GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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PUBLIC HEARING

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TUESDAY

JUNE 12, 2001

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

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

SHEILA CROSS REID	Chairperson
ANNE MOHNKERN RENSHAW	Vice Chairperson
GEOFFREY GRIFFIS	Board Member
SUSAN MORGAN HINTON	Board Member

ZONING COMMISSION MEMBER PRESENT:

CAROL J. MITTEN	Commissioner

COMMISSION STAFF PRESENT:

Sheri Pruitt, Secretary, BZA
Beverly Bailey, Office of Zoning
Paul O. Hart, Office of Zoning
John K. A. Nyarku, Office of Zoning

OTHER AGENCY STAFF PRESENT:

Maxine Brown-Roberts, Office of Planning
John Moore, Office of Planning

D.C. OFFICE OF CORPORATION COUNSEL:

Marie Sansone, Esq.

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

AGENDA ITEM	PAGE
PRELIMINARY MATTERS	6
APPLICATION OF JOHN E. KERN:	
16715 ANC-3D	7
JOHN KERN	8
APPLICATION OF RICHARD SELTZER AND GRACE LOPES:	
16718 ANC-3G	55
GRACE LOPES	57

P-R-O-C-E-E-D-I-N-G-S

(2:17 p.m.)

CHAIRPERSON REID: Good afternoon. The hearing will please come to order. Ladies and gentlemen, this is the June 12 public hearing of the Board of Zoning Adjustment My name is Sheila Cross Reid, Chairperson.

Joining me today is Vice Chairperson Anne Renshaw, Vice Chair, Susan Hinton representing the National Capitol Planning Commission, and representing the Zoning Commission is -- who's on this afternoon? Whoever it is will be here shortly. Ms. Minton, too? Carol Minton, and also Geoff Griffis is our newest member.

The 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 special exception and variances is one, statement of witnesses of the applicant; two, government reports including Office of Planning Department, Public Records, et cetera; three, report of the advisory neighborhood commission; four, parties and persons in support; five, parties and persons in opposition; six, closing remarks

by the applicant.

Cross examination of witnesses is permitted by the applicant or parties. The ANC within which the party is located is automatically a party in the case. The record will be closed at the conclusion of each case except for any materials specifically requested by the Board, and staff will specify at the end of the hearing exactly what is expected.

The Sunshine Act requires that the public hearing in each case be held in the open before the public. The Board may, consistent with its rules of procedure and the Sunshine Act, enter executive session during or after the public hearing on a case for purposes of reviewing the record or deliberating on the case.

Decisions of the Board on these contested cases must be based exclusively on the public record. So the Board may prevent the contrary, the Board requests that 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, or put them on vibrator.

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

At this time, the Board will now consider any

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

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

All right, does the staff have any preliminary matters?

MS. BAILEY: Yes, we do, Madame Chair. It has to do with the application of Alliance Francaise. The application number is 16631. That application is not ready to go forward this afternoon, Madame Chair, and the staff is requesting that it be postponed to October 30 of this year.

CHAIRPERSON REID: Okay. I have no problem. Any discussion regarding that particular? All right, then I move that the application of Alliance Francaise, 16631, be continued until October 30, the year 2001.

COMMISSIONER MITTEN: Second.

CHAIRPERSON REID: All in favor?

(Chorus of ayes.)

CHAIRPERSON REID: Opposed?

MS. BAILEY: Staff will record the vote as five to zero to reschedule the application to October 30.

CHAIRPERSON REID: All right.

MS. BAILEY: The first case of the afternoon is Application No. 16715 of John E. Kern, pursuant to 11 DCMR 3103.2 for a variance from the side yard provisions under Section 405 to allow the construction of a detached single family dwelling in an R-1-B District at premises 2318 Nebraska Avenue, N.W., Square 1412, Lot 64.

All those wishing, please stand, sir. Raise your right hand. Do you swear that the information that you'll be giving today will be the truth? Please say I do. Thank you, and please have a seat at the table.

Members of the Board, the application has submitted a statement, and that was put in front of you. All posting requirements have been met. There is a report from the Office of Planning and also from the Department of Interior. There are no requests for party status, and the case is ready to go forward.

CHAIRPERSON REID: All right.

MR. KERN: Madame Chairman and members of the Board, my name is John Kern, owner of Lot 64, Square 1412, located at 2318 Nebraska Avenue, N.W. I appear before you today to request a side yard area variance for the purpose of constructing an owner occupied single family residence.

I'm a former 15-year resident of the Nebraska Avenue lot that I'm proposing to build this residence. I

currently live at 5208 Wissioming Road in Bethesda, and I've gotten religion. I'm hoping to move back into the District.

With your permission, Madame Chairman, I'd like to proceed by referring to the information in the statement I have placed before you. While the information being referred to is also contained in the BZA file, I have summarized the information in my statement for ease of presentation. I thought it might be a little confusing with all the papers flying around, trying to get to the appropriate one.

CHAIRPERSON REID: Thank you, we appreciate that. Just one second please, sir. Is there anyone here who is testifying in this particular case? All right, Mr. Kern, you can expedite your case. We don't have anyone in opposition or anyone else to testify today. So, give us the salient points, and let's see if we can dispose of this fairly quickly.

MR. KERN: Okay. I'd like to begin by referring to the attachment to my statement. Attachment 1 shows the location of the property. It's a little block of Nebraska Avenue that no one ever can seem to find, but it's a little extension off McArthur Boulevard in the Palisades.

Attachment 2 contains photos of the lot. Attachment 3 shows the odd shape of the lot. Attachment 4 contains photos showing the predominant architectural character of the neighborhood. Attachment 5 shows in the environs, and Attachment 6 shows the footprint of the proposed house and the

extent of the area variance being requested.

The existing property is an R-1-B unimproved residential building lot. Under Section 405, the side yard setback requirement is eight feet. Due to the odd shape of the lot, strict application of the eight feet side yard setback would require the design of a trapezoidal shaped house, which would essentially increase the cost of construction and would be out of character with predominant architecture of the neighborhood, where nearly all lots are rectangular and conducive to siting of traditional homes. In fact, none of the existing houses on the block could be sited on Lot 64 without a side yard variance.

In order to build a more traditional home on the lot, an area of variance is requested for the reduction of the side yard setback from eight feet to four feet on the southwest property line. Please refer to Attachment 6, which shows the footprint of the house and also the area where for the side yard variance.

The lot borders a narrow parcel of public space and a public street. This can be noted on Attachment 5. The narrow parcel of land is owned by the National Park Service, and it's isolated by a public street that connects Nebraska Avenue with Sharier Place. This open park land is not open to residential development.

Granting the variance is not inconsistent with

the general intent or purpose of the zoning regulations since it will not affect the zoning setback requirements between the adjoining single family property owners and the proposed new residence. In addition, it will allow for the construction of a traditional residence, in keeping with the character of the neighborhood. It will not encroach on public space or have an adverse effect on the neighborhood.

In addition, the development of the lot would help to reduce, if not eliminate, the illegal dumping on the adjacent Park Service open space that continues to be a concern of the neighborhood. Accordingly, granting the variance will not be a detriment to the public good.

All of the adjoining residential property owners and other residential property owners within line of sight of the lot have signed a statement indicating no objection to the requested variance. On April 4, 2001, the ANC voted six to zero in favor of the variance, and the D.C. Office of Planning has recommended approval in their letter of June 5, 2001.

The National Park Service, in their letter dated June 11, 2001, stated no objection to the requested variance, with assurances from me regarding the protection of a large maple tree, the use of none intrusive colors and finishes on the house, and limiting access to the property from Nebraska Avenue only.

I have stated these assurances to the National

Park Service in my letter to the BZA dated June 4, 2001. Copies of these letters and statements are all contained in the BZA file.

