

GOVERNMENT OF THE DISTRICT OF COLUMBIA

Board of Zoning Adjustment
441 4th Street, N.W.
Washington, D.C. 20001

PUBLIC MEETING AND PUBLIC HEARING
March 1, 2011
Start: 10:07am - End: 2:29pm

Second Floor Hearing Room, Suite 220 South
Washington, D.C. 20001

Board Members

Meridith Moldenhauer - Chairperson
Nicole Sorg - Vice Chairperson
Jeffery L. Hinkle - NCPC
Michael G. Turnbull - Architect
Greg Selfridge - Zoning Commission
Clifford Moy - Secretary
Beverley Bailey - Office of Zoning
Mary Nagelhout - Office of the Attorney General
John Nyarku - Office of Zoning

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

2 CHAIRPERSON MOLDENHAUER: This meeting
3 will please come to order good morning ladies and
4 gentleman. This is the March 1, 2011, Public
5 Meeting of the Board of Zoning Adjustments for
6 the District of Columbia. My name is Meredith
7 Moldenhauer, Chairperson, joining me today to my
8 left is the Vice Chairperson Nicole Sorg, Mayoral
9 Appointee, and to my right is Jeffrey Hinkle,
10 Representative of the National Capital Planning
11 Commission. Copies of today's meeting agenda are
12 available to you and are located to my left in
13 the wall bin near the door. We do not take any
14 public testimony at our meeting unless the Board
15 asks someone to come forward. Please be advised
16 this proceeding is being recorded by a court
17 reporter and is also being webcast live,
18 accordingly we must ask you to refrain from any
19 disturbing noises or actions in the hearing room.
20 Please turn off all cell phones and beepers at
21 this time. Mr. Secretary, do we have any
22 preliminary matters?

1 SECRETARY MOY: Good morning Madam Chair,
2 yes we do but Staff would suggest that we address
3 those preliminary matters when I call the case.

4 CHAIRPERSON MOLDENHAUER: Wonderful and I
5 think we're going to change around the agenda
6 slightly so I'll just look to you for which cases
7 we're going to hear first.

8 **Application No. 18172**

9 MR. MOY: Yes thank you Madam Chair, first
10 off good morning, good morning to the rest of the
11 Board Members, the first of five cases for
12 decision the first being Application No. 18172,
13 of BREOF 64 New York Avenue, REO LLC, pursuant to
14 11 DCMR 3104.1 for a special exception to reduce
15 by less than 25% the amount of required parking
16 for an existing office building under Section
17 2108, this is in the C-3-C District at premises
18 64 New York Avenue, NE, property is located in
19 (Square 669, Lot 854). If the Board will recall
20 on the 15th of February, the Board completed
21 public testimony, closed the record and scheduled
22 it's decision on March 1st, the Board requested

1 additional information to supplement the record
2 the first being ANC 5-C letter, these documents
3 Madam Chair are in your case folders, there are
4 two filings, one is from ANC 5-C, the ANC 5-C
5 letter rather, dated February 16, 2011,
6 identified as "Exhibit 30", the other and last
7 filing from the Applicant is a resume of Osborne
8 George, Identified as "Exhibit 31". The Board is
9 to act on the merits of the special exception
10 relief, and that completes the Staff's briefing
11 Madam Chair.

12 CHAIRPERSON MOLDENHAUER: Thank you very
13 much Mr. Moy and I'll start us off with this
14 case, I think this case is fairly straight
15 forward, we heard I think ample testimony at the
16 hearing regarding the requirement for parking,
17 the current existing conditions. I think that we
18 had some questions that were not in the record
19 initially of Mr. Osborne George and we have
20 received his resume to satisfy our requirements
21 for making him an expert. In my view I think all
22 my questions were answered in regards to the fact

1 that they had assessed the building as it
2 currently existed and that the potential
3 reduction in parking for putting the new parking
4 space requirements on the site versus having them
5 on adjoining property would be sufficient but not
6 create any substantial negative impact to the
7 community and I think that, that being said we
8 also then left the record open for a resolution
9 from the ANC which we have now in our records,
10 "Exhibit No. 30", which indicates that the ANC
11 had a meeting on February 15th, and that they
12 voted at a duly noticed meeting with a quorum
13 present they voted to support the Application so
14 that would receive great weight as well That
15 being said I would definitely be for granting
16 this application, they satisfied the standards,
17 the submissions I think are, I'll incorporate
18 them for our argument and our analysis. Do any
19 Board Members have any additional deliberation
20 they'd like to add?

21 MR. HINKLE: No Madam Chair, I think your
22 analysis was pretty thorough I have no additional

1 discussion on this.

2 CHAIRPERSON MOLDENHAUER: Okay, then if
3 there's no further discussion I'll submit a
4 motion to approve Application No. 18172 under
5 Section 2108 to reduce the amount of required off
6 street parking from 180 to 150 for an existing
7 office building located at 64 New York Avenue,
8 N.E. motion has been made is there a second?

9 MR. HINKLE: Second.

10 CHAIRPERSON MOLDENHAUER: Motion has been
11 made and seconded all those in favor say aye,
12 aye.

13 CHORUS: Aye.

14 MR. MOY: Madam Chair before I give
15 final vote, we do have an absentee vote from a
16 participating member who is Anthony Hood and his
17 absentee vote is to prove with such conditions
18 that the Board may impose so that would give a
19 final vote of 3 to 0 to 2, this on the motion of
20 the Chairperson Ms. Moldenhauer to approve the
21 special exception relief under Section 2108,
22 seconded by Mr. Hinkle and of course in support

1 of the motion Mr. Hood, no other Board Members
2 participating so again the final vote is 3 to 0
3 to 2 to approve.

4 CHAIRPERSON MOLDENHAUER: Thank you very
5 much Mr. Moy we'll have a summary order for that
6 and waive our requirements.

7 MR. MOY: Thank you Madam Chair.

8 **Application No. 17860**

9 MR. MOY: The next action of the Board is
10 the Applicants motion for a two-year extension of
11 the validity of an existing order to Application
12 No. 17860 of Jemal's KFC, LLC, pursuant to
13 Section 3130 of the Zoning Regulations. The
14 original Application was approved on January 6,
15 2009, and that application was pursuant to 11
16 DCMR 3101.2 for a variance from floor area ratio
17 requirements under Section 771, the variance from
18 the rear yard requirements under Section 774, and
19 a variance from the parking requirements under
20 (Subsection 2101.1) to permit the development of
21 a two-story commercial building in the C-2-A
22 District at premises 1442 Pennsylvania Avenue,

1 S.E. property located in (Square 1065-NE, Lot
2 49). The Board convened this application on
3 February 8, 2011, after deliberation the Board
4 again here requested additional information.
5 These two filings are in your case folders Madam
6 Chair, the first is an ANC 6-B letter dated
7 February 9, 2011, identified as "Exhibit 44" and
8 the Applicant made it's filing with the
9 supporting documentation as requested by the
10 Board identified in your case folders as "Exhibit
11 45". The Board is to act on the merits of the
12 request to extend the life of the order 17860
13 which would be 17860-B in this case, pursuant to
14 Section 3130 that completes the Staff's briefing
15 Madam Chair.

16 CHAIRPERSON MOLDENHAUER: Thank you very
17 much Mr. Moy and this case as you indicated we
18 had left the record open for some additional
19 documentation which we received. One was the
20 letter from the ANC determining where they stand
21 on this request for a two year extension and the
22 other one was for some additional documentation

1 to satisfy the substantial evidence standard
2 under Section 3130 and we've received both of
3 those requested documentation, one we've received
4 "Exhibit 44" which is a letter from the ANC
5 satisfying all of our requirements indicating
6 that at a duly noticed meeting with a quorum
7 present they voted 10 to 0 unanimously to support
8 the application. We also then received "Exhibit
9 46 and 47", 47 is a letter from the Washington
10 Savings Bank indicating that KFC property had
11 attempted to obtain financing but was unable to
12 do so incurring some seriously delays. That
13 being said, I think that, that along with the
14 prior submissions does satisfy our standards and
15 our higher level of requirements in regards to
16 reviewing these two year extensions. I see no
17 problem with granting this two year extension
18 now. I'll open up the floor for any additional
19 deliberation.

20 MS. SORG: Thank you Madam Chair, I have
21 nothing to add and I would support a motion.

22 CHAIRPERSON MOLDENHAUER: Okay motion to

1 approve Application No. 1786C-B pursuant to
2 Section 3130 of the Zoning Regulation to provide
3 a two year extension to a prior approval
4 application and a motion has been made is there a
5 second?

6 MS. SORG: Second.

7 CHAIRPERSON MOLDENHAUER: Motion has been
8 made and seconded, all those in favor say aye,
9 aye.

10 CHORUS: Aye.

11 MR. MOY: Staff would record a vote as 3
12 to 0 to 2 this on the motion of the Chairperson
13 Ms. Moldenhauer to approve the request for
14 extending the life of the order seconded by Ms.
15 Sorg in support of the motion Mr. Hinkle, no
16 other Board Members participating, again the
17 final vote 3 to 0 to 2 to approve.

18 CHAIRPERSON MOLDENHAUER: And we'll
19 request that we waive our requirements and ask
20 for a summary order to be issued, thank you.

21 MR. MOY: Very good, thank you Madam
22 Chair.

1 **Application No. 18079-A**

2 MR. MOY: The next action of the Board is
3 to address the Applicants motion for modification
4 of condition No. 7 of Order No. 18079 of Church
5 of the Pilgrims; pursuant to Section 3129 of the
6 Zoning Regulations. The original application was
7 approved on July 13, 2010, pursuant to 11 DCMR
8 3104.1 for a special exception for a child
9 development center, this is for 50 children, 12
10 staff under Section 205 in the R-3 District at
11 premises 2201 P Street, N.W., (Square 2510, Lot
12 827). The Applicant filed their request for
13 modification under condition no. 7 on January 7,
14 2011, that filing is identified in your case
15 folders as "Exhibit 39", the Applicant
16 subsequently filed a supplemental filing with
17 further rationale which is in your case folders
18 identified as "Exhibit 43". Finally the last
19 filing in your case folder is a supplemental
20 report, Staff report from the Office of Planning
21 dated February 22, 2011, that exhibit is
22 identified as "Exhibit 44", the Board is to act

1 on the merits of the Applicants request for a
2 modification of Condition No. 7; pursuant to the
3 criteria under Section 3129.5 and 3129.6 and that
4 completes the Staff's briefing Madam Chair.

5 CHAIRPERSON MOLDENHAUER: Thank you very
6 much Mr. Moy and to start us off in deliberation
7 I'm going to turn to Ms. Sorg.

8 MS. SORG: Thank you Madam Chair, I think
9 that given the information that we've received in
10 the application for minor modification I can be
11 in support of this motion. Basically the
12 original condition that was placed on the
13 approval was proffered by the Applicant
14 themselves and the Condition No. 7 reads, the
15 Applicant shall provide traffic monitoring for
16 pick up and drop off of the children having one
17 monitor on the outside and one on the inside of
18 the building and a traffic assistant which leaves
19 them to require three people monitoring their
20 pick up and drop off activities at the school.
21 Based on the filings that the secretary indicated
22 the Applicant notes that the church where the

1 school is located has increased the number of
2 parking spaces dedicated to be available to
3 parents during their drop off, I think, from 10
4 to 14 spaces. Also, they note that a greater
5 percentage of the children are walking and the
6 congested scenario that they had anticipated has
7 really not materialized. Additionally in OP's
8 supplementary report they of course, they
9 recommend approval and also note that in
10 discussions with DDOT they indicated that they
11 also don't see the need for additional
12 monitoring, we've received some language for a
13 possible revision to that condition which
14 requires the Applicant to identify one staff
15 member to coordinate and monitor the pick up and
16 drop off efforts and I believe that would be
17 sufficient and would be in support of the
18 Application.

19 CHAIRPERSON MOLDENHAUER: Thank you Ms.
20 Sorg I think that summarizes the issues. I do
21 agree that permitting such a modification I don't
22 think will encumber the intent of our initial

1 condition. I think that initially we had 3
2 individuals that would potentially be assisting
3 the pick up and drop off, I think by still
4 requiring at least one school employee to handle
5 that we are still insuring that that traffic pick
6 up and drop off is adequately monitored and I
7 think they have indicated that based on the
8 current precedent and based on the current flow
9 like they indicated based on people walking more,
10 having more parking spaces, based on our OP
11 report which we have and DDOT's recommendation I
12 see no reason why we could not grant this
13 modification. That being said is there any
14 further deliberation. Is there a motion?

15 MS. MONROE: Can I ask one question are
16 you putting a new condition in for one monitor?

17 MS. SORG: Yes.

18 CHAIRPERSON MOLDENHAUER: Yes I think Ms.
19 Sorg's going to do that right now in her motion.

20 MS. SORG: Thank you Madam Chair, I would
21 submit a motion to approve the Application for
22 minor modification for modification of condition

1 no. 7 of Order No. 18079-A for the Church of the
2 Pilgrims to place the language in condition no. 7
3 and should read that the Applicant shall
4 designate a school employee to be an onsite
5 traffic monitoring coordinator to ensure the safe
6 pick up and drop off of children and to resolve
7 any traffic flow issues and concerns as may be
8 appropriate.

9 CHAIRPERSON MOLDENHAUER: Motion has been
10 made is there a second? I'll second. The motion
11 has been made and seconded, all those in favor
12 say aye, aye.

13 CHORUS: Aye.

14 MR. MOY: Before I give a final vote
15 Madam Chair we have another participant on this
16 Application who is Mr. Anthony Hood, Chairman
17 Hood, and his absentee ballot vote is to approve
18 with such conditions as the Board may impose. So
19 that would give a final vote of 3 to 0 to 2, this
20 on the motion of the Vice Chair Ms. Sorg to
21 approve the request for modifying condition no. 7
22 as she has stated to her motion, seconded by the

1 Chairperson Ms. Moldenhauer and of course in
2 support of the motion Mr. Hood, no other Board
3 Members participating, so again the final vote is
4 3 to 0 to approve.

5 CHAIRPERSON MOLDENHAUER: Thank you very
6 much Mr. Moy and we would like to waive any
7 requirements and have a summary order issued.

8 MR. MOY: Very good, thank you Madam
9 Chair.

10 CHAIRPERSON MOLDENHAUER: Thank you.

11 **Application No. 18090**

12 MR. MOY: The next application for
13 deliberation and decision is Application No.
14 18090 this of M. Sikder; pursuant to 11 DCMR
15 3103.2 for a variance from the lot area and lot
16 width requirements under Section 401 a variance
17 from the lot occupancy requirements under Section
18 403 and a variance from the side yard
19 requirements under Section 405 to allow the
20 construction of new one family detached dwelling
21 in the R-1-B District at premises 3158 Monroe
22 Street, N.E., (Square 4309, Lot 26). On December

1 1, 2010, a procedural order was approved by the
2 Board on November 16, 2010, and this procedural
3 order was issued to the Applicant and parties to
4 the case. In addition in the procedural order it
5 set a decision date of March 1, 2011, also
6 setting submission deadlines with request for
7 specific information. In your case folders Madam
8 Chair there are three filings, first there is a
9 filing from the Applicant dated January 31, 2011,
10 identified as "Exhibit 49" this filing should be
11 addressed in preliminary matters since the
12 filings untimely the deadline for submission was
13 January 28, 2011. ANC 5-A submitted its post
14 hearing document identified as "Exhibit 48", ANC
15 5-A also submitted a response dated February 10,
16 2011 and that document is identified as "Exhibit
17 50". The Board is to act on the Applicant's
18 request for variance relief from Sections 401 and
19 403 and 405, and that completes the Staff's
20 briefing Madam Chair.

21 CHAIRPERSON MOLDENHAUER: Thank you very
22 much Mr. Moy we'll get started in a moment.

1 Thank you Mr. Moy we have the submissions we had
2 one preliminary issue is that we have to permit
3 the late filing of the submission which was filed
4 on January 31st, when the deadline was January
5 28th, based on that submission there was an email
6 that was received indicating that due to the snow
7 that submission was not going to be able to be
8 submitted in time and I have a copy of that email
9 submission from the Office of Zoning, so given
10 that I think that there's adequate argument made
11 to permit a late filing of just a few days. We
12 also then have the filing from the ANC 5-A-11,
13 and then their reply which is also going to be
14 part of our record for this additional
15 deliberation. Just to kind of summarize this is
16 a case where we had previously gone through a
17 full deliberation and discussed the matters of
18 this case in depth, we had previously come to a
19 2-2 vote, a 2-2 vote indicates that we cannot
20 make a decision because we require a majority
21 decision of 3 at least to take any action, that
22 being said we had put out a procedural order and

1 as indicated we have submissions from both sides
2 that are applied, also from the ANC. Based on
3 those we are going to see if we can't reach some
4 sort of deliberation or decision today following
5 these additional submissions. I've reviewed all
6 3 additional submissions and previously I had
7 felt that the Applicant had satisfied the
8 standard for variance standard in this case.
9 This is a challenging case where there is
10 extensive opposition from the community, and so
11 the question then in my view looking at the
12 standard it is first of all does he satisfy the
13 first prong of the standard and for reasons of
14 exceptional narrowness, shallowness or shape of a
15 particular piece of property at the time of the
16 original adoption of the Zoning Regs and I think
17 this property is obviously, I think that's
18 probably the major merits and major questions of
19 this case is it too exception, is it too narrow,
20 but I do think that it does satisfy that first
21 standard, I think that the second standard is the
22 question of does that exceptional circumstance or

1 situation then give rise to practical difficulty
2 and I think that in this case it does, because of
3 the shape and the size of the lot it creates a
4 practical difficulty in satisfying every single
5 one of the Zoning Requirements as they would be
6 if you were to have a standard lot that would be
7 created post 1958. Then the last question is, I
8 think, really where, kind of I think, my
9 determination I think really lies is, you know,
10 does this substantially, and the question is can
11 this relief be granted without substantial
12 detriment to the public good and without
13 substantially impairing the intent or purpose and
14 integrity of the zone plan. That standard I
15 think is a question where we have to look and we
16 have to look at the question of, you know, does
17 the community present strong arguments that this
18 is going to substantially create substantial
19 detriment to the public good and in regards to
20 the questions of is it substantially impairing
21 the intent or purpose of the zone plan we look
22 and give deference to the Office of Planning and

1 their report and their recommendation to approve
2 but we also consider the community's input and
3 the great weight to the ANC that we give in
4 regards to their analysis and their
5 interpretation of whether there is a substantial
6 impairment to the integrity of the Zone Plan or
7 the Zoning Regulations within their community
8 because obviously they also are experts in their
9 own community and their own environment. That
10 being said my question then is whether there is a
11 substantial detriment and I think that a
12 substantial detriment is a very high standard
13 and here where we are looking and I think the
14 most recent submission from the Applicant in
15 regards to his diagrams and I think, his specs
16 and everything have shown that in regards to the
17 fact that the property is attempting to appear as
18 much like the other properties on the block, I
19 think that the public good while obviously you
20 have a lot of arguments on the other side from
21 the ANC will be improved and enhanced by having
22 something built rather than having a vacant lot.

