they just decided to do this. It wasn't clear to me they necessarily got a building permit to do that.

MR. SOCKWELL: Well, they demolished the existing structure because it was going to fall in anyway. He said part of the wall started moving in toward the center.

MR. GILREATH: Yeah.

MR. SOCKWELL: So in order to rebuild, they would have to have submitted drawings for something more than an in kind replacement of deteriorated materials. It would have actually become a new construction because the scope would have changed.

MR. GILREATH: Well, they may have, indeed, gotten the building permit. The impression I had, it just seemed that he and this young lady who is now deceased, they discussed this and said this building is in such bad repair; the walls are shifting. Let's just do it.

Now, of course, he's an experienced architect. He may have gotten a building permit. I

don't know.

MR. SOCKWELL: But the other thing is that now they would want to build on top of it. I'm not sure that that could be accomplished without securing a record lot.

MR. GILREATH: Well, if he did not get a building permit, does that make our -- inhibit our ability to make a --

MR. SOCKWELL: Well, if anything was amiss in the permit process, it doesn't sound like it would be. He's an experienced and licensed contractor, which means he's bonded.

MR. GILREATH: Okay. Well, we can assume he did that. We can at least get a confirmation.

MR. SOCKWELL: Yeah.

MR. GILREATH: Okay.

MR. SOCKWELL: It's the ones that aren't licensed that you really start worrying about.

MS. KING: Yeah, I think on this one we just deal with the facts of the case as they're put before us. I mean they've got -- they have the responsibility to provide proof.

CHAIRPERSON REID: What I don't understand is I'm still grappling with this issue, and you know, perhaps someone can explain it to me;

I don't understand how you can go from a garage to a dwelling unit and not be a change in -- not be a use variance. That's where I'm --

MR. SOCKWELL: Well, that's another part of it. The thing is under the zoning ordinance, if the garage was at one time a part of the larger lot, then if the lots were separated, that separation cannot create a nonconforming situation that we have to accept for construction because that nonconforming situation would have been created after the date of the May 12th --

MS. PRUITT-WILLIAMS: '58.

MR. SOCKWELL: -- 1958 zoning ordinance enactment.

So sometimes people buy property and they say, "Okay. I'm going to subdivide it, and I'm going to building a house." Okay. They'll keep the big piece on -- the big house on the big piece of property, and I'm going to cut this little piece off over here. I'm going to build a house on that, but it's now a nonconforming lot because it's under the square footage or whatever. So now I'm going to build something on that, but I've created a nonconforming lot.

So the zoning code doesn't allow you to do that. The question here is the garage existed.

If the lot was separated while the garage existed, that might be fine for the garage, but it may not be fine for building a house on top of the garage because the nonconforming lot was created after May 12th of 1958. It is not grandfathered.

If the nonconforming lot had existed prior to that --

MS. KING: But the 800 --

MR. SOCKWELL: -- I could change the dynamics of this, but we --

MS. KING: The 800 number demonstrated that it happened after '85; is that correct?

MR. SOCKWELL: Well, the 800 number demonstrates that a subdivision of land recorded in the books of the Surveyor's Office has not taken place.

So there's no way of telling what the real property line of 806 and 804 --

MS. KING: Eight, oh, four and five, I think.

MR. GILREATH: Well, our staff indicates it's already a nonconforming structure. It seems to me what we have to determine, if they have to go -- say, nonconforming is now X percent over lot occupancy; if it because of initial storage, they're going to push even further. It's going to affect

the equation and also the rear yard setback requirement.

Say for a one story you go to a three story. Can we -- is that going to affect the light and all of that? It seems to me that's what we have to explain.

MR. SOCKWELL: Yeah, what they have, they could probably have divided the lot around the garage at some point. Apparently -- I don't know why it has 800 numbers on it. That's one of my questions.

MR. GILREATH: Well, according to Ms. King, don't we deal with what's before us? Do we need to -- is that an issue or not, this 800 lot business?

MR. SOCKWELL: Well, let's put it this way. For us, we have to determine whether the underlying condition is correct, I think, in order to rule on the proposed condition.

CHAIRPERSON REID: Well --

MR. SOCKWELL: To the extent that you -- just like in any situation where you have a nonconforming use or an unlicensed or previously unregulated condition, you can't put a regulated condition on top of an unregulated condition.

CHAIRPERSON REID: Okay, but --

MR. SOCKWELL: But I'm not sure that that's --

CHAIRPERSON REID: But also with the lot size.

MR. SOCKWELL: It's tiny.

CHAIRPERSON REID: All right. It's only 288 square feet.

MR. SOCKWELL: Un-huh.

CHAIRPERSON REID: And what is allowed is 1,800 square feet.

MR. SOCKWELL: Un-huh.

CHAIRPERSON REID: So would that within itself create an unusual or a unique --

MR. SOCKWELL: Within itself it would create a tremendous burden on us to justify the creation of a residence on a smaller footprint because the idea is that --

MS. KING: You know, I --

MR. SOCKWELL: -- if you have a 20 square foot lot --

MS. KING: We shouldn't decide the case before we hear it.

MR. SOCKWELL: --and you build -- and you put a -- you can put a 2,000 square foot house on it, but you're only going to have 20 square feet per floor. So you'd have a ten story, 20 foot

square.

CHAIRPERSON REID: Right. Within itself, it's already so tiny, but it has a garage on it. Okay. Like the --

MR. SOCKWELL: The garage was an accessory structure. It wasn't -- it wasn't a structure --

CHAIRPERSON REID: Is it on that lot?

MR. SOCKWELL: Yes.

MS. PRUITT-WILLIAMS: Yes.

CHAIRPERSON REID: But the house -- the house --

MR. SOCKWELL: The adjacent house is on another lot.

MS. KING: It is on 803.

CHAIRPERSON REID: Oh.

MR. SOCKWELL: The adjacent house is on another lot.

CHAIRPERSON REID: I've got you. All right. Okay.

MR. SOCKWELL: The problem is to separate it out. I don't -- maybe she bought it and it was separated. I don't know.

MR. GILREATH: Well, are they going to exceed the --

MS. KING: Well, I don't think we should

debate this case before we hear it.

MR. SOCKWELL: No. Yeah, we shouldn't.

MR. GILREATH: Well, we need to have an understanding of what we're supposed to be responding to.

MS. KING: Well, haven't had anything to respond to yet. They haven't made any case.

CHAIRPERSON REID: Okay. Well, when they come back --

MS. KING: Right.

CHAIRPERSON REID: -- we can ask them the questions about that, but in the meantime before we call the next case, there was the preliminary matter regarding George Washington University with them -- they were notifying us they were withdrawing. We didn't have to take a motion or anything, right?

But what about the issue -- the issue that Mr. Gilreath brought to my attention was the reimbursement. So that means that -- is that automatic when they withdraw? They will receive their fee?

MR. GILREATH: Filing fee?

MS. PRUITT-WILLIAMS: You pay your filing fee. We keep it. No.

CHAIRPERSON REID: Well, then that --

MS. PRUITT-WILLIAMS: Because they --

CHAIRPERSON REID: That was a request.

MS. PRUITT-WILLIAMS: They requested it, and their request will be denied.

CHAIRPERSON REID: By whom?

MS. PRUITT-WILLIAMS: The Director.

CHAIRPERSON REID: So the request was not to the Board?

MS. PRUITT-WILLIAMS: The request for withdrawal was to the Board. I just --

CHAIRPERSON REID: But the request for the fee --

MS. PRUITT-WILLIAMS: The Director has the authority to --

CHAIRPERSON REID: -- was also --

MS. PRUITT-WILLIAMS: Yeah.

CHAIRPERSON REID: -- to the Board, but you're saying that the Board does not make that decision?

MS. PRUITT-WILLIAMS: The Director has the authority to make that decision. First of all, we don't have the budget authority to return money.

CHAIRPERSON REID: Yeah.

MS. PRUITT-WILLIAMS: Bottom line.

CHAIRPERSON REID: I just wanted to make sure we were taking care of that.

MS. PRUITT-WILLIAMS: Right, yeah.

MR. GILREATH: Madame Chair, I --

MS. PRUITT-WILLIAMS: And they were withdrawing because they didn't want to. It wasn't any extenuating circumstances. They chose to withdraw. It was a self-induced issue. So --

CHAIRPERSON REID: Okay. Mr. Gilreath.

MR. SOCKWELL: But as long as it's not our call.

MS. PRUITT-WILLIAMS: No.

MR. SOCKWELL: It doesn't matter.

MS. KING: But we can't do it.

MS. PRUITT-WILLIAMS: Right.

CHAIRPERSON REID: Mr. Gilreath.

MR. GILREATH: My packet folder does not contain the rear yard setback, what it is now and if we grant the three stories that you're going to be over. In other words, was that in your packet?

CHAIRPERSON REID: Here's the --

MR. GILREATH: Or you had it, because that's useful to me to see what the occupancy coverage is. If we grant this, is it going to be over --

CHAIRPERSON REID: You're back to the other case.

MR. GILREATH: Yeah. I just need that

record --

CHAIRPERSON REID: Sure.

MR. GILREATH: -- information so I can better assess.

CHAIRPERSON REID: Right.

MR. SOCKWELL: What's the zone, an R-3 zone?

MS. KING: What, the Walker one?

MR. SOCKWELL: Yes.

CHAIRPERSON REID: While you're looking for that --

MR. SOCKWELL: R-4.

CHAIRPERSON REID: -- is it all right to go ahead and proceed with the next case or do you need to address that?

MR. GILREATH: No, no.

CHAIRPERSON REID: This was for your own edification.

MR. GILREATH: I just want this to -- so that I can look at it as we give --

CHAIRPERSON REID: Okay. All right. Ms. Pruitt-Williams, could we please have the last case of the day?

MS. PRUITT-WILLIAMS: Last case of the day or the first one, depending on how --

CHAIRPERSON REID: Well, actually this

is the last -- right. It's the first one.

MS. PRUITT-WILLIAMS: It depends on how you look at it.

One, six, four, nine, right, an application of David Soiberman -- I'm not sure if I'm --

MR. SOIBERMAN: Dennis.

MS. PRUITT-WILLIAMS: I'm sorry. Excuse me.

Dennis Soiberman, pursuant to 11 DCMR 3107.2 for variances from Section 403.2 of the lot occupancy requirement and Section 405.9 of the side yard requirement to construct a one story rear addition to an existing row house dwelling located in an R-3 district at premises 3900 W Street, N.W., Square 1315, Lot 45.

All those planning to testify, will you please stand and raise your right had? You're going to testify?

(Whereupon, the witnesses were duly sworn.)

MS. PRUITT-WILLIAMS: Please be seated, and would you come forward?

MR. SOCKWELL: Madame Chair, I need to make one statement about Application No. 16489, and that is that it cited Section 405.9 of the zoning

ordinance as one of the sections from which relief was requested.

Under Section 405.5 of the ordinance, a side yard would not be required on a corner lot that abuts two streets. So there is no requirement for side yard on the property in question, period.

CHAIRPERSON REID: Did they self-certify?

MR. SOCKWELL: Yes, it was self-certified. So Section 405.9 does not bear upon this case.

CHAIRPERSON REID: That is not applicable here?

MR. SOCKWELL: That is not applicable.

CHAIRPERSON REID: So that makes it a little earlier for you.

MR. SOIBERMAN: I don't know what that means, but if it's good for us, I'm all in favor.

My name is Dennis Soiberman, Madame Chairman and members of the Board.

I have a little package here I'd like to pass it. It's just a small collection of drawings that I've made.

MS. KING: Is there anybody here in opposition to this case?

(No response.)

CHAIRPERSON REID: That being the case, then what we typically do, Mr. Soiberman, is we can expedite this basically.

MR. SOIBERMAN: Yes, ma'am.

CHAIRPERSON REID: We have read the material that has been submitted to us, and as Mr. Sockwell has so aptly analyzed your submission, basically we would ask that you just give us the highlights of your application and we can kind of expedite it.

MR. SOIBERMAN: Okay. For that I would like to refer to Chris Landis, the architect and potential builder pending the outcome of this hearing.

CHAIRPERSON REID: All right.

MR. LANDIS: Hi. My name is Chris Landis. Hello, Ms. Chairperson and Board.

This is the first time I've been before this august body. So bear with me.

Since one of the sections that we quoted is no longer applicable, I'll just relate to the hardship of the first one, which is the 40 percent lot coverage.

The neighbors enjoy 60 percent lot coverage. Because this is an end unit and it doesn't actually touch the lot line, it's actually

three feet from the lot line. It's considered semi-detached. So it is required that it can only cover 40 percent, and the others enjoy a 60 percent. Therefore, the owner couldn't actually build anything onto his house.

And in terms of the overall intent of the zoning code, it still remains a single family dwelling. It's a family room for them to enjoy, as you can see in the drawings, and most of the other adjacent houses have also expanded in the last ten or 20 years. So that what we're proposing is very in keeping with what the neighborhood is.

