

GOVERNMENT  
OF  
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

+ + + + +

PUBLIC HEARING

+ + + + +

TUESDAY,  
APRIL 8, 2008

+ + + + +

The Public Hearing convened in  
Room 220 South, 441 4<sup>th</sup> Street, N.W.,  
Washington, D.C., 20001, pursuant to notice at  
9:30 a.m., Ruthanne G. Miller, Chairperson,  
presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

RUTHANNE G. MILLER, Chairperson  
MARC D. LOUD, Vice Chairman  
MARY OATES WALKER, Board Member  
SHANE L. DETTMAN, Board Member (NCPC)

ZONING COMMISSION MEMBER PRESENT:

GREGORY N. JEFFRIES, Vice Chairman

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY, Secretary  
BEVERLEY BAILEY, Sr. Zoning Specialist

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

LORI MONROE, ESQ.  
SHERRY GLAZER, ESQ.

OFFICE OF PLANNING STAFF PRESENT:

ARTHUR JACKSON  
MATT JESICK  
PAUL W. GOLDSTEIN

The transcript constitutes the minutes  
from the Public Hearing held on April 8, 2008.

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

2 10:59 a.m.

3 CHAIRPERSON MILLER: Okay. I'm  
4 going to open up our Public Hearing for today,  
5 which is April 8, 2008. In case anyone has  
6 recently entered, I'll do a quick intro. I'm  
7 Ruthanne Miller, I'm the Chair of the BZA. To  
8 my left is Mary Oates Walker and Shane  
9 Dettman, Board Members, and coming in is Marc  
10 Loud, Vice Chair. And also joining us on the  
11 dias is Mr. Clifford Moy from the Office of  
12 Zoning, Sherry Glazer from the Office of  
13 Attorney General and Ms. Beverley Bailey from  
14 the Office of Zoning.

15 Copies of today's hearing agenda  
16 are available to you and are located to my  
17 left in the wall bin near the door. Please,  
18 be advised that this proceeding is being  
19 recorded by a Court Reporter and is also  
20 webcast live. Accordingly, we must ask you to  
21 refrain from any disruptive noises or actions  
22 in the hearing room.

1                   When presenting information to the  
2                   Board, please, turn on and speak into the  
3                   microphone, first, stating your name and home  
4                   address. When you are finished speaking,  
5                   please, turn your microphone off, so that your  
6                   microphone is no longer picking up sound or  
7                   background noise.

8                   All persons planning to testify  
9                   either in favor or in opposition are to fill  
10                  out two witness cards. These cards are  
11                  located to my left on the table near the door  
12                  and on the witness tables. Upon coming  
13                  forward to speak to the Board, please, give  
14                  both cards to the reporter sitting to my  
15                  right.

16                 The order of procedure for special  
17                 exceptions and variances is: One, statement  
18                 and witnesses of the applicant. Two,  
19                 Government reports, including Office of  
20                 Planning, Department of Public Works, DDOT,  
21                 etcetera. Three, report of the Advisory  
22                 Neighborhood Commission. Four, parties or

1 persons in support. Five, parties or persons  
2 in opposition. Six, closing remarks by the  
3 applicant.

4 Pursuant to Section 3117.4 and  
5 3117.5, the following time constraints will be  
6 maintained: The applicant, persons and  
7 parties, except an ANC, in support, including  
8 witnesses, 60 minutes collectively. Persons  
9 and parties, except an ANC, in opposition,  
10 including witnesses, 60 minutes collectively.  
11 Individuals 3 minutes.

12 These time restraints do not  
13 include cross examination and/or questions  
14 from the Board. Cross examination of  
15 witnesses is permitted by the applicant or  
16 parties. The ANC within which the property is  
17 located is automatically a party in a special  
18 exception or variance case.

19 Nothing prohibits the Board from  
20 placing reasonable restrictions on cross  
21 examination, including time limits and  
22 limitations on the scope of cross examination.

1           The record will be closed at the  
2 conclusion of each case, except for any  
3 material specifically requested by the Board.  
4 The Board and the staff will specify at the  
5 end of the hearing exactly what is expected  
6 and the date when the persons must submit the  
7 evidence to the Office of Zoning. After the  
8 record is closed, no other information will be  
9 accepted by the Board.

10           The Sunshine Act requires that the  
11 Public Hearing on each case be held in the  
12 open before the public. The Board may,  
13 consistent with it's rules of procedure and  
14 the Sunshine Act, enter Executive Session  
15 during or after the Public Hearing on a case  
16 for purposes of reviewing the record or  
17 deliberating on the case.

18           The decision of the Board in these  
19 contested cases must be based exclusively on  
20 the record. To avoid any appearance to the  
21 contrary, the Board requests that persons  
22 present not engage the Members of the Board in

1 conversation.

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

5 The Board will now consider any  
6 preliminary matters. Preliminary matters are  
7 those which relate to whether a case will or  
8 should be heard today, such as requests for  
9 postponement, continuances or withdrawal or  
10 whether proper and adequate notice of the  
11 hearing has been given. If you are not  
12 prepared to go forward with a case today or if  
13 you believe that the Board should not proceed,  
14 now is the time to raise such a matter.

15 Does the staff have any  
16 preliminary matters?

17 MS. BAILEY: No, Madam Chair.

18 CHAIRPERSON MILLER: Okay. Then  
19 let's proceed with the agenda. Would all  
20 individuals wishing to testify today, please,  
21 rise to take the oath and Ms. Bailey will  
22 administer it.

1 MS. BAILEY: Would you, please,  
2 raise your right hand?

3 (Whereupon, the witnesses were  
4 sworn.)

5 CHAIRPERSON MILLER: Thank you. I  
6 just want to note for the record that Mr.  
7 Jeffries has joined us and Mr. Jeffries, to my  
8 right, is a Commissioner on the Zoning  
9 Commission.

10 Ms. Bailey, then we are ready for  
11 the first case.

12 MS. BAILEY: Thank you, Madam  
13 Chair. The first case is Application 17748 of  
14 Antonio Diez, pursuant to 11 DCMR 3104.1, for  
15 a special exception to allow a rear addition  
16 to an existing one-family detached dwelling  
17 under section 223, not meeting the lot  
18 occupancy requirements, that's section 405,  
19 side yard requirements, section 405, as well,  
20 in the R-1-B District at premises 4902 Belt  
21 Road, N.W., Square 1757, Lot 32.

22 There is a request for party

1 status in this application, Madam Chair.

2 CHAIRPERSON MILLER: Okay. Would  
3 the parties in this case come forward, good  
4 morning, and introduce yourself for the  
5 record? Turn on the microphone.

6 MR. DIEZ: My name is Antonio  
7 Diez.

8 COMMISSIONER JEFFRIES: Push the  
9 red button.

10 MR. DIEZ: Thank you. My name is  
11 Antonio Diez and I reside at 4902 Belt Road,  
12 N.W. I'm the owner of the property since  
13 1975.

14 CHAIRPERSON MILLER: Okay. Why  
15 don't you have a seat? And is Ms. Hattery  
16 here? And would you come forward, please?  
17 Have a seat and introduce yourself for the  
18 record as well.

19 MS. HATTERY: I'm Maxine Hattery.  
20 I'm sorry, Maxine Hattery. I live behind --

21 COMMISSIONER JEFFRIES: Can you  
22 press the button, please?

1 MS. HATTERY: Oh.

2 COMMISSIONER JEFFRIES: Thank you.

3 MS. HATTERY: Maxine Hattery and I  
4 live behind Mr. Diez.

5 CHAIRPERSON MILLER: Could you  
6 just give your exact address for the record  
7 also?

8 MS. HATTERY: 4901 41<sup>st</sup> Street.

9 CHAIRPERSON MILLER: Okay. And is  
10 anyone here from the ANC? Okay. Not seeing  
11 anyone. Party status is a preliminary matter,  
12 so I think we ought to deal with that one  
13 first before we get into the merits.

14 MR. JACKSON: Excuse me, Madam  
15 Chair?

16 CHAIRPERSON MILLER: Yes.

17 MR. JACKSON: I believe she  
18 accidentally turned her mike off.

19 MS. HATTERY: I'm sorry.

20 MR. MOY: Sir, turn yours off, Mr.  
21 Diez, that would -- there you go. Thank you.

22 CHAIRPERSON MILLER: Ms. Hattery,

1       could you give your address again for the  
2       record?

3                   MS. HATTERY: 4901 41<sup>st</sup> Street.

4                   CHAIRPERSON MILLER: Okay. You  
5       filed an application for party status, because  
6       you -- well, why don't you describe the  
7       proximity of your house to Mr. Diez' house.

8                   MS. HATTERY: Mr. Diez in his  
9       application is the rear yard, which is  
10      actually to the side of his house is a direct  
11      line between -- is directly in back of mine --  
12      my house. And when I put the application in,  
13      there is a strip there between us, which  
14      belongs to somebody else and I had forgotten  
15      that when I put the application in. So there  
16      is a strip between my yard and his yard.

17                  CHAIRPERSON MILLER: And you are  
18      concerned about a wall of some sort that is  
19      going to affect you?

20                  MS. HATTERY: Yeah, it would  
21      affect me. I'm a proponent of the addition.

22                  CHAIRPERSON MILLER: Oh, okay.

1 MS. HATTERY: I really am just  
2 here in case there was any problem, because I  
3 figured I'm the most important.

4 CHAIRPERSON MILLER: Okay.

5 MS. HATTERY: I'm the person who  
6 is going to be affected most.

7 CHAIRPERSON MILLER: Okay.

8 MS. HATTERY: So if anybody  
9 complains to being affected, I'm affected  
10 worse.

11 CHAIRPERSON MILLER: Okay. All  
12 right. Well, let me say this then. I'm not  
13 sure whether you want to go through this whole  
14 party status thing. You can testify as a  
15 person in support of the application.

16 MS. HATTERY: Okay.

17 CHAIRPERSON MILLER: You don't  
18 want to be cross examining Mr. Diez or  
19 anything?

20 MS. HATTERY: Not at all, no.

21 CHAIRPERSON MILLER: Okay. All  
22 right. So then I'll take it that you are

1 withdrawing your party status application?

2 And then we'll call on you for testimony --

3 MS. HATTERY: Whatever is  
4 appropriate.

5 CHAIRPERSON MILLER: -- if you  
6 want to, at that point.

7 MS. HATTERY: Okay.

8 CHAIRPERSON MILLER: Okay. We  
9 will go through the proceeding and we'll get  
10 to a point where, as I was reading before,  
11 that, you know, persons in support or  
12 opposition can come testify.

13 MS. HATTERY: Um-hum.

14 CHAIRPERSON MILLER: And at that  
15 point, if you would like to testify, you will  
16 have the opportunity to testify.

17 MS. HATTERY: Okay.

18 CHAIRPERSON MILLER: And we will  
19 keep this. This is in our record, your party  
20 status application.

21 MS. HATTERY: Um-hum.

22 CHAIRPERSON MILLER: But we will

1 consider it withdrawn with respect to your  
2 participating as a party.

3 MS. HATTERY: Cool.

4 CHAIRPERSON MILLER: Okay. Thank  
5 you. Okay. Now, we can get to the merits.  
6 There is a little twist in this application it  
7 seems brought up by the Office of Planning  
8 with respect to whether you are eliminating  
9 your required parking space. And I don't  
10 think you had an opportunity or that you took  
11 an opportunity to respond in writing to that  
12 issue. And it's a significant issue, so would  
13 you like to respond to that issue now, because  
14 the Office of Planning didn't have a concern  
15 with respect to the rest of the application.

16 MR. DIEZ: I would be glad to  
17 respond to your request. I started this  
18 application basically almost two years ago.  
19 So DCRA, they denied my permit, because it was  
20 a zoning discussion on September of last year.  
21 They said that they would actually write down  
22 the reasons why I need to go to a zoning

1 exception or a zoning variance.

2           They took some time to write the  
3 information that they -- needed to be  
4 addressed to you. And the zoning did not  
5 discuss any parking. I continued with -- in  
6 good faith with the design, which called for  
7 a tear down of a very small garage, noting  
8 that the whole neighborhood -- basically,  
9 there are three garages in the perimeters  
10 where I live in the houses.

11           They have been there for quite  
12 some time. The house was built in 1951. And  
13 because of that, the zoning came after when  
14 the house was built, so it's a very irregular  
15 parking. If I were to put parking, I would  
16 destroy the present garden that I have. And  
17 there's two large trees right next to the  
18 property that I would have to tear down or  
19 require to do that in order to provide  
20 parking.

21           There is ample parking on the  
22 streets. I have to pay residential parking in

1 front of my house. Right across from where I  
2 am, there is a large park and, basically,  
3 parking is not restricted. So I have never  
4 really parked in the garage in the last 30  
5 years that I have been there.

6 So I saw no reason why I would not  
7 be able to extend the house in that direction.  
8 Destroying the present garage would build a  
9 wall up some 10 feet from the house, including  
10 the part of the garage. So the whole area  
11 between the garage and the curb is roughly 55  
12 feet.

13 The property abutting my property  
14 is Mr. Harner, who doesn't have any objection  
15 to me building the house either next to his  
16 property or near the house of Maxine. There  
17 is a large strip of land, it's about 20 feet,  
18 where an old garage has been built there and  
19 there is a backyard that she has. So I don't  
20 think it will improve her view much, but we're  
21 willing to discuss that issue to be a separate  
22 issue to discuss.

1 I think that pretty much is my  
2 testimony, unless you have additional  
3 questions.

4 CHAIRPERSON MILLER: So if you  
5 build your project as in these plans, there is  
6 no space for a parking pad? Is that correct?

7 MR. DIEZ: That's correct. The  
8 present parking in the house is very steep and  
9 scrapes the bottom of any car that go in  
10 there, plus it provides a lot of commuters to  
11 come inside the garage and destroy the present  
12 garage door. It's been a hazard. I had  
13 replaced the garage door several times,  
14 because the path of the ramp is very, very  
15 small.

16 CHAIRPERSON MILLER: Okay. I  
17 don't know. This is where I see where we may  
18 be at and others can comment and we'll see.  
19 I would agree with the Office of Planning's  
20 assessment. And it's unfortunate that this  
21 wasn't picked up by the ZA earlier. But it  
22 looks like you do need a variance for required

1 parking.

2 That's a harder test than the  
3 special exceptions. You have to show an  
4 exceptional condition and a practical  
5 difficulty arising out of that exceptional  
6 condition and then no substantial detriment.  
7 I don't know if you heard us do our analysis  
8 in the meeting earlier.

9 But this also raises a question  
10 about advertising, because you advertised for  
11 special exception relief. I don't believe you  
12 advertised for variance relief.

13 MR. DIEZ: No, the advertising was  
14 exclusively on the variance based on the  
15 guidance from the DCRA. I basically pay no  
16 part on the text as expressed to me on the  
17 objections of my design. So the text was  
18 actually put forth by the DCRA to come to you.

19 CHAIRPERSON MILLER: I understand  
20 that. And that's what's -- and I want to hear  
21 from others, too, and Office of Planning.  
22 That's what I think is unfortunate about your

1 situation that Office of Planning has picked  
2 up on something when they did their review.  
3 Some further relief that the ZA and DCRA  
4 missed, to no fault of you, I mean, you asked  
5 them what you needed, you followed their  
6 advice and you advertised accordingly.

7 But we are now in a situation  
8 where if we agree that the variance relief is  
9 needed, it hasn't been advertised for. Even  
10 though we get into the discussion of well, you  
11 know, you advertised for the project that you  
12 were doing, it's the same project, but a  
13 different relief may be required, an  
14 additional relief.

15 MR. DIEZ: May I say something to  
16 that report?

17 CHAIRPERSON MILLER: Yes,  
18 absolutely.

19 MR. DIEZ: I attended the last --  
20 not the last, but the meeting on February 14  
21 by ANC-3E and they were very -- I was very  
22 clear about what I need to be done. And there

1 is a letter addressing the issue and actually  
2 accepting the planning. Plus several  
3 neighbors, I have letters from them. I didn't  
4 tell them that I wasn't going to destroy the  
5 garage, so they -- the neighbors know that  
6 that is basically my planning in terms of  
7 advertising.

8 But I know that you have different  
9 requirements. I just don't know what to do at  
10 this point.

11 CHAIRPERSON MILLER: Okay. Well,  
12 no, that's a very important point to make,  
13 because sometimes even though you might not  
14 have advertised for something specifically by  
15 its name, that it's actually the neighborhood  
16 really does know exactly what you are doing,  
17 then we may find that you don't need to  
18 advertise. You know, if your neighbors know  
19 and you have a neighbor right here --

20 MR. DIEZ: Thank you.

21 CHAIRPERSON MILLER: -- who can  
22 testify, also that's the first hurdle.

1                   MEMBER WALKER: Madam Chair, I am  
2 still unclear as to why it is the case that  
3 the existing driveway can't serve as a parking  
4 pad. And perhaps we could explore that with  
5 the Office of Planning?