1 I know that we have arguments from the ANC both
2 in our "Exhibit No. 48 and 50", you know arguing
3 that this Application should not be granted, that
4 this is two extreme of a relief, that the
5 Applicant has not satisfied his standard in
6 regards to satisfying or providing architectural
7 drawings which meet the visual eye or satisfy
8 some of the esthetics or scales of the community.
9 That being said I think that it does and I think
10 that even if there is a potential distinction,
11 obviously there is going to be a distinction
12 between each individual home, every home is not
13 going to be the same. I think that in general
14 that there is no substantial detriment, that
15 being said I, my opinion from our prior
16 deliberation I'll incorporate I think probably a
17 more lengthily deliberation that I had previously
18 into my argument because I'm giving more a
19 truncated statement now. I'll incorporate that
20 as my opinion has not changed in this matter
21 based on the additional submissions. That being
22 said I'll look to other Board Members to see

1 where they stand, if their opinions have either
2 changed or are still the same.

3 MR. HINKLE: Well thank you Madam Chair,
4 I'm pretty much in agreement with your analysis
5 here, you know my concern the last time was
6 regarding the third prong and whether there was
7 detriment to the public good and we did hear a
8 lot of testimony from the neighborhood in that
9 regard. Though we specifically sent some
10 questions back to the ANC 5-A and those questions
11 regarded the value of the homes and whether this
12 development would lower the values of the homes
13 in the neighborhood or at least the street as
14 well as how it might impact a stream and the
15 trees and there were some arguments in the
16 supplemental information that we did receive but
17 I wasn't necessarily persuaded that the value of
18 the homes would be negatively effected by this
19 new development. Likewise I was looking a little
20 more for specific evidence as to how an
21 underground stream might be effected by this
22 property and we didn't necessarily receive that,

1 so I'm pretty much falling in the same place I
2 was the last we reviewed this project and that is
3 I do think the Applicant met all three prongs of
4 the variance test and I am in support of this
5 proposal.

6 MS. SORG: Thank you Madam Chair and Mr.
7 Hinkle for your deliberations. You know the last
8 time that we visited this case in deliberations I
9 came down on the other side of the variance test
10 primarily for the reason that I didn't think that
11 the Applicant had supplied enough information and
12 this goes to your comments Madam Chair, you know,
13 clearly the property was unique you know that's
14 not something that we could have gotten around,
15 but it was really the second and the third prong
16 that I had trouble seeing that the Applicant had
17 given us enough information to, for me, to really
18 get behind an understanding of what the hardship
19 was and also, you know, how to get by the third
20 prong and the effect on the Zone Plan, etc.
21 Given what the Applicant submitted in response to
22 our procedural orders while I still am very

1 understanding of the frustration of the ANC and
2 the neighborhood and their concerns for their
3 public space in this neighborhood as well as for
4 their property values I, the Applicant did give
5 us what we asked for and in this case I think
6 that the comps that he provided as well as, you
7 know, the submitted or describe efforts of the
8 Applicant to purchase the neighboring property
9 and the indication that, that purchase seemed to
10 be in keeping with the market values of similar
11 vacant properties in the area based on the per
12 square foot calculations I think puts me over the
13 edge on the second prong and the practical
14 difficulty that's created by not being able to
15 expand on this, you know, unique vacant lot. So
16 additionally I think that the renderings that
17 were submitted as well as the tabulation of the
18 construction costs for the project have also
19 gotten me over the hurdle of the third prong I
20 think that the perspectives that were submitted
21 have sort of elated my concerns regarding this
22 scale and placement of the house, you know, and

1 it's relation to the neighboring property and the
2 parkland that's behind it. So I think that given
3 this additional information while I, you know,
4 definitely feel strongly the concerns of the
5 community and I think really would hope that this
6 Applicant would work closely with them to help to
7 sway some of the frustration between the two
8 parties that's being felt. I think that I can,
9 I'm ready at this time to support the
10 Application.

11 CHAIRPERSON MOLDENHAUER: Is there any
12 further deliberation? Seeing none, I just want
13 to make a comment on the record, I think that the
14 same thing maybe I had said before but I'm just
15 going to say it again, I think that in being on
16 the Board we have to apply this three prong test
17 and I think that there was a lot of arguments
18 from the ANC that were factually accurate that in
19 regards to individuals buying significantly
20 unique properties and then being able to
21 potentially satisfy the first prong and then
22 having sufficient arguments to satisfy the second

1 and third prong, if there are concerns about
2 that, that's where the Zoning Commission and them
3 doing a rewrite if maybe there are some
4 additional factors that individuals feel that
5 need to be considered in these types of
6 standards, that should be then potentially
7 considered or presented to the Zoning Commission
8 in regards to the rewrite, but right now in my
9 view, you know, my hands are tied in applying the
10 regulations and the three prong test as it is
11 written and so based on that, you know, again I
12 fell as though the Applicant has met it's burden
13 and has satisfied the three prong test, but if
14 there are concerns in that regard from the
15 community I think that that's potentially another
16 avenue to go in regards to looking at the rewrite
17 and looking at other ways in which the BZA would
18 maybe review certain cases or different standards
19 that may be applied. That being said I'll submit
20 a motion, a motion to approve Application No.
21 18090 pursuant to 11 DCMR 3133.2 for a variance
22 from the lot area and lot width requirement under

1 Section 401 and a variance from the lot occupancy
2 requirement under Section 403, and a variance
3 from the side yard requirement under 405 to allow
4 the construction of a new one family detached
5 dwelling in the R-1-B District at 3158 Monroe
6 Street, N.E., a motion has been made is there a
7 second?

8 MR. HINKLE: Second.

9 CHAIRPERSON MOLDENHAUER: A motion has
10 been made and seconded, all those in favor say
11 aye, aye.

12 CHORUS: Aye.

13 MR. MOY: Before Staff gives a final vote
14 Madam Chair we do have another participating
15 member on this Application and I have an absentee
16 vote from Conrad Schlater and his vote is to
17 approve the Application with such conditions as
18 the Board may impose. So that would give a final
19 vote of 4 to 0 to 1, this on the motion of
20 Chairperson Moldenhauer to approve the
21 Application for the variance relief requested,
22 seconded by Mr. Hinkle also in support of this

1 motion Ms. Sorg, no other Board Members
2 participating, so again the final vote is 4 to 0
3 to 1 to approve.

4 **Appeal No. 18152**

5 MR. MOY: The next and last action before
6 the Board and it's Public Meeting this morning
7 Madam Chair is the Appeal No. 18152 of Advisory
8 Neighborhood Commission 1-D; pursuant to 11 DCMR
9 3100 and 3101 from an August 17, 2010 decision by
10 the Department of Consumer Regulatory Affairs to
11 grant a building permit allowing the renovation
12 and expansion of the existing Mtn. Pleasant
13 library in the R-5 District at premises 3160 16th
14 Street, N.W. property is in (Square 2595, Lot
15 830). As the Board will recall on February 1,
16 2011, the Board completed the public testimony,
17 closed the record and scheduled this decision on
18 March 1st, the Board requested additional
19 information to supplement the record from the
20 Appellant and parties as well as providing the
21 record to be open to receive responses. There
22 are three filings in your case folders Madam

1 Chair, the first two filings are from the
2 intervener, the first of which is dated February
3 15, 2011, identified as "Exhibit 43", the
4 interveners response filing is dated February 22,
5 2011, identified as "Exhibit 44". The third
6 filing is from the Appellee DCRA, that document
7 is dated February 15, 2011, identified as
8 "Exhibit 42". Finally Madam Chair we have a
9 preliminary matter in that the Appellant made
10 it's filing yesterday, Monday February 28, 2011,
11 this deadline for that filing would have been
12 February 15, 2011, which I have which has not
13 been distributed to the Board, other than that
14 the Board is to act on the merits of the ANC 1-C-
15 D's appeal of the DCRA's decision to issue a
16 building permit, the merits of that appeal, and
17 that completes the Staff's briefing Madam Chair.

18 CHAIRPERSON MOLDENHAUER: Thank you very
19 much Mr. Moy and has you indicated we have just
20 one preliminary matter which was that document
21 that you indicated was received yesterday and
22 that we have not received as you stated it's

1 consider late, we had only left the record open
2 for a specific period of time and specific
3 documentation if an individual wanted to submit
4 additional arguments they either had to get it in
5 on time or to ask for relief, I don't see either
6 and thus I am not inclined to waive any or our
7 requirements. We give certain deadlines, we need
8 to be able to receive documentation sufficient in
9 advance of this deliberation especially because
10 like this it takes all the Board Members a lot of
11 time to review and to make sure that we have had
12 adequate time to review this so that we can
13 adequately deliberate on these cases and to
14 receive something after our deadline it cannot be
15 admitted into the record because it would not
16 provide us adequate time to review nor is it fair
17 we closed the record except for specific
18 submissions as of specific dates. That being
19 said that document will not be received we have
20 not reviewed it and it will be sent back to the
21 individual who submitted it. That's our only
22 preliminary matter now the question is we just

1 into deliberation. This case has, I'm not going
2 to go into all the details but I'm just going to
3 in general state that we had previously made
4 multiple procedural decisions on this case in the
5 record, one obviously finalizing who specifically
6 was the Applicant, also narrowing the scope of
7 the jurisdiction of the Board and those decisions
8 have already been made but what we had done is we
9 had narrowed the scope of this appeal to
10 specifically just four issues being rear yard,
11 courts, parking and loading. So those issues are
12 the ones that we will deliberate on today, all
13 other issues as we previously determined are not
14 relevant and as we go into our deliberation I'll
15 just make a general comment as well, there were
16 aspects, I think, a lot of aspects of the
17 testimony from the Applicant that we permitted
18 into the record but that may not have been
19 relevant to those specific issues in regards to
20 the zoning aspects of the case and so that will
21 be something that while we considered it, we
22 considered it based on it's relevancy and I think

1 that not a lot of it will be aspects of how we
2 make our decision or how we deliberate this case,
3 at least in my view, I don't know about the other
4 Board Members. That being said I'm going to jump
5 through some of the other matters in regards to
6 the court, the parking and the loading and then I
7 think that our major discussion today is going to
8 be a question of the rear yard at least in my
9 view, other Board Members can maybe chime in on
10 that but the court, the Appellant's argument was
11 that the court measurement should have been a
12 narrower portion of the side yard in regards to
13 the fact that it was not a level plane but that
14 the ZA in his testimony indicated that that
15 entire section would have been calculated and
16 thus the court would have been substantial and
17 satisfied the requirement. I was not persuaded
18 at all by the Appellant's argument in regards to
19 their, I guess, nuance view of a plane and I
20 think that I would feel that the ZA's
21 interpretation was more rational and I think
22 we've seen a lot of cases where the plane does

1 not have to specifically linear but where your
2 measuring on a sphere where you have a court
3 which may be elevated in between two portions of
4 a building and I think that we give deference to
5 the ZA and I felt his analysis was more
6 persuasive and that there was no real expert
7 testimony presented by the Appellant in regards
8 to how they came to these conclusions in regards
9 to that they were arguing that there was really
10 no substantial support to their argument in that
11 regard. Their parking argument the property was
12 grandfathered, there was really no parking
13 requirement, there was no prior parking ever
14 really legally provided, there was testimony that
15 cars had been parked on the property from time to
16 time but just because people park in a place does
17 not make legal parking, and so if there was never
18 legal parking previously created then there would
19 be no requirement if the property is
20 grandfathered to have more parking in the future,
21 a new building or revision or renovation occurs.
22 That being said, again I found no persuasive

1 argument made by the Appellant in regards to the
2 parking requirement, and I would find in favor of
3 the District in that regard. The loading
4 requirement again there was really nothing
5 articulated other than the facts that how will
6 they load supplies, how will they do this? Just
7 because there will be a need to load does not
8 mean that there is a zoning requirement to have
9 loading, that is based on specific square
10 footage, this property does not require loading
11 and because it's not required thus it does not
12 need to be provided in this case as it is, they
13 obviously will have to create other means of
14 loading and doing that as more of an operational
15 perspective than something that we as a Board can
16 review or analyze, so those three issues, you
17 know, I think I can easily dismiss the
18 Appellant's arguments and deny those, that would
19 be my position, obviously I'll bring it to other
20 Board Members. My major issue is then going to
21 the rear yard and I think that's going to take a
22 lot more deliberation, I still think I'm going to

1 look to other Board Members to see if they might
2 want to start us off on that argument or see if
3 they have any additional deliberation on any of
4 the above three issues.

5 MS. SORG: Thank you Madam Chair just in
6 regards to the first three issues that you
7 brought up I agree that I think we can, at least
8 in my opinion, you know, really forgo any
9 discussion of those and go straight to rear yard.

10 MR. TURNBULL: I would concur with that
11 Madam Chair, and if you'd like I'll start us off.

12 CHAIRPERSON MOLDENHAUER: Okay, thank
13 you.

14 MR. TURNBULL: Thank you, Madam Chair I
15 really do feel that your going through rereading
16 the testimony and the record that the ZA did err
17 in deciding that the northern side of the lot is
18 the rear yard, and I'll go through some of my
19 rationale on how I'm looking at that and what I
20 looked at when I went back and read the
21 testimony. I think it's more of a definition of
22 terms and how you apply those terms and I think

1 the recognition of what is accepted in planning
2 or even for the common citizen to look at and let
3 me start us off, in the testimony and I'm looking
4 at page 245 Mr. LeGrant had been questioned by
5 Mr. Otten and the response from Mr. LeGrant was
6 well I think I noted in my letter of March 2009 I
7 made a finding as to what that the rear lot align
8 was that line opposite the front, continuing on
9 page 247, Mr. LeGrant was talking, I think I had
10 posed a question to him about how he had actually
11 looked at it and why he decided that particular
12 portion of the lot was the rear and he said if
13 you look at the opposite situation where 16th has
14 a line that is parallel and that if you switch
15 the frontages to Lamont my determination was,
16 well then you would also switch what line would
17 be the rear as well, that was my analysis which I
18 think I had asked the question that since this
19 building is symmetrical, bilaterally symmetry
20 around a central access, if you determine if you
21 pick one side and the owner has the option to
22 pick either side, I was trying to get at the

1 reasoning for what would be the rear yard or the
2 rear building if you looked at it one way and the
3 other. I was hoping to find some kind of a
4 similarity or consensus as to how he approached
5 the situation, that if on 16th Street he went back
6 and if I'm reading what this testimony was, he
7 picked a line that was parallel at the back of
8 the building on 16th Street and that would be the
9 rear, but when he went to Lamont he said if you
10 switch frontages to Lamont my determination was,
11 well then, you would also switch what line would
12 be the rear as well and that doesn't make sense,
13 you still approach the problem the same way, you
14 would approach, again these are not parallel
15 lines to each other, the front either Lamont or
16 16th, but the analysis should be fairly similar
17 that if your going to go to Lamont and you pick
18 the opposite side, it should be the same way as
19 what you did on 16th Street, in theory, again this
20 is very theoretical, but if you go to Lamont and
21 you pick Lamont he did not pick the opposite
22 side, and I think the key word is opposite, what

1 do you mean by, what is the word opposite, and
2 again we don't have a definition of the word
3 opposite in our Zoning Regs but you have to, if
4 you look at the common accepted definition
5 whether you go to Webster's, Merriam's, you go to
6 any of the online dictionaries you'll find a
7 fairly typical definition which will say
8 something to the effect like, and I'm quoting
9 here from answers.com the American Heritage
10 Dictionary; "facing the other way, placed or
11 located directly across from something else or
12 from each other, opposite sides of a building".
13 Reading again; "placed directly across from
14 something else or from each other". "Facing the
15 other way, moving or tending away". The feeling
16 is that this would be if you turn or if you're at
17 the front of the building and you turn around you
18 should be looking right back at the rear of the
19 building, but Mr. LeGrant's analysis for picking
20 the north side he says that, "he could make a
21 determination to go on a 45 degree angle and say
22 that's the rear of the building", I think that