There also is a large chunk of land next to this project that is vacant. I believe it's an easement for a highway that was proposed some years ago, and that's probably the reason why it wasn't built right to the lot line, but I don't know exactly what the reason is.

MS. KING: You're adding on a two story structure; is that correct?

MR. LANDIS: No, one story. It does have a basement in the sense that it's enclosed, but --

MS. KING: But I mean there are two floors, a basement floor and a one story; is that correct?

MR. LANDIS: Well, the basement doesn't actually have a floor. It's just up on piers, and it's over the ground. It's enclosed by -- it does have walls on either side, but it's more --

MS. KING: I mean where there used to be vacant space --

MR. LANDIS: Right.

MS. KING: -- there's now going to be a room here and a room on top of it; is that correct?

MR. LANDIS: Sort of. The room on the bottom is not enclosed totally. I mean it's more for garden tools and things like that.

MS. KING: Okay, but --

MR. LANDIS: It has a passageway through it.

MS. KING: I'm trying to understand --

MR. LANDIS: Right.

MS. KING: -- what I presume is a computer generated drawings, which is somewhat confusing.

MR. LANDIS: Right.

MR. SOIBERMAN: Ms. King, may I address that? Right now I don't know if there's a picture of the back porch there, the way it appears, but there is a slab that's seven feet from the house where the addition would now appear, and underneath

that, you can't even stand up. It's about --

MS. KING: A crawl space.

MR. SOIBERMAN: -- four and a half feet. I store lawn mowers and so forth, and we're just extending that. We're not excavating that out. So you still have to bend down to crawl under the house. It will just be a bigger crawl space.

But what we're building is basically a first floor.

MS. KING: I mean this is -- this is -- this is what you're building, and this is the shadow of the existing porch; is that correct?

MR. LANDIS: No, it actually -- how do you define a room? It's not heated. It's not insulated. It does have --

MS. KING: No, I'm -- I'm not talking about heating and insulation.

MR. LANDIS: Right.

MS. KING: This is what you're going to build?

MR. LANDIS: Right.

MS. KING: And this is the shadow of the existing porch?

MR. LANDIS: No, I think that hatching there just shows the siding. The two side walls are going to be brick, and the back is going to be

clapboarding.

MS. KING: I see. Okay.

MR. LANDIS: And those are -- those are like an access gate, door that you can open up that has paneling on it to look like the rest of the back of the house.

MR. GILREATH: Well, as I understand it, your house --

MS. KING: Oh, I see what you mean.

MR. GILREATH: -- your house now presents a 40 percent lot occupancy.

MR. LANDIS: Right.

MR. GILREATH: And to build this addition, you need to go to 60 percent; is that correct?

MR. LANDIS: Right, close to it.

MR. GILREATH: Okay.

MR. SOCKWELL: Mr. Landis.

MR. LANDIS: Yes.

MR. SOCKWELL: The size of the basic house that your client occupies is the same as the size of the basic houses that are adjacent to it.

MR. LANDIS: Yes. Actually in some cases it's smaller because it doesn't have a second floor on the proposed addition.

MR. SOCKWELL: Okay. The footprint

would be approximately the same.

MR. LANDIS: It would be.

MR. SOCKWELL: However, because it's a corner lot, the lot itself is larger than its adjacent neighbors' lots, is it not?

MR. LANDIS: I don't believe so.

MR. SOCKWELL: If those houses are approximately the same and the front and rear lot lines are approximately the same size and the other houses are row houses, then there would not be a side yard for any of the row houses. Therefore, the actual square footage of the sites should be identical or pretty close to identical to the square footage of your site minus the area that comprises the front property line to rear property line area that's right now side yard.

MR. LANDIS: That's possible. I didn't measure the other houses. The side yard here really consists of about three feet, a sliver three feet long the length of the property.

MR. SOCKWELL: If that three foot by the --

MR. LANDIS: Ninety-five feet.

MR. SOCKWELL: -- 95 feet gave you the ability to build a house that's fundamentally larger than the adjacent properties, then there actually

wouldn't be a relief. There'd actually be just a benefit.

MR. LANDIS: That's possible, but I don't think we're building --

MR. SOCKWELL: And we might need to have information that shows that your house is unduly restricted by the site. I don't see -- because I can't read the dimensions from the information that I have on the property itself, it's --

MR. LANDIS: Right. This property is 20 feet, .67 feet wide.

MR. SOCKWELL: Yeah, I can't read the adjacent properties even though I do have my handy dandy magnifying glass.

MR. LANDIS: Yeah. No, it's not there. It certainly is not on the -- it's not on the survey that I have.

MR. SOCKWELL: Yeah. It would be -- it would be interesting to know whether this lot is the same size as the other lots. If it's larger as a corner lot, then actually by being able to go to 60 percent of lot coverage, you would be gaining an advantage over the neighboring property rather than just coming up to the standard of the neighboring property because your lot is larger.

MR. LANDIS: Right. Well --

MR. SOCKWELL: And the house would then be able to become a larger house than any of its adjacent neighbors, at least in footprint.

MR. GILREATH: Well, do we know that, indeed, the lot is larger than the neighbors --

MR. SOCKWELL: We don't know at this point.

MR. GILREATH: -- and how much larger it is?

MR. SOCKWELL: We don't know at this point because I can't read the drawing that I have, which is just a -- this is a site drawing we get as part of our packages. I wish I could read the lot size. It would at least help me to understand this.

MR. LANDIS: I'm just asking the owner if he knows if his house is bigger.

MR. SOIBERMAN: The houses on the row are imperceptibly identical.

MR. SOCKWELL: I would think so.

MR. SOIBERMAN: And I think that my unit might have six inches in width on the other houses, but it's -- you really can't tell being inside and it's --

MR. SOCKWELL: Well, being an end wall unit, you'd actually have a little bit more because --

MR. SOIBERMAN: Right.

MR. SOCKWELL: -- you're not sharing a common interior wall on the outside. So --

MR. SOIBERMAN: That's right.

MR. SOCKWELL: -- it would give you no more usable area, but it might give you a slightly larger footprint.

MR. SOIBERMAN: Yeah.

MR. SOCKWELL: In the normal sense that all of these houses appear to have been constructed at the same time.

MS. KING: They were.

MR. SOIBERMAN: That's right.

MS. KING: The whole neighborhood.

MR. SOIBERMAN: The whole neighborhood was built at one -- and we're in a row of five connected houses.

MR. SOCKWELL: Yeah, your five connected lots appear to probably have houses of the same size, but your lot just happens to be a little bit wider than the other ones.

MR. SOIBERMAN: Right, because it's an end unit it has that three foot on the side.

MR. SOCKWELL: So the unfortunate thing is that the 60 percent that you're asking for is -- the other houses are built to 60 percent of their

lot occupancy.

MR. SOIBERMAN: A lot of them in the neighborhood are. Specifically a neighbor two doors up, I think, you have a letter from a Mr. Mosher to that effect, and we're just conforming pretty much to what the neighborhood does, but --

MR. SOCKWELL: Certainly.

MR. SOIBERMAN: -- we found out in the planning stage that we couldn't proceed because of the variance needed.

MR. SOCKWELL: Right. The thing is that the 60 percent that you want to occupy may, in fact, because you have a larger lot to work with, give you the ability to over size your house beyond the limitations that your adjacent neighbors would have the ability to build.

MR. LANDIS: Yeah, I'd like to just compare the lot size to the proposed size because I don't think we're asking for 60. I just know that it sent off a bill at the Building Department and it was referred over here because we were exceeding the 40 percent that we were allowed, but I don't think that we're asking for the full 60 because we're only proposing a one story addition.

CHAIRPERSON REID: When you mentioned -- - you said a hardship, but I think we're talking

about a practical difficulty. What is it? What's your practical difficulty in being able to comply with existing zoning regulations?

MR. LANDIS: Well, it's a hardship on the owner in the sense that they're an end unit, and they're only allowed to cover 40 percent of their lot whereas all of the adjacent units, since they are attached, are allowed to cover 60 percent.

CHAIRPERSON REID: But that's the zoning.

MR. LANDIS: That is zoning.

CHAIRPERSON REID: That is the intent of the zoning regulations.

MR. LANDIS: Right, but it's a hardship for the owner on the end. The zoning is a hardship for the owner on the end unit.

CHAIRPERSON REID: But your letter says, "This imposes an additional hardship on the property that is really no different than its neighbors other than being the last in the row."

What does that mean?

MR. LANDIS: Well, that it's on the end unit, and so it's zoned differently in the sense that it can only cover 40 percent of the lot.

CHAIRPERSON REID: Well, it's not. No, my understanding is that it's zoned for a semi-

detached in that zoning district.

MR. GILREATH: Because it's an end lot though. If he were one house over, he'd be able to get 60 percent coverage.

CHAIRPERSON REID: But that's the difference. The row houses are allowed 60 percent and the semi-detached houses 40. That is -- that is -- that is the --

MR. GILREATH: Well, this is semi-detached only in the sense that it happens to be at the end of this --

CHAIRPERSON REID: Yeah, but that's what semi-detached means.

MR. SOCKWELL: Yeah, but that's traditional. In any block in any development anywhere in the country and perhaps anywhere in the world, the end unit is always a semi-detached building.

CHAIRPERSON REID: By definition.

MR. SOCKWELL: By definition.

MR. GILREATH: Well, but it seems to me that you're imposing undue hardship on the -- when the person buys this house on the end.

MR. SOCKWELL: We do this the world over.

MR. GILREATH: Well --

CHAIRPERSON REID: The think about it is --

MR. SOCKWELL: Unfortunately.

CHAIRPERSON REID: -- he says -- what gives me pause is that he's proffering to us that the only hardship -- now, it says that the hardship that he's referring to is no different than his neighbors other than being the last in the row.

Now, the zoning regulations stipulate that for a row house, the lot occupancy is 60 percent in the zoning district, and the semi-detached is 40 percent, and you're saying -- it sounds to me like you're saying that is what your hardship is, but your hardship can't be -- that does not -- that does not make -- in other words, that does not make a good case to say that your hardship is the fact that this is what the zone -- these are -- these are the zoning regulations, but this is -- this is -- the zoning regulations were put in place for a reason, and the reason was such that the land in the District of Columbia is allocated for certain uses to the best interests of the citizenry here in the city.

So I can understand that being a rational for a variance.

MR. SOIBERMAN: Ms. Reid, I on my own

tried to find out why this law was in place, and I've been in touch with people at the Enforcement Division of the zoning and spoke to a gentleman who worked there for 20 years, since the '50s or so, but he could not explain to me the reason why this law was in place.

And when all of the units are identical, he can enforce it, but maybe you can explain to me why it's there.

CHAIRPERSON REID: No.

MR. SOIBERMAN: It puts us at a distinct disadvantage because we can't make our house the same size as our neighbors. That's --

CHAIRPERSON REID: But, see, what you have to understand, sir, is that it is not within our purview to question the reason why the zoning regulations are as they exist.

MR. SOIBERMAN: I understand.

CHAIRPERSON REID: I mean that could go on, you know, ad infinitum here. What we have to do is look at the zoning regulations as they exist and to use those regulations as guidance for whatever decision we make regarding your application.

And so far, quite frankly, I don't -- I don't see your making your case.

MS. KING: Well, excuse me please, Mr.

Soiberman.

MR. SOIBERMAN: Yes, ma'am.

MS. KING: Are you saying that all of the houses on your -- amongst the other four houses in that group of five identical houses have all put additions on the back of their house?

MR. SOIBERMAN: No, ma'am. One specifically has on that row of five.

MS. KING: Similar in size to the one that you wish to put on?

MR. SOIBERMAN: Almost exactly.

MS. KING: And they got zoning approval for it?

MR. SOIBERMAN: I would imagine. It's built. It's been built for about ten years.

CHAIRPERSON REID: No, you can't imagine.

MR. SOCKWELL: You can't imagine.

CHAIRPERSON REID: Because people do things that are not --

MS. KING: But I mean --

CHAIRPERSON REID: -- not within the scope of the law.

MS. KING: -- perhaps you're --

MR. SOIBERMAN: I don't know.

MS. KING: I mean, as presently -- let's

get this 60 percent business. As presently constituted, if the original house on another plot, on another lot, not yours, but another plot, would cover how much of the available land? Do you know? Do you have any idea?

MR. LANDIS: Can you say that again?

MS. KING: Mr. Soiberman's house covers what percentage of the land on which his -- the plot of land that he owns?

MR. LANDIS: The existing house covers a little less than actually 40 percent.

MS. KING: Okay.

MR. SOCKWELL: How much little less?

MR. LANDIS: Probably about 38 percent.

MS. KING: Okay, and therefore, the other houses, if they are unmodified, may be a little more because the lots are smaller, but they're all well under 60 percent, right?

MR. LANDIS: Right. But also there's the issue of this three foot setback.

MS. KING: No, no. I understand. I'm not talking about that. I was just trying to figure out if the neighbors had additions to their houses, but the chances are that the neighbor -- if the neighbor put on a similar addition, that it was a matter of right and there was no zoning permission

required.