6                   CHAIRPERSON MILLER: Yes, let's  
7 get the applicant just to respond and then go  
8 to the Office of Planning. Right. When we  
9 look at these pictures, now that I have it in  
10 front of me and Ms. Oates was looking at it,  
11 there is a garage and then there is a driveway  
12 in front. Why couldn't you park your car in  
13 the driveway, if you have this new project, if  
14 the project is approved?

15                  MR. DIEZ: The driveway is too  
16 narrow. A car would not fit at all, even a  
17 small car could not fit in the driveway.

18                  CHAIRPERSON MILLER: And you don't  
19 use your garage? Is that what you're saying?

20                  MR. DIEZ: I don't use my garage.  
21 I never have. It's too small. It's not wide  
22 enough.

1 CHAIRPERSON MILLER: Oh, I see  
2 what you are saying. Okay. So --

3 MR. DIEZ: The ramp is very steep  
4 and very, very small. So it's less than 20  
5 feet. It's less than -- it's probably less  
6 than 18 feet. I haven't measured it at this  
7 point, but it's right next to the -- to Bell  
8 Road and as you go in, even cars turning into  
9 the driveway and back smashed right up against  
10 the garage door. I had to replace it a couple  
11 of times.

12 So it's wrongly designed. It  
13 doesn't serve the purpose.

14 CHAIRPERSON MILLER: Okay.

15 COMMISSIONER JEFFRIES: I'm sorry.

16 CHAIRPERSON MILLER: No, that's  
17 fine.

18 COMMISSIONER JEFFRIES: So I'm  
19 looking at the photographs in Exhibit No. 5.  
20 And I'm looking at this driveway and you said  
21 the driveway is how wide?

22 MR. DIEZ: I do not have the exact

1 measurements with me, but I think you -- you  
2 mean the area? Okay. Well, somebody from the  
3 Planning Commission did visit it. You cannot  
4 possibly -- if you were to park a car there,  
5 it doesn't -- you will be just -- the rear end  
6 of the car will be right into the street.  
7 That's how short it is.

8 COMMISSIONER JEFFRIES: Oh, so  
9 it's short. It's shallow?

10 MR. DIEZ: It's short and shallow.

11 COMMISSIONER JEFFRIES: Oh, okay.

12 MR. DIEZ: It's wide enough.

13 COMMISSIONER JEFFRIES: It's wide  
14 enough.

15 MR. DIEZ: But you can't possibly  
16 put a car in there thoroughly. You cannot  
17 park it away from the street without hitting  
18 the door of the garage.

19 COMMISSIONER JEFFRIES: Okay. Do  
20 we -- okay. Thank you.

21 MR. DIEZ: You're welcome.

22 CHAIRPERSON MILLER: Mr. Jackson?

1 Oh, I'm sorry, go ahead.

2 VICE CHAIRMAN LOUD: I just wanted  
3 to, first of all, just commend you on your  
4 application. I have looked at it and I think,  
5 based on what you were advised from DCRA, you  
6 met all of the requirements of section 223,  
7 which largely deal with adverse impact to  
8 neighboring properties. And that doesn't  
9 appear to be the case here.

10 But the implication, I think, of  
11 some of your testimony is that if only you had  
12 known from DCRA, it would have made a  
13 difference. And my question is had DCRA  
14 notified you earlier, would you have been able  
15 to incorporate into your design an opportunity  
16 for parking?

17 MR. DIEZ: I would have, but you  
18 see by now, I have two-thirds of all the plans  
19 paid for for electrical, etcetera, of the  
20 property. I would have to redesign the whole  
21 extension. I would have to probably try to  
22 get an excavation and pull into on side -- on

1 the side of the house a car. Something that  
2 I basically would not approve of myself,  
3 having a garage underneath a place that I'm  
4 going to be living on.

5 So I chose the idea of having a  
6 garage in that property, other than building  
7 above it and creating a nuisance to my  
8 neighbors, I don't think is something that I  
9 would really entertain.

10 VICE CHAIRMAN LOUD: But you would  
11 have entertained it had you learned from DCRA  
12 early enough in the process is what I gather.

13 MR. DIEZ: That is a good  
14 proposition. I would have changed the design  
15 early on.

16 VICE CHAIRMAN LOUD: Okay. Now,  
17 just repeat for me again just a little bit, a  
18 little more slowly at what stage of the design  
19 process were you when you submitted this to  
20 DCRA? Had you already completed the design  
21 work? When you submitted this to DCRA and  
22 they rejected it.

1                   MR. DIEZ: When I completed the  
2 design in 2006, it took them about a year to  
3 take a look at the plans and specifications to  
4 it and then they required from me to do  
5 complete plumbing, electrical, structural,  
6 etcetera. And they raised no objections to  
7 the zoning at all, at that point. So I went  
8 ahead and paid a substantial amount of money  
9 to get those drawings for all the  
10 requirements.

11                   When I turned them in, the person  
12 that actually took a look at my proposal, was  
13 no longer there. So a new person reviewed the  
14 whole thing and made the -- told me on  
15 September of last year to come to you. And  
16 they -- then they -- the body of the request,  
17 it could have been problem with zoning. That  
18 time was water under the bridge, because I've  
19 done considerable progress in the design. But  
20 that was when that happened.

21                   VICE CHAIRMAN LOUD: And again,  
22 had you been notified then that there was an

1 issue with parking, would you have revised  
2 your design to incorporate parking into the  
3 final upgrade or final addition, I should say?

4 MR. DIEZ: To tell you my gut  
5 feeling on that, after having spent a great  
6 amount of money on that, I would have been so  
7 discouraged about it, that I would not have  
8 proceeded with it. It's just it was very  
9 upsetting to even think that I had to come and  
10 come with another requirement when, basically,  
11 80 percent of all the design was done.

12 So I would have entertained it  
13 briefly, and I probably would have done some  
14 sketches and had to again apply through the  
15 Board, at that point. But I was very, very  
16 discouraged in September when that did happen,  
17 because of what I told you. So it's a concern  
18 in that the timing was an issue.

19 The lack of information was  
20 another issue. And I was proceeding in good  
21 faith all along the way to try to comply with  
22 all the rules and regulations.

1 VICE CHAIRMAN LOUD: Okay. Thank  
2 you.

3 CHAIRPERSON MILLER: Let me ask  
4 you this. In the notes and computations that  
5 are attached to the Zoning Administrator's  
6 referral to us, they mark off that your  
7 property provides one parking space. Do you  
8 know how they got that information? Did you  
9 talk to them about it at all?

10 MR. DIEZ: No.

11 CHAIRPERSON MILLER: No. Okay.  
12 Because your view is you can't provide one  
13 parking space now, correct? Even though you  
14 have this garage there, it doesn't provide  
15 parking. Is that right?

16 MR. DIEZ: That is correct  
17 assessment.

18 CHAIRPERSON MILLER: Okay.

19 MR. DIEZ: Ms. Miller.

20 CHAIRPERSON MILLER: Okay. Well,  
21 I think I would like to ask Mr. Jackson to  
22 comment on what he has heard from the Office

1 of Planning at this point.

2 Good morning, Mr. Jackson.

3 MR. JACKSON: Good morning, Madam  
4 Chair. Arthur Jackson with the D.C. Office of  
5 Planning. I'm the Development Review  
6 Specialist there. The applicant and I met on  
7 the property and we discussed the application.  
8 He was kind enough to show me around the  
9 property. It was on a very chilly day, I  
10 might add.

11 And I outlined the -- identified  
12 the issues relative to the special exception.  
13 And that I thought, based on my site visit,  
14 that there wasn't an issue, that this was a  
15 reasonable addition in line with the  
16 requirements of 223. But I also highlighted  
17 the time that I thought parking would be an  
18 issue that we could not support, because it  
19 would be eliminating a parking space.

20 With reference to your question  
21 about the parking pad, based on our aerial  
22 photograph of the site, it would appear that

1 most of the driveway is actually in public  
2 space, so that there really isn't enough  
3 property -- enough area on the property for  
4 them to fit the car.

5 With regard to -- we also  
6 contacted -- sent an inquiry to the Department  
7 of Transportation just to see what their  
8 opinion was. In the response, we -- if we had  
9 had a chance to discuss it, we would have  
10 looked at options such as possibly moving the  
11 curb cut from where it is now around the  
12 corner, so they could come straight off of the  
13 other street, such that --

14 MR. DIEZ: Ellicott.

15 MR. JACKSON: -- Davenport? No.  
16 Ellicott?

17 MR. DIEZ: Ellicott Street.

18 MR. JACKSON: Ellicott Street.

19 Noting that next door to the property is a  
20 garage, which has an unpaved access from  
21 Davenport. Ellicott, I'm sorry. That way  
22 possibly the distance from between his

1 addition and the property line could have been  
2 sufficient for a vehicle.

3 But again, those are just thoughts  
4 that we had, lines of questions we would have  
5 liked to have pursued with the Department of  
6 Transportation, but we got no response to our  
7 inquiry.

8 But given the current  
9 circumstances, it may -- as we stated in the  
10 report, the applicant, at this point, really  
11 has not made the case in line with the  
12 variance requirements. However, he has  
13 brought up a few issues that could be  
14 considered, I think, with regard to the slope,  
15 the character of the property and there might  
16 be some other details that he could put forth  
17 to make a case for variance approval.

18 So at this point, I'm not saying  
19 that the -- I don't think, based on the  
20 circumstances, the Office of Planning really--  
21 and the requirements of the Zoning  
22 Regulations, particularly 201 -- 2100.1 says

1       that "All uses will provide parking on-site,  
2       if possible."

3               We would like to give the -- we  
4       think it might be prudent to give the  
5       applicant the option or the opportunity to  
6       redevelop his variance case, because, again,  
7       he had referral from the Department, the DCRA.  
8       We had a conversation, but I think today's  
9       reaction from the Board really clarified that  
10      you think this is a legitimate requirement for  
11      this -- for a variance approval for that  
12      aspect of this proposal.

13             And I think it may be worthwhile  
14      giving him an opportunity to prepare or  
15      address that aspect of his proposal to look at  
16      the variance standard.

17             CHAIRPERSON MILLER: Well, let's  
18      see if we're going to need to do that. I  
19      mean, I'm not sure if it's that complicated,  
20      but I want to get the facts, because I think  
21      that the applicant has stated that even the  
22      garage is too small for a parking space.

1 MR. JACKSON: Well --

2 CHAIRPERSON MILLER: Or is it just  
3 that the driveway is too short for the parking  
4 pad?

5 MR. JACKSON: I think the issue is  
6 rather moot though, because he is tearing down  
7 the garage to build the addition.

8 CHAIRPERSON MILLER: Well, I don't  
9 think it's moot, for me, to resolve my  
10 question, because if he doesn't have a  
11 required -- if he can't provide a required  
12 space right now, then it's nonconforming with  
13 respect to required parking right now. So  
14 it's a little bit different. It would be a  
15 variance, you know. It would be a variance,  
16 because he's nonconforming anyway.

17 It's different where you could --  
18 you are providing a space and you're taking it  
19 away is different from you're not providing a  
20 space. Your property doesn't have space for  
21 parking as it is.

22 COMMISSIONER JEFFRIES: Madam

1 Chair?

2 CHAIRPERSON MILLER: Yes.

3 MR. JACKSON: The current  
4 observation by DCRA and the Office of Planning  
5 is that he has a parking space on-site. But  
6 again, that's just based on what the  
7 conditions are. And furthermore, if he is  
8 going to demolish the garage to build an  
9 addition, why couldn't he incorporate the  
10 space as part of that new construction?

11 So in essence, the regulations  
12 just say if you meet the requirement, you can  
13 meet the requirement. And on its face, the  
14 current property meets the requirement. And  
15 it appears that DCRA's impression was that it  
16 did, too.

17 CHAIRPERSON MILLER: I just want  
18 to ask the application just so that we have  
19 the right facts to analyze. Did you say that  
20 the garage is too small? Though that would be  
21 hard to believe that a garage would be too  
22 small for a car. Could you clarify that? Am

1 I wrong? You probably didn't say that.

2 MR. DIEZ: Probably a very nice  
3 sports car could be brought in there, if I  
4 empty all the stuff that I have in the garage.  
5 The garage door see is perilously close to the  
6 curb. I -- even if I don't open the garage  
7 door, I couldn't park my car in the ramp.  
8 It's not long enough to do that.

9 So basically, there is no parking  
10 for me. I don't have a huge SUV or anything  
11 like that, but a car manufactured today that  
12 I would like to put in there, it's just not  
13 possible. Even a car that was done in 1951,  
14 which were a lot larger and bigger, would not  
15 fit in the garage.

16 CHAIRPERSON MILLER: Okay. I  
17 guess Mr. Jackson's point is if you're doing  
18 new construction, you could provide required  
19 parking. And that if you are not, you need a  
20 variance from it. Is that your position, Mr.  
21 Jackson?

22 MR. JACKSON: Again, on its face,

1 he has a garage that is suitable for one  
2 vehicle. And if he is demolishing the garage  
3 for new construction, the -- you know, it  
4 appears that they could continue to  
5 accommodate a parking pad or an enclosure for  
6 one vehicle.

7 COMMISSIONER JEFFRIES: Madam  
8 Chair, I'm just having some difficulty  
9 understanding how the actual garage is not  
10 shallow enough. I mean, the existing garage  
11 or well, has it been demolished already?

12 MR. DIEZ: No.

13 COMMISSIONER JEFFRIES: Okay.  
14 Okay. Because I'm looking at the drawings  
15 that show 21 feet on the addition. Unless I'm  
16 missing something here, what is the current  
17 depth of the garage?

18 MR. DIEZ: The current depth of  
19 the garage is about 20 feet, approximately, 20  
20 feet from the door.

21 COMMISSIONER JEFFRIES: Okay.

22 MR. DIEZ: The back.

1 COMMISSIONER JEFFRIES: So the  
2 garage door goes in and you -- the moment you  
3 step in, you've got 20 feet from the garage  
4 door to the --

5 MR. DIEZ: To the back. That's  
6 correct. It's extremely small and tight.

7 COMMISSIONER JEFFRIES: But 20  
8 feet, I mean, you should be able to get a car  
9 in a garage that's 20 feet in depth.

10 MR. DIEZ: Yes, you could, a small  
11 car you could. You could get a small car all  
12 the way back to the back, which is 6 feet from  
13 my neighbor's fence in the back.

14 COMMISSIONER JEFFRIES: Excuse me,  
15 aren't parking spaces -- what are the typical  
16 like for a parking space? What are the  
17 dimensions?

18 MR. JACKSON: Well, the minimum  
19 requirement for a standard space is 9 x 19  
20 under the regulations. But they can go to a  
21 compact car space is smaller than that.

22 COMMISSIONER JEFFRIES: Like 17 or

1 something? Something like that?

2 MR. JACKSON: Yeah, I believe so.

3 COMMISSIONER JEFFRIES: All right.

4 CHAIRPERSON MILLER: I guess so  
5 technically, there is a required parking space  
6 on the property it sounds like, whether the  
7 applicant uses it or not.

8 MR. JACKSON: Just a follow-up?

9 CHAIRPERSON MILLER: Okay.

10 MR. JACKSON: Just to follow-up on  
11 the question, the compact car space is 8 x 16.

12 COMMISSIONER JEFFRIES: I would  
13 just -- it sounds to me, I mean, you might  
14 have a lot of things in there and if you --  
15 but I mean, a 20 foot depth garage works,  
16 should work. I mean, I -- you know, so it  
17 sounds to me that you really do have a parking  
18 space on this site currently that is usable.

19 CHAIRPERSON MILLER: I think that  
20 the first issue we really need to resolve is  
21 if --, and if the applicant wants us to  
22 consider the variance piece, which is this

1 parking piece today, I guess I would want to  
2 ask Ms. Hattery, since she is most impacted  
3 neighbor.

4 And you say, the question goes to  
5 whether we would have to advertise again for  
6 this additional relief, which would mean  
7 going, you know, back to the community with  
8 the placard and the ANC notice and everything  
9 or if it's not necessary because they actually  
10 all have knowledge of what you were doing.

11 So I was just -- since Ms. Hattery  
12 is here, I was wondering if you could just --  
13 would you mind coming up just to address that  
14 point?

15 VICE CHAIRMAN LOUD: Madam Chair,  
16 just to say that I still would like to ask Mr.  
17 Jackson a question before we get away from OP,  
18 but I do understand why you are doing what  
19 you're doing. Okay.