1 goes beyond a rational interpretation of what
2 most people would expect the ZA to do when you
3 look at the opposite side. I think that by
4 veering off of a definition of the opposite side,
5 I need a drink of water, Mr. LeGrant has a
6 Masters Degree in Planning from Berkley
7 University, very familiar with planning terms and
8 I think the accepted, you get into what he's
9 looking at, he's looking at the site, this is a
10 particular site, it's different, it's a corner
11 lot and there are many different kinds of corner
12 lots, there's corner lots that are at 135 degree,
13 45 degrees, 90 degrees, so they're all different
14 and you have to look at each of these different,
15 you can't simply say it's a corner lot so I can
16 do this and I can do that, they're all going to
17 be different. But if you look at planning terms
18 from New York City or Chicago and I look at rear
19 lot line in New York any lot line that is
20 generally parallel to a street line bounding the
21 zoning lot and does not intersect a street line.
22 In Chicago; the boundary opposite the front of

1 the lot is here and defined or that boundary most
2 nearby parallel to the front of the lot. I guess
3 what troubles me on some of these things is
4 there's accepted definitions and terms that
5 planners use and that the common individual looks
6 at when they look at opposite and to me opposite
7 is directly opposite, not 25 degrees off to one
8 side, 30 degrees, 15 degrees, 40 degrees, it's
9 directly opposite, it would be, you would turn
10 directly around and you would be facing the
11 opposite side, opposite sides of the table; you
12 are directly across from me. Opposite, if you
13 have opposite sides, you're on the side which is
14 directly opposite my side of the table. Going
15 on, I think what's troubling also, and I think
16 Madam Chair you had even asked the question about
17 looking at methodology and understanding your
18 methodology and I believe Mr. LeGrant replied, he
19 talks about; "so you have the adjacent lots, with
20 residential uses that would be one of those
21 properties are adjacent properties next to would
22 be impacted by the addition, this all frankly was

1 the library's plan to maximize the size of the
2 area for the addition, that area would, that
3 ultimately was proposed and improved by my office
4 to build the line gave an area on which the
5 addition could be better accommodated". Reading
6 into that I have a feeling that there was more of
7 an accommodation made to the owner rather than a
8 direct interpretation or making a judgment as to
9 what was the opposite side. Another instance in
10 the testimony Mr. Surabian had been asking him
11 questions, he says; "sure, so in response to the
12 request of designating Lamont Street as the front
13 of the lot being a quarter lot then crucial of
14 the analysis is the lot line opposite the front
15 to determine what rear lot line is, so if this is
16 Lamont, I concluded in my letter I think it's
17 point number 6 that this line would be the rear
18 lot line, and I believe he's referring to the
19 north lot line, it doesn't say in this testimony.

20 I may change my... I believe its south...

21 CHAIRPERSON MOLDENHAUER: I believe it is
22 south, south is what is currently considered the

1 rear by the Zoning Administrator and west is the
2 Appellant.

3 MR. TURNBULL: You know what I meant,
4 right?

5 CHAIRPERSON MOLDENHAUER: Yeah, but I
6 appreciate that correction on the record, in all
7 we're talking about the same thing.

8 MR. HINKLE: Mr. LeGrant, well because it
9 follows, once you designate the front of the lot
10 and the side opposite becomes the rear that
11 derives all the placement of what is deemed side
12 lot, rear lot line, rear yard resulted from the
13 applicable side yard so once you deem Lamont as
14 the front the side opposite is the rear, rear lot
15 line, this then becomes a rear yard and although
16 it doesn't show here the addition, any
17 construction, and then he goes on talking about
18 some other issues. Further on he says; "well the
19 code doesn't give you any, Mr. Surabian asked
20 him; "you determined in using your determination
21 of which end was the opposite how did you reach
22 that, the opposite"? Mr. LeGrant replied; "well

1 the code doesn't give any guidance on this so
2 when looking at a, once you've determined the
3 front you have to look at what would be the rear
4 lot line, the standard use is opposite of that,
5 is it arguable that this line here is the
6 opposite, this as well as this, I think it's a
7 judgment call and the judgment that I made was
8 that this lot here is in fact opposite the lot
9 frontage", and I think this is the key, he made a
10 judgment call but I think this is where he erred
11 I don't think when the interpretation of opposite
12 you can simply turn around from the front and
13 look and cover a wide range, I think for people
14 in the District to be able to have consistency in
15 the Zoning Administrator and how he makes his
16 decisions, I think opposite is going to be
17 directly across, straight back from where your
18 standing would be the definition of that, and
19 that is totally opposite of what he had done. I
20 think, yeah it's a judgment but I don't think
21 that, that is a rational judgment. I think
22 looking at the site if you look at the aerial

1 view of the existing site and you look at the
2 front your actually only, if you make a
3 determination that next to the one apartment
4 building is going to be the rear you've deviated
5 at like 15 or 20% and said, there that's my rear
6 yard instead of saying not that's the rear yard,
7 and I think that's a stretch, I can't accept
8 that, to me that's, I don't know whether the
9 program was already done and he had to chose this
10 site and he said well the owner wants to build
11 there so I'm going to make this a side yard, it
12 doesn't follow, there is no logic that A plus B
13 equal C or in this case he wants to make it F. I
14 just can't see that in looking at the determines
15 and how he analyze this that Mr. LeGrant could
16 say that you don't go straight back to get to the
17 rear of the building that you go off only 20
18 degrees or whatever and you can pick, but as the
19 ANC had said in their testimony has traditionally
20 been looked at as side yards and that the rear
21 yard is traditionally at the back of the
22 building, now that's not covered, again if that's

1 not relevant in once sense if once you determine
2 what's the front of the building. I think that,
3 I just can't see how he could make that
4 determination and do that. The Applicant asked
5 him several times, there was one point; let me
6 find my note here. Mr. Otten had been
7 questioning and he had talked about at one point
8 in his testimony about shifting frontages the
9 focus is on the building itself; "the rear yard
10 depends upon the rear line of the building". So
11 the question I ask is where is the rear line of t
12 his building? And to Mr. Otten it was obviously
13 pretty much determined that he was looking at the
14 traditional view of where was behind, typically
15 behind the building, but then he also brings out,
16 if this method doesn't sound reasonable as to how
17 he looked at it in their testimony and the
18 explanation that he gave, he says; " then we can
19 take the Zoning Administrators premise that
20 Lamont Street is the frontage and that the rear
21 line is automatically that line that is opposite
22 the frontage, so doing that I brought up that

1 earlier and he goes to the Platt and he showed
2 some pictures about what that implied. I think
3 there are implications here that when you use the
4 word opposite and you're relying on that term in
5 determining making your judgment I think you
6 should give a fairly straight forward, you should
7 follow the very straight forward definition of
8 opposite and that it is directly behind or
9 directly in front of you. So if you're at Lamont
10 looking out the window and you turn around,
11 that's the front, and you turn around you should
12 be able to walk straight back and see the rear of
13 the building. I just, it just is not following a
14 logical sense that you can veer off 20 degrees or
15 30 degrees and say well that's going to be the
16 rear of the building over there. It just doesn't
17 follow, as a planner and as I cited some other
18 sources for rear yard a lot of jurisdictions
19 basically tell you it's the line parallel to that
20 front lotage. Now there's nothing says that has
21 to follow that, but I'm saying there has to be a
22 consistency and that he's a Zoning Administrator,

1 he's got a degree in planning, he understands the
2 implications of other jurisdictions, and we're in
3 the process of a zoning rewrite ourselves, I
4 think that brings it to a higher level of
5 understanding. I think that the Zoning
6 Administrator has to apply the best integrity of
7 definitions and terms when he giving a judgment.
8 I think that in this particular case, I think
9 he's veered off and I want to, maybe because the
10 library already had showed him this, I'm not sure
11 but I think that it was wrong. I really think
12 that the strict interpretation of opposite is
13 directly back and not off to the sides 30 to 40
14 degrees or whatever it was. That the
15 neighborhood, the community needs to know that
16 the Zoning Administrator is using either common
17 definitions or words that everybody understands
18 and I think that, I just can't at this point in
19 time say that the southern lot area is the rear
20 of this building, it just doesn't follow a
21 logical analysis of how you would look at this
22 building. I mean just looking at the aerial view

1 it becomes quite obvious that the rear of the
2 building is about 50 to 80 feet back, straight
3 back.

4 CHAIRPERSON MOLDENHAUER: Thank you very
5 much Mr. Turnbull, I think that was a very
6 extensive breakdown of your analysis and of your
7 perspective. In contrast while I do agree with
8 you I think that in my view the question is did
9 the ZA err and in determining did he err, you
10 know, we have to look and providing him
11 discretion, was his decision reasonable and did
12 it conform to the Zoning Regulations. That being
13 said I think one of the problems here, and I
14 think you pointed this out, is that we have no
15 definition of rear lot line. We have a
16 definition for rear yard, which then references
17 the rear lot line but doesn't define it at all,
18 so where the Regs are silent that's when where we
19 are, that's where the problem has occurred, it is
20 creating I think a distinction between what a
21 common citizen looking at a building and knowing
22 the history of the building would rationally

1 determine as a rear yard and then potentially
2 what the Zoning Administrator or a Applicant
3 could rationally be deemed the rear yard while
4 not conflicting with any existing regulations and
5 I think that's kind of this catch 22 where we
6 are, where there's no specific definition and as
7 you said we have to then go to the Webster's
8 definition of what is opposite, what is rear?
9 Rather than being able to just say well what
10 makes logical sense here. I think when your
11 confined to, what potentially does or does not
12 conflict with the Zoning Regs, I think that's
13 where, at least I understand the ZA made his
14 decision he you know sat down with the Applicant
15 I'm sure and looked at plans and said okay well
16 you're choosing Lamont and not 16th as your Street
17 frontage, and they had that option to do that,
18 now what's the opposite of Lamont and or what's
19 then the rear yard and not having the term rear
20 yard defined it was then an opportunity for the
21 ZA to say okay does what the Applicant is
22 requesting, you know, does what the library's

1 requesting, does that conflict with any of the
2 Zoning Regulations? As testified before us he
3 looked at did making the southern line, the
4 southern property line, the rear yard create any
5 additional non-conformities and he said that was
6 kind of one of his factors, AKA does making the
7 southern property line create any conflicts or
8 discrepancies with the existing Zoning Regs since
9 the required definition is silent, and he said no
10 he doesn't, you know, and then he said okay well
11 so if the south and the west don't create any
12 major non-conformities then either one would be
13 sufficient and he also testified that in making
14 that determination he does not consider the
15 historic layout of the building. I think that's
16 very interesting or important to me in regards to
17 the fact that the ZA's indicating that that is
18 not a factor he considers because I think that's
19 one of the major factors that the Appellant was
20 articulating, I even heard you Mr. Turnbull
21 articulated it, this is when your looking on the
22 street what is the rational perspective, you look

1 back and you say, that looks like the rear yard
2 to me. The ZA indicates that he doesn't consider
3 that, that's was not part of his deliberation or
4 is methodology, that it was more a matter of
5 determining potentially what was an opposite side
6 for Lamont and in viewing that I think that while
7 obviously one maybe more mathematically appealing
8 as your indicating in regards to the dimensions
9 in which you look at to determine opposite, I do
10 think that under the Webster's definition he had
11 potentially a choice from either saying, well it
12 could be the west or it could be the south and
13 then based on that he says well if they're both
14 non-conformity and the Applicant is submitting me
15 drawings and because it does not conflict with
16 any of my existing Zoning Regulations and the
17 definition is silent, I have to deem that, that's
18 then sufficient. I understand that argument, I
19 do see the challenge from the District Citizen
20 perspective where you walk up to a building and
21 you say how in the world this can be considered
22 the rear. I think that it's the same issue we

1 have at times where people have two potential
2 street frontages where a property may take up an
3 entire width of a property or entire width of a
4 block and can chose, you know, 15th Street or 16th
5 Street to be the front of their building, that's
6 probably not a good example because there's not
7 elevation change on both 15th or 16th but if there
8 were, if this was in a different area where there
9 was an elevation change some one may chose a
10 different street because it may provide them to
11 go a little higher in regards to the height
12 requirement based on the topography of one street
13 to another. I think that's the same situation
14 here; where yes people do chose things in order
15 to maximize, what's the terminology that was
16 used, maximize the size. The Appellant and the
17 intervener both in their submissions kind of
18 looked at that as being, in my view, the, I
19 guess, the Red Herring, kind of the bullet in
20 regards to well this is definitely an error, I
21 don't know if that is. While obviously we want
22 the ZA to be only applying the Zoning Regulations

1 at times obviously where the Zoning Regulations
2 are silent and there's no then interference or
3 specific, I guess, there's no specific issue
4 where your, contrary to the regulations then that
5 may be something that may be considered as it is
6 in other cases. That being said, you know, I
7 don't see an error in the Zoning Administrator's
8 decision in this case. I'll open up the floor
9 for further deliberation.

10 MS. SORG: Thank you Madam Chair, I just
11 wanted to add a couple of comments on what you
12 said and also on Mr. Turnbull's comments. I
13 agree with Mr. Turnbull that this is clearly not
14 an intuitive designation and I think actually
15 that's one of the reasons why, when we question
16 the ZA in the hearing as to whether or not
17 building orientation was relevant to this
18 decision he said no it wasn't. In my analysis
19 over the last, in reviewing the transcription and
20 the filings I think one of the first decisions
21 that I made in my analysis was that I thought
22 better to base what I'm thinking on the property

1 lines as opposed to the building orientation
2 itself. I think that also to add to the sort of
3 conversation about the definition of opposite and
4 it's silence in the Zoning Regulations, you know
5 when you look at the Webster's Dictionary which
6 is you know, what we're meant to turn to when the
7 Zoning Regulations are silent on something, I
8 think the salient points of their definition of
9 opposite say things like, facing and not adjacent
10 and thirdly sharing no point at which the
11 intervening space is zero. So I think if your
12 looking for odds on the two choices for rear lot
13 lines when you designate Lamont Street the front
14 here I think both can be said to be facing as a
15 frontage, I think both can be said to be not
16 adjacent with Lamont as a frontage but also both
17 of them do actually share a point at which the
18 intervening space is zero, so I mean, even with
19 that definition of opposite I don't think your
20 going to get to a place where you've got a lot
21 line that totally satisfies a definition because
22 of the configuration of the property. For that

1 reason I think I agree with the Chair in the
2 sense that the ZA had in front of him a piece of
3 property that was not in a (inaudible) but was
4 subject to a proposal for a project and that in
5 looking at that proposal the judgment comes in
6 whether the designation that the Applicant
7 proposes at the time to the ZA would create
8 additional non-conformities and I think I also
9 find that, you know, his analysis that no it
10 wouldn't is sufficient, I think that's all I've
11 got for now.

12 MR. TURNBULL: Well I can't agree with
13 either of you, I think first of all I don't think
14 it's a reasonable decision that he made, I think
15 that it goes beyond reasonable to decide that the
16 rear lot is where he says it is on the southern
17 boundary. I think it's diametrically opposed to
18 some, it's a different paradigm that what I'm
19 used to looking at it as from a zoning standpoint
20 and I think it's dramatic. I think it's dramatic
21 for how, now you have a rear yard between two
22 buildings facing on a street, I just find that

1 highly illogical that you can do that. To me it
2 does cause a conflict with the Zoning Regs, to me
3 I think you have to look at this on a very narrow
4 terms when you get to situations like this and I
5 think he erred, I really do think that you should
6 look at this in a very rational way and I just
7 can't agree with either of you.

8 CHAIRPERSON MOLDENHAUER: You just
9 actually made a point that made me think about
10 something new. Do we have a definition for side
11 yard? You just indicated that obviously how can
12 you have a rear yard between two buildings and
13 paralleling or touching a street, and I think
14 that, that's a really good comment, so the
15 question then I'm just saying out loud now is did
16 he potentially error not by making this the rear
17 yard but by not making the southern line a side
18 yard, I'm thinking out loud at the moment, I'm
19 flipping to my definition section, this maybe
20 another area where the definition and the section
21 is silent.

22 MS. GLAZER: There is a definition Madam

1 Chair for yard, side, if you want I can read it
2 into the record.

3 CHAIRPERSON MOLDENHAUER: I've got it
4 right now, I just found it. It says; side yard
5 is a yard between any portion of a building or
6 other structure and the adjacent side lot line
7 extending for the full depth of the building, so
8 that doesn't help any, zoning rewrite please. No
9 that doesn't help any and I think this is where
10 Art was saying earlier that this is a hard case
11 because you have, because of the lack of
12 definition and the silence of the regs, the
13 ambiguity of the regs to some degree and how
14 those were defined you have the ability for the
15 ZA to make a decision that does not conflict with
16 the current Zoning Regulations and I think that's
17 where, because of the deference and because of
18 the silence I have to give deference to the ZA's
19 decision. I do see a potential challenge in
20 making the southern line which is between two
21 buildings on 16th Street a rear yard or a rear lot
22 line but I think that because of the shape of

1 this building you have, it has that option. Any
2 further deliberations or comments from the new
3 issues that were just brought out?

4 MS. SORG: Well one of the things that I
5 might add I don't think that, I don't know if
6 it's exactly useful or not but if we're looking
7 at other definitions you can, since the
8 regulations are silent on what the definition of
9 the rear lot line is, you know we can look at
10 whether or not the rear yard that's created by
11 the designated lot line fulfills the requirements
12 for the rear yard and kind of look at it sort of
13 backwards as perhaps a piece of the puzzle here,
14 you know which is does the rear yard allow the
15 light and air with the setback that's required
16 and in this case I think it does, it does fulfill
17 the requirement in the Zone as a rear yard.