MR. SOIBERMAN: That probably was the case because they're a middle unit.

MS. KING: Yeah.

MR. GILREATH: And they can occupy 50 percent -- 60 percent.

MS. KING: Sixty percent.

MR. SOIBERMAN: Actually -- because I don't think we're asking --

MR. GILREATH: What bothers me is a semi-detached house, I can understand if there were two houses together, but when you have a series of row houses and this one is on the end, it is not to my mind a pure definition of what a semi-detached house is.

MS. KING: Well, but nevertheless it's what happens. I mean it's --

MR. GILREATH: Because if you have two together, you have more space on each side. In this case on one side there is no light whatsoever.

MR. SOCKWELL: Well, what they did was they gave him a larger lot than anybody else. He got the wider lot because he has windows on his end wall. That pushes his property line back from what would be the logical line of a sidewalk so that his privacy is better preserved, that he has a little

bit more access to light and ventilation. That's the likelihood of your lot being larger if your house is approximately the same footprint as the others.

The 40 percent portion was probably intended in reality to guarantee that houses in pairs would have adequate side and rear circulation of air and whatnot between pairs, but the fact that the law is written around this, the fact that you actually have a larger lot negates some of the hardship.

And the question is that you could actually build 40 percent of a larger lot. Somebody else can build 60 percent of a smaller lot. It's not going to quite even out. I can pretty much be assured of that based on the relative sizes of things.

I don't know exactly what the side yard is. What is the side yard?

MR. SOIBERMAN: It is three feet.

MR. SOCKWELL: It is three feet. Okay. The question is if the adjacent neighbor build an addition right now, you saw that as an existing increase in his lot occupancy, and you would like to have the same thing.

If it can be shown that that addition is

a legal addition and that you are unnecessarily hampered from increasing the size of a like home -- I mean your house is identical to the other ones; they all came out of the same cookie cutter at the same time -- and you want to increase your footprint, if that addition is legal, then that would give us cause to believe that some previous -- that even without Board action there is a rationale for granting an addition that is no greater in size than that which your adjacent neighbors having very similar homes have been able to accomplish legally.

MR. SOIBERMAN: I believe that's the case, that it is, that we're not asking for any more than what neighbors have in the --

MR. SOCKWELL: We just have to make sure that that's a legal addition that we could even use as an example size-wise, and you'd have to find out if they achieved a permit for that.

I mean, there's -- never cite an example that you cannot substantiate because it doesn't help us, and it's hearsay because people build additions all the time, and if the neighbors don't call for inspections, nobody is going to know that it was illegal.

CHAIRPERSON REID: What is the unique, unusual condition or circumstances inherent in the

land?

MR. LANDIS: That it's an end unit. That's a unique condition.

CHAIRPERSON REID: The fact that an end unit -- well, isn't there an end unit on the other end?

MR. SOCKWELL: No, actually it doesn't -- this doesn't show. Unfortunately the other sheet that actually shows the houses, they didn't give us the piece of land that we needed.

CHAIRPERSON REID: But the fact that it's an end unit within itself, why is that -- I mean why is that uniquely --

MR. LANDIS: I have a question. I was told at the Building Department that if this building had been built to the lot line it would have been considered attached and that we would have had the 60 percent, but that since it was stepped back three feet --

CHAIRPERSON REID: If it were built to the lot line we could consider it what?

MR. LANDIS: Attached.

CHAIRPERSON REID: How? Attached houses have to be attached on two sides.

MR. LANDIS: Well, it would go from one -- like an attached house going from the lot line to

lot line on either side, and this -- and in that situation it would be considered attached even though it wasn't attached to anything on the other side. That's what I was told, and that's why I thought it was --

CHAIRPERSON REID: I don't understand why you would be told that because --

MS. KING: Are you sure that's not -- is that the case?

CHAIRPERSON REID: -- there's no other house -- just a moment, please -- there's no other house on the -- any house that is not attached on both sides, either it's a detached house or semi-detached house, and semi-detached is usually defined in real estate law, is defined as being attached on one side. Whether it goes to the lot line or not, if there's not another building on the side which is unattached, that building then is a semi-detached house.

MR. LANDIS: Right. I'm just going by what I was told downtown.

CHAIRPERSON REID: But you said you're a contractor?

MR. LANDIS: I'm an architect and a contractor.

CHAIRPERSON REID: Well, you know that.

I'm certain you know that.

MR. LANDIS: No. This is the first time for me.

CHAIRPERSON REID: Notwithstanding what they may have said to you --

MR. LANDIS: Right.

CHAIRPERSON REID: -- you know what the definition of attached, semi-detached, and detached is.

MR. LANDIS: I asked the question that I obviously didn't know the answer to.

MR. GILREATH: Well, if you were to investigate that and, indeed -- that's right. It's not been built to the lot line. So you still have the problem. I started to say if it were built -- so you still have the problem.

Madame Chair, would it be a hardship -- say a real estate person was showing a prospective house like this. "This is a fine house. However, it is semi-detached and you'll never be able to put an addition on. That's there is all you're going to ever get."

Wouldn't that be a detriment to the value of that house and the desirability of wanting to purchase it?

CHAIRPERSON REID: Well, may I, Ms.

King? In that, Mr. Gilreath, as you well know, I come from a real estate background, and on the contrary, it would be -- this is a semi-detached house which is more marketable and more attractive, more appealing because of the fact that it's not attached on the other side like the rest of the houses in the row. It has greater curb appeal.

MR. GILREATH: But what if the square footage of the houses are about the same though as exists?

CHAIRPERSON REID: Well, the one on the end would typically have a little bit more space because of the fact that it is on the end, and not -- and also, as Mr. Sockwell stated, have light, have windows on the side, you know, getting more light into the house than houses that don't have that because of the fact that they're attached on both sides. So it would be a more attractive house than --

MR. GILREATH: You could get a little bit more land, but is your house about the same size as the other houses?

MS. KING: Identical they said.

MR. GILREATH: It's identical in terms of square footage. You all have the same. He does have a little more amenity by this one side is the

only difference.

MR. SOCKWELL: His heating bills are a little higher.

MS. KING: That's right.

MR. GILREATH: Yeah.

CHAIRPERSON REID: Okay.

MR. SOIBERMAN: There are house in the neighborhood, corner houses, that are quite a bit bigger in size than the adjoining row houses. Ours is not one of them. They're -- they were just built that way in the neighborhood, and they hold a distinct advantage.

What I hold is basically a disadvantage because I can't build the same or offer the same size house as my neighbor can.

CHAIRPERSON REID: But when you say that that's a unique or unusual condition, in all -- notwithstanding the fact that on this -- if on this block there are no more semi-detached houses in that community, in that neighborhood there are -- there are -- all around and about there; so it would have to be, again, something that is unique and unusual inherent in the land, in the property that you -- the subject property, and I don't see that.

MR. SOCKWELL: In what I think may be fairness, and, Madame Chairman, correct me if I seem

to be going afield, if we took your lot -- if we can determine or if you can determine that the difference in width of your lot from the adjacent four in the row is that three feet of side yard, if you lopped off that three feet and took 60 percent of the remainder and met your addition size within those constraints, then there wouldn't be an unfairness, I don't think, to providing you with that level of relief as a hardship based upon identical conditions.

CHAIRPERSON REID: Say that again. If they can do what?

MR. SOCKWELL: If they can show -- is this it?

PARTICIPANT: I don't have one with the house on it.

MR. SOCKWELL: Okay, but this is -- where is the square? Where are we?

PARTICIPANT: The lot is right here.

MR. SOCKWELL: Oh, okay, okay. Now, okay.

Yeah, the difference is 2.67 feet. Eighteen, point, oh is the width of the three adjacent properties to the east, I suppose.

PARTICIPANT: West.

MR. SOCKWELL: West. Okay. To the

west, and your property is 20.67 feet wide. Now, the fifth property, the last property to the west is 18.33, which is negligible. So you actually have 2.67 more feet times 95 than your adjacent neighbors.

If you subtract that 2.67 times 95 from the area of your lot, then your lot is essentially the same as everybody else's, and if you take 60 percent of that, then that's less than 60 percent of the lot that you own, but that's approximately what's allowed in the other houses which are essentially the same.

And if you can fit your addition within that, I would be willing to accept the hardship aspect of your filing and having -- and feel that we had remediated it fairly.

CHAIRPERSON REID: But then what do you -- he would still need a variance?

MS. KING: No.

MR. SOCKWELL: He'd need a variance. He'd need a variance because he'd be over the 40 percent of his lot size.

MS. KING: But I mean --

MR. SOCKWELL: but he'd be under the 60 percent, and you'd have to work the numbers and tell me exactly what percentage you're at because it

would seem to me that that would be fair.

CHAIRPERSON REID: You mean that would be an equitable compromise?

MR. SOCKWELL: An equitable compromise because you have more lot than they do.

CHAIRPERSON REID: Okay. Ms. King?

MS. KING: I agree with Mr. Sockwell. It seems to me that if he can demonstrate this hardship and show that his addition is going to -- you know, if for example, your neighbor got an addition as a matter of right and if you lop off that three feet and you could have it as a matter of right, it seems to us -- to me, and clearly to Mr. Sockwell -- that it would be quite equitable.

But if your addition is greater than that, you may want to rethink it.

MR. LANDIS: Could I recess and do those calculations while you're --

MS. KING: While we're doing the other case?

MR. LANDIS: Right.

CHAIRPERSON REID: Okay, all right. Well --

MR. SOCKWELL: Just to tell you your lot is 1,710 square feet -- no. Your neighbor's lot is 1,710 square feet. Your lot is 1,963.65 square feet

inclusive of the additional 2.67 feet.

MR. LANDIS: Right.

MR. SOCKWELL: So we just subtract. I just deleted my number. Okay. No problem.

MR. SOIBERMAN: Madame Chairman, we made a phone call during this process and spoke to our neighbor. She assured us that all permits were acquired for her addition and everything was done according to District code.

MS. KING: Okay.

MR. SOIBERMAN: We don't have documentation, but that was conveyed to us.

MR. LANDIS: And she begged us not to call the inspectors out.

(Laughter.)

MR. SOCKWELL: Two, fifty-three, point, six, five square feet is what you'd have to take off of your lot in terms of area.

CHAIRPERSON REID: Do you mean lot or the addition?

MR. SOCKWELL: No, that's the area that is not --

MR. LANDIS: That's the 2.6 times 95, right?

MR. SOCKWELL: That's the 2.6 times 95, and then tell us what your addition is in terms of -

-

MS. KING: In comparison to 1,700.

MR. SOCKWELL: Yeah, 1,710, right. Yeah, okay.

CHAIRPERSON REID: Okay. Do you still want to recess?

MR. SOCKWELL: You can do that pretty quickly, can't you?

MR. LANDIS: Sure. I can.

(Pause in proceedings.)

MR. LANDIS: I'm ready, Madame Chair.

CHAIRPERSON REID: Yes, un-huh.

MR. LANDIS: According to my calculations, we would be covering 57.48 percent of the lot.

MR. SOCKWELL: Of the reduced lot?

MR. LANDIS: Of the reduced lot.

MR. SOCKWELL: And of the complete lot, how much?

MR. LANDIS: Let me quickly do that.

MR. SOCKWELL: Thank you.

(Pause in proceedings.)

MR. SOCKWELL: Mr. Landis?

MR. LANDIS: Un-huh.

MR. SOCKWELL: Actually all you had to do was add that 253 back in and then divide the

thing back out so you'd get the number.

MR. LANDIS: Okay.

MR. SOCKWELL: Do me a favor.

MR. LANDIS: Sure.

MR. SOCKWELL: I know you're working --

MR. LANDIS: Under the gun.

MR. SOCKWELL: -- under the gun. The square footage that you came up with, the house footprint plus the addition footprint?

MR. LANDIS: I came up with the total was 983.

MR. SOCKWELL: That's the total footprint --

MR. LANDIS: Right.

MR. SOCKWELL: -- of the house and the addition?

MR. LANDIS: Right.

MR. SOCKWELL: Okay.

MR. LANDIS: And the total square footage of the existing lot is 1,963.

MR. SOCKWELL: Right.

MR. LANDIS: And there's an old porch that's coming off the existing house.

MS. KING: But that doesn't count.

MR. SOCKWELL: I'm at approximately 50 percent coverage.

MR. LANDIS: Okay, okay.

MR. SOCKWELL: Now, what about this porch? How high is the porch off the ground?

MS. KING: This replaces the porch, does it not?

MR. SOIBERMAN: There's a picture.

MR. LANDIS: It does. It replaces the porch, and it's bigger than the porch.

MR. SOCKWELL: Okay. So the porch is -- how high off the ground was the porch?

MR. LANDIS: About five feet.

MR. SOCKWELL: So it was lot coverage. It was considered lot coverage at the time?

MR. LANDIS: It was considered lot coverage, right.

MR. SOCKWELL: All right. So we're granting you 50 percent -- would grant, if we accept this -- we would grant 50 percent as opposed to 40 percent, as opposed to 60 percent of lot coverage.