In view of the lack of opposition and the consistency of my request with the intent and purpose of the zoning regulations, I respectfully ask that the Board approve the area variance from eight feet to four feet on the southwest property line of Lot 64, Square 1412.

That concludes my statement, Madame Chairman, and I'll be pleased to answer any questions you or any members of the Board may have.

CHAIRPERSON REID: Okay, thank you very much. Board members, questions? Mr. Griffis?

MEMBER GRIFFIS: Yes, a simple question. You just mentioned the Park Service, and according to the letter here, that they have -- they're assuming that their conditions would be part of anything granted from the BZA. The second point you made was the finishes. They're actually quoting you, and I think it's straight from your description of the properties, red brick exterior walls.

MR. KERN: Yes.

MEMBER GRIFFIS: And that still stands?

MR. KERN: That still stands, absolutely.

MEMBER GRIFFIS: Okay.

MR. KERN: Yes.

MEMBER GRIFFIS: The other, maybe a small aside, but there was talk of how a contemporary architecture might fit within the site, although that may not fit within the comprehensive plan. I didn't know, were plans of that nature part of the file?

MR. KERN: Yes, sir. I didn't submit those plans.

MEMBER GRIFFIS: Okay, you have.

MR. KERN: I didn't want to scare everyone with them. It was pretty, I think I talked to Ms. Maxine Brown Roberts about those plans. She saw them as well. My neighbors weren't too happy.

MEMBER GRIFFIS: No, I can imagine not.

MR. KERN: I know all of them on the block, and they were pleased to see that it wasn't going to be contemporary. This is not a large house, a three-bedroom house.

MEMBER GRIFFIS: Yes, and I reviewed the plans on the original, and it looks appropriate, first of all, for the block. I also think, based on the statements in the file that were given, in terms of the problem with no eyes on that portion of the park and that it actually, as you stated and also in the file, was a dumping ground and other illegal activity was alluded to. I tend to strongly agree that an occupied house on that corner will create its own policing of

that area and actually be a fairly positive addition to that block.

That's all I have, Madame Chair.

VICE CHAIRPERSON RENSHAW: Madame Chair? I would like to ask if you have worked out any kind of a construction agreement with the Advisory Neighborhood Commission which is in support of your application?

MR. KERN: In what regard?

VICE CHAIRPERSON RENSHAW: In what regard, the agreement on the hours, the truck routes, whether you are, because your home would take between six and nine months, is that correct?

MR. KERN: I would estimate that's correct, yes.

VICE CHAIRPERSON RENSHAW: And many times, the ANC's would request that the developer keep the licenses, the license numbers of the truckers who are going to be working on site. Have you worked out any kind of an agreement with the ANC?

MR. KERN: That wasn't an issue when I was before the ANC. I'd be happy to do that if they would so request. I think that given where the lot is, and it's down on like almost a dead-end street, with a street cut-through that goes through Nebraska to Sharier Place, it really doesn't disturb any of the parking of the current residents.

VICE CHAIRPERSON RENSHAW: But this goes --

MR. KERN: Or a barrier to work down there.

VICE CHAIRPERSON RENSHAW: This goes up to McArthur Boulevard?

MR. KERN: Yes.

VICE CHAIRPERSON RENSHAW: And there has been quite an issue about truck traffic on McArthur Boulevard, speeding of trucks, dirt spewing from trucks, and it has been a building issue.

MR. KERN: Yes, that has to do with the development of Georgetown University.

VICE CHAIRPERSON RENSHAW: It is also with private residences in the area.

MR. KERN: Oh, I didn't realize that.

VICE CHAIRPERSON RENSHAW: Yes. It's not just with Georgetown.

CHAIRPERSON REID: Well, you know, just let me jump in here for a minute. With regard to that construction plan, that comes up a lot, Ms. Renshaw, and I know that's something that's near and dear to your heart, but invariably when it does come up, the issue is raised about, and I think we need to get this clarified once and for all because just last week, remember they had that contentious little tete-a-tete going back and forth about this issue? Ms. Sansone, do we have regulations within the licensing procedures that are adequate enough to address this whole issue regarding the construction

plan, as far as the hours and allowing of the trucks. We keep going back and forth with this. Can we just kind of lay this to bed once and for all?

MS. SANSONE: Madame Chair, there are regulations within the construction code and other matters regulated by DCRA about the types of problems that these construction agreements attempt to address. I'm not sure all the parameters would be covered. For example, the idea of a contact person or hotline that the Board sometimes requires, but things like the hours that they can operate and things like making dust and, you know, excess noise, there are regulations that regulate that, and I would be happy to try to pull them together for the Board, you know, provide them to you at the next meeting.

CHAIRPERSON REID: One thing, Ms. Renshaw. I think that would be great for us to have that, but also, my other question is, if, in fact, the applicant goes for the ANC proper for that particular area and the ANC does not require or request that from us, how do we handle that? I mean, then a Board member will come and say well, has your ANC requested it. If the ANC has not done that, then do we or is it appropriate for us then to say well, perhaps you should get that, and they have to go back to the ANC and they have to have a full meeting and all that in order to get one, or how do we handle it?

MS. SANSONE: Madame Chair, I would suggest that it's probably, you know, to some extent whether the Board feels

this is going to be a significant problem in the project at hand. If the ANC has not requested it and they're not present at this meeting, it does seem kind of burdensome to both the applicant and probably, if the ANC did not perceive it to be an issue or matter of concern, you know, then we're also sort of forcing the ANC to take another look at it or asking them to. So, it does seem to interject some delay or extra work in the process.

Possibly the applicant could just indicate what he intends his construction management practices to be, and maybe that would satisfy the Board's concerns about us controlling noise, hours, complaints, handling that sort of thing.

COMMISSIONER MITTEN: Madame Chair, I think that while there may be concerns related to construction management and so on, I think the only conditions that are appropriate for the Board to impose are those that arise from what are perceived adverse conditions related to the relief that's being sought, and I don't see things related to construction management as arising out of a side yard variance. So, I think that's really what we have to look to for guidance in deciding which conditions are appropriate.

CHAIRPERSON REID: Okay, Mrs. Minter. Mrs. Renshaw?

VICE CHAIRPERSON RENSHAW: Well, I just want to

state that the Chair of ANC 3-D is a member of the Ward 3 traffic policy committee which has just been set up by the mayor. It's a pilot initiative because of the problems in Ward 3. We have had our first meeting, and uppermost on the agenda was discussion of truck traffic and certainly the ANC 3-D area has had a number of complaints.

I think since the applicant is willing to propose a construction agreement, just laying out and having on file with the ANC how he is going to manage his construction would be very, very helpful in case, just in case, there are calls to the ANC in complaint. You never know. It's helpful to have in the ANC records attached to your file the hours of operation and how a complaint might be handled, how you are reached, or if you have a construction foreman, and that it's going to be six to nine months, and exactly how you might prescribe handling the idling of trucks and washing up around your property.

It's as simple as that, just filing something with the ANC, and it doesn't have to have a special meeting because the ANC has already passed on this. It's the same document that you can share, or you can file it with us and also share it with the ANC.

MR. KERN: I have no problem with that. I submitted a similar thing to the Office of Planning. They were asking about the hours. Basically, I think most of this is

already covered in D.C. regulations anyway about the hours of operation and maintaining a clean construction site, putting gravel down so you're not tracking mud out into the street. I mean, it's all there, but if you think this is important to do. This is not a major project, to build one house on a dead-end street basically. I'm very sensitive to the issue.

VICE CHAIRPERSON RENSHAW: And we hope that that's the case, that it's not a big deal, but it's just very good planning to have on file with an agency, and advisory neighborhood commission that has oversight in your neighborhood, just exactly how you're going to operate your construction site.

CHAIRPERSON REID: I will agree that there are instances where there is a major construction going on where you really do need to have a little bit more insight as to what's going on, but not in any way to trivialize your concern, Mr. Renshaw, I think that the applicant has heard you, and while it may not be a condition of this board, this body, one member is concerned. You may want to address, and it may be very well taken care of with the submission that you gave to Office of Planning, the same type of thing that you may also want to give to the ANC. This is not a condition or not a requirement, you understand.