18 CHAIRPERSON MOLDENHAUER: Any further
19 discussion? I think from kind of just hearing
20 all of our different positions, I think that,
21 well lets formally have a vote, I think what's
22 going to have to happen is we're going to have to

1 pull in another Board Member into this
2 deliberation at another date.

3 MS. SORG: Not to interrupt Madam Chair,
4 there is another point, not related to the
5 definition of the rear lot that I wanted to bring
6 in and that is the nature of the burden of the
7 Appellant in these kinds of cases and you know
8 one of the other things that I found in my
9 analysis is that, you know, in these cases it's
10 the burden of the Appellant to show that the ZA
11 erred and I think that while certainly in the
12 testimony in questioning the Appellant brought up
13 questions about the rear yard, I personally in
14 reviewing the record didn't see, to me compelling
15 evidence that was presented by the Appellant in
16 testimony or in their filings that brought me to
17 a place that led me to, that was convincing
18 enough that the ZA had erred, so I just wanted to
19 bring up that other point.

20 CHAIRPERSON MOLDENHAUER: I think you
21 make a good point in that regard, I think that
22 while we have Mr. LeGrant who as, Mr. Turnbull

1 you pointed out he has professional degrees in
2 interpreting and evaluating in Zoning and
3 Planning, the Appellant who had the burden here
4 presented no one architect who specifically on
5 the record indicated that he was not an expert in
6 Zoning and he was not testifying as to those
7 issues. They had nobody else who had any
8 specific expertise, professional background, or
9 ability to testify that there was a specific
10 zoning error in the Application of potentially
11 opposite or the Application of how the Zoning
12 Administrator determined or identified the
13 southern lot line as being the rear line. I do
14 agree with you in that regard that they did fail
15 to meet their burden here, I think that Mr.
16 Turnbull you're picking up some very good
17 arguments in your perspective on things but I
18 don't think that the Applicant, sorry the
19 Appellant presented a sufficient case to satisfy
20 the burden in that regard or in my view to
21 overcome the difference that's provided by the
22 office and the silence of the regulations.

1 MR. TURNBULL: Let me respond there's
2 nothing in the Zoning Regulations that says you
3 have to be a doctor, a planner, an architect or
4 an attorney to come before this Board and give
5 evidence on a case that is that you're testifying
6 on. So the expertise is one thing but to me it's
7 irrelevant. The only reason I brought up Mr.
8 LeGrant's degrees was because as a Zoning
9 Administrator he has knowledge of planning terms
10 and definitions and jurisdictional planning
11 concepts that the other person that most people
12 don't have so he's familiar with what Baltimore,
13 Richmond and all of the others are using as
14 definitions so when he applies his analysis on
15 this he's using his total knowledge of what is
16 commonly believed terms and that is why I'm
17 saying that he ignored all of that when he was
18 doing his analysis. I disagree also that the
19 Applicant didn't make their case, they did make
20 their case, they did bring up at several points
21 and but just like now you don't agree with it, so
22 if he didn't prove his case, I'm not proving my

1 case, so there we are, but I think he made his
2 case, he brought it out, you just don't believe
3 it, you just don't want to recognize certain
4 issues of what's opposite and how to do that,
5 that's not the Applicant's fault, that's not my
6 fault, we're trying to tell you or explain one
7 point of view and how to look at this and you
8 don't agree with that.

9 CHAIRPERSON MOLDENHAUER: And obviously
10 that's what happens on Boards but why don't we do
11 this, I know that we're, we've adequately gone
12 through this issue, we're going to have to re-
13 deliberate this issue and I think this is a very
14 challenging case and I think it's going to give
15 us all some more opportunity to kind of review
16 the record. What we'll do is we will submit a
17 motion, I'll see if there are any motions, I'll
18 submit a motion to deny this Appellant's
19 Application 18152, is there second?

20 MS. SORG: Second.

21 CHAIRPERSON MOLDENHAUER: A motion has
22 been made and seconded, all those in favor say

1 aye.

2 MS. SORG: Aye.

3 CHAIRPERSON MOLDENHAUER: All those
4 opposed?

5 MR. TURNBULL: Opposed.

6 CHAIRPERSON MOLDENHAUER: Motion will not
7 pass as 2 to 1, are there any further motions?

8 MR. TURNBULL: I would think a motion to
9 approve 18152.

10 CHAIRPERSON MOLDENHAUER: Is there a
11 second? There's no second so what we'll do, is
12 we will require that an additional Board Member
13 who is not present at one of the hearings will
14 have to read the full record and then we will
15 reconvene and set this for a decision date and
16 try to see if we can't come to a formal
17 deliberation on this case. That being said, Mr.
18 Moy is there a date maybe in April?

19 MR. MOY: Yes we have the first Tuesday
20 in April which is April 5th.

21 CHAIRPERSON MOLDENHAUER: Okay let's do
22 that, we can have it nice and early. So we'll

1 put this down, is Mr. Turnbull already on that
2 date?

3 MR. MOY: No he's not, but this is the
4 first case in the morning then maybe that would
5 accommodate Mr. Turnbull?

6 MR. TURNBULL: Yeah, that will be fine.

7 CHAIRPERSON MOLDENHAUER: I want to make
8 sure that obviously you're present. Okay perfect
9 well then we will reconvene this case, the record
10 is still closed, no further documentation will be
11 accepted into the record and we will reconvene
12 for deliberation on this case on April 5th.
13 Anything further from any Board Members on this
14 case? Seeing none then that will conclude our
15 Public Meeting for this morning and we will enter
16 into our Public Hearing.

17 **Morning Session**

18 CHAIRPERSON MOLDENHAUER: This hearing
19 will please come to order, good morning ladies
20 and gentleman, this is the March 1, 2011, Public
21 Hearing of the Board of Zoning Adjustments for
22 the District of Columbia, my name is Meredith

1 Moldenhauer, Chairperson, joining me today to my
2 left is the Vice Chair Nicole Sorg, to her left
3 Representative of the Zoning Commission is
4 Michael Turnbull and to my right is Jeffrey
5 Hinkle, Representative of the National Capital
6 Planning Commission. Copies of today's meeting
7 agenda are available to you and are located to my
8 left in the wall bin near the door. Please be
9 advised this proceeding is being recorded by a
10 court reporter and is also being webcast live.
11 Accordingly we must ask you to refrain from any
12 disturbing noises or actions in the hearing room.
13 When presenting information to the Board please
14 turn-on and speak into your microphone first
15 stating your name and home address. When you are
16 finished speaking please turn-off your microphone
17 so that your microphone is no longer picking up
18 sounds or background noise. All persons planning
19 to testify either in support or in opposition are
20 to fill out two witness cards these cards are
21 located to my left on the table near the door and
22 are also on witness tables. Upon coming forward

1 to speak to the Board please give both cards to
2 the court reporter sitting to my right. The order
3 of procedures for special exceptions and
4 variances are as follows: 1. Statement of the
5 Applicant and Applicant's Witnesses. 2. Parties
6 and persons in support. 3. Parties and persons in
7 opposition. 4. Government Reports including
8 Office of Planning and Department of
9 Transportation. 5. Reports from the ANC. 6.
10 Rebuttal and closing statements of the Applicant.
11 Pursuant to Section 3117.4 and 3117.5 the
12 following time constraints will be maintained,
13 the Applicant/Appellant persons and parties
14 except an ANC in support including their
15 witnesses will be given 60 minutes collectively.
16 The Appellees persons and parties except an ANC
17 in opposition including witnesses will be given
18 60 minutes collectively. Individuals will be
19 given 3 minutes and associations or organizations
20 will be given 5. These time restrictions do not
21 include cross examinations or questions from the
22 Board. Cross examination of witnesses is

1 permitted by a party or an Applicant. The ANC
2 within which the property is located is
3 automatically a party to a special exception or
4 variance case. Nothing prohibits the Board from
5 placing reasonable restrictions on cross
6 examination including time limitations or
7 limitation on the scope of cross examination.
8 The record will be closed at the conclusion of
9 each case except for any materials specifically
10 requested by the Board. The Board and the Staff
11 will specify at the end of each hearing exactly
12 what is expected and the date when the person
13 must submit this evidence to the Office of
14 Zoning. After the record is closed no other
15 information will be accepted by the Board. The
16 Sunshine Act requires that a public hearing on
17 each case be held in the open before the public.
18 The Board may consistent with its rules and
19 procedures and the Sunshine Act enter into
20 Executive Session during or after a public
21 hearing on a case for purposes of reviewing the
22 record or deliberating on a case. The decision

1 of the Board as in these contested cases must be
2 based exclusively on the public record, to avoid
3 any appearance to the contrary the Board requests
4 that persons present not engage the members of
5 the Board in conversation. Please turn off all
6 beepers and cell phones at this time as to not
7 disturb these proceedings. At this time the
8 Board will consider any preliminary matters,
9 preliminary matters relate to whether a case
10 should or will be heard today such as a request
11 for postponement, continuance or withdrawal or
12 whether proper or adequate notice of a hearing
13 was given. If you are not prepared to go forward
14 today or you believe that the Board should not
15 proceed, now is the time to raise such a matter.
16 Mr. Secretary, do we have any preliminary
17 matters?

18 MR. MOY: We do Madam Chair, the only
19 preliminary matter for the morning session is we
20 have one case in the morning that has been
21 withdrawn from the record and that is Application
22 No. 18170 of Cameron Burnett, so that's

1 officially withdrawn.

2 CHAIRPERSON MOLDENHAUER: Thank you Mr.
3 Moy so then we only have two cases on the agenda
4 for this morning. All those individuals wishing
5 to testify in those cases please stand and the
6 oath will be administered.

7 MR. MOY: Do you solemnly swear or affirm
8 that the testimony that your about to present at
9 this preceding is the truth, the whole truth and
10 nothing but the truth. Ladies and gentleman you
11 may consider yourself under oath.

12 CHAIRPERSON MOLDENHAUER: Okay Mr. Moy we
13 can call the first case.

14 **Application No.18176**

15 MR. MOY: That would be Application 18176
16 of Andrew I. Abramson, pursuant to 11 DCMR 3104.1
17 for a special exception to allow a two-story rear
18 addition to a one family detached dwelling under
19 Section 223, not meeting the side yard Section
20 405 requirements in the R-2 District at premises
21 2911 Porter Street, N.W. (Square 2061, Lot 73).

22 CHAIRPERSON MOLDENHAUER: Good morning if

1 you can state your name for the record.

2 MS. STACY: My name is Amy Stacy, my
3 address is 15 Woodmoor Drive, Silver Spring, MD I
4 am the authorized agent for the homeowner in this
5 case.

6 CHAIRPERSON MOLDENHAUER: Thank you very
7 much; I think that we have a fairly full record
8 except for a couple of questions maybe from Board
9 Members. I will turn to you to see if there's
10 anything that you would like to present or if
11 you'd like to present your case.

12 MS. STACY: In this case we have a
13 property that is narrower than the Zoning Regs
14 require, the homeowner and I went through
15 numerous design options for an addition to the
16 house which is also in an Historic District and
17 has never been improved or even up-kept. Because
18 of the narrowness and the amount of space that
19 the homeowner would like to add to the house we
20 came to the determination that we would like to
21 seek relief on one side yard set back otherwise
22 the addition would have been exceptionally deep

1 and skinny and out of proportion with the house,
2 we thought that would cause difficulties in
3 getting approval through the HPRB as well so we
4 worked with HPRB to come up with a design that
5 they felt they could support with the request for
6 that special exception.

7 CHAIRPERSON MOLDENHAUER: Do Board
8 Members have any questions?

9 MS. SORG: Thank you Madam Chair, the
10 only question that I had from reviewing the
11 filings in this case is about; I don't think
12 we've gotten any letter from the neighbors, so
13 maybe you can talk to that a little bit.

14 MS. STACY: We did submit letters from
15 the neighbors. The neighbor at 2909 I believe,
16 which would be the, there should be two letters,
17 I know the homeowner...

18 CHAIRPERSON MOLDENHAUER: When did he
19 submit those?

20 MS. STACY: He said he hand delivered
21 them a week or two ago.

22 CHAIRPERSON MOLDENHAUER: I don't have

1 them in my record.

2 MS. STACY: You know what I'm sorry, we
3 emailed them and we also mailed them and they
4 were to be received prior to last week and
5 unfortunately I don't have copies of them in my
6 notebook today, but the Harvey's the homeowner
7 who is closer to Connecticut Avenue had no
8 reservations at all, the homeowners at 2913 asked
9 that we design the addition so that the windows
10 on the addition to not face directly into their
11 windows and so we did rearrange some windows in
12 order to accommodate that. If you look in the
13 Office of Planning Report they actually address
14 those issues. We did send the letters to Mr.
15 Arthur Jackson at the Office of Planning so I
16 know he saw them, I'm sorry if they did not get
17 received by the Board in time for that.

18 CHAIRPERSON MOLDENHAUER: I think what
19 happened is maybe the owner sent them only to the
20 Office of Planning because we have nothing in our
21 record, I mean I don't know for sure but I'm
22 telling you we don't have it in our record and I

1 do see the reference in the OP report so maybe it
2 was something where he didn't realize to send
3 them to both agencies but we don't have those. I
4 agree with Ms. Sorg in asking that question
5 because one of my major concerns is just how
6 narrow this lot is and how close together these
7 properties are, and obviously for a 223 one of
8 the questions is obviously potential impacts on
9 privacy to neighboring properties. So is your
10 testimony that after potentially redoing some of
11 the exterior windows that all neighbors were okay
12 or were supporting the Application?

13 MS. STACY: Yes.

14 CHAIRPERSON MOLDENHAUER: Ms. Sorg sorry
15 I didn't mean to jump in there, do you have any
16 other questions?

17 MS. SORG: No, no, that was just what I
18 wanted to clarify, so I mean we have it on the
19 record now I guess that the letters were taken
20 and so both of those were the adjacent neighbors
21 and so if they had any fears you worked with
22 them, that's good.

1 MS. STACY: Of course.

2 CHAIRPERSON MOLDENHAUER: Do any other
3 Board Members have any other questions?

4 MR. TURNBULL: Are we going to request
5 those letters then?

6 CHAIRPERSON MOLDENHAUER: I think I would
7 like to see them, I also want to hear from OP to
8 see if they've seen them so maybe then I'd be
9 satisfied but let's see where that goes and we'll
10 get to that at the end of the hearing.

11 MR. TURNBULL: My only other comment is
12 that I think the addition is really, I like the
13 addition I think it, actually your existing
14 condition at the back of the house is not quite
15 correct you showed the shingles on it but
16 actually they're siding on the back, the picture
17 that we have showed siding so, either that or
18 it's shingles that have been painted.

19 MS. STACY: It's is shingles that have
20 been painted.

21 MR. TURNBULL: Okay that makes sense, so
22 is the front painted also, I didn't, or is it

1 stained, not it looks stained?

2 MS. STACY: The homeowner bought the
3 property a few years ago and I think the previous
4 owner had replaced those shingles and then did
5 not pain them. Since we've been working back and
6 forth for so long on trying to decide what the
7 big picture was going to be he just hasn't even
8 addressed that. The plan would be that they
9 would be painted when the whole house gets
10 painted.

11 MR. TURNBULL: I think the character is I
12 think working with HPRB I think the project
13 itself, the house looks very nice.

14 MS. SORG: Actually I just want to say on
15 there, I agree I think the scale of the addition
16 actually seems pretty good and I know that the
17 chair voiced some concerns regarding the
18 proximity of the houses, but one thing I would
19 note also is that on this, on Porter Street here
20 their set off from each other on the street front
21 so to me that gives a little bit more sort of
22 privacy and air between the properties there, but

1 I would say that I think the character is really
2 nice of the exterior as well, as I think the
3 interior is nice too.

4 CHAIRPERSON MOLDENHAUER: Any further
5 questions for the Applicant? Seeing none, thank
6 you very much. At this point in time we'll turn
7 to see if there are any individuals in support or
8 in opposition of this case in the audience,
9 seeing none then we'll turn the Office of
10 Planning for their report.

11 MS. BROWN-ROBERTS: Good morning Madam
12 Chairman and Members of the Board, I'm Maxine
13 Brown-Roberts from the Office of Planning. First
14 of all I'll just address the issue that you just
15 spoke about, I'm sitting in for Arthur Jackson
16 today he's out ill and I don't have the full file
17 with me, I think I'll be here this afternoon for
18 another case so I could check the file and see if
19 I find anything and I'll take it back later, so
20 that's something I can commit to checking.
21 Regarding the request for the special exception
22 the Applicant is requesting a special exception

1 under Section 223 to reduce the side yard from
2 the required 8 feet to 5 feet and just to make
3 this short on the analysis given in our report
4 they have met all the requirements of Section
5 223, and we believe that this would not be a
6 detriment to the community or to the privacy of
7 adjacent owners or to their light and air and
8 therefore we recommend approval of the request
9 from the requirements under Section 223, thank
10 you Madam Chairman.