CHAIRPERSON REID: So you've got a ten foot compromise in there.

MR. SOCKWELL: Ten percent compromise.

CHAIRPERSON REID: What did I say?

MR. SOCKWELL: Ten foot.

CHAIRPERSON REID: I meant to say ten percent. Ten percent compromise.

Okay. And did you have anything else to add to your -- all right. What about the adverse impact? Can you speak to that? Is there any adverse impact to that?

MR. GILREATH: It will affect the neighbors in terms of light, air, parking.

CHAIRPERSON REID: Parking, traffic.

MR. SOIBERMAN: No, we enjoy quite a large side lot that belongs to the city, and it's set back about 25 feet from the street. It's actually -- the project has actually been embraced by the ANC and all the surrounding neighbors.

CHAIRPERSON REID: You've not had any complaints or any opposition?

MR. SOIBERMAN: No, ma'am.

MR. SOCKWELL: And the direct neighbor who it would affect most is here to speak on their behalf.

CHAIRPERSON REID: All right. Why don't you just stay right there?

ANC, government reports?

MS. KING: Yes, we have a letter, August 10th, from ANC 3B. They had a meeting on July 8th, which was properly noticed.

MS. PRUITT-WILLIAMS: Mic, Ms. King. Ms. King, your mic.

MS. KING: Oh, I beg your pardon.

CHAIRPERSON REID: Start over.

MS. KING: August 10th letter from ANC 3B. At a properly noticed, regular meeting on July 8th, there was no objection from the audience to the proposed variance. The Commission respectfully requests that this application be promptly approved. Signed, James Lively.

CHAIRPERSON REID: Okay. So was there a quorum present and vote taken?

MS. KING: It doesn't -- it doesn't say, but I -- this is my neighboring ANC to where I live. I know most of the members, and I think they're very assiduous in their attendance, but it doesn't say how many, you know.

CHAIRPERSON REID: Okay.

MS. KING: They voted unanimously, but it doesn't say that there was a quorum.

CHAIRPERSON REID: All right. Then we will take that into consideration, even though it would not be given a great weight typically we give to ANCs because it was not a quorum or a vote taken. There --

MR. SOIBERMAN: Well, there was a quorum at that meeting, and it was -- the house was full because we were discussing another issue. So quite

a --

MS. KING: Which was not so benign.

MR. SOIBERMAN: A bus issue, which -- and the CVS pharmacy. So --

CHAIRPERSON REID: Persons or parties in support of the application? Persons or parties in opposition to the application? Closing remarks by the Applicant.

MS. PRUITT-WILLIAMS: Madame Chairman.

MS. KING: Are you in opposition?

MS. PRUITT-WILLIAMS: Are you in support?

MR. EVERETT: Yeah.

MS. EVERETT: We were --

MS. PRUITT-WILLIAMS: Please come forward.

MR. SOCKWELL: You were or you are?

MS. PRUITT-WILLIAMS: They are. You are, correct?

MS. EVERETT: We are in support.

MS. PRUITT-WILLIAMS: Yes.

CHAIRPERSON REID: Okay. Give your name and your address, please.

MS. EVERETT: I'm Sally Everett. We live at 3902 W Street, next door to June and Dennis.

CHAIRPERSON REID: Okay.

MR. EVERETT: We live immediately to the west. It's the next -- the next house.

CHAIRPERSON REID: Okay, and give your name.

MR. EVERETT: My name is Jack Everett. Again, it's 3902 W Street.

CHAIRPERSON REID: All right.

MR. EVERETT: We would be most impacted. When we stand out on our porch, to our right there is another home with a deck similar to ours, which would be the equivalent to Dennis' porch. His has got a roof over it. Ours happens not to. The one to our immediate west does not.

The next house after that is the Moshers. Theirs was the house that was built matter of right with permits, and they have a brick wall that we see to the right. It actually -- for the people that are immediately to the right of us, it makes it actually kind of cozy.

We would lose, I suppose you could say, air circulation, and we would lose morning sun to a certain extent on our back deck, but it would protect us.

MS. EVERETT: I think it would be limited.

MR. EVERETT: It would be -- it would

protect us from the wind. We would get sun later on in the day, and it actually would look -- it looks quite cozy with a brick wall. We've already discussed with Dennis. We'd like to fix something like a plant holder to the brick, and we're going to plant something in there.

Also, if we or someone who purchases our house many years from now wants to add an addition on this, they would have a wall right there that they could attach. It would save them money because basically Dennis is paying for something which in a sense is -- might some day make it easier for someone to build out where we are.

We have no plans of doing that. We just moved into the house a year ago and can't afford it, but I'm not sure I would want to do that anyway, but I'm confident that it would not hurt the value of our property, and it might make it more cozy.

And we have absolutely no objection whatsoever.

CHAIRPERSON REID: Thank you very --

MR. SOIBERMAN: No, we're very happy --

CHAIRPERSON REID: Thank you.

MR. SOCKWELL: Mr. Everett, one thing. You might want to consult with Mr. Landis about that attachment to wall situation because I'm sure that

he realizes that Mr. Soiberman's wall is going to be totally on Mr. Soiberman's property, and for anyone in the future to attach to it, their attachment would belong to Mr. Soiberman.

MR. LANDIS: Generally what we do is when we go down to the building department, we get a letter from the neighbor and we build a firewall that's actually half on the neighbor's property.

MR. EVERETT: So you're going to --

MR. LANDIS: It's four inches on their property and four inches on Dennis Soiberman's property.

MR. EVERETT: So you will build it so that it could be a party wall in the future?

MR. LANDIS: Exactly.

MR. EVERETT: Okay.

CHAIRPERSON REID: We also have three other letters of support in the file of persons who reside within the neighborhood. Actually other than the Everetts, we have a letter from Nancy Meyers, one from Darwin and Penny Mosher.

Thank you very much.

All right. Persons and parties in opposition to this case?

(No response.)

CHAIRPERSON REID: All right. Closing

remarks by the Applicant.

MR. SOIBERMAN: Well, I think I've said most of my views during this interview, and I just hope that the Board rules in our favor.

We're very sensitive to the aesthetics of the neighborhood, and we're actually paying Mr. Landis a lot more money to construct a brick wall facing the street so that it would blend in with the architecture of the neighborhood. We didn't have to, but we chose to do that, and there's no outlandish architectural elements. Everything's going to blend perfectly with the neighborhood.

And I think it would be an asset to the neighborhood, and we would enjoy living in a slightly larger house.

CHAIRPERSON REID: Okay. Are you requesting a bench decision and summary order?

MS. KING: Yes, you are. Just say yes.

CHAIRPERSON REID: A decision today?

MR. SOIBERMAN: I'm sorry?

MS. KING: Just say yes.

MR. SOIBERMAN: I would like to have a decision as soon as possible, yes.

CHAIRPERSON REID: Okay, all right.

MS. KING: Madame Chair, I move that we grant this application. I think that, thanks to Mr.

Sockwell, we've figured out that it would be only equitable to grant it. There's no opposition. In fact, on the contrary is support both from the Advisory Neighborhood Commission and for the most affected immediate neighbor.

So that the impact on the community is clearly benign, and the family -- it will continue to be a single family home as forecast in the zoning regulations, and therefore, I think that the case has been made and this application should be granted.

MR. SOCKWELL: And we should stipulate if we grant this that no more than 50 percent of the total site area will be accommodated with the existing construction and the proposed addition.

MS. KING: Right. I agree.

MR. GILREATH: I second the motion to Ms. King's motion.

I, even though the way we adjusted this it's a bit tenuous, but I feel that to deprive the Applicant of the opportunity to build there constitutes in my mind a legitimate hardship, and therefore, I think we should grant the application.

CHAIRPERSON REID: My feeling about this particular application is that I don't -- I don't feel that the burden of proof has been met in regard

to test number one, and I don't see where it's a unique or unusual property or there's anything unique or unusual inherent in the land.

And also in regard to test number three regarding the impairing of the integrity -- intent and integrity of the zoning regulation and map.

Okay. All in favor?

(Chorus of ayes.)

CHAIRPERSON REID: Opposed?

Aye.

MS. KING: You got it.

MR. SOIBERMAN: Thank you very much.

MS. PRUITT-WILLIAMS: I almost lost all of the information. I will read back.

Staff will record the vote as three to zero -- I mean three to one to approve, motion made by Ms. King, seconded by Mr. Gilreath, with a condition that no more than 50 percent of the lot occupancy for the existing and proposed additions.

CHAIRPERSON REID: Okay. All right. Then we go back to the case --

MR. SOIBERMAN: Thank you.

CHAIRPERSON REID: -- number 16486, please.

MR. LANDIS: Thank you.

CHAIRPERSON REID: Thank you. Thank you

very much.

Okay. Ms. Walker, are you ready? Are you ready?

MS. WALKER: Yes, I am. Thank you.

I'm going to let Rick proceed forward with the variance for the zoning relief, but I would like to point out that I assumed, as well as I think some other ones, some other folks here assumed, that Tosha owns the property next door to this, to this unit that she's trying to put on. She bought that like January, February of this year. So the house -- the house right here, she owns that piece of property.

And there is like a gaited way here, and this piece of property had been sold over 20, 30 years ago to someone that had just left it sitting there. So that was the eyesore with all of the animals in it and just a lot of junk and debris.

So when she purchased this property, we looked at that, and a lot of the neighbors wanted her to purchase this, and she went through a lot of records trying to find out who owned this piece of property, which was a carriage house with nothing in it and a broken down roof.

She found that, and immediately the guy said, "Yes, I don't plan to do anything with it. I

had it 20 years, but I'm not going to do," and that's how she purchased that, that piece of property.

So she owns this piece, and she was just trying to enhance the property in the back.

MS. KING: Excuse me. Let me understand. She owns the house.

MS. PRUITT-WILLIAMS: Next door to it.

MS. KING: Okay. This is the house that she's living in?

MS. WALKER: Yeah, this is the house.

MS. KING: And this is the house that has the garage in the back.

MS. WALKER: This has a garage. This is the garage. This piece of property she owns.

I'm sorry.

MS. KING: Oh, I see. All right. This is the house. This is the garage, which you propose to build on top.

MS. WALKER: Yes.

MS. KING: And what is the other property she owns?

MS. WALKER: This one here, just this here, and then there's an alley here.

MS. KING: Oh, I see, and there were two --

CHAIRPERSON REID: Where is the subject property?

MS. KING: -- there were two separate pieces of property?

MS. WALKER: Yes. Twenty years ago they belonged as one piece of property, and I guess 20, 30 years ago this person owning this sold it off, and the guy was going to put --

MS. KING: Oh, sold the garage.

MS. WALKER: Yeah, and he was going to put a barbershop there.

CHAIRPERSON REID: She lived in that?

MS. WALKER: This here.

CHAIRPERSON REID: This is where her house --

MS. WALKER: Yes, exactly.

CHAIRPERSON REID: That's her house.

MS. WALKER: Yes.

CHAIRPERSON REID: That's the one that she purchased.

MS. WALKER: Yes.

CHAIRPERSON REID: And then she bought this.

MS. WALKER: This eyesore.

MS. KING: And tore down the --

MS. WALKER: Yes.

MS. KING: Did she tear down the garage entirely or did she leave one wall standing?

MR. FOSTER: We tore the entire garage down.

MS. KING: Pardon?

MR. FOSTER: We tore the entire garage down.

MS. KING: Razed to the ground, and they built from scratch.

MR. FOSTER: That's correct.

CHAIRPERSON REID: Yeah, demolition permits for that?

MR. FOSTER: I don't -- yeah, I'm sure. I know we had the -- we did have the demolition permit, and we did have the repair permit, but when we got to the point where we couldn't repair it and had to take it down, we had to make a decision, and I don't know if she acquired that permit or not.

MR. SOCKWELL: So when you say "demolition permit," you don't mean demolition permit. You mean that there was a permit to take off the old roof, buttress the walls and put a new roof on it?

MR. FOSTER: There was a permit to take off the old roof. The old roof was already off. It was just a matter -- there was no roof on it.

MR. SOCKWELL: I mean as a home improvement contractor licensed in the city, we're talking razed work versus demolition. We're talking -- we're talking an alteration/repair permit that was issued --

MR. FOSTER: Right.

MR. SOCKWELL: -- to rebuild the existing structure.

MR. FOSTER: Right. That was the -- that was the -- we got an alteration and repair.

MR. SOCKWELL: Right, but no demolition or razed permit was issued. When you found out that the -- and tell me if I'm wrong, but let me just lead you in this direction, please, for my own -- I'm sorry -- for my own edification -- once the wall started leaning in and you knew that you couldn't save the structure, you didn't go back to the city. You made the decision to tear it down.

Generally if a razed permit is issued for any building, there's a procedure that has to be adhered to, and that includes vector control, which is rat baiting and things like that. It includes ascertaining that all utilities that might have served that particular structure have been cut off, capped, disconnected, and abandoned per the utility companies. Then a raze permit can be issued should

there not be any extenuating circumstances like historic preservation issues and things like that.