MR. KERN: Right.

CHAIRPERSON REID: It is something that you could

do just based on your own volition if in fact you feel that I guess better community relations or whatever that might be. For you to do it is not a requirement or a condition.

MR. KERN: Well, I'd be pleased to do that.

CHAIRPERSON REID: Okay

MR. KERN: I'm a long term resident of that block. I know all the people and they know me.

CHAIRPERSON REID: Okay.

MR. KERN: It's just not going to be a problem.

CHAIRPERSON REID: Okay, all right. Thank you very much. Any other questions, Board members?

MEMBER HINTON: I have one question, Madame Chair.

CHAIRPERSON REID: Okay.

MEMBER HINTON: The letter from the National Park Service has four conditions. Have you seen that letter?

MR. KERN: Yes, a precondition, I believe.

MEMBER HINTON: One of the conditions talks about a tree protection plan which you've committed to prepare.

MR. KERN: Right.

MEMBER HINTON: Would it be possible to prepare this for this Board's records so that we can see where the tree is and the area that you're going to mark out as tree protection area?

MR. KERN: They're concerned about one tree on

the property which is kind of a neighborhood asset, and I've been babying that tree for years. As a matter of fact, I just had an arborist come out. We deep fed it this spring. It's a large maple tree which is about 90 percent on my property and about ten percent on the Park Service. I think everyone has looked at that and said boy, I hope that tree doesn't come down, and I have no intention of taking that tree down and have every intention of protecting to the full extent.

What I was planning on doing when I told the Park Service, and they were happy with that, is I would border off that area to avoid any construction equipment or any kind of materials being stored in the root drip line of that tree. The actual house is outside of the drip line of the tree anyway. So, we've got plenty of room to work, given again the dead-end nature of the street that we're working on basically.

MEMBER HINTON: Great, but that's a plan that I think should be in our record, a plan that shows where the tree is and the area that you're going to cordon off that no one will be able to store anything or walk under or move equipment under.

The architectural plans also concern me. They're pretty preliminary in nature as far as dimensions and things, which they don't have any of, and they don't make any mention of what the exterior materials are. I think that's something that really should be added to the drawings that are in our

records.

MR. KERN: Well, that information was in the letter I submitted to the Park Service. There's no requirement that I knew of about materials for area of the variance. The house is going to be brick, and it's going to have a slate roof and copper gutters and white windows.

MEMBER HINTON: Well, in consideration of granting the variance, we are considering what the Park Service has required, and they're requiring those materials. So, I think it's important to have those materials marked on the plans that go along with your application.

MR. KERN: That information is in the record.

MEMBER HINTON: It is not on the plans. I want it on the plans. I don't want it in a letter.

MR. KERN: Well, these aren't working drawings, Ms. Hinton. They're just conceptual drawings in terms of the elevations. We didn't put all that stuff in there. I mean, there's a lot of information that is not on the plans at this point. That would, of course, be all in the working drawings when we go through the permitting process.

MEMBER HINTON: Okay. Well, here's the problem that people don't seem to understand. Normally, the way you get here is you file a building permit that has all the complete information on your drawings. The Zoning Administrator, when they review it, they see that you need

zoning action, and it's sent here. We get those drawings that are pretty far along.

When people do this self-certification, they don't always prepare the full detailed drawings. That doesn't mean we don't need them. If you look at our zoning regs, we require site plans, building plans, elevation plans. They're to be final, detailed plans in order for us to decide whether the house that you're planning to build and your need for the variance is justified or not.

Once we grant a variance, it's not a variance for you to go and build whatever the heck you want and take those four feet. It's a variance to build the exact house that you've shown us. So, these are not conceptual plans once we approve them. This is the house that you build.

MR. KERN: Right.

MEMBER HINTON: So, I want more detail on these plans before we approve it. I don't want it to come in the form of a letter from the Park Service saying what you said you were going to build. It needs to come from you to this Board as a commitment of what you're going to build.

MR. KERN: Well, I mean, I'd have to go back and have the architect put that information on the plans then if that's what you're requiring, but it wasn't my understanding, looking at the restrictions on applying for the area of variance that it required that kind of detail. It just say

sufficient detail to elevations.

CHAIRPERSON REID: Sometimes, Mr. Kern, when people self-certify, that happens because that is one of the risk that you take when you self-certify, that you may run into just some areas that need more explanation or there's additional submissions or whatever that you may need. In this instance, that's what's lacking.

MR. KERN: Okay, so what you're asking and the Board is asking for details to be placed on the drawings and submitted?

MEMBER HINTON: The materials, right. There should be labels listed on there what those materials will be, right. And then you need to provide a separate plan that's going to be -- you can call it your tree preservation plan, that shows the location of the tree and that shows this cordoning off area that you're going to make that's going to keep everything out from under the drip line of the tree to protect those roots.

CHAIRPERSON REID: Okay.

MR. KERN: Okay, I can provide that.

MEMBER HINTON: See, without the plan, let's just say that you didn't cordon off the area. If the zoning inspector goes out and wants to see if you're complying with these conditions, there's nothing for him or her to look at. There's no plan that shows what area you promised to cordon off

or even what tree it is. So, we have to make sure we have a complete record that is clear with all the conditions that we're putting on so that somebody can go out and make sure that you're doing what you committed to do.

MR. KERN: Fine. Should that be submitted to the BZA in the form of a letter or actual --

MEMBER HINTON: Well, it should be a site plan, so it's going to be --

MR. KERN: A site plan.

MEMBER HINTON: I think you can use this plan that you have, which you call -- I don't know what you call it, this plan?

MR. KERN: Right.

MEMBER HINTON: If you show the location of the tree and --

CHAIRPERSON REID: Sorry, say exhibit number.

MEMBER HINTON: It's Exhibit No. 7, page one.

MR. KERN: That's the original plans, okay, right.

MEMBER HINTON: And if you show the tree and then show the area that you're going to cordon off. Then you can use these same drawings --

MR. KERN: To describe the finishes.

MEMBER HINTON: Pages five and six have the elevations.

MR. KERN: Right.

MEMBER HINTON: If you just make labels of what those materials will be with little arrows.

MR. KERN: Okay.

MEMBER HINTON: It's even something that you could do. I don't think this requires sort of, you know, going back to your architect.

MR. KERN: Right. Yes, that's simple enough to do. As I say, I'm really committed to that.

CHAIRPERSON REID: Do you know that? I mean, if you know it, can't he just put it on there?

MR. KERN: I could do that, too.

CHAIRPERSON REID: Yes, just do it. Just put it on there.

MR. KERN: I know exactly where the tree is.

CHAIRPERSON REID: Okay.

MEMBER HINTON: That would be great if we could amend the exhibit at this point, and then it would be in the record.

CHAIRPERSON REID: Well, why don't you sit back down, and then if you're done, then we can go to the next while we are going through the various segments.

VICE CHAIRPERSON RENSHAW: I have a questions for Mr. Kerns, just to ask, did you fill out the calculation sheet that's supposedly on the back side of the self cert form?

MR. KERN: Calculation?

VICE CHAIRPERSON RENSHAW: Which has your lot requirement? Do we have a sample to show him?

CHAIRPERSON REID: You mean the comp sheet?

VICE CHAIRPERSON RENSHAW: Yes. It looks like this. It looks like that.

MR. KERN: No, I haven't seen that.

VICE CHAIRPERSON RENSHAW: Because that's a requirement that all certification forms must be completely filled out, and that's a requirement. So, you have to --

MR. KERN: That wasn't one of the forms that was given to me to fill out.

CHAIRPERSON REID: You weren't given that? Because you know, this is something new, isn't it?