11 CHAIRPERSON MOLDENHAUER: Thank you very
12 much. Does the Applicant have any questions for
13 the Office of Planning?

14 MS. STACY: No but I would like to add I
15 did find my letters in my file would you like to
16 see them?

17 CHAIRPERSON MOLDENHAUER: Yes, actually
18 that would fine, so you can give them to Mr. Moy
19 and we'll make copies. Thank you those letters
20 will be made part of our record. Are there any
21 final concluding comments by the Applicant? Do
22 Board Members have any final comments or

1 questions for the Applicant? Seeing none then at
2 this point in time we'll conclude our hearing and
3 I think that now that we actually have those
4 letters that allows us to then go directly into
5 deliberation on this case. I will just start us
6 off; this is a 223 for a special exception relief
7 for a reduction in the minimum side yard
8 requirement. The Applicant has gone through and
9 I think OP's report is sufficiently adequate to
10 kind of go through the analysis for the light and
11 air available to neighboring properties, any
12 privacy and enjoyment issues and then potentially
13 any impact on the visibility from the public ways
14 or adjacent buildings and I think that all those
15 standards are satisfied as we indicated I think
16 on the initial record there were some concerns
17 about the privacy and enjoyment of potentially
18 light and air from neighboring properties but I
19 think has OP indicated and now that we have those
20 two letters from the neighboring property owners
21 that they have reviewed the plans and have no
22 major concerns. I'm sorry is there anyone

1 present from the ANC for this case? There is no
2 one present from the ANC, we have a letter in our
3 record indicating that on January 18, 2011, ANC
4 3-C voted unanimously to approve the application
5 and that would receive great weight based on
6 those standards and based on that I really see no
7 problem with approving this application. I'll
8 open up the floor to any further deliberation
9 from Board Members.

10 MS. SORG: I don't have anything to add
11 Madam Chair to your deliberations I think that
12 your analysis have all the salient points of the
13 Application.

14 CHAIRPERSON MOLDENHAUER: Okay if there's
15 no further deliberation from Board Members.

16 MR. TURNBULL: I would just concur with
17 yourself and the Vice Chair that with the Office
18 of Planning Report I have no issues with this
19 project.

20 CHAIRPERSON MOLDENHAUER: Okay wonderful
21 then what we'll do is I'll submit a motion, a
22 motion to approve Application No. 18176 pursuant

1 to 11 DCMR 3104.1 for a special exception to
2 allow a two-story rear addition to a one family
3 detached dwelling under Section 223 not meeting
4 the side yard under 405 requirements in an R-2
5 District at premises 2911 Porter Street, N.W. A
6 motion has been made is there a second?

7 MS. SORG: A motion has been made and
8 seconded, all those in favor say aye, aye.

9 CHORUS: Aye.

10 MR. MOY: Staff would record the vote as
11 4 to 0 to 1, this is on the motion of the
12 Chairperson Ms. Moldenhauer to approve the
13 Application for relief from special exception
14 side yard requirements under 405, seconded the
15 motion Ms. Sorg, also supporting the motion Mr.
16 Hinkle and Mr. Turnbull, no other Board Members
17 participating. So again the final vote is 4 to 0
18 to 1.

19 CHAIRPERSON MOLDENHAUER: Thank you very
20 much Mr. Moy and seeing that the ANC is in
21 support and we have letters of support from the
22 neighbors I would ask that we waive our

1 requirements and have a summary order be issued.

2 MR. MOY: Thank you Madam Chair.

3 CHAIRPERSON MOLDENHAUER: Thank you, we
4 can then call our next and last case for morning.

5 **Application No. 18172(stated but not what was on**
6 **the agenda that was 18173)?**

7 MR. MOY: That would be Application
8 18172(this application number is what was stated
9 but not what was on the agenda)? of Allison C.
10 Warren, pursuant to 11 DCMR 3103.2 for a variance
11 form the lot occupancy requirements under Section
12 403, and the alley centerline setback
13 requirements under (Subsection 2300.2(b) to allow
14 the construction of an accessory garage serving a
15 one family row dwelling in the R-4 District at
16 premises 906 Maryland Avenue, N.E. (Square 936,
17 Lot 24).

18 CHAIRPERSON MOLDENHAUER: Good morning if
19 the, if you can state your name for the record.

20 MR. WEAVER: Yes, Robert Weaver from KGRW
21 we're the architects representing our client
22 here. Good morning we'd like to just kind of

1 briefly go through you have the record in front
2 of you. We are seeking to build a garage in the
3 rear along the alley. The photographs in the
4 aerial photo might be kind of helpful documents,
5 the photos kind of show existing parking area in
6 the back that backs up to the alley with existing
7 masonry walls and that's kind of photos one and
8 two show that. Photo two also shows a mature
9 tree that is just beyond the masonry wall, photo
10 three is adjacent property, garage to the east
11 and then photo four is the garage to the west and
12 photos five and six are views from the back of
13 the house kind of the rear yard to that masonry
14 wall and then beyond that is the existing parking
15 area. The aerial photo has superimposed on that
16 the proposed garage which again sits kind of
17 where that parking area is so this can be used
18 for reference throughout the case. To construct
19 a useable garage we are seeking variances for
20 relief from several Sections 2300.2 which is a
21 setback from the centerline of the alley, 403.2
22 is lot occupancy and then as a natural outflow of

1 if those two are approved there's a couple of
2 other subsection as well 401.1 and 401.3 that are
3 related to the lot size and area being non-
4 conforming and existing condition and then 2001.3
5 being a non-conforming structure. The variance
6 has a high threshold so there are exceptional
7 condition situations in this particular project
8 that would make strict adherence of the
9 guidelines and the regulations result in peculiar
10 practical difficulty and undo hardship, I'll
11 briefly go through those, and also the variance
12 must not result in substantial detriment to the
13 public good and be consistent with the intent of
14 Zoning Regulations, specifically for the setback
15 from the center alley line, the alley centerline
16 rather. The key issue here is, a couple of
17 issues, one is that the existing masonry wall is
18 in such a place that it defines the rear garden
19 with the existing mature tree, it allows space to
20 park but if you follow the restrictions of the
21 setback there would not be sufficient room for
22 the garage, exacerbating this as the fact that

1 the alley is only 10 feet wide so if you take 5
2 feet from the centerline then an additional 7
3 feet into the property would not leave space, it
4 would be a practical difficulty to move that
5 retaining wall and they would also have damage of
6 the effect of the tree is only less than 4 feet
7 from that wall and so that would have to be
8 removed which would be of detriment both to the
9 property and to the neighbors as well. So in
10 terms of how the relief, if it was granted it
11 would create substantial detriment to the public
12 good, the existing alley is narrow as I mentioned
13 the existing garages along that alley are all
14 right up to the alley property line and so this
15 would be more consistent actually with what's
16 already there. The fact that this is an infill
17 property would indicate that it's not going to
18 further restrict the alley in a maneuverability
19 or traffic issues versus if it were at the end of
20 the alley or the other. In terms of consistent
21 with the Zoning Intent it certainly meets the
22 provisions of adequate light and air, it's

1 between, and there are three walls that are
2 already there. It doesn't prevent undo
3 concentration population, or overcrowding of land
4 and in terms of the intent of providing greenery
5 it actually by not moving the wall it preserves
6 the tree canopy and the effect that that would
7 have for the neighborhood and for the neighbors
8 as well as the property itself. The other main
9 issues that we need relief from is Section 403.2
10 which is the percentage of lot occupancy and
11 we're asking for 71.8% which obviously exceeds
12 the 70%, the unique condition here is as
13 sometimes occurs with older properties as in this
14 case, the adjacent neighbors structure actually
15 sits on the property and occupies 2% of the
16 occupancy and so if it were not sitting on there
17 then it would be able to be pursued under a
18 special exception which would be below the 70%,
19 this creates a special condition. The other
20 thing that's a special condition as well as the
21 exceptional small size and narrowness of the lot,
22 the lot preexists the regulations is 16.3 feet

1 wide and only 1632 feet in area instead of 1800
2 so that exacerbates meeting that percentage
3 threshold. Obviously it's practically difficult
4 and possible to move an existing structure, the
5 neighboring property nor is it desirable for
6 everyone involved. In terms of substantial
7 detriment to the public good the higher
8 percentage of lot occupancy actually still
9 preserves all the green space, I think if you
10 look at the aerial photograph the property in
11 question actually is one of the most green
12 properties in that entire block and the granting
13 of the relief would allow that to continue.
14 Again similar it is consistent with the Zoning
15 Regulations similar to the arguments that were
16 stated for the first, for 2300.2. Just touching
17 on what I believe we need relief on the variances
18 for 401.1 and 401.3 and 2001.3 we had some
19 discussion both with the ANC and the Office of
20 Planning and certainly will defer to what the
21 Board determines is necessary. We want to make
22 sure that we've covered all of our bases before

1 we go for permit. Normally things like lot size
2 would be covered in Section 223 as one of the
3 areas that you can exceed those requirements and
4 the only thing I see there and the reason we're
5 asking for variance is because although Section
6 401.3 and 2001.3 are all covered in 223 it says
7 subject to the provisions of the Section in
8 Section 223.3 says the lot occupancy shall be 70%
9 or less for Zoning R-4 and obviously we're
10 applying for above 70% in that particular
11 variance. So if in granting that variance that
12 allows you to say Section 223 is sufficient
13 that's okay but I just wanted to point that out
14 that I believe we need 401.1 and 401.3 and 2001.3
15 just to cover our bases. Finally I would say in
16 terms of neighborhood due diligence we have
17 received unanimous support from the ANC
18 Commissioners, the recommendation of the Office
19 of Planning has recommended approval, I went and
20 met with the Capitol Hill Restoration Society and
21 they voted to recommend approval and the record
22 also has neighbors letters of support including

1 the neighbors immediately to either side of the
2 subject property and I'd be happy to answer any
3 questions.

4 CHAIRPERSON MOLDENHAUER: Thank you I did
5 have some quick questions in regards to the
6 encroachment is that something that, I just seen
7 I want to cover all of our bases, did the
8 Applicant consider potentially going to the
9 neighbor and asking the neighbor to demolish that
10 encroachment? Is that an option?

11 MR. WEAVER: I think in terms of the
12 neighbor relations and it's a historic area as
13 well, so there's a historic building, I think the
14 approach was what's best for the neighborhood
15 would be to not create controversy and in fact
16 the neighbor has written a letter of support,
17 supporting this Application. Obviously it would
18 not be in their best interest either to have the
19 building demolished.

20 CHAIRPERSON MOLDENHAUER: Just making
21 sure that obviously they've considered all their
22 options since obviously you've indicated a

1 variance is a higher standard. I don't have any
2 questions do any other Board Members have any
3 questions?

4 MR. TURNBULL: Madam Chair just following
5 up on that and I'm not sure but looking at the
6 survey, "Exhibit 2" it sort of looks like the
7 existing house may be encroaching on the other
8 property so...

9 CHAIRPERSON MOLDENHAUER: Where is that?

10 MR. TURNBULL: Maybe the architect could,
11 looking at "Exhibit 2" it looks like the dash
12 line sort of goes over the property line at the
13 house at the corner there.

14 MR. WEAVER: Yes it would appear
15 especially in these old neighborhoods like
16 Capitol Hill some of the boundaries were not
17 quite as precise at that point.

18 MR. TURNBULL: So I think we've got a
19 little give and take here.

20 MR. WEAVER: Well I think the neighbors
21 are happy with each other in their existing
22 conditions, yes. Also as I mentioned this lot

1 predates the regulations and it's a smaller lot
2 and that creates a hardship, it's harder to
3 achieve a percentage when your lot size is
4 significantly smaller than the 1800 square feet.

5 CHAIRPERSON MOLDENHAUER: Do any other
6 Board Members have any other questions for the
7 Applicant?

8 MR. HINKLE: Could you just describe a
9 little bit of the architecture of the garage, I
10 was trying to figure out how it's being stuck in
11 there, are you using the existing retaining wall?

12 MR. WEAVER: Our intent is to use, well
13 the wall that is to the left which is on the
14 property there's the masonry garden wall itself,
15 the wall to the right actually is off of the
16 property and so we'll have to construct a
17 separate wall that will be right on the property
18 line.

19 MR. HINKLE: It looks like there might be
20 a few inches between the new wall and the
21 existing wall to the property?

22 MR. WEAVER: Yes and she has been in

1 contact with the neighbor too in terms of how
2 they resolve that in a minimal manner.

3 MR. HINKLE: Okay, thank you.

4 CHAIRPERSON MOLDENHAUER: Thank you any
5 further questions from the Board Members?

6 MR. TURNBULL: How deep is the garage
7 going to be?

8 MR. WEAVER: 20 feet interior, I think it
9 says 20.7 that's just an acknowledgement of some
10 wall thickness.

11 MR. TURNBULL: So they'll probably be
12 using some smaller cars, 20 feet seems tight but.

13 MR. WEAVER: Yeah I would not recommend
14 any tighter.

15 MR. TURNBULL: Okay thank you.

16 CHAIRPERSON MOLDENHAUER: It seems there
17 are no other questions from Board Members. Are
18 there any individuals in the audience in support
19 or in opposition of this case? We did have a
20 party status request but on the party status
21 request it indicated that Gail Robins was not
22 going to appear so we can't take a party status

1 request for someone who doesn't appear, we have
2 acknowledged her support of the Application in
3 our written documentation and our written file.
4 That being said there's nobody in the audience in
5 support or in opposition we'll turn to the Office
6 of Planning for their report.

7 MS. THOMAS: Good afternoon Madam Chair,
8 Members of the Board, I'm Karen Thomas for the
9 Office of Planning and the Office of Planning is
10 recommending approval of the variance relief
11 requested with this Application including the
12 required setback from the alley centerline and
13 the lot occupancy. We did concur that there was
14 a confluence of factors that created a practical
15 difficulty in the Applicant meeting the area
16 requirements as requested including the wall, the
17 presence of the wall, the garden wall, the
18 encroachment of the neighbors wall on to their
19 property and the existing tree as well, so these
20 all together created a problem for the garage
21 addition at the rear, we see that, we noted that
22 removal of the garden wall would in fact effect

1 the trees and that would not be any good to the
2 neighborhood or it would adversely effect the
3 neighborhood character at the rear of the
4 property because it's the only shade tree in the
5 neighborhood at the rear. We also believe it was
6 practically difficult for the Applicant to meet
7 the centerline again due to the wall and with
8 respect to lot occupancy, that encroachment for
9 the wall into the neighbors property onto the
10 Applicant's property did in fact effect
11 contribute to the Applicant's overall lot
12 occupancy thereby reducing what the Applicant
13 could make use of so all in all we do see that
14 this Application did meet the variance test and
15 we recommend approval as requested and I'd be
16 happy to take any questions, thank you.

17 CHAIRPERSON MOLDENHAUER: Thank you for
18 your report and your oral summary. Does the
19 Applicant have any questions for Office of
20 Planning?

21 MR. WEAVER: No.

22 CHAIRPERSON MOLDENHAUER: Do any Board

1 Members have any questions for the Office of
2 Planning?

3 MR. TURNBULL: Not for OP I just had one
4 question I just want to tie down for the record.
5 On the garage looking at the garage plan and
6 elevation submittal I'm assuming that the front
7 the alley façade or elevation is brick?

8 MR. WEAVER: That has not been determined
9 but what are typical are brick and or block is
10 typical of that alley.

11 MR. TURNBULL: And the roof would slope,
12 where's the water coming down then back toward
13 the house area?

14 MR. WEAVER: No the water would be
15 spanning, I guess looking at it left to right
16 with a gutter that would take the water to the
17 rear.

18 MR. TURNBULL: Well are you dumping it in
19 the alley? Or dumping it in the back yard?

20 MR. WEAVER: We hadn't determined that
21 but we probably would have taken it to the alley
22 but we can certainly switch that if it's a

1 condition.

2 MR. TURNBULL: I'm not sure what the
3 Office Planning's thought is on...

4 MS. THOMAS: From environment standpoint
5 I would suggest that the water be taken back to
6 the property and that could also help as for
7 watering to the tree.

8 MR. WEAVER: That's not a problem I think
9 just initially since it was all impervious area
10 anyway the rain was falling and running that way.

11 MR. TURNBULL: Could we get, is it
12 possible to get a set of drawings on the garage?

13 MR. WEAVER: We we're going through this
14 phase first.

15 CHAIRPERSON MOLDENHAUER: I mean
16 typically just not to jump in when Mr. Turnbull
17 is kind of making a comment but typically we have
18 plans that are far more sufficient and detailed
19 than this, typically we'll have the detailed
20 plans that we can see all the information and
21 make that determination because whenever we grant
22 approval we grant approval subject to the plans

1 and so you then obviously have to build subject
2 to those plans and that's where if there's a
3 change you have to come back in for minor
4 modifications but it is challenging Mr. Turnbull
5 points out some problems in regards to impact on
6 neighboring properties or impact in that regard
7 that we can't make the determination on based on
8 the fact that we don't really have a full set of
9 plans. I would be personally and I will look to
10 other Board Members and see what they would like,
11 but I would be inclined to ask the Applicant to
12 go back finalize the plans and bring those to us
13 for review prior to making a decision in this
14 case, how do the other Board Members feel?

15 MS. SORG: Yeah Madam Chair I would agree
16 I mean it seems like a pretty simple project and
17 we're kind of like thrown into the variance
18 waters but it is nonetheless a variance but the
19 test is higher and we want to make sure, I agree
20 that we have all the information that we need to
21 make sure.

22 CHAIRPERSON MOLDENHAUER: I think so far

1 I think I feel strong about this Application but
2 I do think that we do need more detail, so that
3 being said before we finalize this let me just
4 ask if there's anybody present in the audience at
5 this point in time I'll turn to the ANC from ANC
6 6-A, seeing no one I'll reference that we have
7 "Exhibit No. 25" which is a letter from the ANC
8 indicating that at a duly called meeting with a
9 quorum present on February 10, 2010, I think they
10 probably mean 2011, the letter is dated 2011, it
11 must be a typographical error. They voted to
12 support this Application for a variance for the
13 lot occupancy requirements under 403 and the
14 alley centerline and setback. That being said
15 this letter would receive great weight and that
16 will be duly noted. At this point in time we'll
17 turn back to the Applicant for any closing
18 remarks. If you have any closing remarks but I
19 think also we probably won't deliberate this case
20 today, we'll wait for the plans.