So what I'm trying to get to is that there was something abbreviated in the construction process here, and that was that you didn't -- admittedly you didn't realize that the building was going to fall in on you, and you probably were unable to stabilize it before you reached a point where you knew it couldn't be stabilized.

Then you went to the ultimate conclusion in a sort of fast track method, which was you tore it down, and then you said, "Well, we'll build it back up the way it was."

You didn't receive another permit to rebuild the structure, and you didn't contact the city, Inspections Division and people like that, to tell them what had happened. I mean you could have -- I mean, unless the thing was going to fall into the alley or fall into the house next door, probably a better procedure would have been to go to the city and tell them that this thing -- "we were doing alteration and repair. We got a permit. The thing's falling in. What do we do? We've got to do it quick."

I just want to know what happened. That's all.

MR. FOSTER: Okay. To answer the question, I was the one that acquired the initial permit. The initial permit was a repair/alteration permit.

When we got to the point -- now, I wasn't involved at this point, but when my superintendent got to the point where the wall did, in fact, fall into the alley -- the wall that we initially planned to work on was the rear wall and the wall that ran parallel to the alley.

MR. SOCKWELL: Un-huh.

MR. FOSTER: When we realized that we couldn't -- we couldn't save the interior section of the back wall and the wall that's opposite the alleyway wall, there was, in fact, another permit pulled because we did call the utility company and have the electricity capped, and -- now I don't know this to be true. I don't know whether Tosha did it or not. I can say I did not do it, and as far as I know, nobody working for me did do it -- but I do know that when we got to the point where we realized that this structure was a lot worse than we imagined it being, we did call the utility company, that being, I think the only other service -- the only service that was provided in that structure was electricity, and they did come out and cap off the

electricity.

So, you know, I can't answer that.

MR. SOCKWELL: So your involvement with this process was sort of in stages, but not through all of what happened.

MR. FOSTER: That's correct.

MR. SOCKWELL: Okay.

MS. KING: Mr. Foster, was that building a garage before?

MR. FOSTER: I don't want to -- I don't want to say it was a garage. It was a --

MS. KING: But there's no curb cut, is there?

MR. FOSTER: No. It was not a garage. It was -- it was a -- it was a building that was -- that was being used as I want to say a barbershop or a hair salon or something for a long time, and it went abandoned. So --

MS. KING: Well, now, the drawing that Ms. Walker just gave us shows a fence around this and no curb cut. It's a two-car garage, but how do cars get into it?

MR. FOSTER: Well, that fence, that's the conceptual -- that's what we want it to look like after the fact.

MS. KING: I understand, but at the

present time is it being used as a garage?

MR. FOSTER: No, ma'am.

MS. KING: And how do you intend to use it as a garage?

Is this in part of the Capitol Hill Historic District?

MR. FOSTER: No, I believe it to be outside.

MS. KING: It's not, but you have to get DPW's permission to have a curb cut in order to use it as a garage.

MR. FOSTER: I understand that, and --

MS. KING: And nothing has been done about that?

MR. FOSTER: No. The only reason why was because we didn't gotten to that point in the planning stages. We had a situation --

MS. KING: You built a garage, but you have no curb cut.

CHAIRPERSON REID: I thought it was a vacant -- is it built?

MR. FOSTER: It's built, but it's -- the garage itself, the walls are back in place. It is -- with the exception of some modification, with the exception of not having the brick put back on it, which there is the room. I mean it is the same

size, the same physical structure, but the -- but the matching brick was not put back on it.

MS. KING: Yeah, you can see. It's a cinder block building.

MR. FOSTER: That's correct.

MS. KING: You can see it right here. It's a cinder block building --

MR. FOSTER: That's correct.

MS. KING: -- with a garage door or is it just a --

MR. FOSTER: No garage door is there now. Just a --

MS. KING: How do you get in. I mean --

MR. FOSTER: There's an opening that's -- a piece of steel that spans across, but it's -- with a roof and a -- with a roof and a door -- and that's the reason why we did not cut out the driveway area that would lead -- that would provide access to this garage, because we hadn't done through or the project was not to the point where it had gone through the stages of actually being permitted for permits -- submitted for permits.

MR. SOCKWELL: Can I -- can I interrupt here?

MR. FOSTER: Sure.

MR. SOCKWELL: In order to construct it

as a garage, you would be going to public space for a curb cut permit at approximately the same time -- this is the Department of Public Works for the District of Columbia -- at approximately the same time that you would be planning and designing your facility, the building.

There seem to be some discontinuities in the way that this process took place that make it a little difficult to understand exactly what's going on because obviously you have a steel header going across on the street side that I can see the very corner of; of course, no curb cut; and of course, the fact that it might be used for a garage or anything else, there has been no final inspection of the building, I assume, for any use.

You say there's no roof on it at this point?

MR. FOSTER: No, sir.

MR. SOCKWELL: Okay. So it's an open --

MS. KING: Oh, there's no roof.

MR. SOCKWELL: It's an open box.

MS. KING: Oh.

MR. SOCKWELL: And the reason that there's no roof on it, did something occur in the process that --

MR. FOSTER: Again, our original intent

was to create something. Our original intent was to do the repair work. It started out as a totally different thing, and she had started the process of actually trying to create the conceptual stuff, and that stuff dates back before actual construction.

There was an imminent concern to shore the structure, to make sure that the structure was sound. There were folks going in and out of this building. I believe it was being used for -- by people who use drugs or whatever the case may be, and she wanted to try to secure it.

We couldn't attach any door. There was some sort of attempt made obviously several times to try to close off the only entrance in, but they would just break through that.

I think the thing that prevented them from continuing to go in was when the roof collapsed, and the wall that ran parallel to the alley fell in, and the rear wall which is -- which runs opposite, which runs parallel to a neighbor's yard, began to come in, and in our original documents we talked about getting the roof off, getting the roof into a container, and putting some sort of bracing system in to keep the wall in place so that it would be safe while -- while she went through the process of securing the necessary

authorization or approvals to build.

MR. SOCKWELL: Okay. Mr. Foster, what this really seems to come to is that the original building under an alteration and repair permit collapsed on you.

MR. FOSTER: That's correct.

MR. SOCKWELL: At the time of collapse, there was no permit to build another structure.

MR. FOSTER: That's correct.

MR. SOCKWELL: At the time of collapse, there was no final raze permit, raze meaning total demolition of an existing structure, issued, and what is there now was a replacement of basically a ground floor foundation with the intent to design and build a two-story residential unit above.

But to the best of my understanding, what's there now really doesn't have a permit.

MS. KING: Probably not.

MR. FOSTER: Yeah, that's correct.

MR. SOCKWELL: Okay. So the issue -- there's several issues here, and whether or not we're supposed to be reviewing this with this current condition existing is something that I need to defer to the Chairperson and our people because I see that we have a structure here, but that structure that's there now is, in effect, an illegal

structure because it didn't have a proper permit.

The proposed use, it couldn't have been approved for -- it couldn't have been approved for anyway because one of two things would have to have taken place. First, because you would have to have applied for a driveway, deposits would have to have been paid for the protection of public space.

During that process, after or as a result of the review process, a certain amount of zoning approval would have to have taken place for the beginnings of a structure that would ultimately be a two story structure. A very simple zoning review would have been necessary to replace the garage most likely because it's not an historic district.

But there seem to be a lot of loose ends in the process, and I think they need to be tired together before we can do anything with this.

CHAIRPERSON REID: Mr. Sockwell, I have to say that I am not certain myself, given your analysis, which is far more in depth and detailed than what is put in the package, what basically I was looking at; I don't know, quite frankly, what the correct procedure is.

What I hear you saying is the structure that has been erected there is illegal?

MR. SOCKWELL: Yeah, that's --

MS. KING: Unpermitted, let's say.

MR. SOCKWELL: Unpermitted. It had not been permitted.

CHAIRPERSON REID: Permitted? So what's the difference?

MR. SOCKWELL: If we assume that that structure doesn't exist --

CHAIRPERSON REID: Okay, but can we do that?

MR. SOCKWELL: Well, we'd have to in order to -- well, we'd have to assume -- we'd have to assume that this is a lot upon which such a structure is proposed.

CHAIRPERSON REID: Okay. Right, because -- because, and applying the regulations, we have to -- we have to consider it as if it weren't there.

MR. SOCKWELL: Exactly.

CHAIRPERSON REID: Let's just wash our whole mindset of the fact that that building is there and look at it from the perspective of it not being there and determine whether or not we could allow it to be there; is that correct?

MR. SOCKWELL: Yeah.

CHAIRPERSON REID: Is that correct? All right. Now, could you hear me?

All right. That being the case, then, Mr. Sockwell, are you saying that one now is not there?

MR. SOCKWELL: Un-huh. It's not there.

CHAIRPERSON REID: So could it go there if, in fact, they were to be able to make their case in regard to the practical difficulty?

First -- first -- first of all, the unique and unusual aspect. Now, we have to go to that. How is this property unique or different or unusual to the extent that you could not -- it would cause you an undue difficulty -- I mean a practical difficulty to comply with the existing zoning regulations? That's what you have to address.

So let's start with the first part. How is this parcel unique or different or something that is unusual about it inherent in the land itself?

MR. FOSTER: Well, I'll take an attempt to try to explain that.

The original structure, the structure that she owned prior to buying the lot which the driveway was on, the south wall or the side wall was never designed to be a load bearing wall in itself. The thickness of the wall I believe to be only one course of brick.

Now, I don't know what kind of framing

the have on the inside, but typically in construction in that area, you have masonry walls that are 12 to 13 -- 12 to 16 inches in thickness. The wall that the existing -- that the existing structure is on is only, as I understand it, to be four inches, just one course of brick.

So my original feeling was that the lot itself was designed or the lot in which we're contemplating building the proposed carriage house or mother-in-law suite was designed to have a unit up against it. The original structure, if she's not granted permission to build this structure, is going to require that she takes out this wall at some point. I mean it is in bad masonry condition already, and you can see where people have made -- where various contractors have made an effort to try to patch it and replace it, and they've done -- and even camouflage it with paint.

But the whole idea, and it doesn't reflect in that, that illustration doesn't provide a clear example, but what I suggested to Tosha was that she build a unit up against that unit so that it will -- it will be line with the rest of the masonry construction there, without having to remove that south wall.

So by building an additional wall up

against that wall, it will increase the mass and will allow her wall, the wall in the original structure, to stay in place.

So I think that that's the hardship. I mean if she doesn't -- if she doesn't do something about that, she's going to lose the south wall on the original house.

CHAIRPERSON REID: Wait a minute. Am I understanding you to say, Mr. Foster, that the subject site s -- that the main house next door needs the wall of the subject site to be stable for reinforcement?

MR. FOSTER: Yes, I'm saying that would be one way. That would not be the only way --

CHAIRPERSON REID: Okay.

MR. FOSTER: -- but that --

CHAIRPERSON REID: Okay. Now, if it didn't have it, if it didn't have that wall, then what would happen?

MR. FOSTER: Then she would have to get involved in some sort of complicated shoring method or actually completely removing that wall and rebuilding it.

MS. KING: What, the wall of the residence or --

MS. KING: CHAIRPERSON REID: The house.

MS. KING: -- the garage?

MR. FOSTER: Of the residence.

CHAIRPERSON REID: So that wall for the garage goes right up beside --

MS. KING: It doesn't.

MR. FOSTER: It doesn't in that illustration, but there -- but clearly if you look at the way that the houses are numbered, it was meant to be occupied by another house because the address of the original house I believe to be 800, and then the next house, which is opposite on the alley, and I can show you on the illustration, is 804. So there is no 802.

I believe --

MS. KING: No, 803 is the one that faces on E. It's on the corner of E and 17th, and 804, according to this --

MR. FOSTER: Okay. Well, then maybe I have the numbers wrong. I don't remember. I don't have that here in front of me, but if I were to be able to show you on that illustration --

MS. KING: But this is the architect's drawing, and does not show the garage or the proposed garage with apartment above it --

MR. FOSTER: Okay.

MS. KING: -- touching the main

building.

MR. FOSTER: No, it doesn't.

MS. KING: So what you're saying is there's yet another plan or scheme where it does touch?

MS. WALKER: Well, can I say something, please?

CHAIRPERSON REID: Sure.

MS. WALKER: Okay.

CHAIRPERSON REID: Please do.

MS. WALKER: In talking back and forth with Tosha, Tosha bought that main house. It had already been renovated, and she bought it from the person that renovated it. So she didn't have any input insofar as contractors or any of this.

MS. KING: And this is the building that you're talking about now where the south wall is decayed.

MS. WALKER: Yes. Rick says the south wall of that house that she purchased is decayed.

Not knowing that, when she called in an architect after she bought the piece of property that was the carriage house, she thought, gee, we could have a courtyard between that main house that I purchased and this -- this carriage house.

Apparently once Rick got involved and he

looked at the main house's south wall, he talked to Tosha to say you need some further enhancement. You need to build up this south wall, and the architectural drawings that you have really should tie into that main house in order to assure that south wall.