VICE CHAIRPERSON RENSHAW: This was on the --

CHAIRPERSON REID: And all of them aren't -- you know, I see this sometimes. This is something new then. We see it sometimes. Sometimes we don't. I don't know in what instances they are --

VICE CHAIRPERSON RENSHAW: All of the cases that we hear have this filled out, and so he would have to do that.

CHAIRPERSON REID: I haven't -- this is something --

VICE CHAIRPERSON RENSHAW: That was in this.

CHAIRPERSON REID: Yes, this is not something

that -- just recently started having to do that, but this is something that he can do. That's not -- it's basically -- can he see the form? Do you have one, Mr. Kern?

MR. KERN: No. That form was not --

CHAIRPERSON REID: Okay, let's give him a copy of this. What we could do is have you to fill it out.

VICE CHAIRPERSON RENSHAW: And put it in your file.

CHAIRPERSON REID: With the file. We'll give you -- just look at it, and then we'll give you a fresh copy of it.

COMMISSIONER MITTEN: You know, just to be clear, I think this is really -- there's the front page is what's signed, and then this says side two. So, I think this is really just the back of that form.

CHAIRPERSON REID: It is.

COMMISSIONER MITTEN: Oh, okay.

CHAIRPERSON REID: But the point I'm making is that that back side is something new. That wasn't always on there. This is something that just recently became attached. You know what, it very well may be -- I would not be surprised if all of the forms don't have it on the back.

MS. SANSONE: Madame Chair?

CHAIRPERSON REID: Yes.

MS. SANSONE: That is correct. The requirement of having the applicants fill out the computation sheet just

began with Mr. Nyarku trying to upgrade our forms.

CHAIRPERSON REID: Oh, okay.

MS. SANSONE: So, it is a fairly new requirement.

CHAIRPERSON REID: Okay, and that is ours, isn't it?

MS. SANSONE: That's correct, yes.

CHAIRPERSON REID: Okay. All right. So, can we please give him a fresh copy and allow him to do that today, please?

COMMISSIONER MITTEN: Well, you know, just in fairness to Mr. Kern, he filed before the BZA on the second of March.

CHAIRPERSON REID: When did it go into effect? What date was that? Was that before March?

MS. SANSONE: Madame Chair, that I don't know. I know it was a result of Mr. Nyarku's work on this.

CHAIRPERSON REID: Mr. Hart, do you know if this was something -- wait a minute. Mr. Nyarku didn't come on board until -- I don't think that this particular applicant would be affected by that because Mr. Nyarku did not come on board until after March, was he?

MR. HART: He would probably be before Mr. Nyarku came.

CHAIRPERSON REID: He is grandfathered.

MR. HART: Yes.

CHAIRPERSON REID: Okay. All right, Mr. Kern, that's something that doesn't affect you. You're grandfathered.

MR. KERN: Thank you very much.

VICE CHAIRPERSON RENSHAW: However, if you'd like to fill it out, we won't stop you.

CHAIRPERSON REID: Okay. Now, while you're doing that, if there aren't any further questions, we'll move now to government reports. We'll start with Office of Planning. Again, we have read -- let's see the Office of Planning report.

We have read the Office of Planning report, so if you wanted to just basically give us highlights.

MS. BROWN-ROBERTS: Okay. Good afternoon, Madame Chairman and members of the Board. My name is Maxine Brown-Roberts from the Office of Planning. Section 3103.2 outlines the standards for approving the area of variance.

CHAIRPERSON REID: Wait a minute, one thing. I think we need a waiver here.

MS. BROWN-ROBERTS: No.

CHAIRPERSON REID: June 5?

MS. BROWN-ROBERTS: For the report?

CHAIRPERSON REID: Yes.

MS. BROWN-ROBERTS: No, it came in on time.

CHAIRPERSON REID: Okay. All right. Go ahead,

sorry.

MS. BROWN-ROBERTS: Okay. The property is unique due to its irregular shape with a width of approximately 69 feet in front and 22 feet in the rear and a lot area of 4,543 square feet. This is unlike most of the other lots along the western side of Nebraska Avenue which are generally rectangular in shape and have an area 50 feet wide and 100 feet in length, for a lot area of approximately 5,000 square feet.

Due to the irregular shape and the 15-foot building restriction line along the front of the property, applicant is unable to build a house that meets all the requirements of the zoning regulation and be consistent with the predominant architecture of the neighborhood. If the house were to meet all the setback requirements and be complementary to the neighborhood, the resulting house would be much smaller. The applicant would suffer undue hardship if he were to build a smaller traditional house that does not meet the needs of his family or a contemporary architectural design that could be more costly.

The reduction in the required side yard is adjacent to open public space that will not be developed. Therefore, the reduction of the side yard would not have an impact on any adjacent residence. Development of this lot will enhance the neighborhood, as it will help to curtail illegal dumping and other illegal activities that the undeveloped site

now attracts. The variance request will therefore not cause any substantial detriment to the public good.

The proposed variance to allow a reduction in side yard setback will not diminish the intent, purpose, or integrity of the zoning regulations and map, as the intent of the setback requirement is to provide adequate light and air between houses. In this case, the reduction is to the side yard, which is adjacent to public parking right of way, and therefore will not infringe on the light and air for adjacent residences.

The Office of Planning recommends that the Board approve the requested variance and supports the recommendation of conditions of the National Park Service. Thank you, Madame Chairman.

CHAIRPERSON REID: Thank you. Questions, Board members? I have just one quick question. In regard to the practical difficulty, you're basically stating that while the property is unique, that the practical difficult is that the house would have to be smaller and that it could not fit within the architectural integrity of that particular neighborhood? Is that our understanding, or would it have to be -- okay, this is two questions. Would it have to be contemporary in order to be -- it couldn't be smaller in some other kind of architectural design that would fit into the neighborhood?

MS. BROWN-ROBERTS: Yes, it could be smaller for

similar architecture, but I think what would happen is that they applicant has certain desires for his family, and therefore that would not accommodate him.

MR. KERN: Could I just interject one thing there? None of the houses on the block would fit on that lot without a side yard setback, and those houses aren't large houses. The one I'm building is not a large house. It's a three-bedroom house.

CHAIRPERSON REID: How many square feet?

MR. KERN: The footprint, I mean, total size of the house would be about 3,000 square feet. The footprint is 1600 --let's see, they've got that here somewhere. Under the 40 percent rule, they allowed the footprint would be 1,817, and we're talking here 1,628. So, we're under the 40 percent of lot occupancy in terms of the footprint of the house.

MEMBER HINTON: I think the question was just square footage.

MR. KERN: The square footage of the house is just over 3,000 square feet, about 3200 square feet. Most of the houses in that block, and a lot have been expanded and added onto. The original citizens' houses in those blocks were probably around 1500, 2,000 square feet, but even those houses wouldn't fit on that lot without a side yard variance.

CHAIRPERSON REID: They're what size?

MR. KERN: Well, it would depend on what they

have an how you count the basements. Some people have opened up their third floors to rooms and that sort of thing, but basically, the two-story center hall colonial houses, finished face on floor one, floor two, about 1500 square feet.

CHAIRPERSON REID: Wait a minute. You're saying that most of the houses are about 1500 square feet?

MR. KERN: I'm saying when they were built back in the 40's and 50's.

CHAIRPERSON REID: The square footage or the footprint?

MR. KERN: The square footage of the house, but most of these houses have been added onto, and they've finished their basements and they've opened up the attics. So, what I'm talking about is the original two levels.

CHAIRPERSON REID: The base house.

MR. KERN: Yes, without any improvements to the basement or the attic spaces. So, the house is well within the scale of the neighborhood.

CHAIRPERSON REID: So, what would be the largest size house that you could build and still be within the existing zoning regulations of that district?