21 MR. WEAVER: Okay, just a procedural
22 question then, in submitting some more drawing to

1 you would this then be deliberated like at the
2 next hearing or like just from a timing
3 standpoint I'd like to understand for my client,
4 I mean it is a on one level it is a very simple
5 project so we're trying to cover all of our
6 bases, I think there's one other base that you
7 would like to see just from a schedule standpoint
8 I'd like to...

9 CHAIRPERSON MOLDENHAUER: Yeah, I know we
10 can pretty much flex to your needs and if you
11 need more time to put together for the property
12 owner to make final decisions in regards to
13 materials and things like that that you need to
14 be able to put into those plans we can give you
15 two weeks, I don't know if we're going to need,
16 Board Members do we want to set this for another
17 hearing where we can ask the Applicant questions
18 of the plans or do you think that we can go
19 directly into deliberation and just as this to be
20 supplemented for a decision calendar? So I'm
21 getting a consensus from the Board Members that
22 this could be put into a decision calendar so

1 then you would just need to supply us with the
2 plans and so long as your plans are detailed
3 enough and answer the questions that we kind of
4 have before us then we would be able to make the
5 decision, again we could put this on the decision
6 calendar for next week if you think that's enough
7 time for you and the property owner to create,
8 you know, make the decisions, create the plans
9 and then get them to our office.

10 MR. WEAVER: Okay, will you be meeting in
11 two weeks could we...

12 CHAIRPERSON MOLDENHAUER: Yes we will be
13 meeting in two weeks, let me get out my calendar
14 that would be March...

15 MR. MOY: That would be March 15th.

16 CHAIRPERSON MOLDENHAUER: March 15th,
17 okay...

18 MR. WEAVER: And when would you need them
19 prior to that to give you time to review?

20 CHAIRPERSON MOLDENHAUER: We would want
21 them by the Thursday prior to the hearing, so if
22 it's March 15th we would need them by the 10th.

1 MR. WEAVER: Okay.

2 MS. MONROE: I just want to point out you
3 did such a good job for the Regs figuring them
4 all out, 3125.7 actually says approval of an
5 application shall include approval of the plans
6 submitted with the Application, so the Board is
7 kind of stuck, they really can't approve it until
8 they have the plans in the record, so their not
9 just being nit picky.

10 MR. WEAVER: I understand with the garage
11 I was thinking that outlining the plan, you know
12 there are interior partitions but I understand
13 what your asking for, I wasn't trying to
14 circumvent that either.

15 CHAIRPERSON MOLDENHAUER: Okay so what we
16 have is we have a deadline for submission of
17 plans by the 10th of March and then we have this
18 being placed on the calendar for decision on
19 March 15th. That then will conclude this hearing
20 and we are then finished with our morning cases
21 and we'll reconvene at 1 o'clock, thank you very
22 much.

1 **Afternoon Session**

2 CHAIRPERSON MOLDENHAUER: This hearing
3 will please come to order, good morning ladies
4 and gentleman, this is the March 1, 2011, Public
5 Hearing of the Board of Zoning Adjustments for
6 the District of Columbia, my name is Meredith
7 Moldenhauer, Chairperson, joining me today to my
8 right is Jeffrey Hinkle, Representative of the
9 National Capital Planning Commission and to my
10 left is a Vice Chairperson Nicole Sorg, Mayoral
11 Appointee, and to her left is Representative of
12 the Zoning Commission, Michael Turnbull. Copies
13 of today's meeting agenda are available to you
14 and are located to my left in the wall bin near
15 the door. Please be advised this proceeding is
16 being recorded by a court reporter and is also
17 being webcast live. Accordingly we must ask you
18 to refrain from any disturbing noises or actions
19 in the hearing room. When presenting information
20 to the Board please turn-on and speak into your
21 microphone first stating your name and home
22 address. When you are finished speaking please

1 turn-off your microphone so that your microphone
2 is no longer picking up sounds or background
3 noise. All persons planning to testify either in
4 support or in opposition are to fill out two
5 witness cards these cards are located to my left
6 on the wall bin near the door and are also on
7 witness tables. Upon coming forward to speak to
8 the Board please give both cards to the court
9 reporter sitting to my right. The order for
10 special exceptions and variances are as follows:
11 1. Statement of the Applicant and Applicant's
12 Witnesses. 2. Parties and persons in support. 3.
13 Parties and persons in opposition. 4. Government
14 Reports including Office of Planning and
15 Department of Transportation. 5. Reports from
16 the ANC. 6. Rebuttal and closing statements of
17 the Applicant. Pursuant to Section 3117.4 and
18 3117.5 the following time constraints will be
19 maintained, the Applicant/Appellant persons and
20 parties except an ANC in support including their
21 witnesses will be given 60 minutes collectively.
22 The Appellees persons and parties except an ANC

1 in opposition including witnesses will be given
2 60 minutes collectively. Individuals will be
3 given 3 minutes and associations or organizations
4 will be given 5. These time restrictions do not
5 include cross examinations or questions from the
6 Board. Cross examination of witnesses is
7 permitted by a party or an Applicant, the ANC
8 within which the property is located is
9 automatically a party to a special exception or
10 variance case. Nothing prohibits the Board from
11 placing reasonable restrictions on cross
12 examination including time limitations or
13 limitation on the scope of cross examination.
14 The record will be closed at the conclusion of
15 each case except for any materials specifically
16 requested by the Board. The Board and the Staff
17 will specify at the end of each hearing exactly
18 what is expected and the date when the person
19 must submit this documentation to the Office of
20 Zoning. After the record is closed no other
21 information will be accepted by the Board. The
22 Sunshine Act requires that a public hearing on

1 each case be held in the open before the public.
2 The Board may consistent with its rules and
3 procedures and the Sunshine Act enter into
4 Executive Session during or after a hearing on a
5 case for purposes of reviewing the record or
6 deliberating on a case. The decision of the
7 Board as in these contested cases must be based
8 exclusively on the public record, to avoid any
9 appearance to the contrary the Board requests
10 that persons present not engage the members of
11 the Board in conversation. Please turn off all
12 beepers and cell phones at this time as to not
13 disturb these proceedings. The Board will make
14 every effort to conclude the public hearing as
15 near as possible to 6pm if the afternoon cases
16 are not completed at 6pm the Board will assess
17 whether it can complete the pending case or cases
18 remaining on the agenda. At this time the Board
19 will consider any preliminary matters,
20 preliminary matters relate to whether a case
21 should or will be heard today such as a request
22 for postponement, continuance or withdrawal or

1 whether proper or adequate notice of a hearing
2 was given. If you are not prepared to go forward
3 today or you believe that the Board should not
4 proceed, now is the time to raise such a matter.

5 Mr. Secretary, do we have any preliminary
6 matters?

7 MR. MOY: Madam Chair there is a
8 preliminary matter to the second case this
9 afternoon, Application No. 18174, other than that
10 the Board can proceed.

11 CHAIRPERSON MOLDENHAUER: Okay thank you
12 we'll actually take that up first on the agenda.
13 Let's first have all individuals wishing to
14 testify please stand for the oath to be
15 administered.

16 MR. MOY: Do you solemnly swear or affirm
17 that the testimony you're about to present at
18 this proceeding is the truth, the whole truth and
19 nothing but the truth? You may consider
20 yourselves under oath.

21 **Application No. 18174**

22 MR. MOY: Yes good afternoon Madam Chair,

1 Members of the Board that Application No. would
2 be Application No. 18174 of Gary Cohen pursuant
3 to 11 DCMR 3103.2 for a variance from the lot
4 occupancy requirements under Section 772 and a
5 variance from the off street parking requirements
6 under Subsection 2101.1 to allow the conversion
7 of an existing one story commercial building a
8 Laundromat to a three story apartment building in
9 the C-2-A District at premises 732 15th Street,
10 S.E. (Square 1077, Lot 808).

11 CHAIRPERSON MOLDENHAUER: Parties can
12 please step forward, turn on your microphone you
13 can introduce yourself for the record.

14 MR. COHEN: I'm Gary Cohen the Applicant.

15 MR. GOINS: PGN Architects.

16 CHAIRPERSON MOLDENHAUER: The reason we
17 called this case first is because we have a
18 preliminary matter which is the fact that the
19 posting has not occurred on this property, I
20 think that you're aware that it has not occurred.
21 I think that you had submitted a request to
22 waive that requirement is that correct?

1 MR. COHEN: We were going to ask.

2 CHAIRPERSON MOLDENHAUER: You were going
3 to ask for it, well since sometimes people will
4 say oh we posted it late and we'll say okay well
5 as long it was posted late but it was still
6 posted that might be one thing but since it
7 hasn't been posted at all we really, it's
8 required by the Regs that it be posted for 15
9 days. What we are going to recommend is that
10 right after this you go next door, you go across
11 to the Office of Zoning, you pick up the poster,
12 you post it today and we hear this case on March
13 15th, so that way that's 15 days from today so
14 long as you actually get it posted by today and
15 then get the affidavit to our office hopefully by
16 tomorrow saying that it was posted by today
17 you'll take a picture and you'll show that it was
18 posted today and then we'll be able to hear this
19 case on March 15th, our schedule is very full on
20 March 15th, but we'd like to squeeze it in and get
21 that taken care of anyway. So what we'll do is
22 we'll postpone this case to the afternoon of

1 March 15th and we'll expect to have the affidavit
2 of posting from you by tomorrow.

3 MR. COHEN: You will.

4 CHAIRPERSON MOLDENHAUER: Okay fabulous,
5 thank you.

6 **Application No. 18175**

7 MR. MOY: The next case Madam Chair for
8 the afternoon session is Application No. 18175 of
9 David Stivaletta pursuant to 11 DCMR 3103.2 for a
10 variance from the lot occupancy requirements
11 under Section 772, and a variance from the non-
12 conforming structure provisions under Subsection
13 2001.3, to allow a two story rear addition to an
14 existing one family row dwelling in the R-5-B
15 District that premise is 1432 Q Street, N.W.
16 (Square 209, Lot 72).

17 CHAIRPERSON MOLDENHAUER: Thank you very
18 much before the parties introduce themselves, I
19 am going to notify individuals that I actually
20 know the Applicant in a profession setting so
21 based on that there will be a quorum if I recuse
22 myself and I will recuse myself then for this

1 case so I will say enjoy the rest of the
2 afternoon everybody and I will be off to the
3 office and so I leave everybody in capable hands,
4 Ms. Sorg as Vice Chair will take over and take
5 care of the rest of the cases which is just this
6 one on the agenda. So thank you and I'll let you
7 guys introduce yourselves for the record.

8 MS. SORG: Thank you Madam Chair, have a
9 good afternoon. Can you please introduce
10 yourselves for the record?

11 MR. SULLIVAN: Sure my name is Marty
12 Sullivan with Sullivan, Stiles and Barrows, here
13 on behalf of the Applicant.

14 MR. STIVALETTA: I'm David Stivaletta,
15 1432 Q Street.

16 MR. CREASER: My name is Randy Creaser,
17 of Ryan Architects, 1420 Q Street, N.W.,
18 Washington, DC.

19 MS. SORG: Thank you, I think Mr.
20 Sullivan we can just go ahead right into your
21 presentation.

22 MR. SULLIVAN: Thank you, good afternoon

1 Madam Chair and Members of the Board, we're here
2 to present Application No. 18175, the Applicant
3 David Stivaletta at 1432 Q Street, N.W is
4 requesting variance relief from Section 403.2 and
5 Section 2001.3 both areas of relief relate to the
6 lot occupancy, this is the R-5-B District. I'd
7 like to start with our testimony and I'll
8 highlight our legal argument on the variance test
9 following that testimony so Mr. Stivaletta will
10 testify now.

11 MR. STIVALETTA: Good afternoon, the
12 reason why we're requesting this variance is in
13 the addition, first let me give you a little
14 background, I've been living in the residence for
15 13 years at 1432 Q, I've been a member there and
16 have assisted the residence Board and worked in
17 the community for quite sometime and before
18 needing, or requesting this variance I had spoken
19 to several of the members of the Board and also
20 our immediate neighbors to talk to them about the
21 potential impact on their property. Actually one
22 of the neighbors is sitting in the back. So the

1 main reason for me requesting this, is the way
2 the house was designed there really is only one
3 bedroom there and I'm requesting this so I can
4 build an additional bedroom upstairs so I have
5 space, one to bring my aging parents with me in
6 the very near future. We've gone through the
7 process of talking to the CDC and getting their
8 approval and the Historical Society's approval
9 for this project. When we presented to the CDC
10 they made particular note of some of the
11 mitigating factors of requesting the variance and
12 the main one was the small size of the property,
13 the width being so narrow and then the other that
14 the Historical Society does not want us to remove
15 the Carriage House which that structure takes up
16 19% of our property and I think that's all I
17 have, thank you.

18 MS. SORG: Is there a, where's the other
19 mic? Here we go,

20 MR. CREASER: Good afternoon my name is
21 Randy Creaser with Creaser Ryan Architects. I
22 believe you have the submittals before you but I

1 will review with you the dimensions of the
2 proposed addition. As you can see the existing
3 property from property line to property line is
4 approximately 13'6", the addition is going to be
5 a two story addition with a footprint of the
6 13'6" feet from property line to property line
7 and then extending to the rear of the property
8 approximately 12 feet 8 inches which allows for a
9 little over 22 feet of open space to the face of
10 the existing two story garage. If you go to
11 sheet 2, it's kind of sort of a clear Birdseye
12 view of the existing building in the context of
13 the existing garage and the neighbors on the east
14 and west, on the right illustration is a sort of
15 Photoshop view of what the addition would look
16 like which would be projecting into that rear
17 yard, that 12 feet 6 inches and we have the
18 architectural sort of character we've gone to
19 some trouble to take off the existing vinyl
20 siding of the rear elevation and surround the new
21 addition with brick and fenestrate the rear wall
22 with sash windows and a patio door. The HPRB

1 liked this idea because it was kind of keeping a
2 traditional look to the house which is in keeping
3 with the rest of the neighborhood. As we stated
4 previously the sort of uniqueness of this
5 proposal is that this is really one of the
6 smallest houses on the whole block. I have an
7 exhibit here it should be sheet 6 that kind of
8 gives you an idea of the subject property 1432
9 and where the existing rear wall is in relation
10 to the rest of the block which has rather larger
11 extensions out the rear, so we're asking that
12 because of the unique nature of this it kind of
13 creates a practical difficulty, so what we're
14 trying to do is do the sort of architecturally
15 correct thing, we couldn't really add a third
16 story just the practicality of that as well as
17 the HPRB wasn't really keen about that. The HPRB
18 wasn't not keen about taking down the existing
19 garage which would then allow us plenty of
20 occupancy to then do the addition. So we're kind
21 of in a position where we're doing the minimum
22 that we can do to provide a marketable bedroom

1 and kitchen area for a house of this size. So
2 in closing I hope that this, that you will
3 support this proposal based on the fact that both
4 the immediate neighbors are in support of this
5 addition to I believe the immediate neighbors to
6 the east and west, you should have letters in
7 support, the CDC and the ANC has also unanimously
8 supported it and also the fact that just sort of
9 for the public good it is not creating a
10 unnecessary burden or impact on the architectural
11 character of the rest of the adjoining properties
12 or architectural character of the alley façade's
13 in that neighborhood. I also feel that
14 personally I happen to be a neighbor also, I've
15 lived in the neighborhood and sort of feel that
16 an addition of this type to this home is actually
17 a very strong support of the real estate and
18 property values that we all desire in our
19 neighborhoods, that's all thank you.

20 MR. SULLIVAN: I just have a couple of
21 questions for the Applicant, for Mr. Stivaletta;
22 can you tell us what the square footage of the

1 house is inside?

2 MR. STIVALETТА: The current square
3 footage is about 1300 square feet.

4 MR. SULLIVAN: And with the proposed what
5 the square footage will be?

6 MR. STIVALETТА: It will be about 1660
7 square feet.

8 MR. SULLIVAN: And can you talk about the
9 cellar height, is the cellar height limited?

10 MR. STIVALETТА: The cellar height is
11 just a little greater than 6 feet; it's about 6
12 feet 6 inches.

13 MR. SULLIVAN: Thank you. I'd just like
14 to address the variance test, as applied to the
15 facts that you have before you as well as the
16 testimony that you've heard from the architect
17 and the Applicant as you know the Board can
18 consider a confluence of factors when considering
19 whether or not a property has a practical
20 difficulty as a result of extraordinary or
21 unique conditions and I think this case is
22 perhaps the epitome of a confluence of factors

1 case, its as you can see from that it's a very
2 narrow lot, almost, it may be the most narrow one
3 on the lot, but it's certainly of the 10 or 12
4 lots around it. It's similar in size width wise
5 although slightly smaller that the two lots on
6 either side of it but when you go out from there
7 and if, Randy if you could put that picture up
8 and show, these three together were obviously
9 built together and then the neighborhood grew up
10 around these homes. Is this the general
11 condition of the rest of the block too?

12 MR. CREASER: Yes, I can testify that
13 most of the other properties on this street are 3
14 to 4 stories tall, which is, you can see, you
15 don't have this in your packet but I will bring
16 it closer so that you can kind of see the
17 neighboring.