So once I got involved, which was this past week to understand, ut-oh, we have a problem with this house, this property that my daughter bought, we need to go back and relook at how can we restruct (phonetic) these architectural drawings for this carriage house so that they tie into the main house to assure that there's -- that that wall is safe.

MS. KING: So, in fact, what you're asking for is permission to build not what we have plans for, but to build a three story addition at the back of your daughter's house?

MS. WALKER: Alongside of it, yes.

MS. KING: But touching.

MS. WALKER: Touching it.

MS. KING: I mean, will there be an opening between the two buildings? I mean, will you be able to go from Tosha's house into this new structure?

MS. WALKER: Exactly. There would be a

tie-in. I mean, I talked to Rick the other day.

What is it called?

MS. KING: But we don't have the plans --

MS. WALKER: No.

MS. KING: -- for what you intend to do?

MS. WALKER: No.

MS. KING: Nor do we have a schematic drawing that shows what you intend to do.

MS. WALKER: Right, exactly.

MR. SOCKWELL: The date of this -- excuse me. The date of this, this is from the base book, correct? This is based on the 1965 reprint?

CHAIRPERSON REID: Yeah.

MR. SOCKWELL: Okay. While you can't really see this, in orange I have indicated the original building that was torn down, and in pink I have indicated the house.

Now, I can't tell you where the end of the lot is, except to assume that it encompasses the white area in between. Four, forty-five includes the house and a back yard. Four, thirty-nine, the address 439 is strictly that building that isn't there anymore because you said that it had a commercial use at one time. That would mean that the building would have been separately addressed,

and therefore was setting on its own piece of property, which even in this drawing, dated 30 years ago, 34 years ago, is Lot 804.

In order for you to combined the Lot 804 and 805 structures with anything that connects --

MS. KING: I think it's 804 and 803.

MR. SOCKWELL: Eight, oh, four and 803.

MS. KING: Yeah. I think that's a three. Let me have your magnifying glass.

MR. SOCKWELL: Okay. It's 803.

MS. KING: Is that what it is?

MR. SOCKWELL: This works.

Anyway, to combine 804 and 803 would mean that you would have to subdivide the property, which is the process of either taking something apart or putting it together. Then you would be subject to the yard, side yard and/or rear yard. There wouldn't be any side yard required, but you would be subject to the rear yard requirements for property in that zone, and it would probably not allow you to connect two structures that way with a separation in between because now you would have to come back to some body like this one to get a variance or special exception to have these two structures connected.

Right now you're on two separate pieces

of property with two different building. One was a commercial structure which no longer exists, which has been partially -- well, we just assume that it's not there. One was a commercial structure that no longer exists. That was 439. That was the building that she wanted to put the two story house on top of the garage for, which would, in fact, possibly represent a change of use, depending upon the time frame between its last commercial application and the current situation for occupancy purposes.

Eight, oh, three was a residence, is a residence, and what you were talking about as the south wall is actually a north wall based on this map arrow.

MS. KING: Yeah, but I think that --

MR. SOCKWELL: But anyway, neither here nor there.

There's a lot that I don't understand here, but I do know that the two pieces of property were separate. They were independent. That 439 by itself was in single ownership probably before 1958, which would grandfather it into certain allowables as nonconformities with the current zoning ordinance, but on the other hand, by virtue of the size of that lot, which is about 18 -- it's a 280-some square feet. The minimum size for an

apartment, which is generally considered to be one of a multiple dwelling units would be 900 square feet per apartment, but that really doesn't apply.

The minimum lot size for any other structure would be 4,000 square feet with a grandfathering of lots that met 80 percent of the length and width of a lot that would be a conforming 4,000 square foot lot, and we're talking about something that's less than 300 square feet and what to do with it.

MR. GILREATH: Mr. Sockwell, if, indeed, there have been no changes since 1965, that's based -- you would agree or you said based on the base?

MR. SOCKWELL: Yeah.

MR. GILREATH: My experience working with the National Capitol Planning Commission for about 27 years is base, when we start looking for lots and so forth, we find them going back to the base. That gives us kind of a starting point. We have found there have been consolidations and so forth that have occurred subsequent.

MR. SOCKWELL: These lot numbers still comply.

MR. GILREATH: Well, if there have been no -- if I were to go to the maps and titles and records, what's the date?

My experience has been that there can be consolidated lots and so forth along the way since '65 when we did the base.

MR. SOCKWELL: This is what I'm going by currently, which is their exhibit, which is the same lot numbers as appear on the base.

MR. GILREATH: No, he is using the 804.

MR. SOCKWELL: That's --

MR. GILREATH: Well, if we assume that that's right --

MR. SOCKWELL: That's why I assumed it to be correct.

MR. GILREATH: I don't know whether they went to the -- indeed, they went to the records and so forth, the current records, and that's the case. I would concur. Otherwise, base alone is not really sufficient or reliable as a starting point.

MR. SOCKWELL: Oh, I understand. I use these things all the time.

MR. GILREATH: Okay.

MR. SOCKWELL: Believe me.

MR. GILREATH: -- are correct, then you would be correct, I guess.

MR. SOCKWELL: Yeah, I mean, I would never use the base unless I had something to balance it against.

CHAIRPERSON REID: The lot size is -- where is the folder? -- 288?

MR. SOCKWELL: The lot size is Section 401.2.

CHAIRPERSON REID: Is what?

MR. SOCKWELL: Section 401. -- oh, the lot size. I'm sorry. I'm -- no, it's approximately 288 square feet from what they're --

CHAIRPERSON REID: Based on the regulations is that adequate enough space for a dwelling unit?

MR. SOCKWELL: As one of a multiple dwelling unit building, yes, the way the zoning ordinance is written, but as a stand alone building used as a dwelling unit, 4,000 square feet would be the specific minimum lot size in an R-4.

If it were a row dwelling and a flat, then it would be 1,800 square feet. If it's a one family semi-detached dwelling, it would be 3,000, but this building stands by itself, and it falls under the most restrictive requirements because it is the same as a single family home.

As a single family house in an R-1 zone, it would -- it requires certain things normally.

MS. KING: But really what we're confronted with is that we don't have a plan for

what they want to do. What they're talking about now is forget everything --

MR. SOCKWELL: Well, she did have plans.

MS. KING: I know. I know, but they're scratching all of that.

CHAIRPERSON REID: Those are not the plans that --

MS. KING: And what they want to do is build -- is use this property, the 80 -- you've taken away my map.

CHAIRPERSON REID: Eight, oh, four?

MS. KING: Sheila has it there in front of here. Here. I've got it here.

CHAIRPERSON REID: Eight, oh, four.

MS. KING: They want to take 804 and build an addition, use that property to build a significant addition onto 803.

CHAIRPERSON REID: Three stories.

MS. KING: Which may or may not be a separate dwelling unit.

MR. SOCKWELL: Eight, oh, four and 803 are separate lots.

MS. KING: I understand that.

MR. SOCKWELL: Even though they're owned by the same person.

MS. KING: I understand.

MR. SOCKWELL: We can't rule on construction on lots that you can't build that way on.

MS. KING: That's why I think that we can't decide this case, that they need to go back. They need to draw up -- they need to investigate a couple of things.

One is if they have to merge the two plots, and if so, how they go about that.

If they are going to use it as a garage, whether or not they're going to have a -- be able to get a curb cut, and if all of this happens, if they can use that property to add onto the structure, the main house in 803.

MR. FOSTER: Exactly.

MS. KING: But I don't -- we don't have plans --

CHAIRPERSON REID: Okay, but --

MS. KING: -- for what they want.

CHAIRPERSON REID: But how -- how -- here's where I'm having difficulty. Looking at the lot, the space between 803 and 804, there is -- it looks like there is steps, and there is a breezeway or something.

MS. KING: Yeah, but this is just a plan.

MR. FOSTER: It's an upper level --

CHAIRPERSON REID: No, but what I'm saying --

MS. KING: This is just a plan, but they don't want to do this anymore.

CHAIRPERSON REID: No, no, no. I understand that, but is this going to be eliminated so that the two -- the properties will then --

MR. SOCKWELL: What they wanted to do is build an in-law suite connected to the main house, which would be a separate --

CHAIRPERSON REID: But this is separate.

MR. SOCKWELL: -- separate construction, but would be connected so that it would all be one building for the sake of --

CHAIRPERSON REID: Lot occupancy?

MR. SOCKWELL: Yeah, I mean, it would be all part of the same building.

CHAIRPERSON REID: But you can't do that on two lots.

MR. SOCKWELL: No, you can't do anything on two lots. You can't connect --

CHAIRPERSON REID: It has to be on the same lot.

MR. SOCKWELL: Yeah, the lot has to be -- even though the lots are both owned in the same

name of Tosha Walker or --

CHAIRPERSON REID: But you can't do that.

MR. SOCKWELL: -- or the Estate of Tosha Walker, the building can't be --

MR. GILREATH: But they can apply for having the lots combined though.

MS. KING: That's right.

MR. SOCKWELL: They could apply for a subdivision.

CHAIRPERSON REID: Now, we've had -- we've had cases where there's a carriage house, and they've -- the regulations have stipulated that if, in fact, that the carriage house and the subject dwelling, the main house, is on the same lot and if, in fact, they somehow connect, then you can do that.

MR. SOCKWELL: Yeah.

CHAIRPERSON REID: But in this instance, the way that it's structured right now, Mr. Foster, I don't think that you're optimizing what you would be able to do because of the way in which your application is structured right now. Do you see what I'm saying?

You have -- we -- I didn't know until just today that both lots were owned by the same person. So that being the case, it may be

worthwhile --

MS. KING: Or that they were separate lots.

CHAIRPERSON REID: Well, no. I --

MS. KING: I wasn't aware that they were separate lots.

CHAIRPERSON REID: I was only dealing with that one -- that one, the carriage house and the garage, but if, in fact, you do have both, then as Mr. Sockwell said, subdividing it to -- to --

MS. KING: Which does not mean dividing it, which also can mean putting it together.

CHAIRPERSON REID: Yeah, for some reason that was always an anomaly to me in the zoning and architecture of putting it -- that was assembling the two -- would then give them more leverage, would it? Would it not?

MR. SOCKWELL: Well, the problem is that in an R-4, they'd be limited to that same 40 percent of lot occupancy for --

MS. KING: As the case we just did.

MR. SOCKWELL: Yeah, as the case we did, and the thing is that the structure that would have been an acceptable nonconforming structure on the two properties independently and that could have remained if the two properties were combined is no

longer there. So they can't even go in with an existing second building and say, "Well, we want to rebuild the garage and put another floor on it and connect it by a breezeway or whatever to the main building," because that building has been torn down.

CHAIRPERSON REID: Oh, right.

MR. SOCKWELL: So the problem is that the preexisting, grandfatherable conditions have changed.

CHAIRPERSON REID: But if -- if my memory serves me correctly, Mr. Sockwell --

MR. SOCKWELL: Yes?

CHAIRPERSON REID: -- if we are going to regard this as if -- as if they haven't torn the building down or can we do that?

MS. KING: No, we've got to consider that there's no building there.

MR. SOCKWELL: Let me go back to the original application. Can staff help us with this?

CHAIRPERSON REID: So you're saying, Mr. Sockwell, that when they tore that building down, they, in effect, at the same time nullified the nonconforming aspect.

MR. SOCKWELL: Yeah. They nullified -- they basically have a virgin lot with no building on it.

CHAIRPERSON REID: But if they still had that old garage there --

MR. SOCKWELL: Garage on it.

CHAIRPERSON REID: -- then --

MR. SOCKWELL: Then --

CHAIRPERSON REID: -- that could be grandfathered even though it was --

MR. SOCKWELL: It was a nonconforming use of a single lot. It used 100 percent of that lot.

CHAIRPERSON REID: So even though that the building was blighted or dilapidated --

MR. SOCKWELL: Yeah, it was there.

CHAIRPERSON REID: -- they could still come in under nonconforming --

MR. SOCKWELL: Un-huh.

CHAIRPERSON REID: -- and then make an application for a variance to --

MR. SOCKWELL: Extend it.

CHAIRPERSON REID: After they combine it. Okay. Well --

MR. GILREATH: There has to be something wrong with regulations or our interpretation to say keep the old wall there, and all of us are going to get killed. It's a public safety thing, and to say, "Okay. If you want to build on that, leave the old

wall there and let the drug people use it, and if it falls on someone and kills them, then were are abiding by the law, and that's what the law wants."

The law does not want that. There's something wrong somewhere in our interpretation.

MS. KING: No, what happened was when they realized they couldn't repair the bloody thing, they didn't go back to DCRA and say, "It's hopeless. We need to demolish it."

MR. SOCKWELL: See, when the wall fell in the alley, they could have shoved it into the site, gone back to the city and said, "We were in the process of repairing the building. It fell in. We now need to get a permit to rebuild the structure. We need a further permit because we've got a permit to put in -- to stabilize the roof, put a new roof on it," dah, dah, dah, dah, dah. "But now the wall has fallen in, and we have to get a permit to rebuild the walls," et cetera, et cetera.