20 CHAIRPERSON MILLER: Okay. This  
21 is very quick. You've been listening to our  
22 conversation. Okay. So basically, there was

1 a new form of relief that the Office of  
2 Planning determined the applicant might need.  
3 Do you feel like you are on notice enough of  
4 the project or that it would need to be  
5 advertised again for some reason?

6 MS. HATTERY: Well, if there is a  
7 new drawing and if there is a -- if there were  
8 Mr. Jackson's proposal that, I think, would  
9 impact me more negatively than the current  
10 proposal.

11 CHAIRPERSON MILLER: I think it  
12 would be based on -- we would consider it  
13 based on the drawings that are in the record.  
14 We would be considering, you know, giving the  
15 applicant relief from having to change the  
16 drawings.

17 MS. HATTERY: Oh, I see.

18 CHAIRPERSON MILLER: So the  
19 drawings wouldn't change.

20 MS. HATTERY: Oh, yeah. No, it's  
21 fine the way it is. I would also like to  
22 mention, I think Mr. Diez mentioned, but just

1 to emphasize the fact, since I mean, I'm all  
2 for this off-street parking as a resident of  
3 D.C. In this particular situation, since  
4 there is a park across the street, you have  
5 half the amount of parking problem that you  
6 would have on a normal street, because they  
7 are across the street.

8 Across the street, there is  
9 nobody, no residential people parking on a  
10 street, across the street. So there is twice  
11 as much space for the residents to park on  
12 this particular street.

13 CHAIRPERSON MILLER: Okay.

14 MS. HATTERY: Yeah.

15 CHAIRPERSON MILLER: I don't want  
16 to --

17 MS. HATTERY: It's just --

18 CHAIRPERSON MILLER: I hate to  
19 compartmentalize too much.

20 MS. HATTERY: Yeah.

21 CHAIRPERSON MILLER: But  
22 basically, I just wanted to know --

1 MS. HATTERY: No, the proposal as  
2 is is fine with me.

3 CHAIRPERSON MILLER: Okay. All  
4 right. We will call you again later on.  
5 Thank you. Okay. Mr. Loud?

6 VICE CHAIRMAN LOUD: Mr. Jackson,  
7 you testified about the slope and the  
8 character of the property. And I guess sort  
9 of your feeling, you qualified it, that  
10 notwithstanding the fact that there is a  
11 garage there presently, that it might make --  
12 the land might meet the uniqueness test for  
13 variance. Did I understand in characterizing  
14 your testimony correct?

15 MR. JACKSON: Not exactly. But  
16 what I did say was that after visiting the  
17 site, we were looking at more the requirements  
18 for the special exception, rather than the  
19 variance. But noted that the proposal to  
20 eliminate the garage without putting a parking  
21 pad on it raised an issue.

22 There is a slope on the garage, on

1 the driveway. There are -- the width of the  
2 driveway and the distance from the street are  
3 evident in the aerials. We made no assessment  
4 of that while we were on-site.

5 What we were saying though was is  
6 since the applicant is intimately aware of  
7 these circumstances and the situation on-site,  
8 that with further analysis on their part and  
9 documentation, they could present a case for  
10 the variance possibly. But since they have  
11 not really had the opportunity to do that  
12 prior to today's hearing, they may need  
13 additional time to pull that together.

14 But I was not making any  
15 assessment one way or the other. Just making  
16 the observation. Just repeating the  
17 observations I made on-site.

18 COMMISSIONER JEFFRIES: Okay. Are  
19 you prepared to make any kind of assessment  
20 just based on what you have seen?

21 MR. JACKSON: Again, I wasn't  
22 really focusing on those issues.

1 COMMISSIONER JEFFRIES: Okay.

2 MR. JACKSON: I was more concerned  
3 with the surrounding uses, surrounding land  
4 uses and the potential impact on the  
5 neighborhood of the addition itself.

6 COMMISSIONER JEFFRIES: Okay. I  
7 thought I heard you say something a little bit  
8 different and just wanted to clarify it.

9 CHAIRPERSON MILLER: Okay. I  
10 think what we could do is, if you wanted, Mr.  
11 Diez, and I'll see what my Board Members  
12 think, hear you with respect to the variance  
13 case today and then we will see at the end of  
14 the hearing whether or not to leave the record  
15 open in case you feel like you need to put  
16 more information in.

17 But I just want to see, do Board  
18 Members have a problem with going forward and  
19 considering or discussing the variance without  
20 noticing the variance relief to the public?

21 COMMISSIONER JEFFRIES: Yeah, I  
22 mean, we can certainly do that. I'm just --

1     you know, the practical difficulty piece of  
2     this, I'm curious about from fellow Board  
3     Members. But I'm willing to go forward and  
4     have the discussion.

5                   CHAIRPERSON MILLER: Okay. My  
6     first question is, you know, do you have any  
7     problem with the notice? I don't really,  
8     because the community saw the plans as they  
9     are and that's what is going to happen. And  
10    the most impacted neighbor here doesn't have  
11    a concern with that.

12                   With respect to the variance case,  
13    you know, we haven't heard it, except I would  
14    say that there is a potential variance case  
15    and that the exceptional situation that I'm  
16    seeing here is the reliance on DCRA, you know,  
17    years ago. And that these plans were  
18    developed in reliance on DCRA. And now, the  
19    applicant has said there is a great practical  
20    difficulty in changing plans. Now, there is  
21    a lot of costs involved and that's a practical  
22    difficulty.

1                   And then we would look at the  
2           detriment to the public, which -- or  
3           neighboring properties, which we haven't heard  
4           of any. But that's where I see this is  
5           possibly fitting into the variance test. But  
6           we haven't heard all the testimony yet.

7                   You know, Ms. Hattery started to  
8           talk about no detriment because of the  
9           parking, because the park across the street  
10          and the applicant has talked about never  
11          parking in there anyway, so that's not going  
12          to change. But I think I know what you are  
13          most probably concerned about is the practical  
14          difficulty.

15                  And I guess the courts have found  
16          practical difficulties where parties have  
17          relied on the applicant to their detriment at  
18          no fault of their own. So that's a  
19          possibility.

20                  COMMISSIONER JEFFRIES: I mean,  
21          clearly it seems to me that the applicant  
22          could do an addition onto his home and can

1 also have a parking space. You know, but, I  
2 mean, clearly, I mean, there has been some  
3 reliance here, you know, on DCRA and so forth.  
4 And, you know, I think one of the things that  
5 I think, you know, all residents need are some  
6 predictability and some understanding about  
7 what the rules are.

8 So I'm certainly sympathetic to  
9 that. But I'm really, you know, still dealing  
10 with the, you know, very academic  
11 understanding about the variance test and  
12 particularly the practical difficulty piece,  
13 you know, because this could be done very  
14 differently. And so --

15 CHAIRPERSON MILLER: I think yeah.  
16 And so we're -- Mr. Diez, we're giving you  
17 ideas as to, you know, what we will be looking  
18 at, because I think the situation is it's not  
19 that uncommon for perhaps residents not to use  
20 their garages and they park in the street and  
21 they use the garages for storage or whatever.

22 But that doesn't mean that this

1 Board is going to say okay, you can knock it  
2 down. You don't use it and, therefore, you  
3 don't need a required parking space when the  
4 regs call for required parking spaces. So  
5 what you need to do is, you know, address how  
6 your case is exceptional. It's not just, you  
7 know -- and I think that partially goes to Mr.  
8 Loud's question of well, you could change it,  
9 couldn't you? And you're saying perhaps that  
10 well, at this point, it would be very  
11 expensive or something like that. Maybe you  
12 want to, you know, address those issues.

13 MR. DIEZ: There is a point, sort  
14 of an aesthetic point, if you will. I think  
15 the reason why my neighbor did not oppose to  
16 it is that I retain a large portion of what is  
17 now a very beautiful garden that I built for  
18 the last 30 years would have to be sacrificed.  
19 I'll consider -- they are going to be looking  
20 at a shiny car and a platform there instead of  
21 what I have.

22 And I think that I was trying to

1 not only be good to myself and be able to look  
2 at the garden from my house, which I can't I  
3 have to go outside to go inside, they are  
4 enjoying more the garden than I do, because  
5 it's pretty much an open land.

6 I would have to basically -- the  
7 design calls for large windows in there, so it  
8 would be more transparent. I would just lose,  
9 basically, all of that if I were to  
10 incorporate a car garage in a very short  
11 landing from the street, which provides me,  
12 basically, no great room, other than removing  
13 an adjacent tree to it, which is -- I think  
14 that tree has been there for the last 80 years  
15 or more. Anyway, that's -- I wanted to add  
16 that to it.

17 CHAIRPERSON MILLER: The practical  
18 difficulty test is kind of tricky, but, you  
19 know, is there a practical difficulty that you  
20 are addressing by your addition or it's just  
21 something that you wanted to do?

22 MR. DIEZ: It's -- I don't know

1       how practical it is. We, basically, have a  
2       very, very small dining room and a postage  
3       stamp kitchen. We entertain a lot. We bring  
4       people from Georgetown and from a lot of  
5       travel that I do around the world to come to  
6       our home. I like to have a more comfortable  
7       quarters to live in.

8               So that's one of the reasons for  
9       it. The other one is we're getting a little  
10      old in age and I wanted to put actually an  
11      elevator in there, so that when our knees  
12      start to fail, we won't have to move from the  
13      area, because we have been there quite a long  
14      time and we wanted to stay in our home in case  
15      that there would be a problem for us, my  
16      mother, who is now kind of elderly, wants to  
17      move in with us from Florida.

18             But she could stay where she is,  
19      too. In other words, I don't necessarily have  
20      to bring her over, but those are the kinds of  
21      things that I was entertaining with this  
22      addition. A larger kitchen and a larger

1 dining room for my guests.

2 CHAIRPERSON MILLER: And you might  
3 possibly have been able to configure the  
4 design differently had you known that you had  
5 to have a required parking space?

6 MR. DIEZ: That's always the  
7 possibility that I would have been able to do  
8 that. I just looked at my option and I  
9 proceeded in good faith and I did what I did  
10 based on that. If I have to revise it, if I  
11 have the energy and the money to do that, I  
12 will probably like to do -- make an attempt to  
13 do it.

14 I don't know how successful it's  
15 going to be, because it's going to impact more  
16 severely on the neighborhood. And I don't  
17 know that my neighbors will be as pleasant as  
18 they are right now to going along with my  
19 design.

20 CHAIRPERSON MILLER: And why would  
21 it impact more severely on the neighbors?

22 MR. DIEZ: Because I would have

1 the serious excavation to go under the house  
2 and providing enough space for a car to move  
3 right in and try to fit it within 6 feet from  
4 my neighbor's fence in the back. Coming from  
5 Ellicott Street is more difficult and I will  
6 have to remove the entire garden. I don't  
7 think that's an option, but it's always -- on  
8 paper, you could always design things on paper  
9 and try to come up with a better solution.

10 But, aesthetically speaking, to  
11 have a garage in the open field like that on  
12 that hill, which is a prominent point in the  
13 city of Washington, in terms of elevation, I  
14 don't think is really a pleasant idea to  
15 pursue.

16 MEMBER DETTMAN: Madam Chair, I  
17 just have a couple of comments to make,  
18 because it feels like we are starting to get  
19 a little bit into the merits of the case and  
20 I'm not sure if we have decided to go forward  
21 today or if we are still trying to sort of  
22 figure that out.

1 CHAIRPERSON MILLER: We are.

2 MEMBER DETTMAN: But I want this  
3 to be as convenient for the applicant as  
4 possible. And I think it might be more  
5 convenient for the applicant to hold off for  
6 the following reasons: One is that with  
7 respect to the variance from parking, I think  
8 that the applicant will have difficulty  
9 meeting the first, second and possibly the  
10 third prong of the test.

11 I think that we're a little bit  
12 familiar with that it might be hard to  
13 accommodate that one spot on the lot if we  
14 were to demolish the garage and put up the  
15 addition. And so we resort to street parking.  
16 But, you know, I have heard that there is a  
17 park across the street. But I don't -- does  
18 that park have on-site parking or do the users  
19 of that park from the surrounding  
20 neighborhood, do they come in and rely upon  
21 the street parking to be able to park and use  
22 the park?

1           And so that might be an issue that  
2           would need to be sort of fleshed out with DCOP  
3           when they analyze, if they go back and do a  
4           supplemental report and analyze for parking.  
5           I'm not sure about the practical difficulty.  
6           We have a spot on-site and we're removing it.  
7           And so we meet the regulations and how can we  
8           justify removing this from that?

9           But also, I see a couple of  
10          inconsistencies in the plans. In particular,  
11          the last page that says the front elevation,  
12          which is actually another copy of the rear  
13          elevation. And noting that there is actually  
14          an elevator going into this property, which is  
15          tending towards the front of the house, I  
16          would be more comfortable seeing what the  
17          front elevation of this house is going to look  
18          like.

19          And, you know, are we going to be  
20          able to see the elevator shaft? What's going  
21          to be on the roof? And so I think a couple of  
22          issues need to be fleshed out with the plans

1 as well as the analysis. And I think to sort  
2 of go forward today, try to work through the  
3 parking variance or not and leave it up to  
4 possibly DCRA to all of a sudden a lightbulb  
5 goes on and says oh, you need relief from  
6 parking and just send the applicant right  
7 back.

8 I think it's more efficient to  
9 send the applicant back to figure out these  
10 issues prior to us going forward.

11 CHAIRPERSON MILLER: Yes?

12 MR. DIEZ: Could I have a point of  
13 clarification? I thought that the elevation  
14 didn't show any entrance whatsoever to the  
15 garage -- to the elevator. It's not -- it  
16 doesn't come in from the street. It's inside  
17 the house.

18 MEMBER DETTMAN: Right.

19 MR. DIEZ: There is no --

20 MEMBER DETTMAN: You show a west  
21 elevation which is the rear of your property.

22 MR. DIEZ: Yes.

1                   MEMBER DETTMAN: On the very next  
2 page, you have it labeled front elevation  
3 east, but it's actually the west elevation.

4                   MR. DIEZ: Oh, I'm --

5                   MEMBER DETTMAN: So I understand  
6 that you won't be able to see the entrance to  
7 the elevator from the outside of the house.

8                   MR. DIEZ: Right.

9                   MEMBER DETTMAN: You will actually  
10 enter it from, it looks like, your kitchen.  
11 But I know that as elevators sometimes require  
12 things that are on the roof of the house,  
13 which I don't know, in your case it might not.  
14 But without seeing it on paper, I'm just not  
15 comfortable sort of guessing what the front of  
16 the house is going to look like.

17                   MR. DIEZ: I thought I put on my  
18 documents how -- the front of the house  
19 completely.

20                   MEMBER DETTMAN: I might not have  
21 it.

22                   MR. DIEZ: I may not? Oh, you may

1 -- don't have?

2 MEMBER DETTMAN: I actually don't  
3 have that.

4 MR. DIEZ: You don't have that  
5 page? Again, I'm sorry, you know. You may  
6 have not --

7 COMMISSIONER JEFFRIES: Wait. The  
8 front elevation is not the west elevation? Is  
9 that the problem?

10 MEMBER DETTMAN: I actually -- in  
11 my plans, I actually do not have the east  
12 elevation, but Ms. Walker seems to have them.  
13 So I apologize. I'll withdraw that comment.

14 MR. DIEZ: Thank you.

15 CHAIRPERSON MILLER: Okay. Let me  
16 see and maybe make this suggestion in response  
17 to Mr. Dettman's remarks and see how others  
18 feel. You know, it's a three prong test. You  
19 didn't come here necessarily even  
20 understanding that, I would assume, and the  
21 degree of proof to meet the test.

22 I think we have heard a lot of

1 facts that we have an idea of the situation,  
2 but perhaps we can discuss whether they should  
3 be buttressed by a supplemental pleading. I  
4 mean, again, I see that there is some merit to  
5 an exceptional situation possibly being DCRA,  
6 you know, not letting him know years ago about  
7 this.

8 But, in my mind, maybe there is a  
9 question about the costs actually. You know,  
10 could the plans be adjusted and if it would be  
11 very costly at this point. What is that cost,  
12 so that we have it in the record? What are we  
13 talking about? You know, we have your  
14 testimony, in general. But I think as Mr.,  
15 you know, Jeffries was pointing out earlier,  
16 there is this practical difficulty. We need  
17 to make sure that you have met that test.

18 MR. DIEZ: All the approved plans  
19 I mentioned before cost me \$8,000.

20 CHAIRPERSON MILLER: Okay. But do  
21 you know what it would cost to have somebody  
22 look at it to see whether parking could be put

1 in or do you think you would have to start  
2 over again and it would be \$8,000 more?