18 MS. SORG: I think we have some photos
19 that show that actually, thank you.

20 MR. SULLIVAN: So it's very narrow, it's
21 very small; it has a very low height relative to
22 the neighborhood. When it comes to the lot

1 occupancy calculation because of the size
2 comparable to the rest of the neighborhood this
3 property has an extraordinarily low denominator
4 that greatly limits the footprint and living area
5 of this building, so when you throw on top of
6 that there's the existing carriage house that the
7 Historic Preservation doesn't want us to remove
8 it consume almost one fifth of that available lot
9 area. So in relation to the neighborhood this
10 property has practical difficulties in complying
11 with the strict application of the lot occupancy
12 limits because of all of these unique conditions.
13 In addition to the factors affecting the
14 footprint and the denominator of the lot
15 occupancy calculation the Applicant's property is
16 effectively prevented from going up because it
17 wouldn't be feasible or the Historic Preservation
18 wouldn't approve a height increase, it's
19 impossible to go down because of the nearly
20 uninhabitable condition of the cellar, so an
21 addition to the rear is the only reasonable
22 alternative to provide a modest addition of

1 living space which will go by the way from 1300
2 to 1660 and still be considerably smaller than
3 almost every home on the lot. As you look at
4 this drawing, you'll see when you walk down the
5 back alley you won't see it's 75% lot occupancy
6 is what it will be including the garage, you
7 won't see a big 75 hanging over there, no one
8 will know it's 75%. That 75% is largely a
9 product of that small denominator and in relation
10 to the neighborhood if you could show where the
11 line of the addition would be, you Randy on that,
12 it's still going to be one of the smallest homes
13 on the block.

14 MS. SORG: We can see if you point at it,
15 its okay also.

16 MR. SULLIVAN: On prong three as I
17 mentioned even after we have the addition we've
18 got a small footprint, you also have 23 feet
19 between the end of the addition and the beginning
20 of the garage and in that sense the relief
21 certainly doesn't impair the integrity of the
22 zone plan, also the fact that we have so many

1 factors coming together, the size, the height,
2 the garage and the basement issue it's very
3 unlikely that this would set any precedent that
4 would be of any concern to anybody and in fact in
5 there, they may not have mentioned it the letter,
6 the ANC but when we met with the community
7 development committee they specifically called
8 out that normally they might be concerned for an
9 addition over lot occupancy but it was unlikely
10 that they would ever see a case that had this
11 many unique circumstances and they felt very
12 comfortable granting their approval for that. So
13 ANC 2-F unanimously support the proposal, I want
14 to make sure you have that letter.

15 MS. SORG: I was going to interrupt you
16 and say that I don't believe that we have
17 anything in our file from the ANC, so if you have
18 that you can give that to Mr. Moy, thank you.

19 MR. SULLIVAN: If I could just, I know
20 that every case is reviewed on its own merits
21 regardless of other cases but I think there are a
22 couple of previous BZA cases that are instructive

1 on some specific aspects of this Application. In
2 Case 17125 in the C-R-4 District, the Board
3 approved an addition that went to 75%, like this,
4 over the objection of the Office of Planning
5 which suggested that it stays at 70%. One of the
6 similarities from that case is that it involved
7 the property where there were two adjoining row
8 houses just like this, and the BZA stated that
9 the requirement that the property be unique does
10 not mean that the property must be the only
11 property that is affect in a particular way it
12 need only be established that it seems unlikely
13 that many properties would be effected in this
14 particular way, and I think that this applies to
15 all of our unique conditions. Also in that case
16 the Board determined that the difference between
17 a lot occupancy of 75% and 70% was dominimus, the
18 Board also said that the Board believes that the
19 Applicants seek to do not more than the owner of
20 a somewhat large lot, customarily accomplishes
21 through Section 223 relief, so I think that ties
22 in to what we're saying about how it still has a

1 small foot print in the context of the
2 neighborhood regardless of the relatively high
3 lot occupancy percentage calculation. So that's
4 part of our uniqueness and our practical
5 difficulty argument. I would also like to
6 highlight a case in which the Board denied a
7 variance request because the language in that
8 denial really distinguishes a critical point
9 here, it was Case No. 17045 where the Board
10 denied a request to go to 80% and there were two
11 things, first the Applicant had built the
12 addition and saying that they were going to then
13 remove the garage and when they got done with the
14 addition they came back to the BZA and said now
15 we want to keep the garage and the Board said
16 well you should have asked for that up front.
17 But the real critical point there is there was a
18 carriage house that was taking up a lot of the
19 lot occupancy percentage as it is here and it was
20 not in an Historic District and the Board said if
21 there was some, they implied that this was a
22 critical difference that it was not in a Historic

1 District because there was nothing preventing
2 them from removing the garage where as in this
3 case we have input from Historic Preservation
4 that they want to retain the Carriage House and I
5 would disagree with OP on that point in their
6 report, I think that is very unique, the garage
7 itself might not be the most unique factor here,
8 but the fact that we do have a carriage house
9 that we can't remove in combination with the
10 small lot, it really all, it works together.
11 Finally there was a BZA Case 17579 where the
12 Board approved a lot occupancy variance and
13 stated that it based its conclusion "on the
14 dwellings absence of a basement level that
15 creates a unique circumstance specific to this
16 property compared to neighboring properties. So
17 I bring that up for two points, one they did
18 point to the, it was the absence of a basement
19 where we think we have a similar condition here
20 where we have a limited basement. But the other
21 thing that's important about that ruling is that
22 it's evaluated in the context of the surrounding

1 neighborhood and it was important to them that
2 the conclusion was based on the absence of
3 basement, it created a unique circumstance
4 compared to neighboring properties and we think
5 we have that here because other basements in the
6 neighborhood, the homes, Randy if you could talk
7 about the homes, generally neighborhoods have
8 large full basements.

9 MR. CREASER: Yes most of the homes in
10 this block do have actual like apartments with
11 head heights exceeding 7 feet.

12 MR. SULLIVAN: Thank you, so this is a
13 one bedroom house in an area that has, very close
14 by 4000, almost 4000 square foot homes with
15 multiple bedrooms and it doesn't fit in the
16 neighborhood, the neighborhood has sort of grown
17 up around it, so we think all of that together is
18 an unnecessary burden in complying with the lot
19 occupancy requirements. So to summarize we think
20 we have several unique conditions, we think we
21 have as a result of those unique conditions we
22 have a practical and unnecessary burden in

1 complying with the lot occupancy. We can't go
2 higher, we can't go lower, we can only go back
3 and the relief granted will not cause substantial
4 detriment to the public good and will not
5 substantially impair the integrity of the zone
6 plan, thank you.

7 MS. SORG: Thank you, before I ask my
8 fellow Board Members if they have any questions
9 of the Applicant, I will mention that in our file
10 I have a letter from the neighbor at 1436 Q
11 Street but I think that's the only letter that I
12 have, and I believe in your testimony you
13 mentioned that there were...

14 MR. SULLIVAN: I submitted one with the
15 prehearing statement, as an attachment to the
16 prehearing statement; those are the two adjacent
17 neighbors.

18 MS. SORG: Got it thank you.

19 MR. SULLIVAN: I think we thought they
20 were going to submit them separately.

21 MS. SORG: Okay.

22 MR. TURNBULL: Just to confirm I believe

1 there on "Exhibit 25" and were talking about a
2 Mr. George Simmons and Kerry Skelton, are those
3 the letters we're looking for?

4 MR. SULLIVAN: That's correct.

5 MR. TURNBULL: Okay.

6 MS. SORG: Oh great, I see, okay thank
7 you. Do Board Members have any questions for the
8 Applicant?

9 MR. TURNBULL: I just wanted; you've read
10 the Office of Planning Report?

11 MR. SULLIVAN: Yes I have.

12 MR. TURNBULL: I mean we're going to hear
13 from them, but...

14 MR. SULLIVAN: I was going to wait until
15 after and address it during rebuttal.

16 MR. TURNBULL: Okay.

17 MS. SORG: I have two questions, one did
18 you, you mentioned that HPRB was sort of not in
19 favor of removing the carriage house; did you
20 present a scheme in which that was proposed?

21 MR. SULLIVAN: Well I would ask the
22 Applicant about that Mr. Creaser I don't think

1 was involved at that point, David I think you
2 were.

3 MR. STIVALETТА: We have talked about the
4 carriage house with them and they said that they
5 would prefer that it remain one because of the
6 historical nature and then two because of the
7 security that it provides to the three of us in
8 the back. We have had issues with crime, I've
9 been broken into that garage a couple of times
10 but none of the houses have been broken into
11 because they can't get past the structure and the
12 way the other two fences are designed on either
13 side.

14 MS. SORG: So you think it's providing
15 you security as well?

16 MR. STIVALETТА: That's correct.

17 MS. SORG: And what goes on, on the
18 second floor?

19 MR. STIVALETТА: Of the carriage house?
20 It's storage.

21 MS. SORG: Storage and you park on the
22 first floor.

1 MR. STIVALETТА: That's correct; I mean
2 there's no electricity there right now so.

3 MS. SORG: Okay thank you. Any other
4 questions from the Board?

5 MR. TURNBULL: We don't have full plans
6 of the existing house, a section or anything, I
7 mean we've got, we show the end of the house and
8 then we see the addition on the house but do you
9 have the existing floor plan or a section through
10 the house?

11 MR. CREASER: I don't have a section
12 through the house there is a, on sheet four it
13 illustrates the east and west elevations that
14 indicate the existing footprint at the right side
15 of the east elevation with the proposed addition.

16 MR. TURNBULL: But no floor plan?

17 MR. CREASER: Of the existing house, this
18 is the same submittal we made, no I do not have.

19 MR. SULLIVAN: I don't know that we
20 submitted a full floor plan; we could have the
21 Applicant describe it if that helps.

22 MS. SORG: What I think I'd like to do

1 Mr. Turnbull you tell me if this would satisfy
2 what your looking for, I think why don't we
3 continue and then maybe it's something that we
4 can request from the Applicant at the close of
5 today's hearing is that's something that we want,
6 okay.

7 MR. TURNBULL: Okay.

8 MS. SORG: Why don't we go ahead and hear
9 from any parties or person in support? They can
10 step forward if there are any, okay.

11 MR. SULLIVAN: She said she just wants to
12 listen not talk.

13 MS. SORG: Okay seeing none we will turn
14 to any parties or persons in opposition to the
15 Application, and seeing no one stepping forward
16 again, let's turn to the Office of Planning.

17 MR. GOLDSTEIN: Good afternoon my name is
18 Paul Goldstein with the Office of Planning. The
19 Office of Planning cannot recommend approval of
20 the Applicant's request for relief from Sections
21 403, and 2001.3, for the record, the subject
22 property is lot 72 and Square 209 and is zoned R-

1 5-B and as you've heard the relief is need to
2 accommodate the Applicants proposal for a two
3 story rear expansion of the dwelling, I'll hit
4 the highlights of our report and the variance
5 test. OP doesn't believe that the test has yet
6 been made although we've heard some good
7 information today. The property is on the
8 smaller side, I think that's been testified too,
9 it's not the smallest on the block there are a
10 couple of others to the west of this that are
11 smaller but it is on the small side, it's width
12 is under 14 feet, it's 1300 plus square feet
13 currently. The problem that the Office of
14 Planning has is that it's health, there's a
15 practical difficulty related to that small size
16 and it goes to how is this unnecessarily
17 burdensome, how would it be burdensome to
18 actually comply with the Zoning Regulations.
19 They're permitted to expand the dwelling already
20 as a special exception under 223, it can go up to
21 70%, and they're a little under 63% at the moment
22 that would give them about, another square feet

1 of lot coverage to play with. I think the
2 Applicant was talking a bit about that this is
3 the minimum needed to fit their needs, I think
4 that might be interesting to kind of explore that
5 a little bit more, how the existing house can't
6 be reconfigured perhaps to comply with the 70%
7 limitation. I think maybe it would be helpful to
8 have the full floor plans as well to have that
9 discussion. I think it would be interesting to
10 talk a bit more about the limitations of the
11 existing house and why 70% is not a reasonable
12 limitation when they are permitted, 223 is giving
13 the homeowners the ability to expand their homes
14 up to a certain point. Considering the third
15 prong the Office of Planning doesn't see any
16 detriment to the public good, you've got letters
17 in the record already that are in support,
18 haven't seen the letter but I've heard that the
19 ANC is supportive, so that doesn't trouble us.
20 Regarding the intent of the Zoning Regulations,
21 Section 2001.3 specifically provides that
22 additions to non-conforming structures must meet

1 lot occupancy provisions, in this case that would
2 be 60% in the R-5-B and as I mentioned Section
3 223 anticipates and permits additions to existing
4 non-conforming dwellings but the Office of
5 Planning tends to take a pretty strong stance
6 based on 2001.3A and just because that
7 specifically is called out that you've got to
8 comply with lot occupancy standards, that doesn't
9 mean that you can't get a variance from it but we
10 tend to say that it requires a pretty high burden
11 to be able to meet that test. So as a result the
12 Office of Planning is not able to recommend
13 support for the Application and that concludes my
14 presentation, I'm not available for questions,
15 thank you.

16 MS. SORG: Thank you very much; do Board
17 Members have questions for Office of Planning?

18 MR. TURNBULL: Yes, Mr. Goldstein, good
19 afternoon, a question about the basement, I'm
20 looking at drawing four it shows a section and
21 I'm looking at a basement to the existing
22 building from ceiling, I guess, to floor which is

1 6.5 on one drawing and 6.4 at another. It's more
2 of a building code issue but I don't even know if
3 that's considered a habitable space down there
4 then, that's not a zoning issue but how did you
5 look at that part of it and I mean as far as a
6 useable space for the Applicant to use.

7 MR. GOLDSTEIN: I had difficulty judging
8 that factor so to be honest I wouldn't mind
9 hearing a little bit more about how that limits
10 their use, I don't quite know what the neighboring
11 homes have, if they were built in three are
12 these just the exact same cellars. There has
13 been some testimony that this is a unique
14 condition, it certainly is, it is a bit of a
15 limiting factor for them, does that...

16 MR. TURNBULL: I could use it to; it
17 wouldn't impact me but...

18 MR. GOLDSTEIN: Does that necessarily
19 flow that they can get relief from lot occupancy
20 I'm not quite there yet but it certainly is a
21 limitation in their use from what it sounds like.

22 MR. TURNBULL: Well would that add to the

1 practical difficulty of doing, of making, of
2 being able to work with the house that they've
3 got and make it, I'm just wondering as you look
4 at this, is this just another limiting factor,
5 that definitely inhibits their use of the
6 building.

7 MR. GOLDSTEIN: I think that we actually
8 kind of raise that in our report, some more
9 discussions about the limitations of the house; I
10 mean this certainly gets to it. Are there
11 limitations that this expansion helps to
12 alleviate, perhaps there is some connection there
13 that can be made, that constraint somehow leads
14 to the need for additional lot occupancy, I don't
15 feel like we've quite gotten there yet.

16 MR. TURNBULL: What will you see the
17 Applicant providing you that would convince you
18 of this issue and that it's a major factor?

19 MR. GOLDSTEIN: I think and some
20 discussions I have had with the Applicant I think
21 some of the things I was asking about, I can't
22 necessarily say it's convincing or it's not at

1 this point, but certainly some of the limitations
2 of the existing house I think we're hearing a bit
3 about that, and then also how this expansion sort
4 of responds to these limitations to the
5 constraints on the house, could there, is it
6 possible to reconfigure in some way that can
7 still keep you under 70%, you know I'm kind of
8 grasping a little bit.

9 MR. TURNBULL: I guess I'm getting, one
10 of the things that I mentioned earlier was what
11 if we had a set of floor plans of the house or
12 section and maybe some idea, some concept drawing
13 and how to, could they work within that limit
14 then or up to the limits of 70% is what your
15 asking for.

16 MR. GOLDSTEIN: I think that would be
17 helpful.

18 MS. SORG: I wanted to ask one question
19 with regard to the first prong of the variance
20 test. We heard some testimony from the Applicant
21 today about the garage, or the carriage house
22 being historic and that contributing to their

1 view of their meeting the first prong, you didn't
2 go into that too much in your report I wonder if
3 you could address that a little.

4 MR. GOLDSTEIN: Sure, that's an argument
5 I had a little difficulty with, I can confirm I
6 spoke as well to our Historic Preservation Office
7 who did express the opinion that they would not
8 be happy with the carriage house coming down
9 which I guess has also been confirmed by their
10 discussions with HPRB. There are other garages
11 on this block, it's actually a bigger garage than
12 they otherwise would be allowed to have, if you
13 eliminate 15 feet of one story it's tough to see
14 this as a unique factor, having a garage, I guess
15 their point is it's a small lot already and they
16 have a garage, it's tough to, I guess unless you
17 can really kind of get there with a confluence of
18 factors, having a garage that actually is
19 developed on a property more than you'd otherwise
20 be permitted to build on your property, not only
21 lot occupancy but in height and in stories. It's
22 hard to see that as a factor that's limiting to

1 this specific property.

2 MR. TURNBULL: Do you feel the same about
3 the third floor addition in terms of the HPRB
4 expressing not wanting a third story on this,
5 does that create a practical difficulty in terms
6 of OP's review of this project.