So it would have been an incongruent placement of a structure. Then they could have asked to extend it.

But when they took it away, it's gone.

MR. GILREATH: Why couldn't they go back now -- we've had cases where someone has gone ahead and built without proper permit and so forth, and we

kind of grandfather or approve it. So if they go back and tell them what happen and they grant them a permit, then can they go forward?

MR. SOCKWELL: They could do that.

MR. GILREATH: Yeah.

MR. SOCKWELL: They could go to the permit office --

MR. FOSTER: Thank you.

MR. SOCKWELL: -- and request that what they've built --

MR. FOSTER: I think it --

MR. SOCKWELL: Because you never were cited by the city, right?

MR. FOSTER: No, sir.

CHAIRPERSON REID: You didn't have a stop work order.

MR. FOSTER: No, sir. No, they -- their inspector stopped by, and they saw what we were doing, but I think the people in the neighborhood can substantiate the existing condition of that building.

And I made the decision over the phone that I thought that that was the best thing to do, although I was not there.

I have had buildings or sections of buildings fall on people, and under the

circumstances, I think we had to act. We had to do something. We could not leave that situation like it was.

MS. KING: Absolutely not, but at the same time you should have gone back to the Department of Consumer and Regulatory Affairs and regularized it all. We're not --

MR. FOSTER: Well, we attempted to.

MS. KING: -- suggesting that you should have let it fall down and kill people, but you know, it doesn't exist because there's no paper work on it, you know.

MR. FOSTER: It's my understanding that that was done.

MS. KING: Oh. Well, then you've got the papers.

MR. FOSTER: Okay. It's my understanding that after we -- we realized that this was more than just a repair and alteration situation, that Tosha went back down to the -- the office had moved.

MS. KING: DCRA.

MR. FOSTER: Right, and advised them of this, and I know for a fact that the inspector came back to the job, and we explained that situation.

Now, I don't know if she actually

acquired the permit or not. I'm assuming that she did because I was there to talk to the inspector. As a matter of fact, I specifically remember needing addition block and so forth to be delivered so that we could go ahead and construct this, and this was the decision Tosha and I made over the phone.

So the intent, the initial intent, as I understand it, and we have two different contracts to substantiate this, was to do the alteration and do the repair. There was an addendum added to the contract after the fact, after we realized we couldn't do this, and it was my understanding that -- - and also, one of my superintendents was very seriously injured on that job -- that we would acquire the permit, and that's why we stopped construction until we actually -- until we actually had enough time to go through the process of getting all the approvals to do what we need to do.

We did not think -- and maybe I exercised poor judgment or advised her poorly -- about if this is what we envision and we can do and if this is in -- with -- if it's wrong to duplicate what was already there, then, you know, maybe I just exercised poor judgment, but my intent was not to do anything until we had the approvals, and we made every effort in both phases, before we realized it

was an alteration -- I mean when we thought it was an alteration and after the fact, to try to follow the guidelines.

MS. KING: But, Mr. Foster, what you have applied for you now tell us is not what you want. What is in this application, all of these papers that you've reviewed and that we have before us and in this drawing, this architect's drawing that you gave us, is not now what you contemplate building; is that correct?

MR. FOSTER: That is correct, but I was not aware --

MS. KING: I don't see how we can sit on this case if you don't have -- if we don't have the drawing and we don't have the legal underpinnings for two lots to be turned into one house.

CHAIRPERSON REID: Ms. Walker.

MS. WALKER: Excuse me. I think Tosha, not knowing, once the contractor got involved and said, "Your wall on your existing unit, there's a problem" -- I mean she's had these drawings because I've seen them before -- that drawing --

CHAIRPERSON REID: Go ahead.

MS. WALKER: Once Rick got involved and he says the drawing -- the wall on your south wall of your house that you won has a problem, a way to

fix that problem is to tie in this new structure that you want to put in -- she had no idea that the wall had a problem.

CHAIRPERSON REID: Who is the architect?

MS. WALKER: I can get you his name. It's --

MS. KING: B.G. Lorie & Associates --

CHAIRPERSON REID: Okay.

MS. KING: -- S.P. Architecture.

CHAIRPERSON REID: Well, here's what it appears happened, in my view. Persons who were advising here were not as well apprised of the zoning regulations and the permitting process as they needed to be, and as a result of that, the submission that has been put before us is inadequate for what you're asking for.

Now, we can rule on it as it is, or I suggest that you go back and confer with staff and get the correct instruction or guidance as to what you need to do in order to make sure that when you come before us, you can optimize the chances of getting what you're requesting.

You see -- and you can see, Ms. Walker, just in our discussions how it's broken down. I mean it's -- we have to basically make our determination on what we have.

MS. WALKER: I thoroughly understand that.

CHAIRPERSON REID: And we just don't have it, and it's not your fault. It's definitely not your fault, and it's not Tosha's fault. What needs to be done is to get the correct -- get the correct guidance and the correct information, and quite -- I thought that the architect who provided you with that information that you need.

MS. WALKER: Well, I don't think -- in defense of the architect, I don't think he was aware of --

MR. FOSTER: She.

MS. WALKER: Okay. I'm sorry. In the defense of the architect, I don't think they were aware of the fact that Rick had informed Tosha that your south wall of your current house has a problem.

CHAIRPERSON REID: I don't know.

MS. WALKER: I don't think --

CHAIRPERSON REID: I don't know.

MS. WALKER: -- anybody did that.

CHAIRPERSON REID: I don't know about that because --

MS. WALKER: I don't think anybody knew that because they weren't involved in the other

house.

CHAIRPERSON REID: It's my understand that architects who operate in the District of Columbia should be well versed on the zoning regulations and the permitting process.

MR. SOCKWELL: The problem with the south wall of the house, while an independent issue, that possibly could have been solved by some kind of tie-in would not have overruled any zoning restrictions, and that's really very important.

I think what might be helpful in looking at this completely is to see the original drawings for the alteration of the existing building, if there were any drawings necessary. There may not have been if it was considered to be an in kind replacement. Then the city would issue a permit without drawings because you weren't building anything at the time. You weren't enlarging the footprint. It might have been just an alteration/repair over-the-counter permit to fix the roof, and yet there might have been drawings of rafters or some kind of elements.

I don't know that, Mr. Foster, that was your company's involvement at that time, but if there is an official set of plans anywhere, it would be helpful to see them because it would certainly

make it a little easier to understand what was there before and what was contemplated at that time.

But right now I think that it would be helpful for you to clear up the issue of what's standing now perhaps permit-wise and to have your architect explore the implications of construction on a combined site.

MS. WALKER: Would that be more expedient in getting something done? I mean I have so many other things that are going on right now.

MR. SOCKWELL: Well, you're talking about a few hours of work to look at some codes, I think.

MS. WALKER: That's no problem. Okay.

MR. SOCKWELL: But I think that for us, we were asked to look at whether or not you could build this on that lot, and there's so many extenuating circumstances and now the change of desired construction. You actually have another application that may or may not come before us.

But what you're trying to do is different from what you applied to us -- what was applied for, and I think that before you determine whether you should withdraw an application or restructure the application, you need to decide what it is you really want to do and whether you can do

it. Even if we approve it can it be done?

Do you understand?

CHAIRPERSON REID: Huh?

MR. SOCKWELL: I mean, do you understand?

CHAIRPERSON REID: No.

MR. GILREATH: I don't understand that either.

MS. KING: Well, I mean if it -- you could --

MR. SOCKWELL: No, what I'm saying is -- what I'm saying is that it might not -- even if such a construction is possible, it's a very strange construction. It was a very strange construction as it was originally conceived, but now I don't know what it is that you want to do, at least not graphically, and we prefer to see something graphic that we can respond to because right now we have an idea that you want to connect something and build something, but you're going to have to add the lots together. You're going to have to decide what it is that can be built on such a combined lot meeting the requirements of zoning, and if you can't do it meeting the requirements of zoning, then you would have to come forward to a review body like this one to request relief from some hardship.

But the problem is that when you subdivide to combine the two lots together, that will have occurred in this time period, after the enactment of the zoning ordinance, and any restrictions that could have been grandfathered in something that happened before May 12th of 1958 won't apply here. What will apply is the current regulation.

CHAIRPERSON REID: Unless --

MS. WALKER: Because that was torn down.

MR. SOCKWELL: Because -- because the condition change and was brought forward. The grandfathering is always based on what existed before the enactment of the code. The building that's gone existed before the enactment of the code. Had it remained in any condition -- and what I was going to suggest was the Chief of Inspections would have told you what to do, but would have been an excellent resource for decision making that was emergency decision making to protect the public health and safety.

Then that body of information could be brought here saying, "I told them to do this, and I told them that they could rebuild the structure because they were going to do X, Y, and Z."

But we don't have anything to

substantiate where you've come. That's all.

MR. GILREATH: I'd like to suggest on combining the lots, Mr. Sockwell, you're obviously very knowledgeable in this area, but if I were in their situation, I would go to the proper authorities on that and explain exactly what you're going to do, and if indeed they bring the books out and they're experts and they say, "Yes, you've got to combine them," fine, but I don't know. There may be -- sometimes there are certain provisions and certain exceptions. So I wouldn't just automatically say, "I've got to have my lots combined."

See what the law requires.

MR. SOCKWELL: There's only one way that you can build across property lines, and that is -- and those property lines would be an 800 number that encompasses both pieces of property, both pieces of property as a single 800 number -- it would be 804 or 803. It would never be both, and that is if the property is encumbered by a highway plan, which means that the city had mapped a proposed future highway alignment across your property.

That means that under those circumstances you cannot get a record lot.

MR. GILREATH: Well, I have no reason to

question that. It's just that sometimes the regulations -- there can be certain exceptions, and I would, if I were in their situation, I'd want to make sure that the people there who are experts and responsible, they are fully aware, and if they draw the same conclusion you have, wonderful, but --

MS. KING: Yeah, you don't want to consolidate the lots and find out that it's made it absolutely impossible for you to do anything that you want to.

MS. WALKER: Okay.

MS. KING: So you need to find out what your position is in the status quo and what the position is if the lots are -- I'm going to call it amalgamated, although it's called subdivided. Okay?

CHAIRPERSON REID: So what do you suggest that we do at this point? Is to continue this case, postpone this case until --

MS. KING: Continue it, yeah.

MR. SOCKWELL: I think we need to continue it.

MR. GILREATH: Yeah, I think. Give them time to -- I don't know. Ms. Pruitt is not here. Are we talking about a month? What time frame can they live with?

MR. SOCKWELL: The Surveyor's Office is

one place you want to go.

MS. WALKER: What's it called?

MR. SOCKWELL: The Surveyor's Office at 941 North Capitol Street, Second Floor.

CHAIRPERSON REID: And also talk to staff for guidance as well. Predicated on what we've discussed here today, they can kind of, you know, give you a capsule type of summary of what we are saying to you, what we need.

MS. KING: Paul Hart is the one.

CHAIRPERSON REID: Yeah, Paul Hart, Mr. Hart right there.

MR. GILREATH: And, Ms. Walker, if you have to go back to Charlotte -- I presume that's where you live -- maybe the architect can talk to Mr. Hart and do all of the detail rather than you having to remain here.

CHAIRPERSON REID: And we can arrange it at your convenience. You can let Mr. Hart know when you feel, given the time that you have to get everything together and to come back, when would be the most convenient time for you to be able to come back with --

MS. KING: Now, given that situation, let's talk about what the -- what the placard should say.

CHAIRPERSON REID: Yes.

MS. KING: Maybe we should set a time certain for a continuation of this hearing which could then be put on a great orange slab outside the building--

CHAIRPERSON REID: So they don't have to say --

MS. KING: -- and everybody would have constructive notice.

CHAIRPERSON REID: -- wouldn't have to say, "The hearing that already took place."

MS. KING: Will be continued on a date certain. Maybe we need to put a date certain.

MR. HART: Yes, Ms. King.

MS. WALKER: I can work around a date.

MR. HART: Excuse me. I thought about that. I had actually worked out some dates, but looking at the list of things that have to be done by the applicant, I would rather -- I think we might be pushing it to give a date certain unless we give a really generous --

CHAIRPERSON REID: Let them tell us?

MR. HART: Yes.

CHAIRPERSON REID: Excuse me, Mr. Hart. I mean not to interrupt you.

MR. HART: Sure, yes.

CHAIRPERSON REID: Let them tell us and then we can schedule that?

MR. HART: Let's keep in close touch with each other. Let us know just how you are progressing.

MS. KING: Well, then how are we going to advertise? We're going to advertise --

CHAIRPERSON REID: When?

MS. KING: -- that the hearing has been head, but there will be a continuance of it?

CHAIRPERSON REID: No. When -- when -- at the time that we know, then Mr. Hart can schedule it so that there will be enough time --

MS. KING: Okay.

CHAIRPERSON REID: -- to give the adequate notice for the posting of the property.

MR. HART: Yes.