3 MR. DIEZ: Ms. Miller, I will have  
4 to start over again. There is no question in  
5 my mind that the present design, small  
6 modifications to it will render anything but  
7 a complete new design. I just know that it's  
8 not possible, I'm an architect.

9 CHAIRPERSON MILLER: Oh, you're an  
10 architect?

11 MR. DIEZ: Yes, ma'am.

12 CHAIRPERSON MILLER: Okay.

13 MR. DIEZ: I did the architectural  
14 drawings and then I had to have consultants  
15 and they were \$8,000 to me.

16 COMMISSIONER JEFFRIES: So what  
17 consultants would you have to bring back into  
18 the picture if you decided to revise?

19 MR. DIEZ: Electrical, plumbing,  
20 air conditioning, structural, those are the  
21 ones I paid for.

22 COMMISSIONER JEFFRIES: And you

1 are telling me that none of this can be  
2 salvaged?

3 MR. DIEZ: None of that really  
4 could be salvaged.

5 COMMISSIONER JEFFRIES: Okay.

6 MR. DIEZ: In my professional  
7 opinion of that.

8 MEMBER DETTMAN: I think I briefly  
9 heard Mr. Jackson mention something about  
10 potentially accommodating access to parking  
11 from Ellicott Street or some other place on  
12 the property? Did you address that in terms  
13 of why that wouldn't be feasible?

14 MR. DIEZ: Ellicott Street is the  
15 only possibility. In order for me to bring a  
16 ramp there, the garage -- I mean, the garden  
17 would really have to be destroyed.

18 MEMBER DETTMAN: Can you tell me a  
19 little bit about the existing curb cut on  
20 Ellicott that leads to that garage that seems  
21 to be very close to the rear of your house?  
22 You had mentioned it is unpaved, but I'm just

1 thinking -- and I want to make sure we explore  
2 all the options to make sure that it's not  
3 feasible.

4 But is it possible that -- I have  
5 heard of situations where you work out an  
6 easement, where you could actually use that  
7 drive to gain access to the rear of your  
8 property somehow.

9 MR. DIEZ: The strip of land makes  
10 to the back of my house stand 6 feet from the  
11 wall of my garage. Only 6 feet. The strip of  
12 land is just as wide as the present garage  
13 there of Mr. Harner. He uses it occasionally  
14 to work on cars that he has. There is an  
15 unpaved entrance in there. He sometimes parks  
16 four and five cars in the back of my property.

17 Therefore, I erected a fence to  
18 see them, but right behind it, he has that  
19 access. I think that that was due to -- I'm  
20 speculating, that that was a family dispute at  
21 some point and the zoning allowed that strip  
22 of land be part of his property. His property

1 has a full garage. He does not park in the  
2 garage, because it's too narrow and too small,  
3 so he made a large width of the -- of actually  
4 the ramp going into his house.

5 So he parks the car right on the  
6 ramp, because there is no space in his  
7 property. On the other side in the back,  
8 other than an arrangement to allow me to park  
9 there, I do pay for on-site parking  
10 neighborhood-wise. So I have that option on  
11 my side of the property. So I have ample  
12 opportunities to park right in front of my  
13 house and so does he, that entire flank of the  
14 house.

15 The other one is basically  
16 National Park Service property and commuters  
17 use it all the time. They feel the whole  
18 thing is unrestricted parking completely on  
19 the other side of the street. In terms of  
20 parking, those are -- I never had really a  
21 problem either for me or for my guests to park  
22 in front of my property.

1 CHAIRPERSON MILLER: Well, I think  
2 maybe we should proceed with the case, unless  
3 do you have other concerns about holding off,  
4 Mr. Dettman, at this point? Okay. All right.  
5 Anything else you want to add?

6 Now, we have just really talked  
7 about the variance. Anything else you want to  
8 add on the variance and then anything else you  
9 want to say about your special exception  
10 application? We do have your application and  
11 the Office of Planning's report and the ANC  
12 report and whatever. But this is your time,  
13 so if there is anything more you want to add  
14 before we again go to Office of Planning, feel  
15 free. Otherwise, you'll get a chance to  
16 respond later.

17 MR. DIEZ: No, I want to thank you  
18 very much for listening to me. I think I  
19 waited really an incredible amount of time and  
20 I, basically, have been misguided up to this  
21 point by the DCRA. First approving, then  
22 disapproving and then going back again. It's

1 very, very -- I would have had the time to  
2 revise the drawings a long, long time ago  
3 without going through this expense.

4 I think I'm at a point now that  
5 basically I want to get going and build it  
6 before I get much older, so I think that one  
7 of my problems here, of course, is that once  
8 you make your decision, if it's a positive  
9 one, if I could proceed with it, I wanted to  
10 find out how quickly I can get on with the  
11 building.

12 That's a concern. I basically am  
13 adamant about not waiting a long, long time  
14 again to resolve this issue. Thank you very  
15 much for your time and opportunity at least.

16 CHAIRPERSON MILLER: I just want  
17 to ask you, what kind of architecture do you  
18 do? Do you do architecture in the District?

19 MR. DIEZ: I am the Architect of  
20 the Treasury Department. Right now, I'm  
21 really concentrating on conservation and  
22 preservation of the historic structure here in

1 town, that's my job.

2 CHAIRPERSON MILLER: So you are  
3 not necessarily familiar with the D.C. Zoning  
4 Regulations?

5 MR. DIEZ: That's correct, ma'am.

6 CHAIRPERSON MILLER: Okay. Thank  
7 you. Any other questions? Okay. Mr.  
8 Jackson?

9 MR. JACKSON: Madam Chair, Members  
10 of the Board, I will briefly go through the  
11 Office of Planning's report with regard to the  
12 consistency with section 223 of the  
13 regulations. The applicant is asking -- based  
14 on an analysis of the existing zoning and  
15 existing situation on the site, the applicant  
16 needs relief from section 401 for lot area and  
17 width, section 403 from lot occupancy, section  
18 404 for rear yard and section 404 for side  
19 yard and also from section 2001.3 for the  
20 percentage of lot occupancy and for creating  
21 a nonconformity with the addition.

22 In terms of the impact of the use

1 on abutting properties, we found that the air  
2 and light available to neighboring properties  
3 is not unduly affected. The privacy of  
4 neighboring properties was not affected, that  
5 the addition itself in view from the street  
6 would not substantially intrude on the  
7 character of the community and the applicant  
8 submitted enough information for this  
9 analysis.

10 Based on that, we think the  
11 applicant -- application is consistent with  
12 the section 223 of the regulations. However,  
13 we would look at the -- we determined -- based  
14 on our determination that the variance relief  
15 was required because the applicant would not  
16 be replacing an existing parking place on-  
17 site, we found that the subject property was  
18 not of unique shape and -- well, not  
19 necessarily unique and it's not the smallest  
20 lot on the square.

21 Therefore, none of the -- and none  
22 of the lot characteristics prohibit the

1 applicant from providing on-site parking. We  
2 also found that the curb cut existing garage  
3 belied that there is an existing practical  
4 difficulty with the applicant providing on-  
5 site parking.

6 And we also found that the  
7 integrity of the Zoning Plan wouldn't be  
8 affected by this, because the current  
9 regulations do not allow on-street parking to  
10 substitute for required on-site parking. And  
11 since the on-site parking currently exists,  
12 granting a variance to eliminate the required  
13 on-site parking would be contrary to the  
14 intent of the regulations of the current -- as  
15 they currently stand.

16 We will note that the Advisory  
17 Neighborhood Commission did write a letter not  
18 opposing this proposal. However, based on  
19 those -- that information in our analysis,  
20 although we recommend to approve the special  
21 exception, we cannot support the variance to  
22 eliminate the existing on-site parking space.

1           That concludes our brief analysis  
2           of the Office of Planning's report. A brief  
3           summary of the Office of Planning's analysis.

4           CHAIRPERSON MILLER: Mr. Jackson,  
5           when you say that the applicant has secured  
6           permit parking authorization from DDOT, is  
7           that just the residential parking permit?

8           MR. JACKSON: Yes.

9           CHAIRPERSON MILLER: Is that what  
10          you were talking about? Okay. How is it  
11          contrary to the integrity of the Zone Plan to  
12          grant a variance for the required parking? I  
13          mean, any time we grant a variance, it's  
14          contrary to what the regulations provide. But  
15          it's not necessarily contrary to the Zone  
16          Plan.

17          MR. JACKSON: Well, the -- again,  
18          we were primarily talking about the  
19          regulations and that the intent of the  
20          regulations, as spelled out in the  
21          regulations, is that any existing or proposed  
22          use should provide required parking on-site.

1 Since the proposed -- since the existing use  
2 provides required parking on-site, to  
3 eliminate that is required -- would be  
4 contrary to the intent of the regulations as  
5 they currently exist, in our opinion.

6 CHAIRPERSON MILLER: Any other  
7 Board questions? Does the applicant have any  
8 questions for the Office of Planning? Okay.  
9 Do you have the Office of Planning's report?

10 MR. DIEZ: I beg your pardon?

11 CHAIRPERSON MILLER: Do you have a  
12 copy of the Office of Planning's report?

13 MR. DIEZ: Yes.

14 CHAIRPERSON MILLER: Okay.

15 MR. DIEZ: I received last week.

16 CHAIRPERSON MILLER: Okay. In  
17 which case then, there are no questions, we go  
18 to the ANC, who I don't believe is here today.  
19 However, we do have a letter to Mr. Jackson  
20 saying that "On February 14, 2008 at a public  
21 meeting, ANC-3E heard from Antonio Diez, the  
22 owner of 4902 Belt Street, N.W., and the

1 Commission has no objection to his request for  
2 an addition of the site." And this is signed  
3 by Lucy Eldridge, ANC-3E. Okay.

4 MS. BAILEY: Madam Chair, you may  
5 want to waive that into the record. We just  
6 received it this morning.

7 CHAIRPERSON MILLER: Okay. I'll  
8 waive it into the record. Can we waive it  
9 into the record? Yes, I don't think there's  
10 an issue with that. I don't know that it  
11 meets the great weight test. We don't see a  
12 vote. I don't see a vote on here or whatever.  
13 But great weight means that we address the  
14 issues that they raise and they don't really  
15 raise any issues. So we note in the record  
16 that they have no objection.

17 Okay. Now, we get to the part  
18 where anyone here who wishes to testify in  
19 support of the application can come forward.  
20 Ms. Hattery, do you have more that you want to  
21 say with respect to this application? Do you  
22 want to come forward? It's the time for

1 anyone who wishes to testify in support of the  
2 application. I know you testified already  
3 somewhat in response to questions earlier.

4 MS. HATTERY: Yeah, I just --

5 CHAIRPERSON MILLER: Now, you have  
6 to -- if you are going to speak, turn on the  
7 microphone.

8 MS. HATTERY: I just wanted to --  
9 I don't know whether it is helpful or not, but  
10 just to add a note about the neighborhood,  
11 which is very, very old. It dates back to the  
12 Civil War times. And very small lots. And so  
13 people who are living there are struggling  
14 with these as far as the aesthetics of their  
15 neighbors and as far as their living quarters  
16 are concerned and that should be, I would  
17 think, taken into consideration as the people  
18 are suffering against unusual constraints in  
19 having to do things like add, you know, a big  
20 driveway and something like that.

21 And I think Mr. Diez is right that  
22 it would be ugly where it is and he does have

1 a very nice garden. And that's all.

2 CHAIRPERSON MILLER: And you  
3 stated that there isn't a big problem with  
4 parking in the neighborhood?

5 MS. HATTERY: That's correct.  
6 That's absolutely correct, yeah.

7 CHAIRPERSON MILLER: Okay. Any  
8 other Board questions? Okay. Thank you very  
9 much. Anybody here to testify in opposition  
10 to this application? Okay.

11 Let me ask you, Mr. Diez, it's  
12 your point for closing remarks, which you can  
13 make. And also, I guess, I would want to hear  
14 whether you have an opinion whether you would  
15 like the Board to deliberate on the variance  
16 on your application today or whether there is  
17 anything else you would want to add to the  
18 record.

19 MR. DIEZ: Yes. I would very much  
20 like the Board to take a look at that variance  
21 and give me an answer, based on your decision.  
22 My concern, of course, is I think that you

1 have as much information as I can provide you  
2 on as many issues as I can be discussed with  
3 you already.

4 Should you want me to put those in  
5 writing, I'll be glad to do it. My concern,  
6 of course, is timing again. I don't know when  
7 I'll have an opportunity to come back to you  
8 again, probably in several months before I  
9 would be able to do this. So my concern is  
10 timing. And my concern is information, should  
11 you require more information, I'll be happy to  
12 provide it to you.

13 And again, I'm grateful that you  
14 took the opportunity to see my case.

15 CHAIRPERSON MILLER: Thank you.

16 COMMISSIONER JEFFRIES: I'll lead  
17 off. This is a case where I'm going to lean  
18 heavily on my colleagues here, because, at  
19 this point, I'm in agreement with the Office  
20 of Planning about the variance. I just don't  
21 find this lot to be -- to represent a  
22 situation that creates a practical difficulty

1 for this applicant.

2 I mean, the lot currently has a  
3 parking space on it. You just -- it currently  
4 has a parking space. I mean, I'm very  
5 sympathetic towards some of the issues that  
6 has been expressed, but this lot has curb  
7 cuts. It has a curb cut. It has a parking  
8 space. And so I just don't see how it's  
9 possible that this applicant can make the  
10 case.

11 I mean, the applicant has been  
12 using his home for many years. And I  
13 understand that he has every -- I mean, in  
14 terms of 223 that he can build an addition,  
15 but -- and I also have some concerns given  
16 that he is an architect that not being  
17 completely, unless I'm missing something here,  
18 you know, understanding, you know, what the R-  
19 1-B Zone talks about in terms of a parking  
20 space.

21 So I am very sympathetic. So I'm  
22 willing to listen to my colleagues here, but

1 at this point, I just wanted to put on the  
2 table that I'm not supportive of the variance,  
3 at this time.

4 VICE CHAIRMAN LOUD: I'm not  
5 certain we're going to deliberate today. I  
6 thought that maybe that was a part of your  
7 question. But if we do, I'm sort of at the  
8 opposite end of the spectrum. I am very  
9 supportive of granting relief for the  
10 applicant, both under 223 and the variance  
11 test.

12 I think the exceptional situation  
13 that the testimony spoke to was the history  
14 with DCRA and the reliance of the applicant on  
15 DCRA's stated grounds for relief. The  
16 applicant testified that he wanted to make  
17 sure that he got that in writing from DCRA.  
18 He did get it in writing from DCRA.

19 And he relied on that in  
20 developing his plans and marshalling his  
21 effort forward for relief. I think the  
22 practical difficulty would appear to be the

1 cost to him, both in terms of time and  
2 dollars, of starting his project anew.

3 He testified that he would have to  
4 start it anew. He testified that he is an  
5 architect and that that's his professional  
6 opinion. He testified that it cost him about  
7 \$8,000 to get to the point where he is today  
8 and that's no small amount of money to just  
9 sort of throw out of the window.

10 Sort of on the softer side, I  
11 mean, what are we talking about here? We're  
12 talking about parking availability for a  
13 project that there is no opposition to. The  
14 closest neighbor, Ms. Hattery, is here and she  
15 testified and she is not concerned about the  
16 proposed addition.

17 Apparently, this sort of area is a  
18 bit unique in the sense that there is an  
19 overflow of off-street parking. And that if  
20 the project goes through, he has already, I  
21 believe, received residential parking permits  
22 for off-street parking.

1           So it's a case where our rules  
2       kind of don't serve us as well as they can,  
3       because there is no real harm to moving  
4       forward on this project. Although, I  
5       understand that's the soft side of the  
6       analysis. It doesn't really meet the strict  
7       standards for the variance test.

8           But again, if we were to go  
9       forward with deliberation today, if we felt  
10      like we had enough information, this is a  
11      project that I could see myself supporting.

12           CHAIRPERSON MILLER: Okay. Let's  
13      clarify here. My understanding is we are  
14      going to deliberate, that this should be  
15      deliberation, because the applicant has said  
16      that he doesn't have any further information  
17      that he wants to submit. And I don't -- I  
18      didn't hear from the Board that they wanted  
19      anything further.

20           So I think we should just do this,  
21      at this point. And I will take your comments  
22      and Mr. Jeffries comments as deliberation.

1 And I would like to add that I think if this  
2 case came normally to the Board, I might not  
3 find that it met the variance test, because I  
4 think there are situations throughout the city  
5 where homeowners don't use the garage and they  
6 use parking in the front or whatever.