MR. KERN: Well, it could be about 4500 square feet. You could go up with it. See, I have some plans that were developed back in 1990 for that lot, and I mean, it scared me when I got looking at it, and I knew that my neighbors

wouldn't like it. Ms. Roberts has seen it, but you could do that without any variance at all, but it just wouldn't fit in the neighborhood.

CHAIRPERSON REID: I understand.

MR. KERN: Plus, it would tower, and you could probably -- the Park Service, I'm sure, wouldn't like it. Of course, they couldn't do anything about it because I wasn't asking for a variance, but it would --

CHAIRPERSON REID: Aesthetically, it would be like a distortion?

MR. KERN: Aesthetically, it just doesn't belong there.

CHAIRPERSON REID: I was just wondering because where I was getting was that your practical difficult that you were asserting was the fact that you couldn't build a bigger house and that, you know -- I said your practical difficulty at first seemed to me that you were just saying that you wanted to build a larger house and that because you wanted to, you know, provide certain amenities for your family, and that was not, in my opinion, a concrete enough practical difficulty. So, this is why I wanted to find out more about where your thinking was in terms of your variance.

MR. KERN: Actually, my house is, the one I'm proposing is doing smaller than what could be built without a

variance.

CHAIRPERSON REID: I understand.

MR. KERN: Yes.

CHAIRPERSON REID: Thank you.

MEMBER GRIFFIS: Madame Chair?

CHAIRPERSON REID: Yes.

MEMBER GRIFFIS: Just a comment on that, it seems to me, looking at basically the footprint plan, that what is being asked for in terms of the side yard variance is, in order to bring the architecture and design of this house into one, the consistency of the architecture on the block, but also, that would then fit into the comprehensive plan for the area. What I'm seeing in this side yard is the undulation of the facade, which is one of the uniquenesses of this lot.

Being a corner lot, it will actually two primary facades as opposed to the other houses that march up, which can be, as you say, the colonial. There are some photographs in there, fairly traditional, but one primary facade here, is what I think is an excellent direction that it's taking, is creating two primary facades that actually then have to be animated. That's where I'm seeing the need for cutting into the side yard, rather than building the entire building footprint out. As you say, you could maximize, you could go up higher.

You could stay within the lot occupancy and do a larger house, the point being is trying to fit within the

architectural fabric and the comprehensive plan and within a very unique corner lot.

CHAIRPERSON REID: Thank you, Mr. Griffis.

MEMBER HINTON: One of the things that I'm looking at is instead of a front covered porch, which can't be in a building restriction line, if you had sort of a front stoop without a cover, the whole house could move up closer to that building restriction line, and I don't think that any part of it as shown would then project beyond your side yard, and you wouldn't need a variance. Is that --

MR. KERN: I don't think that's the case. I think when you move the house forward, you still have a side yard variance problem with -- now, you don't need it for the chimney.

MEMBER HINTON: Right, you don't need it for the chimney, and I think the rest of it, it would just about fit in there.

MEMBER GRIFFIS: Are you suggesting that he wouldn't have a front porch and steps, or he just not cover it?

MEMBER HINTON: Not cover it.

MEMBER GRIFFIS: I see.

MEMBER HINTON: You could have any sort of patio, landing, anything out there, and that can be in the building restriction line, as far as I understand it. It just when it has a cover on it, when it is roofed. If it has a roof, then

it can't be. Is that not true?

COMMISSIONER MITTEN: Can I just interject one thought into that, which is -- that would argue against that. If you look at attachment five and you see sort of where the lines are that would not require a variance and you see the house next door, one of the things that's desirable according to the Ward 3 plan in terms of the design guidelines is that you maintain these facades lines. While, you know, if you move the house all the way up to beyond the building restriction line, then you're well ahead of the house next door. You're much closer to the street. So, I'm not sure, you know, that that's desirable. I mean, I don't know what all the rest of the houses, how they line up.

MEMBER HINTON: It would be good to see if we could see the rest of the houses, because I agree with you.

MEMBER GRIFFIS: I think it can be fairly clear if you just look at attachment four. Two things you're shown. One, the houses seem to be as Ms. Mitten is saying, set on a single line. The other thing that I'm seeing is I don't see a single house there without a covered entrance. So, you'd actually be changing two aspects of the vernacular architecture that's happening on that block.

MEMBER HINTON: Well, if you look on the top photo, the second house in, the one that looks like it's down, I don't see a covered entrance on that one.

MEMBER GRIFFIS: It's a beige in color?

MEMBER HINTON: Yes.

MEMBER GRIFFIS: I think it may be obstructed because it's behind that telephone pole, and it's a little dark in that area.

CHAIRPERSON REID: It's hard to make out.

MEMBER GRIFFIS: You know, I think you could go up two or three more, you see a beige same pitch roof, and you see a covered entrance.

MEMBER HINTON: I see those two farther up. I don't see one on the stone.

CHAIRPERSON REID: I think that an argument could be made that the vast majority of the houses do have a covered porch. How about that?

MR. KERN: One of the problems of moving the house forward would be off-street parking. We have the garages under the house, and to get down into the -- the closer you get to the street, you get too much of a pitch on your driveway, and you can't get down into your garage.

MEMBER HINTON: I didn't see. Could we have the plans back? I didn't see the garage. Sorry if I missed that.

There's no driveway shown on here.

MR. KERN: You have to look at the front elevation.

MEMBER HINTON: Okay. Normally we have a site

plan. This one?

MR. KERN: There's a current curb cut off of Nebraska Avenue right in front of that where the garage comes in. You can see the photograph.

MEMBER HINTON: It's right here, isn't it? Do you see it? Do you see a curb cut?

MR. KERN: Look on the lot, on attachment two. You see the curb cut of the lot, on the lot. The lot is served by water, and I believe sewer is even in there. It was originally going to be built when they built that development, and it just never got built.

CHAIRPERSON REID: Oh, I see it, the curb cut.

MEMBER HINTON: Okay.

CHAIRPERSON REID: Other questions?

COMMISSIONER MITTEN: When you get done, can we see the plans down here because we want to see where the tree is.

MR. KERN: I have indicated the tree on the plans and signed and dated a fenced off area. Also on the elevations, I've indicated the finishes and signed and dated that as well.

MEMBER HINTON: This is the tree.

CHAIRPERSON REID: Okay.

MEMBER HINTON: Mr. Kern, do you intend to have your property line surveyed before any construction begins?

MR. KERN: Oh, yes, yes.

MEMBER HINTON: I'm most concerned about the property line that's adjacent to the federal park land.

MR. KERN: They've recently surveyed that, so their survey markers are in the ground there now.

MEMBER HINTON: Okay, and will it -- I'm interested to know that during construction, that that line will be evident in the field so that anyone who's working on the house will see the edge of your property. It seems to me that the Park Service has made it clear that they don't want any access to your lot to come from that side of their property

MR. KERN: Right. They were concerned -- there's a street that was put through between Nebraska Avenue and Sharier Place which nobody seems to claim. The City says they didn't do it. The Park Service say they didn't put it in there. The Park Service is concerned that I might be trying to get access off that street into the lot, which I have no intention of doing.

I think the Park Service wants to reserve the right to close that road off and reforest that area. I think that that's very controversial because number one, the sewer line runs down that street. I think the reason that street's in there is probably when the sewer line was put in when that area was first developed. Also, there was a street car stop at the end of that street.

From the older residents in the community, they said that ever since they can remember, the street's been there. In the meantime, the City has paved it twice since I've lived there. So, they maintain it, and not knowing, of course, when the pavers come, the street people come out, they don't know that it's not. It looks like a city street. You can see from the photograph.

MEMBER HINTON: Right, and that's why I think it's important to have that property line stake because the way that it looks out at the site with the two streets, it would appear to anyone who doesn't know that that entire parcel is your property.

MR. KERN: Yes.

MEMBER HINTON: You know, between the streets, and that's not the case. So, I think to have that marked.

MR. KERN: Well, that's why the Park Service came through and surveyed all that area and put their markers in.