MS. KING: Okay.

CHAIRPERSON REID: And we'll have the hearing, and that would be once you have ascertained -- basically you have a better grasp of the time line, and let Mr. Hart know, and then we can schedule it so that you won't have to go back to square one. You can stay right in the queue, so that you can come -- as soon as you're ready, we can bring you right up.

MR. GILREATH: And I might add--

MR. HART: Madame Chair -- sorry. Go ahead.

MR. GILREATH: -- that you don't have to wait until you're completely finished and every eye dotted.

MR. HART: That's right.

MR. GILREATH: But if you pretty much decide you can have this done within two weeks hence, you let him know ahead of time, and then he can start the scheduling. As long as you can say you're going to be finished you think at a certain time, then he can take it from there.

MS. KING: But it has to be posted for how many days?

CHAIRPERSON REID: Forty.

MR. HART: Well, no, 15.

MS. KING: Fifteen days' posting, 40 days advertisement.

MR. HART: Yes. We've gone through the 40-day thing for them to be here now.

CHAIRPERSON REID: Okay.

MR. HART: That's what I tried to avoid, not to go that route again by continuing this. So that's out of the way. What we're interested in is 15 days prior to the date --

CHAIRPERSON REID: Okay.

MR. HART: -- on which you can be --

MS. KING: The poster has to be put up on the house.

MR. HART: So that's why it's important.

Let me have you -- while I have your attention, please, bear with me. I want to run -- there's several things that I think it's best to sort of go over while I have you here.

The first thing I have here is check into subdividing the lots, in other words, merging the lots.

MS. KING: Un-huh.

MR. HART: Because -- also determine what can be done if you merge these lots.

The next thing you need to look into is getting a curb cut. What's involved in DPW. That could be a time consuming thing, if you can get it, but that's something to research.

Okay. The building is not there now, and you're building something. So as from what I gather, it's legal, what's there now. So you need to go to the city, DCRA, tell them, again explain to them what has happened, and also request from them or, rather, let them tell you what to do. You may need a permit to construct, a permit -- you know,

some kind of permit, but you want to get this thing on track. So that's the next thing you want to do.

We also need original -- the original drawings to sort of get a benchmark for the Board to see where we're going.

MS. KING: Is that for the -- is that for the original house?

MR. HART: Huh?

MR. SOCKWELL: The original alteration.

MS. KING: Oh, the original alteration of the garage or -- yeah, okay.

MR. HART: And then we also need the existing or, rather, the current drawings.

All right, and --

MR. GILREATH: Well, I would like to clarify "current." What he means by that --

MR. HART: Proposed.

MR. GILREATH: -- actually proposed.

CHAIRPERSON REID: Proposed.

MS. KING: What actually is proposed.

MR. GILREATH: This is what we want to accomplish.

MS. KING: Because what we have before us is not what is actually proposed now.

MS. WALKER: That will hinge on checking into merging the lots.

MS. KING: Right.

CHAIRPERSON REID: Right, right.

MR. SOCKWELL: Yes.

MS. WALKER: So that is the first question that needs to be answered.

MR. SOCKWELL: Yeah, the Surveyor's Office is one of the first stops you could make to find out what the property description is, and you also have the deed descriptions as recorded.

But the other thing is I think it would be helpful to you to research the certificate of occupancy history of 439 to see just when the last time it was occupied as commercial property is because all of this really hinged around a catastrophic failure in the building, and if there's a three year period -- less than a three-year period between the last time it was occupied and what's happened, there may be some way that you can reconstruct a series of events that might be helpful to you.

MS. WALKER: There is -- the owner of that property who sold that property off lives on that street.

MR. SOCKWELL: The city will have the certificate of occupancy records, if there are any, for that address.

MS. KING: And of course, he may, too. The neighbor may.

MR. SOCKWELL: And he may have a copy of it, as well.

MR. FOSTER: Can I ask just one question? Just based on the size structure that you can put on a lot, just looking at the structure that, quote, unquote, doesn't exist, I mean there's no way we could ever put any kind of dwelling on that anyway.

MR. SOCKWELL: If the original building had continued to be there, there's a possibility that without extending its footprint, because you couldn't because it was using 100 percent of the lot --

MR. FOSTER: Okay.

MR. SOCKWELL: -- there may have been a way --

MR. FOSTER: To go vertically?

MR. SOCKWELL: -- to go vertically, but it would have been -- it seemed to me in looking at it that it was a difficult thing to do. That's as far as I could possibly say right now because we haven't really acted upon that.

MR. FOSTER: Okay. I'm just trying to eliminate -- I mean, the whole idea is to try to get

this done, and I think we need to take the best possible course, and if that's one of the least likely ways in which we could do something that would satisfy what she's trying to accomplish, then maybe we need to focus on merging, I guess, the lots and seeing what we could do to tie into the other house.

MS. KING: Yeah, but you want to be very careful that by merging the lots you don't create a situation where you lose all rights to build anything on that property because of the requirement for the setback from the street and the alley.

MR. SOCKWELL: Right. As long as the --

MR. FOSTER: How do we determine that?

MR. SOCKWELL: As long as they're independent lots --

MS. KING: By consulting somebody who knows about that.

MR. SOCKWELL: Yeah. As long as they're independent lots, you have certain rights that you may lose if you combine them.

MR. FOSTER: Okay.

MR. SOCKWELL: That's all I'm saying.

MR. GILREATH: And your existing structure, if it were to be approved, you will end up demolishing that and building it adjacent to the

existing house, will you not? You want this, the wall -- right now the wall is out against the original house, right?

MR. FOSTER: No, but we were going to use a breezeway, if you will, to tie back over into the house.

MR. GILREATH: So you would keep the existing wall in place then.

MR. FOSTER: Right. That's correct.

MR. SOCKWELL: See, one thing is if you roof over a breezeway, it becomes lot occupancy because the structure now has something more than four feet over the ground, and you have to sort of look at those things very carefully and have the zoning checked.

Ms. Lorie, who is your architect, can probably -- will hopefully help you with that, and you know how to contact her, I assume.

MS. BAILEY: Ms. Reid, there's one thing that perhaps they need to be aware of.

MS. KING: I can't hear you, Beverly. Would you speak into a microphone.

MS. BAILEY: It was --

CHAIRPERSON REID: Give your name.

MS. BAILEY: Beverly Bailey with the Office of Zoning.

It wasn't clear whether this project was in the Capitol Hill Historic District. I think the Applicants say it was not, but that may --

MS. KING: Ms. Schauer, who should know these things, shook his head when I asked whether or not.

MS. BAILEY: It's not in the -- okay. I just thank you.

CHAIRPERSON REID: So that gives you a little more leeway.

MS. KING: Oh, yes.

MR. GILREATH: I hope, Ms. Walker, you can be patient with us.

MS. KING: Big time.

MR. GILREATH: We don't want to be tedious, but there are regulations --

MS. WALKER: Oh, no.

MR. GILREATH: -- and we will do all that we can to --

MS. WALKER: I thoroughly understand that, and Tosha would want it done the correct way also. I just have a real major concern that the person that she bought that house from, if there's an unsafe wall there, why wasn't that found out through inspection, what have you, before she purchased the property. So --

MS. KING: How long did she own the house?

MS. WALKER: She just bought it about three months ago, four months ago.

MS. KING: Well, you may have some recourse there.

MS. WALKER: Well, that's where my mind is fast forwarding to, but --

MS. KING: You may well need a good real estate and zoning lawyer.

MS. WALKER: Yeah, I do have an attorney for the case that I'm --

CHAIRPERSON REID: But real estate and zoning attorney, see, specialty. That's very important that they are well apprised of the real estate and zoning law in the District.

MR. SOCKWELL: Because there's a lot to it.

By the way, to your daughter's credit, she was a very visionary person obviously from the concepts that she produced.

CHAIRPERSON REID: Yes, this --

MR. GILREATH: I'd like to say that I want you to convey that we certainly appreciate your idealism and agree that if the facts and so forth are such that they meet the basic requirements, we

would do all that we can to be sympathetic and give due consideration to your application.

MS. WALKER: And I appreciate all of you today.

CHAIRPERSON REID: Absolutely. That means that you can see, Ms. Walker, that given what we have before us, we certain were able to determine that this was certainly a project, a very ambitious project, and when that seemingly was done with the intent of improving the neighborhood there, and the things that we have set out to you were done so that you could be able to strip in your case before us so that you have, you know, the better probability of it getting the best possible decision for you.

MS. WALKER: And I appreciate your time. Tosha was a neophyte in this area, and she was just guided by whomever she thought was a knowledgeable person in doing --

CHAIRPERSON REID: Yeah.

MS. WALKER: -- whatever had to be done. So this starts round one.

CHAIRPERSON REID: So we're going to continue it.

MR. HART: Yes.

CHAIRPERSON REID: Okay.

MR. HART: Ms. Walker, Ms. Walker, let

me say there are several things that, you know, you have to do now, and I would suggest that if you don't think you have all of them, please get to me as soon as -- probably tomorrow. I will have everything laid out for you, and then we can keep in touch, you know, as you proceed, at which point when I think you're at the right point, I'll come back to the Board and let them know.

MS. WALKER: Okay.

MR. HART: And then we will set a date for your postings, for your next -- I guess it will be a meeting.

MS. WALKER: Okay. I'm heading back to Charlotte right after this meeting.

MR. HART: Okay.

MS. WALKER: I have to get on the road, and I'll set up a conference call with you.

MR. HART: Sure.

MS. WALKER: And walk through what I think I need to obtain.

MR. HART: Fine, exactly.

Did you do your witness card?

MS. WALKER: Yes.

MR. HART: And you put your phone number and everything on it.

MS. WALKER: Yes.

MR. HART: Take my direct numbers: (202) 727-0348.

MS. WALKER: Four, eight. Thank you very much.

CHAIRPERSON REID: We didn't have a letter from the ANC in this, did we?

MR. HART: No.

MS. KING: No, I don't think we did.

CHAIRPERSON REID: That's something else that we would like to suggest that you do, is to meet with the ANC or contact them.

MS. KING: The Advisory Neighborhood Commission.

MR. SOCKWELL: But only after you have a concept and --

CHAIRPERSON REID: Yeah, so that you can basically present your concept to them to get -- to try to garner their support.

MS. WALKER: Okay. I know Tosha met with the executive board of the association. Is that what you're talking about?

CHAIRPERSON REID: What is the -- you mean the --

MR. SOCKWELL: In the District we have Advisory Neighborhood Commissions --

MS. WALKER: Okay.

MR. SOCKWELL: -- which are different from civic associations.

MS. WALKER: Okay.

CHAIRPERSON REID: And Mr. Hart can also tell you --

MR. SOCKWELL: Yeah, he can explain that.

CHAIRPERSON REID: -- how to contact them because their position weighs very heavily in these proceedings, and they are given great weight because they are a representative of the community.

MS. WALKER: Okay. Just as you did in the previous case.

CHAIRPERSON REID: Yes.

MS. WALKER: There was a letter.

CHAIRPERSON REID: Yes.

MR. GILREATH: If there's an ANC meeting, either you or if you're not able to be here you need to appoint someone who you feel is trustworthy of presenting your views and so forth. You need someone that they feel is conveying your wishes.

MS. WALKER: This is my daughter's vision. I'll be here.

MR. GILREATH: Fine.

MS. WALKER: Thank you.

CHAIRPERSON REID: And when you come back, definitely the architect should be here --

MS. WALKER: Okay.

CHAIRPERSON REID: -- because we will have specific questions to ask the architect.

MR. SOCKWELL: Mr. Foster, thank you very much because I know we put you through some significant question and answers you --

CHAIRPERSON REID: You didn't expect all of this.

MR. SOCKWELL: -- didn't expect.

MR. FOSTER: No, but that's okay.

CHAIRPERSON REID: Okay.

MR. FOSTER: Thank you.

CHAIRPERSON REID: So we will continue this case until --

MS. KING: A date uncertain.

CHAIRPERSON REID: -- a date uncertain, and once we have it established, Mr. Hart will then so notify us, correct?

Okay. Thank you very much.

MS. BAILEY: How will Mr. Schauer be notified?

CHAIRPERSON REID: How? Mr. Schauer is a party.

MS. BAILEY: Are you going to keep track

of it?

CHAIRPERSON REID: Oh, I'm sorry.

MS. KING: Well, Paul is going to call him. Paul is going to call him. It's as simple as that.

CHAIRPERSON REID: You're not a party?

MS. KING: There's also going to be big, orange signs in the neighborhood. Those will never escape Mr. Schauer, but Paul is going to call him.

CHAIRPERSON REID: Okay.

MR. GILREATH: Before Betty leaves, what is the time that we're going to try to go over and look at this site?

CHAIRPERSON REID: Let me close.

MR. GILREATH: I'm sorry.

CHAIRPERSON REID: And then we can discuss that. That's why I asked her not to leave.

All right. That concludes our proceedings for today. Thank you very much.

(Whereupon, at 4:04 p.m., the meeting in the above-entitled matter was concluded.)