7 And, you know, that's not really--  
8 I wouldn't want to send a message that  
9 everybody can then come in and oh, you don't  
10 need your garage, because you've got parking  
11 in front, so, no, I think that would be  
12 contrary to the intent of the regulations.

13 I think that this case is  
14 exceptional, because of the zoning history and  
15 that is something that the Court of Appeals  
16 has recognized as being an exceptional  
17 situation, that, you know, years ago the  
18 Zoning Administrator certified it for other  
19 relief and not parking.

20 And I had that question and that's  
21 why I asked the applicant the fact that he is  
22 an architect, you know. I thought well, maybe

1 he should have picked this up. However, you  
2 know, I'm not an architect. I'm a lawyer.  
3 And I don't know. It sounds to me that, you  
4 know, some lawyers practice different aspects  
5 of the law.

6 And if this architect practices a  
7 different area of the law, he might not have  
8 realized what the computations meant and that,  
9 you know, he didn't need it. So I think it  
10 was reasonable to rely on the Zoning  
11 Administrator's certification. And I don't  
12 want to assume bad faith here. I don't think  
13 there is enough evidence to do that. Not that  
14 I'm saying you are, Mr. Jeffries.

15 I think that Mr. Jeffries is an  
16 architect, right? So that he, you know, comes  
17 to the Board with different assumptions of how  
18 he might have looked at it. But in any event,  
19 I think that's an exceptional situation.

20 And then we look at the practical  
21 difficulty test, because we have to address  
22 each prong. And I think that the practical

1 difficulties are, number one, at this point,  
2 the cost, which Mr. Diez as an architect has  
3 characterized as being \$8,000. And we weigh  
4 that against the burden of compliance. And  
5 then when we look at how he could comply, he  
6 could just not do the addition, you know.

7 And I don't necessarily want to  
8 put a judgment on whether they need to do the  
9 addition. We did hear from Ms. Hattery as  
10 well that these are very small properties  
11 that, you know, are constraining with respect  
12 to living area. And we did hear from Mr. Diez  
13 that I think they wanted to do a normal kind  
14 of expansion, because this is such a small  
15 house and lot.

16 And that the lot does have  
17 constraints and were they to try to do it  
18 another way, they would be demolishing a  
19 garden, etcetera and that doesn't seem worth  
20 it in weighing the burden of compliance versus  
21 the variance relief. And that there is no  
22 substantial detriment in this case, because

1       there is sufficient parking on the street.

2               So I don't think it's contrary to  
3       the Zone Plan. I think it would be contrary  
4       if we didn't meet the variance test, but I  
5       think that there are exceptional circumstances  
6       in this case. And to me, I'm mainly resting  
7       on reliance on the Zoning Administrator's  
8       certification.

9               MEMBER DETTMAN: Madam chair, I am  
10       sort of leaning in the direction of supporting  
11       the project. With respect to the parking  
12       variance, I think -- and we're going to hear  
13       this in the next case that we hear, is that I  
14       think the uniqueness is -- all resides in the  
15       shape of the lot. And I think as I said in  
16       the next case, we're going to hear an argument  
17       that the shape of the lot constrains a  
18       person's ability to reasonably expand their  
19       house.

20               Looking at the shape of this lot,  
21       it appears that the applicant can't expand  
22       towards the back because of that existing

1 garage. It's very close. Can't expand to the  
2 north, because of an existing house there.  
3 Can't expand to the east, to the front,  
4 because you are stepping on the grounds --  
5 stepping on public space potentially.

6 And so it looks like the southern  
7 side of this property is the only side that  
8 you can reasonably expand this house. And,  
9 you know, we have a long time District  
10 resident and by all means, we want to retain  
11 that District resident. One could say that  
12 well, just expand your house and put in  
13 another garage. Just sort of move the garage  
14 down further south.

15 We have heard argument that that  
16 could destroy a garden. And while I think  
17 that's a great important community amenity and  
18 I commend your efforts, I think -- I wouldn't  
19 weigh that as a factor. However, if you do  
20 move the garage, you have to move the curb  
21 cut. And that makes it probably too close to  
22 the intersection of Belt and Ellicott Road.

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1 So it could be a public safety concern.

2 And so I don't think that that's a  
3 viable option. And with respect to -- the  
4 practical difficulty is the reasonable  
5 expansion of the house. The third prong of  
6 the test I was -- I'm fairly concerned with  
7 by, you know, sort of replacing on-site  
8 parking with using street parking, but I think  
9 we have heard testimony from Ms. Hattery that,  
10 you know, street parking in the general  
11 facility doesn't seem to be a problem and that  
12 we are talking one space.

13 And, you know, there is a  
14 uniqueness element to this project, so I'm not  
15 too fearful that this is going to set some  
16 sort of precedent.

17 CHAIRPERSON MILLER: Well, that's  
18 the thing about variances and precedents.  
19 They have to meet the specific variance test.  
20 And so for it to be a precedent, somebody else  
21 would have to have exceptional conditions, you  
22 know, and the whole thing, practical

1 difficulty and, you know, no substantial  
2 detriment. It's not just the no substantial  
3 detriment.

4 MEMBER WALKER: Madam Chair, we  
5 have heard a lot from the applicant about  
6 wanting to expand space for entertaining and  
7 not destroying a garden. And, you know, I  
8 understand his desires, but ultimately, all of  
9 that -- I'm having -- I'm really struggling  
10 with whether the practical difficulty test is  
11 met here, because we are talking about, you  
12 know, aesthetics and really personal  
13 preferences.

14 And so, you know, I am not  
15 persuaded that the uniqueness lies in the  
16 shape of the lot. It may be the case that the  
17 reliance on the Zoning Administrator's  
18 representation is enough to establish that the  
19 practical difficulty test is met here.

20 I am not certain that we know that  
21 there is enough in the record, however, about  
22 when exactly these plans were done. Were they

1 done, you know, before -- were they completed  
2 before the applicant went to the Zoning  
3 Administrator? You know, I'm really having  
4 trouble concluding that there has been a  
5 detrimental reliance on the Zoning  
6 Administrator's representation.

7 And so, you know, at this point,  
8 I'm really on the fence. I'm really on the  
9 fence.

10 CHAIRPERSON MILLER: Well, let me  
11 say this to you, because I think I was coming  
12 from a similar place with respect to the  
13 topography and stuff, because as far as  
14 precedent goes, I wouldn't want to see other  
15 cases where all the -- you know, they park in  
16 the street anyway. And their house is kind of  
17 small and, therefore, they want to knock down  
18 their garage and make a bigger kitchen.

19 You know, I wasn't necessarily  
20 convinced in that analysis. That's why I was  
21 saying, if it came to me and the Board  
22 normally, I might not be inclined to grant a

1 variance for that. But I think it's, to me,  
2 the zoning history.

3 What we have in the record is we  
4 don't have all the details, but we have  
5 testimony under oath that the applicant relied  
6 on the certification. We have the  
7 certification what it says. And then the  
8 applicant is an architect and capable of  
9 estimating the costs. So we have the cost  
10 that goes to the practical difficulty  
11 question.

12 The cost if he had to redo it  
13 again to comply with the parking, it would be  
14 \$8,000. So we have that fact. That may not  
15 be enough for you. No?

16 COMMISSIONER JEFFRIES: Yeah. But  
17 I think Ms. Oates makes a very good point that  
18 the record is really not full enough to make  
19 some of the determinations that I think are  
20 being made here. I mean, you know, it's one  
21 thing to say it will be \$8,000. It's another  
22 one to break those costs down.

1           Also, you know, the applicant has  
2 testified that, you know, he is in  
3 architectural preservation or historian, but,  
4 you know, maybe there is another way that this  
5 could be designed to accommodate the parking  
6 and not damage much of the garden. And I just  
7 don't think the record is full enough to make  
8 some of the conclusions that have been made.

9           I think that, you know, we are  
10 filling in some blanks here. Again, I want to  
11 just say for the record, I am very sympathetic  
12 to this applicant. And what the community is  
13 saying in terms of this is a nice addition and  
14 so forth, but I'm dealing more with the purity  
15 of the variance test.

16           I mean, we have talked about, you  
17 know, things being precedent setting and  
18 that's, you know, obviously a concern I have.  
19 I just -- as Ms. Oates said, you know, we are  
20 dealing with a lot of things that, you know,  
21 appear to be soft or don't really speak to the  
22 practical difficulties. And then the site

1 being truly unique. In many ways, it's not  
2 unique.

3 I would like to see the record  
4 before I could vote in favor of this. I would  
5 just like to see a more expansive record of  
6 making the case about, you know the practical  
7 difficulties and how this particular addition  
8 can -- will really be impacted by having to  
9 include a parking space on the site.

10 CHAIRPERSON MILLER: I mean, as I  
11 was saying, there are two different ways of  
12 looking at this variance analysis. One is  
13 looking at it from the context of the zoning  
14 history. And then the other is looking at it  
15 from the context of the topography.

16 From the zoning history aspect,  
17 I'm not sure what further information we need,  
18 if we -- unless we're not going to take the  
19 applicant's testimony, you know, as evidence.  
20 You know, we have that there was a  
21 certification and that it didn't catch the  
22 parking variance. We have the architect's

1 testimony, applicant/architect, that the cost  
2 of complying, if it could comply, that would  
3 be at least \$8,000 in redrawing plans.

4 Now, then we can weigh that.  
5 That's a subjective judgment. I'm not sure we  
6 need more information. Maybe somebody might  
7 say well, \$8,000 that's just, you know, too  
8 bad, but that's -- we have to preserve the  
9 integrity of the variance or whatever.

10 But I'm not sure what other  
11 information you want.

12 COMMISSIONER JEFFRIES: Drawings.

13 CHAIRPERSON MILLER: What  
14 drawings? Oh, these drawings aren't  
15 sufficient?

16 COMMISSIONER JEFFRIES: I mean,  
17 what these drawings indicate are that, you  
18 know, in order for me to -- in order for the  
19 applicant to have the type of addition that he  
20 wants, he has to remove an existing parking  
21 space that's on the site. There might be  
22 another drawing that basically says that he

1       could do some type of addition that could be  
2       suitable to -- you know, for his home and  
3       still maintain the parking space.

4               I mean, that's what I'm saying I  
5       have not seen in the record. I mean, I have  
6       heard Mr. Dettman saying that it doesn't seem  
7       like it could go -- you know, it has to go  
8       south and so forth, but we don't really have  
9       that before us.

10              CHAIRPERSON MILLER: Okay. So you  
11       are being kind of more of like a sophisticated  
12       showing as to what -- and plans as to why?

13              COMMISSIONER JEFFRIES: Yes, it  
14       doesn't have to be sophisticated, but just  
15       something that really indicates that it would  
16       be absolutely difficult for this applicant to  
17       build an addition while maintaining a parking  
18       space on the site.

19              CHAIRPERSON MILLER: Okay. But  
20       that's separate from my point.

21              COMMISSIONER JEFFRIES: Um-hum.

22              CHAIRPERSON MILLER: And I think

1 that the applicant was making that not that  
2 necessarily it couldn't be done, maybe it  
3 could be, but that to start again with plans  
4 to try to accommodate the parking would cost  
5 \$8,000. So that's the figure we need to weigh  
6 in our practical difficulty analysis. No?

7 COMMISSIONER JEFFRIES: I'm -- and  
8 I guess what I'm saying is I'm having with the  
9 \$8,000. I mean there are schematic drawings  
10 that could be done, conceptual drawings that  
11 could be done with very -- you know, that can  
12 indicate, you know, what is achievable. You  
13 don't have to do hard line drawings and -- you  
14 know, to get this done. So that was the only  
15 point that I was trying to make.

16 And I don't think that the  
17 applicant needs to incur a lot of debt or cost  
18 in terms of, you know, at least trying to  
19 graphically or illustrate sort of what could  
20 be achieved here. But again, you know, I  
21 don't have a problem being in -- I mean, you  
22 know, if the Board is ready to move on this,

1       that's fine. I mean, I don't -- I'm very  
2       sympathetic to the applicant, but I just  
3       thought that it should -- you know, there  
4       should be some level of dissent on the record  
5       for a case that has, you know, some murkiness  
6       about it.

7                   CHAIRPERSON MILLER: Okay. I just  
8       want to clarify my understanding though, it's  
9       not that the \$8,000 would be for depicting  
10      what is achievable, but to actually, if there  
11      was something achievable, redoing the plans.

12                  MR. DIEZ: Right.

13                  CHAIRPERSON MILLER: So that would  
14      be the cost to the applicant.

15                  COMMISSIONER JEFFRIES: But to me,  
16      I'm getting -- I'm trying to get comfortable  
17      with the practical difficulty piece. And that  
18      could to me be achieved by doing a conceptual  
19      drawing of some sort. And quite frankly, I  
20      think that the applicant should formally make  
21      a variance case. You know, I just don't think  
22      there is enough in the record. And I think

1       that could sort of help sort of, you know,  
2       make that case by, you know, having some, you  
3       know, drawing representation.

4               I understand the \$8,000 he -- you  
5       know, at some point he is going to have to  
6       have drawings that, you know, someone could  
7       build his addition on. But I think, you know,  
8       having come conceptual drawings that could  
9       help him make the case that, yes, this is a --  
10      this will be difficult for me to build an  
11      addition and still maintain the parking space  
12      on the site.

13             CHAIRPERSON MILLER: Okay. I  
14      mean, I'm under the impression that, at this  
15      point, all that would be too much for this  
16      applicant. And he just might not go forward.  
17      And that the question then is again, I don't  
18      know, I see it regardless because of the ZA's  
19      error, is that an exceptional condition that  
20      gave rise to the practical difficulty if we  
21      want to put a number of \$8,000 on it or what  
22      and then the substantial detriment.

1           Because I'm kind of with you, at  
2           this point, that there isn't a case made yet  
3           for the topography of the land giving rise to  
4           a practical difficulty enough for the variance  
5           test.

6           COMMISSIONER JEFFRIES: Yes, and  
7           the reliance piece, you know, again, the  
8           applicant, you know, is an architect. And he  
9           is in a different -- in another area of -- and  
10          I don't -- there is no bad faith here in  
11          terms, you know, of -- you know, I don't think  
12          there is bad faith here. But I could be more  
13          comfortable with the reliance piece if, you  
14          know, we just, you know, had a school teacher  
15          out there who is just trying to pull this  
16          together and relying on DCRA and  
17          certification.

18          So and also, I'm not clear on all  
19          the dates and the sequence of events, quite  
20          frankly, but -- so but again, I am sympathetic  
21          to this applicant. And again, if -- you know,  
22          I'm absolutely fine being in the minority. So

1 I'm certainly not trying to slow this down.

2 MEMBER WALKER: Madam Chair, you  
3 keep making reference to the \$8,000 and  
4 certainly we can, you know, accept that  
5 testimony from the applicant as being true.  
6 However, I think we do have to remember that  
7 the applicant designed the plans. He did the  
8 plans and that cost is associated with  
9 consulting from electricians and so forth.

10 And so I don't think it's the case  
11 that all of that effort is lost. He is going  
12 to carry the benefit of having done this  
13 consulting on this project with these  
14 individuals before forward as he goes through  
15 the next iteration of his plans, if he were  
16 required to do so.

17 CHAIRPERSON MILLER: Okay. Those  
18 are the comments on the variance, I guess, at  
19 this point. Why don't we just comment on the  
20 special exception and then we can take a vote,  
21 I believe. Office of Planning is in support  
22 of the special exception. We have letters of

1 support from the ANC and Ms. Hattery is here,  
2 the neighbor, who has given her support for  
3 both the special exception and the variance.

4 Based on the testimony I have  
5 heard, I haven't heard that there is any  
6 adverse impact on the use or enjoyment of any  
7 abutting or adjacent property, that it affects  
8 air and light or any other impact on the  
9 neighborhood.

10 So including the parking, we heard  
11 a lot of talk about parking, in general, in  
12 the neighborhood and there is sufficient  
13 parking on the street, regardless of the  
14 variance.

15 So anyway, any comments on this?  
16 Office of Planning did a thorough report. I  
17 think we can adopt their comments. Okay. So  
18 any other comments? Then I guess we can vote  
19 on this application.

20 Why don't we vote on the variance  
21 first, as identified by the Office of  
22 Planning. The application would be amended to

1 include the variance from the parking  
2 requirement. Office of Planning identified  
3 that is 2100.10(a) and 2101.1, because the  
4 existing conforming garage space would be  
5 eliminated.

6 Okay. I think this is a very  
7 close call on this one. But I would move  
8 approval of the variance. And we have already  
9 had full discussion, so I don't really think  
10 I have anything else to add, at this point.  
11 Is there a second?