MEMBER HINTON: Great. Thank you.

CHAIRPERSON REID: Okay. Other questions? All right, thank you very much.

MR. KERN: Madame Chairman --

CHAIRPERSON REID: Other government reports. We did receive a letter from the Park Service, and the letter is signed by David Murphy, and basically, in pertinent part, it describes the fact that it has no objections. Let me make sure

I'm saying this correctly, that there was no objection. I don't know, but there was a concern that the building would be developed in such a manner, either now or in the future, that could be highly visible from various points of park land that possibly degrades the aforementioned natural setting of the Potomac Gorge.

It goes on to say that the park land adjacent to the subject property has a portion of road built on it by no known authority nor by any known permission granted by the National Park Service. Therefore, the National Park Service requests that this situation be noted in the record, and recognize that the National Park Service, by its acts in this case, in no way relinquishes rights to manage the portion of park land in such a manner found necessary to preserve and perpetuate the qualities of the natural forested Potomac Gorge.

Such acts may range from continuing to maintain the landscape in the current manner the full restoration of the natural forested landscape found to be necessary to assure the natural appearance of the park.

Then it goes on to make mention of the fact that they have been assured by Mr. Kern that three conditions would be in any proposal that we might approve. Those would be the ones that are reflected in the letter that were also referred to earlier by Mr. Kern regarding the large maple tree will be protected and maintained. Mrs. Hinton has already requested

that that be stipulated as to how that's going to be done.

Mr. Kern has committed to developing a tree protection plan for the period during the construction of the building, and that he is committed to preserve and maintain this maple tree as an amenity to the neighborhood and to maintain the tree as part of the forested cover of the Potomac landscape.

Two, that the exterior finishes of the proposed building shall be red brick exterior walls and a gray slate roof and copper gutters, thus presenting non-intrusive colors and hue to viewers of and in the Potomac Gorge.

Three, access to the property will be from Nebraska Avenue and that no request shall be made to access the property from the street which runs through the Park Service property, such access understood to be both for permanent driveways and for all temporary construction related accesses.

That's basically the salient points of Mr. Murphy's letter that will be contained in the order to be approved, as well as -- did you already reflect on the plan the type of materials as requested by Ms. Hinton?

MR. KERN: Yes, I did.

CHAIRPERSON REID: Okay. Then, going now to the ANC report. ANC-3D has sent in a letter. Mrs. Renshaw, do you want to --

VICE CHAIRPERSON RENSHAW: Yes. We have a

letter. It is Exhibit No. 19 from ANC, Advisory Neighborhood Commission 3-D. It's dated April 16, 2001, and it's signed by the Chair, Eleanor Roberts Lewis. It states that 3-D held its regularly scheduled monthly meeting on Wednesday, April 4, 2001, at the Sibley Memorial Hospital's Earnst Auditorium, and a quorum was present at all time, and proper notice was given of the meeting throughout the Northwest Current paper and by posting notices in all neighborhoods ten days in advance of the meeting.

Mr. Kern's application was on the agenda, and he presented the plans for his new home which he wishes to build on his lot, and he requested the variance for a side yard four feet instead of eight feet on the southwest property line due to the slope and unusual shape of the property. The Commission voted to support the application by a vote of six to zero to zero. So, the ANC 3-D is in support of Mr. Kern's request for a variance from the side yard setback requirement.

The ANC asked that this decision be given the great weight to which it is entitled by law.

CHAIRPERSON REID: And signed by the chairperson?

VICE CHAIRPERSON RENSHAW: Yes, Eleanor Roberts Lewis.

CHAIRPERSON REID: Okay then, ANC 3-D will be afforded the great weight to which it's entitled.

There are no other persons here in support or in

opposition, so closing remarks, Mr. Kern.

MR. KERN: Well, I appreciate this opportunity to present my case before the Board, and I'm hopeful that you will be able to take action in my favor to allow for this variance. I think that it's going to be an asset to the community. As I said, I've been a long-term resident of that block. I know the folks there. I'm looking forward to be moving back into the District. It's a whole new era from what I can see from my friends, though many of them moved out of the District back in the 70's and 80's.

So now, they're fighting all that traffic around the beltway and trying to get back into the City. They're all hoping to get back in, as I am. I'm really looking forward to moving back down there. I know that I'm going to be a good neighbor down there, and I'm going to do what I said I was going to do in terms of protecting the landscape, the trees, and being a good neighbor and during construction and so forth.

So, I appreciate the opportunity of being here today.

CHAIRPERSON REID: All right. So, would you like a bench decision?

MR. KERN: Yes. I didn't know because there were so many things I had to do there, but I think I satisfied most of them by writing on the drawings. I would appreciate it if it's possible for a bench decision and summary order today if

that could be done so I can get moving on my project.

CHAIRPERSON REID: Board members, comments? Motions, questions?

COMMISSIONER MITTEN: I would make a motion, if there aren't any questions.

CHAIRPERSON REID: Okay.

COMMISSIONER MITTEN: I move approval of this application by Mr. Kern for the side yard variance at 2318 Nebraska Avenue, incorporating the three conditions from the National Park Service as outlined in their letter of June 11, 2001.

VICE CHAIRPERSON RENSHAW: Second.

CHAIRPERSON REID: Can you defend the motion?

COMMISSIONER MITTEN: Yes, I'm sorry. The basis for that is that I think Mr. Kern in the record has demonstrated that there is an unusual condition related to his lot, which is a triangular configuration, and that given the traditional nature of the architecture in the balance of the neighborhood, the size of the homes, and combining with the configuration of the lot, that the side yard variance is necessary in order for the new dwelling to be consistent with what with the architecture and the dwelling sizes. So, it would pose Mr. Kern a practical difficulty were he not given the side yard variance, and that this, with the conditions that we've imposed, there will be no detrimental effect to the

zoning ordinance and map in granting this variance.

CHAIRPERSON REID: And there does not appear to be any adverse impact?

COMMISSIONER MITTEN: Well, I think any adverse impact is mitigated by the conditions that the Park Service has suggested.

CHAIRPERSON REID: And that the Office of Planning is in support of the application, as is the ANC, and there is no opposition.

VICE CHAIRPERSON RENSHAW: No opposition.

CHAIRPERSON REID: That's right. All right, any other comments? All in favor?

(Chorus of ayes.)

MR. KERN: Thank you very much, Madame Chair and members of the Board.

CHAIRPERSON REID: Mrs. Hinton -- wait one second, Mr. Kern. Was there anything else that you asked for?

MEMBER HINTON: No, Madame Chair. Actually, everything is on the drawings that we had asked for.

CHAIRPERSON REID: You're fine now?

MEMBER HINTON: Yes.

CHAIRPERSON REID: Okay, thank you.

MEMBER HINTON: Very good. I did make a dimension that I should tell you about. I dimensioned the cordoned area from the tree for about 15 feet from the center

of the tree.

MR. KERN: Yes, I might go a little further than that.

MEMBER HINTON: Farther is better.

MR. KERN: Thank you.

MEMBER HINTON: Yes, thanks.

CHAIRPERSON REID: Okay, thank you.

MS. BAILEY: Staff will record the vote as five to zero to approve the application, motion made by Mrs. Hinton, seconded by Mrs. Renshaw. The order should contain the conditions that are identified in the Park Service report.

MEMBER HINTON: Excuse me, Ms. Bailey. The motion actually was Ms. Mitten. Did you say Mitten or Hinton?

MS. BAILEY: Motion by Mrs. Mitten, seconded by Mrs. Renshaw.

MEMBER HINTON: Thank you.

CHAIRPERSON REID: Okay, last case? You should have your order in about two to three weeks. Don't call. They will call you and let you know, but you should have it fairly quickly, Mr. Kern.

MR. KERN: Thank you very much.

VICE CHAIRPERSON RENSHAW: We should say welcome back to the District.