7 MR. GOLDSTEIN: I don't think it alone
8 would, I think that factor certainly goes to,
9 their options are a bit more limited, I spoke
10 with the Historic Preservation Office as well,
11 they didn't say it was impossible to do, they
12 said it certainly would have it's challenges to
13 go up there. I understand where the Applicant is
14 coming from in a sense; really their only option
15 is to go back if they want to expand this
16 dwelling. I think the Office of Planning just
17 wasn't yet convinced that this couldn't be done
18 in a way that could come in under 223, and that
19 not doing that by exceeding what they're
20 permitted in lot occupancy that, that's a
21 reflection of the uniqueness and is unnecessarily
22 burdensome we just haven't quite gotten to the

1 point yet. But it is a factor, the limits that
2 constrains their ability to expand.

3 MS. SORG: Any questions from the Board?
4 Does the Applicant have questions for the Office
5 of Planning?

6 MR. SULLIVAN: Yes, good afternoon Mr.
7 Goldstein sounds like you're really close on this
8 one right.

9 MR. GOLDSTEIN: No comment.

10 MR. SULLIVAN: You said that the Office
11 of Planning takes a particularly strong stance on
12 2001.3, is that the opinion of the Office of
13 Planning or is, well first of all, so you're
14 saying there's a different standards for that
15 section of the regulations than there would be
16 for a side yard variance?

17 MR. GOLDSTEIN: I think we do tend to
18 interpret that provision as calling out lot
19 occupancy in particular; we treat that as a
20 higher standard.

21 MR. SULLIVAN: Does the Board treat it as
22 a higher standard or is that just your opinion?

1 MR. GOLDSTEIN: I think that's
2 traditionally been the Office of Planning's
3 position, I leave it to the Board how they want
4 to interpret that.

5 MR. SULLIVAN: In past cases where you've
6 said that certain provisions of the regulations
7 have a different burden or a stricter burden than
8 other it's true that the Board has disagreed with
9 you on those points, isn't that correct, in
10 particularly regarding say alley lot cases, under
11 Chapter 25.

12 MR. GOLDSTEIN: That questions just a
13 little too broad for me, so it's hard for me to
14 think of this specific instance. We make
15 recommendations and the Board sometimes disagrees
16 with us.

17 MR. SULLIVAN: Okay, so there's no real
18 legal authority or anything you can cite from the
19 Board that says for instance 201.3 deserves less
20 consideration than a variance from side yards?

21 MR. GOLDSTEIN: It's just; it's been our
22 Office of Planning's consistent interpretation.

1 MR. SULLIVAN: So if you evaluate it
2 then, this application under the same standard
3 that you would evaluate any other variance from
4 any other section of the regs you might get
5 there, is that right, because your close. Your
6 reviewing this under a tougher standard is that
7 what you're saying?

8 MR. GOLDSTEIN: I don't know how to
9 answer that question.

10 MR. SULLIVAN: You said you had approved
11 70% lot occupancy?

12 MR. GOLDSTEIN: I guess that we would
13 likely be supportive, it would certainly need to
14 meet the special exception standards if the
15 neighbors had been supportive I think there would
16 probably be a good chance that we would be
17 supportive of that.

18 MR. SULLIVAN: What difference do you
19 think that 165 square feet makes to take that
20 over the top from something you'd support to
21 something that's just not supportable?

22 MR. GOLDSTEIN: I'm sorry could you

1 repeat that?

2 MR. SULLIVAN: Yeah, the difference
3 between 70 and 75% leads to another 165 square
4 feet of footprint and I'm wondering what
5 difference that 5% makes, your analysis and your
6 review of this.

7 MR. GOLDSTEIN: Actually I think it's even
8 a little lower than that square footage, but
9 yeah, if you're asking about the impact on the
10 public good.

11 MR. SULLIVAN: It's 65, it's not 165.

12 MR. GOLDSTEIN: Yeah it's closer to; I
13 remember it's about 70 square feet above. It's
14 certainly a smaller structure, it appears that
15 this structure does not have an impact on the
16 public good based on the neighbors supporting it,
17 whether it meets the three pronged variance test
18 is a different story.

19 MR. SULLIVAN: Do we meet prong one?

20 MR. GOLDSTEIN: It's, it's hard to
21 bifurcate analysis, prong two flows...

22 MR. SULLIVAN: Would you say it's unique

1 in size?

2 MR. GOLDSTEIN: I think it's a
3 distinguishing feature, prong two has to flow
4 from prong one so you couldn't just say...

5 MR. SULLIVAN: Does it have to be the
6 smallest lot on the block to be considered unique
7 for your analysis?

8 MR. GOLDSTEIN: I think it would help.
9 But it's really the two prongs have to flow from
10 each other.

11 MR. SULLIVAN: Is the height unique? Or
12 lack thereof?

13 MR. GOLDSTEIN: Again, I think it's
14 another factor to be taken into account there are
15 other two-story dwellings along this block and
16 the block across from it.

17 MR. SULLIVAN: You mentioned that the
18 fact that there's a garage is not a unique
19 condition, would it be a unique condition that
20 there's a garage that's prevented from being
21 removed by specific direction from Historic
22 Preservation, does that make it unique?

1 MR. GOLDSTEIN: I'm not sure; I don't
2 think that factor alone would, no.

3 MR. SULLIVAN: So you think there's other
4 garages on the block that have had direction from
5 HP that they can't removed their garage?

6 MR. GOLDSTEIN: I'm not sure.

7 MR. SULLIVAN: Is the standard for
8 practical difficulty that it be impossible?

9 MR. GOLDSTEIN: I believe it's
10 unnecessarily burdensome, as the standard.

11 MR. SULLIVAN: So we don't have to prove
12 that living in a 1300 square foot house among
13 homes that are minimum 2000 square feet, we don't
14 have to prove that it's impossible to be able to
15 live within that living space.

16 MR. GOLDSTEIN: I, I would believe that
17 probably is not the standard.

18 MR. SULLIVAN: No further questions,
19 thank you.

20 MS. SORG: Thank you.

21 MR. TURNBULL: Vice Chair I wonder if I
22 could ask a question.

1 MS. SORG: Yes absolutely.

2 MR. TURNBULL: I'd like to ask the owner,
3 what happens in your basement, what are you
4 doing, how do you use your basement I guess?

5 MR. STIVALETTA: Currently the basement
6 is a laundry room and then the back part is
7 storage?

8 MR. TURNBULL: Is there a furnace down
9 there?

10 MR. STIVALETTA: There's a furnace a hot
11 water heater.

12 MR. TURNBULL: It has a cement floor?

13 MR. STIVALETTA: Yes it has a cement
14 floor.

15 MR. TURNBULL: Do you know what the
16 adjoining have as far as basements it is the
17 same?

18 MR. STIVALETTA: The neighbor to the west
19 yes they have a cement floor but I believe their
20 height is about 7 and a half percent and then the
21 neighbor to the east I believe they have a dirt
22 basement and they do not access their basement

1 from the house they go outside and they have like
2 metal doors that they open.

3 MR. TURNBULL: And how do you, is there
4 stairs going down:

5 MR. STIVALETТА: There are stairs going
6 down to the basement right.

7 MR. TURNBULL: Okay thank you.

8 MR. SORG: Are there any more important
9 questions?

10 MR. HINKLE: Yeah just a question to the
11 owner, what happens if you can't expand this
12 building as you're proposing, I think you
13 mentioned your parents are moving in?

14 MR. STIVALETТА: That's correct, you know
15 my father will be 81 this year; he's had some
16 heart problems, so if I can't do this then, it
17 may mean that I have to sell and move out of the
18 area.

19 MS. SORG: I want to talk a little bit
20 about something that Mr. Goldstein was pointing
21 to which is trying to connect the limitations on
22 use of the house be it the configuration or you

1 did mention the number of bedrooms just now, but
2 to connect that, you've mentioned the limitations
3 of the basement height itself but you know to
4 hear a little bit about how that may or may not
5 be connected with, you know, your requirements
6 for use.

7 MR. STIVALETTA: We had looked at
8 expanding the basement and part of the problem
9 with the house it was I believe originally built
10 in the late 1880s and during the construction of
11 the condo buildings behind us while they were
12 putting in steel platforms we began to see the
13 house and there you can see the fractured
14 structures, there are fractures all on the front
15 of the house now that will need to be repaired
16 so, I think disturbing the foundation would add a
17 great deal of problems in structural integrity to
18 the house.

19 MS. SORG: One other thing to address is
20 the point about what, what that 70 square feet
21 means and why it's necessary to go forward with
22 that as opposed to staying under and the 223...

1 MR. SULLIVAN: We have a drawing actually
2 and it shows the line of where it would be.

3 MR. CREASER: I just drew it on here in
4 red can I approach the bench to show you.

5 MR. SULLIVAN: How large would the
6 bedroom have to be to stay...?

7 MR. CREASER: To be a legal bedroom you
8 need a 7 foot horizontal dimension I all
9 directions.

10 MR. SULLIVAN: So the area if we stuck to
11 70% what would be the area of that bedroom?

12 MR. CREASER: It would be a less than 7
13 foot by we've got 12 in the width because of the
14 13 width of the property.

15 MR. SULLIVAN: So the extra length would
16 be 7 feet.

17 MR. CREASER: Yes it would probably be
18 around 6 foot 9, so we'd be very hard pressed to
19 try to push it to 7 if we're going to try to stay
20 under the 70.

21 MR. CREASER: I just wanted to point out
22 to the Board, I just went ahead and showed what

1 this would look like if we did cut this back and
2 we have here on the second floor an existing
3 bathroom which again I apologize I didn't bring
4 plans for the whole existing house I just showed
5 where the addition's going to be attached. But I
6 do show an existing bathroom and if there is
7 going to be a new closet that was just simply
8 like a small little loft area in the existing
9 house where that new closets going to go, but if
10 we did cut this back to be at the 70%, this is
11 about where that line would be and it would
12 create, because of the existing bathroom it would
13 create a bedroom that would be slightly less than
14 7 feet.

15 MS. SORG: And therefore not...

16 MR. CREASER: In compliance with a
17 bedroom without tearing out the existing bathroom
18 and reconfiguring that.

19 MS. MONROE: Madam Vice Chair can I
20 interrupt for a second; I just want to make sure
21 we're going on the right line here. The maximum
22 lot occupancy actually allowed here is 60% and I

1 realize that OP has talked about 70% because
2 they're looking at the 223 cutoff but the
3 Applicant is entitled to ask for anything he
4 wants.

5 MS. SORG: Absolutely.

6 MR. MONROE: He's not stuck having to go
7 over 70% because that's under 223, I mean if you
8 can't do that 75% is as good as any other. I
9 just want to be clear, it's not like there's some
10 magic if you're under 70% you get it or not get
11 it, that's just the 223 threshold.

12 MS. SORG: Oh certainly not, thank you
13 for pointing that out. Are there any other
14 additional questions for the Applicant? Okay did
15 you want to make any closing statements?

16 MR. SULLIVAN: Just briefly yes thanks.
17 Regarding the uniqueness I think clearly it's
18 unique. Actually, I'm confused by Office of
19 Planning's Report, some of things they mentioned
20 that, they mentioned the range of size of lots
21 and they say that properties range from 15 feet
22 to 23 feet, we're 13.5, we don't even hit the

1 bottom range and yet that's not unique. The lot
2 area is 1500 to 2300 is the range that he gives
3 and yet we're 200 under the bottom of the range,
4 so I don't think it could be more unique in my
5 opinion and I think absolutely the factor of the
6 garage and it's not the fact that there is a
7 garage, although it is very unique if you look at
8 those, the closest eight houses, it's the only
9 one and that's why every other house is bigger
10 than this house and it has a lot bigger footprint
11 but remove the garage and this addition puts us
12 4% under 60%, we easily comply. But it's the
13 fact on top of that that we can't take the garage
14 down, it's not just the garage, but it's the
15 condition, the situation of Historic Preservation
16 saying that we want to retain that carriage
17 house, otherwise we could remove it and made a
18 bigger addition and have a larger footprint to
19 the house. Regarding practical difficulty and
20 unnecessary burden I think and maybe it's because
21 Office of Planning's reliance on their preference
22 to give this particular section a tougher,

1 stricter burden for some reason and it has come
2 up in the past and the Board has rejected that
3 notion that for some reason some sections of regs
4 are more specific or really strict, I mean
5 they're all really strict, you have to comply
6 with all of them and the variance procedure is
7 available to people if they can meet the three
8 prong test you get relief from that section, so I
9 don't think there's any support at all for that.
10 Maybe if they were looking at it under the
11 standard burden or the burden they would for any
12 other variance they'd be there, but on practical
13 difficulty itself, we don't have to prove that
14 it's impossible that he survive in a 1300 square
15 foot house. We are just proving that it's an
16 unnecessary burden to live in a one bedroom house
17 in an area that has four, five, six bedroom
18 homes, and understandably the issue with the
19 parents is a personal issue not relating to the
20 property but the property is one bedroom and
21 anybody would expect or hope to be able to have
22 guests, to have a guest room, to have a little

1 bit more living space in a house that was built
2 for living standards of 140 years ago. As I said
3 the neighborhood kind of grew up around these
4 three properties, and the other two properties
5 obviously have had small additions over the years
6 as most properties built before 1900 have in the
7 District. So I just think he's setting the bar
8 way to high for unnecessary burden, we've got,
9 when you consider we can't go up in height, we
10 can't go down, and you have to compare it to the
11 surrounding neighborhood, sure if we were in an
12 area of one bedroom condos at 1300 square feet we
13 couldn't come in here and say we have a unique
14 condition and a practical difficulty but we do
15 when it's compared to the rest of the
16 neighborhood. Then obviously I think everybody
17 would agree it's no substantial detriment to the
18 public good or the integrity of the zone plan.
19 The one final point, I will point out again the
20 case that said the difference between 70 and 75%
21 is de minimis, it wasn't that BZA case and I
22 think it is too here for 65 square feet and I

1 don't really see the difference between that, so
2 I think Office of Planning would have likely
3 supported 70 which is still a variance, I'm not
4 sure why they wouldn't support the 75 but I don't
5 think it makes any real difference we still have
6 a lot of space back there between the house and
7 the garage and relative to the other footprints
8 on the block we fit right in. That's all I have,
9 thank you.

10 MS. SORG: Thank you very much. Okay, I
11 think that we've identified at least one piece of
12 information that I think we might have before we
13 deliberate on this case, which I don't think that
14 I'm ready to do today, so I think what we can do
15 is we can request that information and then set
16 this for deliberation on some day in the future.
17 So what I think what we'd like to do is request
18 a set of plans as we discussed of the whole house
19 existing condition so we can understand what
20 we're talking about in total here. Do other
21 Board Members have additional information that
22 they think...

1 MR. TURNBULL: Well I have a question;
2 one question is that you never looked at again,
3 the second floor of the garage what is now
4 storage being converted into a bedroom, bathroom
5 suite?

6 MR. STIVALETTA: There's no electricity,
7 there's no plumbing in the carriage house.

8 MR. TURNBULL: You'd have to add all of
9 that?

10 MR. STIVALETTA: Yes I'd have to add all
11 of that, and just looking at the carriage house
12 right now, it would be very expensive to do that,
13 to run that plumbing and electricity out there.

14 MR. TURNBULL: Okay I think getting back
15 to your original request about the house plans; I
16 think one thought was to look at the
17 configuration of had there been some thought
18 given to changing or reconfiguring with a smaller
19 footprint, I don't think we want you to go
20 through a lot of design effort redesigning this
21 thing.

22 MS. SORG: Graphically.

1 MR. TURNBULL: Yeah graphically I think
2 we want but some conceptual ideas on what it
3 would have taken to change it I guess or to make
4 it meet the, maybe Mr. Goldstein would be more
5 comfortable with something like that.

6 MR. GOLDSTEIN: I think it would be
7 helpful just to know how there are possibly
8 constraints to making this a certainly 70%
9 special exception but to making this a special
10 exception case.

11 MR. TURNBULL: Well I guess part of my
12 question too is it would appear that the basement
13 maybe inhabitable because it only comes up two
14 feet above grade, I'm not sure but I don't think
15 it's, most of the basement is below grade, it's
16 not like it's an English basement where you can
17 have a decent size, I think depicting that for us
18 and showing that more clearly I think would help
19 us feel that the basement is non-starter.

20 MS. SORG: So I think you can sort of get
21 the flavor of what we're asking for here, you
22 know whether it's definitely some existing plans

1 as well as however you want to represent what
2 we've talked about connecting the practical
3 difficulty.

4 MR. TURNBULL: Yeah I think Mr. Sullivan
5 you had, the Office of Planning is close, I think
6 speaking for myself I'm pretty close on this too,
7 I just need to see a couple of more things to
8 make me feel that we've really got a situation
9 here that we can approve.

10 MS. SORG: Okay thank you Mr. Turnbull.
11 Can we look at a date on our calendar Mr. Moy?

12 MR. MOY: Yes well Madam Chair there's no
13 hearing on the 22nd and of course there's room for
14 the 29th or even the 15th depending on when the
15 Applicant can submit full plans, I don't know how
16 long it's going to take him to submit full plans?

17 MS. SORG: Of March 15th?

18 MR. MOY: Yes.

19 MS. SORG: So how does the 29th of March
20 work for you guys?

21 MR. SULLIVAN: Yeah that's good for us,
22 when would you want the plans?

1 MS. SORG: It would be at least the
2 Thursday before which makes that the 24th of
3 March.

4 MR. SULLIVAN: Okay, thanks.

5 MS. SORG: Unless there's anything
6 further we will set this down for decision on
7 March 29th in the morning.

8 MR. SULLIVAN: Thank you.

9 MS. SORG: Thank you very much. This
10 concludes the afternoon session of for the Board
11 of Zoning Adjustment, thank you very much.

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