12 VICE CHAIRMAN LOUD: I would  
13 second the motion, Madam Chair.

14 CHAIRPERSON MILLER: Any further  
15 comments on this variance? Okay.

16 All those in favor say aye. Aye.

17 VICE CHAIRMAN LOUD: Aye.

18 MEMBER DETTMAN: Aye.

19 CHAIRPERSON MILLER: All those  
20 opposed?

21 MEMBER WALKER: Nay.

22 COMMISSIONER JEFFRIES: Opposed.

1 CHAIRPERSON MILLER: All those  
2 abstaining? And would you call the vote,  
3 please?

4 MS. BAILEY: The vote is recorded  
5 as 3-2-0 to grant the variance for this  
6 application. Mrs. Miller made the motion, Mr.  
7 Loud seconded, Mr. Dettman supported the  
8 motion. Mrs. Walker and Mr. Jeffries are  
9 opposed to the motion.

10 CHAIRPERSON MILLER: Okay. And  
11 then I would move approval then of the special  
12 exception to allow a rear addition to an  
13 existing one-family detached dwelling under  
14 section 223, not meeting the lot occupancy  
15 requirements, section 405, side yard  
16 requirements, section 405. Is that right?  
17 403, okay.

18 Do I have a second?

19 VICE CHAIRMAN LOUD: Second, Madam  
20 Chair.

21 CHAIRPERSON MILLER: Okay. Any  
22 further comment on special exception

1 application?

2 All those in favor say aye.

3 ALL: Aye.

4 CHAIRPERSON MILLER: All those  
5 opposed? All those abstaining? And would you  
6 call the vote, please?

7 MS. GLAZER: Madam Chair, could I  
8 clarify? Did you mention section 2103, the  
9 nonconforming structure provision? I think OP  
10 mentioned it in their report.

11 CHAIRPERSON MILLER: 2001.3? Yes,  
12 okay. Yeah, I wasn't sure I got that right.  
13 Okay. Yeah, let's clarify. Office of  
14 Planning said it doesn't comply with all the  
15 requirements of 401, 403, I didn't mention all  
16 these, 404, 405, 406 and 2001.3.

17 Okay. I think the Board knew what  
18 it was voting on, correct? Okay.

19 MS. BAILEY: Madam Chair, the vote  
20 is recorded as 5-0-0 for the special exception  
21 associated with the application. Mrs. Miller  
22 made the motion, Mr. Loud seconded, Mr.

1 Dettman, Mrs. Walker and Mr. Jeffries support  
2 the special exception.

3 CHAIRPERSON MILLER: Okay. And  
4 this can be a summary order as there is no  
5 party in opposition in this case. Thank you.

6 I think the applicant wanted to  
7 know how quickly he could proceed or whatever.  
8 The next step though is, basically, a summary  
9 order will be issued from the Office of Zoning  
10 and then you can take that with you to  
11 permitting. But if you have questions, you  
12 can ask the Office of Zoning staff. Okay.  
13 Thank you.

14 MR. DIEZ: Thank you.

15 CHAIRPERSON MILLER: What I would  
16 like to do is just take a five minute break,  
17 perhaps other people in the audience want one  
18 as well. And then we will come back and pick  
19 up the next case.

20 (Whereupon, at 12:34 p.m. a recess  
21 until 12:47 p.m.)

22 CHAIRPERSON MILLER: We're back on

1 the record. Ready for the next case.

2 MS. BAILEY: Thank you, Madam  
3 Chair. Application 17750 of Prashant and  
4 Nirupma Rohatgi, pursuant to 11 DCMR 3103.2  
5 and 3104.1, for a variance from the front yard  
6 setback requirements under subsection 1543.4,  
7 and a special exception to allow an addition  
8 to an existing one-family dwelling under  
9 section 223, not meeting the nonconforming  
10 structure requirements and rear yard  
11 requirements at section 2001.3 and 404. The  
12 property is located in the Wesley Heights/R-1-  
13 B District at premises 4505 Macomb Street,  
14 N.W., Square 1604, Lot 842.

15 CHAIRPERSON MILLER: Good  
16 afternoon.

17 MR. GRINA: My name is Peter  
18 Grina. I'm the architect for the project. I  
19 reside at 4624 Green Place, N.W., Washington,  
20 D.C. 20007.

21 MR. ROHATGI: I'm Prashant  
22 Rohatgi, one of the owners of the house for

1 the application. I reside, as the application  
2 say, at 4505 Macomb Street, N.W., Washington,  
3 D.C. ZIP is 20016.

4 CHAIRPERSON MILLER: And is the  
5 ANC here? Okay. Not hearing from anyone.  
6 Okay. Why don't you start and present your  
7 case?

8 MR. GRINA: Okay. The ANC did  
9 submit a letter, which should be in the file,  
10 unanimously approving the project. I checked  
11 the file yesterday, there was no, as of  
12 yesterday morning, opposition. I submitted  
13 three letters in non-opposition from  
14 neighbors. And I think that I'm sort of  
15 breaking out the project into the two parts  
16 the way the OP report does.

17 I think we -- given the OP report  
18 and the ANC, perhaps I should simply let the  
19 side addition sort of stand on its merit,  
20 unless you all want to discuss that further or  
21 have questions concerning that.

22 The front stoop addition which was

1 more problematic from the Office of Planning,  
2 I think, the one thing that I would like to  
3 add is just that in terms of the practical  
4 difficulty, I mean, the purpose of providing  
5 the front -- the roof over the front stoop  
6 really goes to more of a safety issue in terms  
7 of --

8 CHAIRPERSON MILLER: Can I  
9 interrupt you for just one second?

10 MR. GRINA: Sure.

11 CHAIRPERSON MILLER: When you are  
12 talking about the roof over the front stoop,  
13 where do you fit that in the regulations? Do  
14 you fit it in 2503, roof structures into  
15 required open spaces? Do you fit it into  
16 projections into required open spaces? Have  
17 you looked at that? Have you considered that  
18 at all, like what it is?

19 MR. GRINA: Projection as opposed  
20 to structure? The OP report refers to it as  
21 structure and I did not investigate whether or  
22 not we should have perhaps submitted that as

1 projection, if that's what you are talking  
2 about.

3 CHAIRPERSON MILLER: Okay. So but  
4 I just wanted -- well, we were looking at  
5 those, the regulations. But just as far as  
6 following your analysis, you are following OP  
7 and you are dealing with it as a structure,  
8 right?

9 MR. GRINA: Yeah, although I did  
10 have a question about that, since it was a  
11 cantilevered structure and was not being  
12 supported on columns, but was supported off  
13 the side of the house. So I did have that  
14 question as well. And I don't know what the  
15 proper procedure is for sort of raising that  
16 question.

17 CHAIRPERSON MILLER: Well, do you  
18 have an opinion on that?

19 MR. GRINA: Well, obviously, it's  
20 not -- the only thing in my reading of it when  
21 it says either supported by walls or columns,  
22 it is being supported by the wall of the

1 house. It's not being supported by columns or  
2 side walls. So I wasn't quite sure how to  
3 interpret that.

4 CHAIRPERSON MILLER: Oh, okay. I  
5 was just wondering. Do you have an opinion or  
6 you are just going to go along with Office of  
7 Planning? We can ask Office of Planning to  
8 address this a little bit as well, but I was  
9 just trying to see where you were coming from  
10 at least to follow the analysis that okay,  
11 this is a structure. Okay. This is a  
12 projection. I think our regulations aren't  
13 the clearest on this.

14 MR. GRINA: In my mind, the intent  
15 was for it to be a projection, which is why I  
16 did it cantilevered on brackets as opposed to  
17 putting columns on the stoop.

18 CHAIRPERSON MILLER: And how would  
19 that change the analysis here then? Would it  
20 be allowed if it were a projection? It's not  
21 listed in the projections, but it's like some  
22 of the projections.

1 MR. GRINA: Yeah, I would --

2 CHAIRPERSON MILLER: Correct? Is  
3 that what you think?

4 MR. GRINA: -- have to go back and  
5 look at that.

6 CHAIRPERSON MILLER: I didn't want  
7 to get you off track. I was just trying to  
8 figure out where this was fitting. I mean, it  
9 sounded like you were going down the road of  
10 asking for a variance for this. Is that  
11 right?

12 MR. GRINA: Yes, because that's  
13 the way I was advised.

14 CHAIRPERSON MILLER: How about if  
15 we just go to Office of Planning on this  
16 initial question?

17 MR. GRINA: Sure.

18 CHAIRPERSON MILLER: And they are  
19 the ones that advised you to proceed this way,  
20 correct? Okay.

21 MR. GOLDSTEIN: Thank you, Madam  
22 Chair. Yes, I agree with your sentiment that

1 it is not the clearest of things in our  
2 regulations. What I referenced and I think I  
3 put a -- I dropped a little footnote in my  
4 report is to a previous BZA case that seemed  
5 to have an issue as well with a roof over a  
6 porch.

7 In that case, it seemed to treat  
8 it as a structure, so that was the guidance  
9 that I looked to for considering it. That  
10 would be BZA Application No. 16521, the  
11 Sission Case, which is from 2001. And under  
12 that analysis, it seemed to treat it as a  
13 structure, which is the guidance, the cue that  
14 I looked for.

15 CHAIRPERSON MILLER: In that case,  
16 it was a roof over a porch?

17 MR. GOLDSTEIN: It was a roof over  
18 a porch. And then it didn't, as far as I  
19 could tell, define exactly what the nature of  
20 that roof was. You tried to put that together  
21 with the definition of a building and it's  
22 anything that is supported by walls, which is

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1       what the applicant has just mentioned.

2               Is a cantilevered roof treated as  
3       if it isn't supported by walls? That seems a  
4       little too difficult for me to get to. So it  
5       seemed to me that the roof is supported by a  
6       wall. It's the front wall. And it's also  
7       providing shelter, as was just mentioned,  
8       which is another attribute of a roof of a  
9       structure.

10              So that's how I got to that point.  
11       It is not entirely clear, but based on that  
12       previous reference to it, plus my reading of  
13       the definition, it seemed to fit a structure..

14              CHAIRPERSON MILLER: Not being an  
15       architect, let me ask you this. Is an eave  
16       supported by walls?

17              MR. GOLDSTEIN: I do not know.

18              MEMBER WALKER: If I may, Madam  
19       Chair, did you consider whether it might be an  
20       awning as referenced in 2502.5?

21              MR. GOLDSTEIN: I did consider  
22       whether it is an awning. I looked at the

1 Building Code for references to awnings. My  
2 sense is that that tends to be something more  
3 with wiring and some kind of tarp or it  
4 doesn't have the sense of permanence, is my  
5 understanding. So it didn't seem to fit the  
6 Building Code definition of awning.

7 CHAIRPERSON MILLER: Okay. I  
8 mean, it's not listed in the projections into  
9 required open spaces, 2502, even though it's  
10 similar perhaps to some of those. So that  
11 could be another reason for then concluding  
12 it's a structure. Okay. All right.

13 Well, so you are proceeding with  
14 it being a structure, correct? So unless  
15 Board Members have a real issue with that, we  
16 can consider it as a structure. Do you?  
17 Okay. And so you need a variance for the  
18 structure because it intrudes into open space,  
19 into the yard, front yard?

20 MR. GRINA: Into the required  
21 front yard, yes, that's correct.

22 CHAIRPERSON MILLER: Okay. So I

1 think it would be a good idea if you want to  
2 present your case with respect to the variance  
3 for this, the roof as a structure.

4 MR. GRINA: Okay. The --

5 CHAIRPERSON MILLER: Can I  
6 interrupt you one more time?

7 MR. GRINA: Sure.

8 CHAIRPERSON MILLER: I'm sorry.  
9 Just while you're collecting your thoughts.  
10 I think it might be a good idea, even though  
11 we have all read the file and everything, just  
12 to set the stage with respect to the big  
13 picture we're looking at.

14 MR. GRINA: Okay.

15 CHAIRPERSON MILLER: What the  
16 addition is and even though the other part of  
17 it is not problematic, so we can have in our  
18 heads the context.

19 MR. GRINA: Okay.

20 CHAIRPERSON MILLER: Okay.

21 MR. GRINA: The given -- the  
22 existing house is a very small house compared

1 to the vast majority of Wesley Heights' homes.  
2 We're sort of on -- the site is sort of on the  
3 edge of the Wesley Heights District. Again,  
4 it's very small. It's about 920 square foot  
5 footprint. The first floor is living room,  
6 dining room and a kitchen, very small kitchen,  
7 sort of original 1957 kitchen.

8 So the side addition is a very  
9 small breakfast room, side entry expansion on  
10 the kitchen side of the house. The sort of  
11 extraordinary circumstances of the lot on that  
12 street, which created the hardship of the  
13 front yard setback, there are three houses  
14 that front on Macomb and then there is one  
15 lot, which I call the pipe stem lot, which you  
16 can see pretty clearly in the aerial photo in  
17 the file, which is, I believe, 71 feet back.

18 The other two houses are -- our  
19 house is 3 feet back. The one on one side is  
20 1 foot back. The other house is 5 feet back.  
21 So we actually -- if it weren't for that pipe  
22 stem lot, we would be the average setback

1 house on the street. And the side addition  
2 would, therefore, not require that variance,  
3 the front stoop would still be projecting into  
4 that front yard.

5 Also, the shallowness of the lot,  
6 it's only 50 feet deep. It's a nonconforming  
7 lot. Again, preexisting to the Zoning  
8 Regulations built in 1957. The kitchen, the  
9 breakfast room addition could not really --  
10 could not work to put it on the rear. We  
11 looked at that as a means of keeping it out of  
12 the front yard, but because of the current  
13 plan disposition of the house, the floor plan  
14 didn't really make sense to put the breakfast  
15 room on the back. It had less impact on the  
16 existing house by putting it on the side. It  
17 still complies with side yard setback.

18 CHAIRPERSON MILLER: So the  
19 addition to the side triggers the relief from  
20 which provision? Rear yard?

21 MR. GRINA: Front yard, rear yard  
22 and lot size.

1 CHAIRPERSON MILLER: Okay. Okay.

2 MR. GRINA: Yes, because of the  
3 shallowness of the site, the allowed addition  
4 on the side would be 5 feet, sort of between  
5 the front yard setback and the rear yard  
6 setback.

7 CHAIRPERSON MILLER: Okay. Are  
8 there any questions on the basic addition? I  
9 guess you can move into the more difficult  
10 one, the roof over the front stoop. Okay.

11 MR. GRINA: Yeah, the existing  
12 front entry has a stoop, no covering, it's a  
13 very sort of flush facade. The second floor  
14 eave does not project out very far at all, so  
15 there is -- it's a matter of protecting from  
16 the elements and there was really no -- there  
17 is no other way to do that.

18 CHAIRPERSON MILLER: It hasn't  
19 been protected from the elements since 1957?

20 MR. GRINA: That's correct.

21 CHAIRPERSON MILLER: Okay. Is  
22 there anything different that has happened

1       that -- not to say that it had to be. I mean,  
2       you can have a practical difficulty that  
3       somebody doesn't address for 20 years. So it  
4       doesn't say -- I'm not making a judgment. I'm  
5       just kind of asking a question. Oh, okay.

6               MR. ROHATGI: I would like to say  
7       something. When we moved to the house, we  
8       realized the front door was rotting all the  
9       time, despite trying to maintain it, because  
10      the water was come and hit. And as he said,  
11      the eaves are not deep enough to protect the  
12      door, front door. And the only reason we  
13      wanted something to cover that is really to  
14      provide protection to the entrance and, too,  
15      when people come they are not sitting in the  
16      elements and standing in the elements.

17             CHAIRPERSON MILLER: I just want  
18      to ask about the width of the roof, I guess.  
19      How far out it comes over the front stoop? I  
20      assume it's that width because of the front  
21      stoop that it is just made to align with the  
22      front stoop?

1 MR. GRINA: That's correct. It  
2 follows the footprint of the front -- of the  
3 existing stoop.

4 CHAIRPERSON MILLER: I was just  
5 curious, because 2502.5 which deals with  
6 projections in open space and that's where the  
7 awnings come in. They talk about 40 inches.  
8 That they are not supposed to exceed 40  
9 inches. And I was wondering if you had a  
10 comment on that.

11 MR. GRINA: 40 inches in width or  
12 projection?

13 CHAIRPERSON MILLER: I think  
14 projection. It says awnings serving a window,  
15 porch or door may project into a required yard  
16 or open court for a distance not to exceed 40  
17 inches.

18 MR. GRINA: We could certainly  
19 make that -- we could certainly revise the  
20 design to meet that and limit the projection  
21 to 40 inches by the width of the stoop.