CHAIRPERSON REID: Okay, last case. Please call it, Ms. Bailey.

MS. BAILEY: Application 16718 of Richard Seltzer and Grace Lopes, pursuant to 11 DCMR 3104.1 for a special exception to allow an accessory apartment in the basement of an existing single family detached dwelling under Subsection 202.10 in an R-1-B district at premises 6300 33rd Street, N.W. The property is located in Square 2005, and it's on Lot 43.

VICE CHAIRPERSON RENSHAW: And Madame Chairman, I want to say that I recused myself from the ANC meeting when Ms. Lopes came before the ANC, and the vice chair took over, Joseph Bishop, who signed the ANC letter. He first asked if any of the commissioners had any financial or other interest in the case, and the response was no. He asked if anyone had any difficulty with the chair staying in the room, and the answer was no. It is recorded in the minutes that I did recuse myself.

CHAIRPERSON REID: Okay, thank you very much, Ms. Renshaw. All right, have a seat, Ms. Lopes.

MS. BAILEY: Madame Chair, can I please swear her in before she sits down?

CHAIRPERSON REID: Yes.

MS. BAILEY: Do you swear that the information that you'll be giving today will be the truth, Ms. Lopes?

MS. LOPES: I do.

MS. BAILEY: Thank you. Please be seated.

CHAIRPERSON REID: Okay, Ms. Lopes, there's no

one here but you today, so we can assume that you don't have any opposition to your case?

MS. LOPES: That's correct, as far as I know.

CHAIRPERSON REID: You can give us your salient points, and we should be able to get through your case relatively quickly. Just give us the salient points, and we'll see.

MS. LOPES: Good afternoon. My name is Grace Lopes, and I'm one of the owners of 6300 33rd Street, the property at issue here. Pursuant to 11 DCMR 3104.1, we're requesting a special exception under Subsection 202.10 to allow an accessory apartment in our basement. It is a single family house in the R-1-B District.

Essentially, it's our position that we meet the requirements of Subsection 202.10. I think that they're set forth in detail in the Office of Planning submission, and I could, if appropriate, adopt the representations there and if that will facilitate the hearing, we don't dispute the representations therein.

Essentially, we want to use the basement as an accessory apartment for my 78-year old father. DCRA provided us with all of the relevant permits. The only permit DCRA would not provide us with was, or the only thing that the DCRA disallowed was our ability to install an oven and stove in the basement kitchen area, because DCRA indicated that that would

constitute an accessory apartment within the meaning of the regs.

So, we haven't been able to -- my father has not been able to cook in his apartment, and it's a hardship for him. We'd be seeking approval.

CHAIRPERSON REID: Questions, Board members?

All right, government reports. Office of Planning?

MR. MOORE: Good afternoon. I'm John Moore of the Office of Planning. This application, in your spirit of trying to move this rapidly, this application meets and exceeds the test under 202.10. I would like to make one edification.

On page 3, there is no such word as exzeption. There's an E-Z as opposed to a C.

VICE CHAIRPERSON RENSHAW: Page three.

MR. MOORE: We will submit a corrected page.

CHAIRPERSON REID: I'm sorry, Mr. Moore. We forgot to waive the rules. I think you need a waiver for a late submission. I would have no problem with so waiving the rules unless there is with any of the other Board members. Okay.

Go ahead, I'm sorry. Is it on page three?

MR. MOORE: Yes, on page three, there's a typo. In the subtitle.

CHAIRPERSON REID: I don't have a page three.

MR. MOORE: The application does meet the --

MEMBER HINTON: We got a supplemental copy of the OP report this morning that had all the pages.

VICE CHAIRPERSON RENSHAW: Oh, we did.

MEMBER HINTON: The one that was in our packages was missing pages two and three.

MR. MOORE: Three and four.

MEMBER HINTON: Three and four.

CHAIRPERSON REID: Okay, page three, where is it? Oh, okay.

MR. MOORE: The third subtitle. The application does meet the special -- no such word.

CHAIRPERSON REID: No problem.

MR. MOORE: If I can go to the Office of Planning's conclusion.

CHAIRPERSON REID: Yes.

MR. MOORE: I would agree with the application submitted by Ms. Lopes and Mr. Seltzer seeking a special exception. The Office of Planning is recommending that the Board approve the application. We find the application meets all the tests specified in 202.10 for an accessory apartment and will not adversely affect the neighboring property, and it's in harmony with the general purpose and intent of the zoning regulations.

Can any of us have an apartment and live without

being able to cook? I'll answer any questions you may have.

CHAIRPERSON REID: That's a rhetorical question?

MR. MOORE: Rhetorical, yes.

CHAIRPERSON REID: Okay. All right, questions of Office of Planning?

MEMBER HINTON: I have one question, and that is, it seems to me what this case is about is DCRA will allow everything that otherwise would make an accessory apartment except the stove because they feel like once you have -- the stove is what makes it an accessory apartment?

VICE CHAIRPERSON RENSHAW: Yes.

MEMBER HINTON: So, I guess I think that's something that the Board needs to look at as far as the zoning regs because it just seems to me that it's not quite that simple. If DCRA goes ahead and allows all of these other things and then for some reason, the Board would say no, it's still an accessory apartment, and the person could easily put in a toaster oven and a microwave and have an apartment. So, it just seems that it's something that we should look at, the bigger issue, not this particular case.

MR. MOORE: If I may comment on that, I sort of took the same position. I mean, why did you approve everything else but you left out the stove and the oven. I, in that case, volunteered to take it to the fire department to see if they had any particular slant on this. As you see in the report,

the fire department says we don't have a problem with it, as long as they've got the proper extinguisher in the apartment.

MEMBER HINTON: My issue was more with the DCRA and that at what point do you decide that you're actually approving an accessory apartment?

MEMBER GRIFFIS: Well, I think that's what, if I'm understanding you correctly, I think it is the point where you put a separate kitchen and bath into an area, be it the basement. I mean, by definition in zoning, a complete apartment unit contained within a single family detached house, it has kitchen and bath facilities separate from the principal dwelling, and they have a separate entrance. So, I think that's probably what he's -- otherwise, it's a finished basement.

MEMBER HINTON: Well, but my point is the stove, it does not a kitchen make. Kitchen is bigger than just a stove. Do you understand what I'm saying? They let everything be built, except they wouldn't let a stove go in.

MS. LOPES: The stove and oven.

MEMBER HINTON: Stove and oven.

MEMBER GRIFFIS: Well, yes. I mean, I think that's --

MEMBER HINTON: But there are many other aspects to a kitchen like a refrigerator, a sink.

VICE CHAIRPERSON RENSHAW: Disposal.

MEMBER HINTON: Garbage disposal, counters, cabinets.

VICE CHAIRPERSON RENSHAW: Hot plate.

MEMBER HINTON: You know, stove and oven isn't the only thing that makes it a kitchen.

MEMBER GRIFFIS: Yes.

MEMBER HINTON: That was my point.

MEMBER GRIFFIS: I mean, I don't --

MEMBER HINTON: And the regs say kitchen. They don't say stove.

MEMBER GRIFFIS: Right, but I think part of permitting, what you'll see is first of all, you'll see gas and plumbing connections which you wouldn't see for a moveable appliance like a refrigerator. Those are actually fixed and connected to utility. So, that's probably -- I'm not speaking on official, so I'll be brief, but that may be just what kicks it or raises a flag for them that realizes that there's a kitchen being created. Then that would be a separate unit.

MEMBER HINTON: That's upgraded electricity, an electric connection? Is that what you're saying.

CHAIRPERSON REID: It may be the fire aspect of the stove, because like a microwave you don't have that aspect or a toaster oven is just a plug-in, but then you know, a stove where you have fire may be a safety hazard or something.