22 MR. ROHATGI: That was my

1 understanding that when I talked to Office of  
2 Planning on my own, that you can have a  
3 covering over the front door as long as it was  
4 within certain dimensions. But the only  
5 reason we did, I think, 4 feet was because the  
6 stoop is extending 4 feet from the foundation  
7 of the house towards the front.

8 CHAIRPERSON MILLER: Okay. I was  
9 just curious, because I think that we probably  
10 already decided that we weren't going to treat  
11 it like an awning, but if we were to treat it  
12 like an awning, then it wouldn't need variance  
13 relief if it went out only 40 inches. I mean,  
14 I don't know. We didn't vote on this yet.

15 MR. GRINA: Right.

16 CHAIRPERSON MILLER: But I --

17 MR. GRINA: I think our preference  
18 would be for the roof structure to cover the  
19 stoop entirely.

20 CHAIRPERSON MILLER: Okay.

21 MR. GRINA: If that were not  
22 possible, we would certainly entertain, you

1 know, doing something less substantial.

2 CHAIRPERSON MILLER: Okay. Then  
3 we are really just again at a variance for the  
4 structure in required open spaces. So the  
5 practical difficulty is that the front door is  
6 getting rotted from the elements and guests  
7 aren't being protected, basically, when they  
8 come to the house. And what's the exceptional  
9 condition? Did you identify that?

10 MR. GRINA: The exceptional  
11 condition would be the -- sort of the overall  
12 lot and block disposition in which created  
13 that front yard setback requirement. I mean,  
14 the house -- there is also a fair distance  
15 from -- it's actually about 33 feet from the  
16 curb to the face of the house. So there is  
17 quite a distance between the front property  
18 line and the street.

19 MEMBER DETTMAN: I'm wondering  
20 though how does that setback requirement that  
21 is in the overlay, how does that prevent you  
22 from meeting the regs as it pertains to the

1 projection, the structure? The actual  
2 projection in to the open space?

3 MR. GRINA: I'm not quite -- I  
4 don't understand the question.

5 MEMBER DETTMAN: So we have a  
6 front yard requirement that is sort of  
7 contained inside the Wesley Heights Overlay.  
8 And you don't meet that. But you do have 3  
9 feet of a front yard. And so I'm wondering  
10 how does that setback prevent you from meeting  
11 the requirement of -- it would be 2503.2. Is  
12 that correct?

13 MR. GRINA: No, we don't have --  
14 you are saying we have 3 feet that we could  
15 project into within the front yard setback?

16 MEMBER DETTMAN: I believe that --  
17 I think the requirement is a 20 foot setback.

18 MR. GRINA: Oh, 20 foot.

19 MEMBER DETTMAN: And you have 3  
20 feet.

21 MR. GRINA: No. That 20 foot  
22 setback, if you look on the plat, essentially,

1 is in the middle of the house. So the  
2 existing structure does not meet the front  
3 yard setback.

4 MEMBER DETTMAN: Okay. Okay.

5 MR. GRINA: That's what's sort of  
6 odd. The front yard -- between the -- the  
7 distance between the front yard setback and  
8 the rear yard setback is 5 feet. They almost  
9 meet. I mean, it's almost a non-buildable lot  
10 by those regulations.

11 MEMBER DETTMAN: Okay. All right.  
12 I think actually my -- well, just to clarify  
13 one thing. But you actually do have 3 feet  
14 between the front of your house and your lot  
15 line. Is that correct?

16 MR. GRINA: Yes.

17 MEMBER DETTMAN: Your front lot  
18 line? Okay. But I think my question still  
19 stands. I'm wondering -- you had mentioned  
20 that the unique situation is the setback  
21 requirement. And how does the setback  
22 requirement prevent you from meeting 2503.2?

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1 MR. GRINA: Well, could you tell  
2 me what 2503.2 is?

3 MEMBER DETTMAN: Sure. 2503.2  
4 states "A structure, not including a building,  
5 no part of which is more than 4 feet above the  
6 grade at any point may occupy any yard  
7 required under the provisions of this title.  
8 Any railing required by the D.C. Building Code  
9 shall not be calculated in the measurement of  
10 this height."

11 And so we have a structure right  
12 now, the cantilevered whatever it is --

13 MR. GRINA: Right.

14 MEMBER DETTMAN: -- structure. We  
15 have a structure that exceeds 4 feet in  
16 height.

17 MR. GRINA: Yes.

18 MEMBER DETTMAN: And so it exceeds  
19 4 feet in height and it occupies whatever yard  
20 that you have in front of your building, your  
21 3 foot yard. And so how does the exceptional  
22 situation that you describe as being this 20

1 foot setback required under the Wesley Heights  
2 Overlay, how does that prevent you from  
3 meeting the requirement of 2503.2?

4 MR. GRINA: Because we have no --  
5 the existing front of the house is already  
6 within the front yard. We have no distance  
7 between the front of the house and the front  
8 yard setback. So anything we do on the front  
9 of the house is -- immediately becomes at odds  
10 with that requirement.

11 MEMBER DETTMAN: Right. But the  
12 reason why you actually need relief from  
13 2503.2 is that you exceed 4 feet.

14 MR. GRINA: Right.

15 MEMBER DETTMAN: It doesn't only  
16 have to do with the horizontal distance out  
17 into the yard.

18 MR. GRINA: Okay.

19 MEMBER DETTMAN: It's that you  
20 exceed 4 feet.

21 MR. GRINA: Right.

22 MEMBER DETTMAN: And that setback

1 requirement from the street isn't making you  
2 exceed 4 feet.

3 MR. GRINA: Well, the existing  
4 stoop coming out of the main level, you are up  
5 about 36 inches or 30 inches above grade. So  
6 in order to have a roof over that stoop and  
7 have room to walk out underneath it, you're  
8 going to be more than 4 feet above grade.

9 MR. GOLDSTEIN: This is Paul  
10 Goldstein. Actually, that's an interesting  
11 point. When I was considering the types of  
12 relief that they needed, I didn't also think  
13 that you would need 2503.2 relief as well.  
14 I'm not sure if the applicant was aware that  
15 that might be an additional variance you would  
16 need.

17 If you treat it, I guess, as a  
18 structure, the projection is above 4 feet.  
19 And it is coming into the required yard, which  
20 is described in the 1543.4 front yard analysis  
21 in Wesley Heights. I guess arguably you might  
22 need relief from 2503.2 as well if the roof is

1 considered a structure as I suggested.

2 It's -- yeah, it's a little bit --  
3 it's a little unclear how these are treated.  
4 I think that's what you are getting at. The  
5 front yard setback requirement affects his  
6 ability to project anything into the front  
7 yard. At the same time, the presence of that  
8 structure in the front yard, which is above 4  
9 feet may itself need 2503.2 relief.

10 I hadn't reached that conclusion,  
11 but it's an interesting point you raise.

12 CHAIRPERSON MILLER: So how would  
13 the applicant comply with 2503.2, I mean?

14 MR. GOLDSTEIN: It seems, based on  
15 my reading, you could only comply by not  
16 putting the roof in, strictly comply, unless  
17 it seems like you need relief.

18 MEMBER DETTMAN: Well, I mean,  
19 there is an alternative. It's -- you know, we  
20 have -- I think we are sort of leaning towards  
21 that this is a structure, because it doesn't  
22 meet the definition of a building and that

1 it's not supported by columns or it's not  
2 supported by walls. If it was found that --  
3 or if the plans were amended that this was  
4 actually part of the building, then,  
5 essentially, you would be reducing your front  
6 yard from 3 feet to zero feet.

7 But we are getting front yard  
8 relief anyways. And so your decision, I don't  
9 want to, you know, sort of seem flip about  
10 this, but your decision to not put this thing  
11 above columns seems to sort have created this  
12 condition where we have to treat this as a  
13 structure, as a projection into open space,  
14 because if it was supported by columns, then  
15 based on the definition of a building, it has  
16 a presence, it has a permanent presence on the  
17 ground.

18 MR. GRINA: Right.

19 MEMBER DETTMAN: And so it could  
20 fall under the definition of a building and  
21 now instead of 3 feet, you have zero feet, but  
22 since we are analyzing this in terms of relief

1 from the front yard setback anyways.

2 MR. GRINA: Yeah, I guess I mean,  
3 what we were actually trying to minimize the  
4 impact of what we wanted to accomplish on the  
5 streetscape.

6 MEMBER DETTMAN: And I agree with  
7 you, so it seems to me that the necessary --  
8 if we are to go with the design that's before  
9 us, it seems to me that variance relief would  
10 be needed from 2502.5, because of the distance  
11 it projects away from the building, as well as  
12 2503.2, because of the height that it is,  
13 because it exceeds 4 feet.

14 MR. GOLDSTEIN: I'm wondering if  
15 there is a way you could step back a second?  
16 Could you just consider it as part of the  
17 building and then not a structure and since it  
18 is a projection from the building, therefore,  
19 you wouldn't need 2503.2, but you would need  
20 relief from the required front yard.

21 CHAIRPERSON MILLER: It is  
22 supported by a wall, correct? It's attached

1 to the wall. Isn't it supported by the wall?

2 MR. GRINA: It's attached to the  
3 front wall of the house, yes.

4 CHAIRPERSON MILLER: Okay.

5 MEMBER DETTMAN: I am perfectly in  
6 support of treating this thing as a projection  
7 from the building. However, if you, just to  
8 sort of play devil's advocate here, do look at  
9 the definition of structure, it does say  
10 "Anything constructed, including a building,  
11 the use of which requires a permanent location  
12 on the ground," which this does not, and then  
13 it says "or anything attached to something  
14 having a permanent location on the ground,"  
15 which this is.

16 So it does fall under the  
17 definition of a structure. I don't want it  
18 to, but it does.

19 CHAIRPERSON MILLER: Well, it  
20 falls under building as well, doesn't it?  
21 Which says a structure, oh, having a roof.

22 COMMISSIONER JEFFRIES: Can you

1 just go over your suggestion again in terms of  
2 how we can look at this?

3 MR. GOLDSTEIN: I guess one way to  
4 look at it is that it is under the definition  
5 of a building. And then that doesn't  
6 implicate the provision that Mr. Dettman  
7 raised. It's -- you know, looking now at the  
8 definition of a structure, it doesn't seem --  
9 the roof doesn't seem to be equivalent to any  
10 of the examples that it gives. I don't know  
11 if there was something different in mind when  
12 they came up with structure.

13 But I can see a good argument for  
14 just considering it part of the building.

15 COMMISSIONER JEFFRIES: I mean, it  
16 looks fairly substantial. I mean, I know the  
17 language here, but, I mean, I think we need to  
18 all agree to what it is and move forward.

19 MEMBER DETTMAN: It seems to me  
20 that the angled brackets that are actually  
21 supporting the roof could be considered  
22 columns.

1 COMMISSIONER JEFFRIES: I can go  
2 with that. It's getting late.

3 CHAIRPERSON MILLER: So I think  
4 I'm going to backtrack too on this. Did you  
5 consider the awning issue, whether this could  
6 be -- I know this is probably more permanent  
7 than an awning, correct?

8 COMMISSIONER JEFFRIES: That was  
9 very substantial.

10 CHAIRPERSON MILLER: Yes, yes.

11 MR. GOLDSTEIN: That was the  
12 problem that I found is that I considered an  
13 awning to be something more temporary.

14 CHAIRPERSON MILLER: Okay. I  
15 mean, I think our problem is that it's not  
16 clearly reflected in the regulations. So then  
17 where do we think it fits with respect to the  
18 intent perhaps best?

19 COMMISSIONER JEFFRIES: They said  
20 it was part of the building. I mean, which  
21 looks like to me, it looks fairly substantial.  
22 I mean, it doesn't look like, you know, an

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1 awning or something that -- I mean, this looks  
2 fairly substantial to me.

3 MR. GRINA: Right.

4 COMMISSIONER JEFFRIES: And so we  
5 could say that it was part of the building and  
6 could we then just rely on the front yard  
7 relief?

8 CHAIRPERSON MILLER: I mean, I  
9 would like to do that. I just want to bring  
10 up one other point. If we consider it part of  
11 the building, then are we saying it's not a  
12 projection? Because 2502.1 specifically says  
13 "except for the projections and encroachment  
14 specified in this section." And the  
15 exceptions in 2503, "Every part of a required  
16 yard or court or other required open space  
17 shall be open and unobstructed to the sky."

18 So can we, you know, in good faith  
19 not consider this a projection? It's a very  
20 substantial part of the building, you know,  
21 perhaps.

22 COMMISSIONER JEFFRIES: I mean,

1       that --

2                   CHAIRPERSON MILLER:   Yeah.

3                   COMMISSIONER JEFFRIES:  I'm just  
4       looking at the site elevation.  I mean, it  
5       just looks substantial to me.  It looks like  
6       it is part and parcel of the overall  
7       structure.

8                   MEMBER WALKER:  Right.  And I  
9       think if you consider that it is actually  
10      larger than all of the examples listed under  
11      2502 as projections, then you could rule it  
12      out as being a projection.

13                  CHAIRPERSON MILLER:  Okay.  Yeah,  
14      I was noticing that, too, so that's fine.  
15      Okay.  So we're going to be treating it as  
16      part of the building.  And the variance would  
17      be from the front yard setback, correct?  
18      Okay.  That makes a difference with respect to  
19      the, you know, analysis of your variance.

20                  MR. GRINA:  Right.

21                  CHAIRPERSON MILLER:  Okay.  So  
22      before the Overlay Regulation, would this be

1 in compliance with the front yard setback or  
2 no?

3 MR. GRINA: Well, there was no --

4 CHAIRPERSON MILLER: There was no  
5 requirement?

6 MR. GRINA: Well, there was no  
7 front yard before the overlay.

8 CHAIRPERSON MILLER: There was no  
9 front yard?

10 MR. GRINA: Correct. No front  
11 yard requirement.

12 CHAIRPERSON MILLER: Okay. So it  
13 was made nonconforming by the overlay?

14 MR. GRINA: Right.

15 CHAIRPERSON MILLER: Okay.

16 Anything else? Do you want to add?

17 MR. GRINA: No.

18 CHAIRPERSON MILLER: Okay. Then  
19 we can go to the Office of Planning.

20 MR. GOLDSTEIN: Thank you. Good  
21 morning, good afternoon, Madam Chair and  
22 Members of the Board. As you have heard, my

1 name is Paul Goldstein and I am a Development  
2 Review Specialist with the Office of Planning.

3 As you have already heard, the  
4 applicant is proposing additions to an  
5 existing two story single-family dwelling at  
6 4505 Macomb Street in the R-1-B Zone in the  
7 Wesley Heights Overlay District.

8 As more explicitly provided in the  
9 report, the Office of Planning examined the  
10 two components of the proposal separately,  
11 namely the one story side addition and the  
12 roof over the front stoop. Based on our  
13 review, we recommended approval of the  
14 requested special exception variance relief  
15 for the one story side addition.

16 However, while we can support the  
17 special exception relief for the roof over the  
18 front stoop, we do not believe that the  
19 proposal satisfies the three parts of the  
20 variance test for the front stoop roof.

21 You have a relatively lengthy  
22 report from me with quite a few facets to the

1 analysis, so I'll just try to go quickly and  
2 let you follow-up with questions after.

3 Beginning with the side addition,  
4 OP believes that the proposal satisfies the  
5 special exception relief under 223. The  
6 dwelling is currently nonconforming for rear  
7 yard and lot area. And the addition would  
8 extend a rear yard nonconformity.

9 And 223 addresses situations as we  
10 find here where there is not strict zoning  
11 compliance with certain regulations.  
12 Additionally, the proposed addition which  
13 would have a footprint of about 180 feet and  
14 rise about 14 feet is not likely to have any  
15 adverse impact on light and air or privacy of  
16 adjacent neighbors due to the relatively  
17 restrained height and sufficient distance away  
18 from neighboring properties.

19 The addition, which would extend  
20 the house east, would also visually -- would  
21 not visually intrude on the character, scale  
22 or pattern of neighboring dwellings. And

1 finally, the addition would not exceed the 50  
2 percent lot occupancy restriction.

3           Regarding the variance test -- if  
4 I'm giving too much information, please, let  
5 me know. Regarding the variance test for the  
6 one story side addition, OP believes that the  
7 applicant's proposal satisfies the three part  
8 variance test for relief from section 1543.4,  
9 which is the front yard setback requirement  
10 found in the Wesley Heights Overlay District,  
11 which I'll just call the WH Overlay.

12           First, there are exceptional  
13 conditions that result in a specific  
14 uniqueness. The existing dwelling predates  
15 the 1958 Zoning Code and the WH Overlay. The  
16 lot measures 71 feet wide along Macomb by  
17 about 50 feet deep, a depth which is narrower  
18 than many of the properties in the Wesley  
19 Heights neighborhood.