MEMBER HINTON: I don't think it's safety. I

think it's what Mr. Griffis is saying, that it's --

MEMBER GRIFFIS: Yes, I mean, conventionally, a refrigerator plugs into a standard outlet. If it's an electric range or oven, yes, you're going to have an upgrade of service on that outlet. It will be a specific single breaker to the oven, or it may have a gas connection. It will be -- I don't know what the official is, but it's a fixed utility as opposed to a microwave or a toaster oven or a refrigerator. So, I guess if you start seeing those on plans, you're seeing a separate kitchen.

MEMBER HINTON: And that may be the only way they have to actually regulate it.

MEMBER GRIFFIS: Right, yes.

MEMBER HINTON: Right, so that's the only thing that would come into our permit.

MEMBER GRIFFIS: Right.

MEMBER HINTON: Okay.

VICE CHAIRPERSON RENSHAW: And are those upgrades on the plans?

MS. LOPES: Yes, it's on the plans.

VICE CHAIRPERSON RENSHAW: I don't have a copy of your plans in my file.

MS. LOPES: They're in the record.

VICE CHAIRPERSON RENSHAW: Oh, here they are. Sorry about that. They are here.

CHAIRPERSON REID: So, Ms. Hinton, what are you saying, that you want to the Zoning Commission or member to -- what are you saying that should be done?

MEMBER HINTON: I think we've raised all of the issue. I don't think anything needs to be done.

CHAIRPERSON REID: No, when you asked the question, you just wanted clarification?

MEMBER HINTON: Well, when I first asked the question, I thought there was a bigger issue.

CHAIRPERSON REID: Oh, okay.

MEMBER HINTON: But I think based on what Mr. Griffis had said, that that is probably the only way that DCRA can regulate this sort of use because you know, you can put things in your house and no one would know about it, but when you go to get a permit to upgrade the utilities to put the stove, that is how they would know that you're putting in --

CHAIRPERSON REID: An accessory apartment.

MEMBER HINTON: Right, and that's what triggers their attention the fact that you're putting a kitchen in.

VICE CHAIRPERSON RENSHAW: I would like to know, Madame Chair, if this property is sold, does the accessory apartment carry along, or does it, what shall I say, fold if the property is sold and then it has to be re-applied for?

CHAIRPERSON REID: Well a variance -- is Ms. Sansone there? Variances go with the land -- no, variances go

with the land, but a special exception, doesn't that have a little different --

MS. SANSONE: Madame Chair, the special exception would go along with the use. It wouldn't go with the owner. So, the selling of the home would not trigger any change at all, or change in ownership wouldn't cause a special exception to expire. It would be that if there was a new owner, say, and they chose not to have an apartment in the basement, then the special exception would expire.

CHAIRPERSON REID: Use it for a number of years?

MS. SANSONE: The Board may impose some kind of term of years like we do, for example, a child development center. This morning, we put a two-year term. I mean, we have a term of years for this.

CHAIRPERSON REID: Well, I don't think I'd want to put a term because it's obviously for the use of the father, who will need it. No, I was just wondering just in general. I was just trying to remember. I thought that special exception went with the land unless there was a discontinuance of use for two or three years, and then it expires, something like that, I forget. Three years?

Anyway, let's move on. There's no one here in opposition or in support of your application, so you have now closing remarks.

MS. LOPES: Thank you. On the basis of the

record then, I would ask that you permit the special exception, approve our application, issue a bench decision and a summary order today, only because this has been a significant hardship on my father. He moved in in April, and although he can make do, it would be better for him if he could really cook in a meaningful manner in his own apartment.

CHAIRPERSON REID: Okay, Board members? I'd move approval of this application. I think that the applicant has made her burden of proof that the granting of the application will not cause any adverse impact in regard to light, air, parking, traffic and the like. We've had no opposition. Office of Planning and the ANC has approved the application. I don't think it will impair the integrity or intent of the zoning regulations or zoning map. Is there a second?

COMMISSIONER MITTEN: Second.

CHAIRPERSON REID: All right, all in favor?

VICE CHAIRPERSON RENSHAW: Discussion.

CHAIRPERSON REID: Discussion?

VICE CHAIRPERSON RENSHAW: My only pause is the business that I brought up earlier, and that is the use of this space if the property is sold, that it conveys with the house as an accessory apartment. I just want to express my concern about it because we have problems in residential neighborhoods with accessory apartments. In this case, it is a family member who is utilizing the space, and there is a need for an

apartment for him in the home. Again, it's just what happens if the property is sold, which we hope does not happen because Ms. Lopes is with us, and we want to continue her as a neighbor.

COMMISSIONER MITTEN: Madame Chair, if I could just address that, I think they meet the standard for the special exception, notwithstanding who's actually occupying the accessory apartment. So, I don't think that should be a concern of the Board.

CHAIRPERSON REID: Okay, all in favor?

(Chorus of ayes.)

MS. LOPES: Thank you very much. So, is it approved as of today?

CHAIRPERSON REID: Yes, and your order will come in two to three weeks, but don't call. They will call and let you know.

MS. LOPES: Thank you very much.

CHAIRPERSON REID: But yes --

MS. SANSONE: Madame Chair?

CHAIRPERSON REID: I'm sorry, go ahead.

MS. SANSONE: The application actually is not approved until the written order is issued by the Board, and then it takes ten days for the effectiveness.

CHAIRPERSON REID: Okay. Well, we approved it, and then an order has to come out. As far as -- I think she

asked whether it approved, and it is approved today. Is that correct? But the order is issued in --

MS. SANSONE: Strictly speaking, it's not technically approved until the written order issues.

CHAIRPERSON REID: Okay, all right.

MS. LOPES: Thank you very much.

CHAIRPERSON REID: What did we do today? We took the vote today.

MS. LOPES: Thank you. We won't go out and buy the stove.

CHAIRPERSON REID: But the order itself will not go out for two to three weeks, and that's the official approval.

MS. LOPES: Thank you.

CHAIRPERSON REID: And then ten days after that, what?

MS SANSONE: Ten days after that, the written order becomes effective, which entitles the applicant to go get the certificate of occupancy or building permits or whatever she needs to do.

MEMBER HINTON: I have a question then for you. I was looking through -- you have electrical plans that were done to convert this space. Was the electricity not put in for the stove?

MS. LOPES: You know, I don't know. I can't say

off the top of my head. The electricity was put in for the whole basement. I don't know whether that outlet was put in or not. I assume it wasn't.

MEMBER HINTON: It sounds like it's separate wiring that would have to come in.

MEMBER GRIFFIS: No, I think what you're looking at in the plans is a reflected ceiling plan, which is just a lighting plan, not necessarily --

VICE CHAIRPERSON RENSHAW: Well, it says a stove outlet.

MS. LOPES: It has a stove on it.

VICE CHAIRPERSON RENSHAW: And then that was crossed off, and it was written delete.

MS. LOPES: Right, it was crossed of, delete, and if it wasn't approved, we would not have the contractor do it. Have I verified that? I can't say. I mean, you know, the instructions were follow the plans, follow the law, et cetera, and I assume they did, but I can't tell you without looking myself. I think the electrician would have to come back and re-install and we'd have to go to DCRA and get approval. I just don't want to say something that's inaccurate.

MEMBER HINTON: So you don't know?

MS. LOPES: I don't know. I assume not.

MEMBER HINTON: But you're anticipating having to go back to DCRA to get a permit for an electrician to do this

work?

MS. LOPES: Yes, we would have to.

VICE CHAIRPERSON RENSHAW: And does the fire department stipulate where you install the fire extinguisher?

MS. LOPES: No, it doesn't, but we've got several extinguishers already down there.

VICE CHAIRPERSON RENSHAW: All right.

CHAIRPERSON REID: Okay, any other questions? All right, then this will conclude the June 12 hearing of the Board of Zoning Adjustment. Thank you.

MS. LOPES: Thank you.

(Whereupon, the above-entitled matter was concluded at 3:33 p.m.)