20           The depth is important in light of  
21 this analysis of the WH Overlay requirements  
22 of a 20 foot front yard setback for the block.

1 I think as already has been described that  
2 setback is calculated by averaging the  
3 dwellings that front Macomb Street on the same  
4 block.

5 And what seems had happened in  
6 this case is there was this one out-sized  
7 front yard that really skewed the average to  
8 make three of the four properties  
9 nonconforming for the front yard setback  
10 requirement along this block. The subject  
11 dwelling has a 3 yard setback and is,  
12 therefore, currently 17 feet nonconforming to  
13 the front yard setback.

14 So OP believes that that created a  
15 -- that in tandem the 20 foot front yard  
16 setback plus the 25 foot rear yard setback in  
17 an R-1-B Zone creates an exceptional situation  
18 in that it, by right, you would only have a 5  
19 foot wide addition, which is we believe  
20 exceptional.

21 Second, as a result of the  
22 uniqueness, the property faces a practical

1 difficulty, which is unnecessarily burdensome.  
2 The applicant is unable to make just a modest  
3 addition to a pre-1958 dwelling without  
4 relief.

5 And third, OP believes that relief  
6 can be granted without harming the public good  
7 or substantially impacting the intent, purpose  
8 and integrity of the Zoning Regulations. The  
9 stated goals of the WH Overlay are in part to  
10 allow owners to have a reasonable opportunity  
11 to expand. And the proposed addition would  
12 merely extend a 10 foot setback coming from  
13 the bulk of the addition. It's not shrinking  
14 it. It's extending it. And the addition also  
15 would not substantially alter the density of  
16 the dwelling.

17 Moving to the front stoop roof,  
18 briefly 223, I think, again, OP believes that  
19 it meets the standards for relief under 223  
20 for the front stoop roof. It -- again, there  
21 is strict compliance with certain zoning  
22 requirements. It doesn't appear that it would

1 affect the light and air or visually intrude  
2 upon the character, scale and pattern of  
3 dwellings on the block in a substantial way.

4 However, OP does not believe that  
5 the proposed roof addition satisfies the three  
6 part variance test for the roof addition.

7 There are exceptional conditions creating a  
8 uniqueness here. But we believe that the  
9 second prong of the test, in that it's the  
10 uniqueness does not impose a practical  
11 difficulty, which is unnecessarily burdensome.

12 I have heard a bit more testimony  
13 here about safety issues, which the Board  
14 could look to if it feels fit. It has been  
15 existing since 1957 in its present situation.  
16 There were 40 years before the WH Overlay came  
17 into effect when the roof was not put over the  
18 stoop. So it's hard. OP has difficulty  
19 seeing how they meet that second prong of the  
20 test.

21 And then third, the applicant's --  
22 although it wouldn't present any harm to the

1 public good, it would substantially impair the  
2 intent, purpose and integrity of the Zoning  
3 Regulations, based on the language of the WH  
4 Overlay. Under the proposal, the dwelling's  
5 nonconforming front yard would shrink from 3  
6 feet to zero feet, thereby eliminating any  
7 front yard setback, which is contrary to  
8 section 1543.4.

9 Although you have quite a bit of  
10 public space between the curb and the house,  
11 there was a decision to have a front yard  
12 setback in addition to that. Although as a  
13 result, OP does not think that the diminution  
14 of the front yard can be -- is consistent with  
15 the intent of the Zoning Regulations and the  
16 WH Overlay.

17 So finally, ANC-3D submitted a  
18 letter of support of the proposal. I have  
19 recently seen that three neighbors do not  
20 oppose the addition, including the neighbor  
21 directly to the north. And that concludes my  
22 presentation. And that may have been a little

1 longer than I had promised, but I'm available  
2 for questions.

3 CHAIRPERSON MILLER: Thank you.  
4 No, that was great. And you report is very  
5 thorough. I have a question. On page 8 of  
6 your report, you quote from Zoning Commission  
7 Order 718, Case No. 90-5, establishing the  
8 Wesley Heights Overlay. "The effect of this  
9 limitation minimum front yard setback would be  
10 to prevent additions from extending ahead of  
11 neighboring houses towards the street."

12 Would our granting relief with  
13 respect to the roof over the doorstep result  
14 in this extending ahead of neighboring houses  
15 towards the street?

16 MR. GOLDSTEIN: That's how I  
17 interpreted it. I'm trying to think of what  
18 the purpose of a front yard setback is is to  
19 create a certain line where houses can't come  
20 in front of, I'm assuming. Other parts of the  
21 WH Overlay got a density lot occupancy issues.  
22 This issue seemed to -- this front yard

1 setback seemed to get at the point that they  
2 don't want anyone expanding in front of them.

3 So the roof seems to do that very  
4 thing. Now, could you consider a roof  
5 different than a front wall extending up to  
6 the lot line? That may be up to you to  
7 decide, but I seem to think that that would go  
8 against the intent of it by bringing -- if  
9 we're considering it a building, bring the  
10 building up in front of the neighbors.

11 It is taking the 3 foot front yard  
12 and making it zero. Maybe perhaps more a  
13 technical zero, since it is not solid walls on  
14 the side of the roof, but nonetheless, for our  
15 consideration, that seemed to go against the  
16 intent of what the Zoning Regulations said.

17 I will suggest though that the  
18 ANC-3D didn't see a problem with it. I  
19 haven't heard from the neighbors on either  
20 side. I guess they didn't object to it enough  
21 to want to voice their opinion on it. And  
22 those would be the people that I guess would

1 be -- if there is an impact, whether it's a  
2 view shed or from the front of their, house,  
3 I guess those would be the people who would be  
4 impacted.

5 MR. GRINA: And if I could just  
6 add to that, the ANC report did actually  
7 specifically commented on the front porch roof  
8 extension as being a positive factor and sort  
9 of softening the facade at the street  
10 elevation.

11 CHAIRPERSON MILLER: I guess I'm  
12 just trying to visualize it, that's all. You  
13 know, all these houses in this area have, I  
14 don't know if they all have, these big lawns,  
15 I guess they may, that are public space. And  
16 then I don't know if their houses are -- they  
17 are not necessarily aligned, are they?

18 MR. GOLDSTEIN: Well, I believed  
19 based as well on what the applicant has said,  
20 you have one that is 1 foot setback, one that  
21 is 3 feet setback, the subject property, and  
22 one that is 5 feet and then a 71 foot. So the

1 1 and the 5, I believe, are on either side of  
2 the subject dwelling, unless I'm told --

3 MR. GRINA: That's correct.

4 MR. GOLDSTEIN: -- differently.  
5 So, you know, it's more technical. I can't  
6 imagine unless a neighbor really felt that  
7 their view down the street is minute,  
8 diminished --

9 MR. ROHATGI: Could I just say  
10 something here?

11 CHAIRPERSON MILLER: Wait a  
12 minute. I don't want you to interrupt Office  
13 of Planning yet. I will call on you in a  
14 second. So would you say this is a very small  
15 addition?

16 MR. GOLDSTEIN: You know, 3 feet  
17 out. It's above an existing stoop. It's not  
18 -- I don't think it's a block changing  
19 addition, but it's -- we had trouble with it,  
20 because it seems to go against the intent of  
21 the WH Overlay. And I still believe that if  
22 the front yard setback has any teeth at all,

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1 it would seem to go against building up in the  
2 front yard, taking it from 3 to zero.

3 I mean, it's one thing to extend,  
4 I think, maybe an existing setback. It's  
5 another thing to eliminate it. Again, you can  
6 see through it. There are no walls supporting  
7 the sides, so it's not that the front of the  
8 whole house is moving up. But it seems to go  
9 against the intent of it.

10 CHAIRPERSON MILLER: Okay. Other  
11 questions for Office of Planning? And then we  
12 will get to the applicant again.

13 MEMBER WALKER: Mr. Goldstein, if  
14 the house is setback 3 feet from the lot line  
15 and the structure is actually 4 feet deep,  
16 then it seems that it may be a foot into  
17 public space. Could you comment on that? I  
18 believe there is a reference to that on page  
19 2 of your report.

20 MR. GOLDSTEIN: I believe that the  
21 roof would extend about a foot in the public  
22 space. From what I understand, I don't

1 believe that is going to necessarily be a big  
2 issue, but they may need approval. I think  
3 the applicant is aware of that, that they may  
4 need some kind of public space approval for  
5 that projection.

6 I think it's -- it may even be  
7 somewhat questionable whether they do or not,  
8 but I have trouble anticipating that being a  
9 difficult issue, but I'm not the one granting  
10 it. So given the extensive amount of public  
11 space in front of the house, I think that may  
12 weigh toward it.

13 CHAIRPERSON MILLER: Okay. Did  
14 you want to say something?

15 MR. ROHATGI: Madam Chairman, I  
16 just wanted to make a comment. The house next  
17 to the stoop, their front entrance is not on  
18 the front, but on the side. So when they  
19 enter, it's in the pipe stem lot, and when  
20 they come out of the house, they won't even  
21 see us to -- the roof structure.

22 CHAIRPERSON MILLER: And do you

1 have any questions for Office of Planning?  
2 Okay. Yeah, I would note that no one is here  
3 from the ANC, but they did submit an extensive  
4 report and it's our Exhibit No. 23. They  
5 voted in support unanimously 7-0-0. Let me  
6 see if there is anything I want to highlight  
7 from here. It's very comprehensive.

8 With respect to how this is going  
9 to look, they said that "The proposed addition  
10 will visually continue the existing line of  
11 the house to the east and will be partially  
12 obscured by an existing retaining wall." They  
13 visited the property and didn't have any  
14 difficulty approving it.

15 Okay. They did go through all the  
16 different provisions though. This is really  
17 one of the more comprehensive reports we have  
18 received.

19 Okay. Anything else anybody wants  
20 to comment on this? Not hearing from anybody,  
21 is there anybody here who wishes to testify in  
22 support of this application? Anybody here who

1 wishes to testify in opposition? Any other  
2 questions from Board Members? Any closing  
3 remarks?

4 Okay. We were just deliberating  
5 whether to deliberate on this case. And we  
6 are running late. It's 1:36 now and we have  
7 another case in the morning coming up.  
8 However, the Board has reached conclusions  
9 about the application. So what we're going to  
10 do is do a fairly speedy deliberation on  
11 this application.

12 And so I'm going to start and put  
13 it under motion. I'm going to move approval  
14 of Application No. 17750 of Prashant and  
15 Nirupma Rohatgi, pursuant to 11 DCMR section  
16 3103.2 and 3104.1, for a variance from the  
17 front yard setback requirements under  
18 subsection 1543.4 and special exception to  
19 allow an addition to an existing one-family  
20 dwelling under section 223, not meeting the  
21 nonconforming structure and rear yard  
22 requirements at premises 4505 Macomb Street,

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1 N.W.

2 Do I have a second?

3 MEMBER DETTMAN: Second.

4 CHAIRPERSON MILLER: Okay. So I  
5 think that I have read the relief correctly,  
6 but somebody can certainly correct me if I'm  
7 wrong, because we were discussing the variance  
8 relief, how it should be characterized for the  
9 cantilevered roof in addition to the side  
10 addition.

11 Basically, the Office of Planning  
12 did a very comprehensive analysis of the 223  
13 relief and the variance relief. And the ANC  
14 actually also did a very good analysis.

15 Because of time, I don't want to  
16 go through a whole comprehensive special  
17 exception analysis. I think that the record  
18 is full, particularly with respect to the  
19 Office of Planning's report, that the  
20 addition, both the addition -- well, that the  
21 addition anyway in general won't have an  
22 adverse impact on the use or enjoyment of any

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1 abutting or adjacent property. And that it is  
2 in character and scale and pattern of the  
3 dwellings on the 4500 Block of Macomb Street.

4 I think we should jump into the  
5 variance test. The property itself, I think,  
6 there wasn't much controversy with respect to  
7 the side addition, though I do want to  
8 highlight that with respect to the uniqueness  
9 or exceptional condition of the property, we  
10 did hear that it was very shallow, which  
11 caused the need for relief, variance relief  
12 for the side addition.

13 And also, we get into the Wesley  
14 Height Overlay front yard setback provisions,  
15 which, when they went into effect, put this  
16 property into nonconformance. And not only is  
17 it not in conformity, but it's drastically not  
18 in conformity. It has a setback requirement  
19 now of 20 feet. And it only has, I guess, 4  
20 feet in the front.

21 The 20 feet goes into the middle  
22 of the house. And that happened because of

1 the averaging with another house that was 71  
2 foot setback, what is called like a pipe stem  
3 house.

4 Okay. I think that it's really  
5 the roof that's the main issue, but some of  
6 the situation is true for both. Certainly,  
7 the front yard setback puts this house in an  
8 unusual situation and certainly a  
9 nonconforming situation. And they couldn't do  
10 any addition without increasing that  
11 nonconformity.

12 And so it is an exceptional  
13 situation. If we look at the roof structure,  
14 there is one exceptional situation there. And  
15 then the question was practical difficulty and  
16 the applicant testified that the practical  
17 difficulty is that also that the door is  
18 rotting from the elements and guests are not  
19 protected by anything and that was the reason  
20 of the hardship or rather the practical  
21 difficulty for this addition.

22 And there is no substantial

1       detriment to the public. I think that the ANC  
2       has said that it is still in character with  
3       the neighborhood and none of the neighbors are  
4       complaining.

5               The Office of Planning has stated  
6       that it is contrary to the intent of the  
7       Overlay, because it goes out further than the  
8       houses on either side and the intent was that  
9       that not happen.

10              And I guess I see it not as  
11       contrary to the intent, but as that's why it  
12       requires a variance and that we need to weigh  
13       then the degree of the relief that is required  
14       versus the impact, you know, that this would  
15       have. And the impact, I think, is negligible,  
16       that it is actually an improvement to the  
17       facade and the neighborhood. And that this is  
18       a very small, if not de minimis, type of  
19       addition.

20              Other comments?

21              MEMBER WALKER: Madam Chair, I  
22       would only add that the design is thoughtful,

1 in that it's a cantilever design without  
2 columns or supports on the sides. So that  
3 contributes to it being less obtrusive.

4 CHAIRPERSON MILLER: Anything  
5 else? I don't know if I skipped over the side  
6 addition with respect to -- I think I said the  
7 exceptional situation being the shallowness of  
8 the property and that again, they couldn't do  
9 any addition without this type of relief. And  
10 there is no substantial detriment there as  
11 well.

12 MR. GOLDSTEIN: I'm sorry, Madam  
13 Chair, not to reopen a can of worms at all,  
14 I'm just wondering if it might be worth trying  
15 to give them relief from 2503.2 in case the  
16 Zoning Administrator interprets the roof a  
17 little different than we have. I just  
18 wouldn't want them to be tripped up by it in  
19 the permit phase.

20 CHAIRPERSON MILLER: I think --

21 MR. GOLDSTEIN: I think I'll sit  
22 silently and let --

1 CHAIRPERSON MILLER: Well --

2 MR. GOLDSTEIN: -- you reach a  
3 conclusion.

4 CHAIRPERSON MILLER: And one other  
5 option is, you know, we can put a footnote  
6 that we didn't find that it was required or I  
7 don't know. Because I think we made that  
8 decision at the beginning. Okay.

9 All right. Any other comments?  
10 Yes? Okay.

11 All those in favor say aye.

12 ALL: Aye.

13 CHAIRPERSON MILLER: All those  
14 opposed? All those abstaining? And would you  
15 call the vote, please?

16 MS. BAILEY: Madam Chair, the vote  
17 is recorded as 5-0-0 to grant the application  
18 with instructions as noted by the Board  
19 concerning the footnote. Mrs. Miller made the  
20 motion, Mr. Dettman seconded, Mrs. Walker, Mr.  
21 Loud and Mr. Jeffries support the motion.

22 CHAIRPERSON MILLER: Thank you.

1 And I don't believe that there is any  
2 opposition in this case, so this will be a  
3 summary order.

4 MS. BAILEY: Thank you.

5 CHAIRPERSON MILLER: Okay. This  
6 is where the Board is at. It's now 1:45 and  
7 we have one more case on our morning agenda.  
8 The Board is going to take a break for half an  
9 hour before we take that case. So unless --  
10 is there anything that we need to hear before  
11 we take that break? Mr. Brown seems to be  
12 approaching the table.

13 MR. BROWN: No, no, no.

14 CHAIRPERSON MILLER: Okay. Then  
15 we will be back in about half an hour.

16 (Whereupon, the Public Hearing was  
17 recessed at 1:50 p.m. to reconvene at 2:40  
18 p.m. this same day.)  
19  
20  
21  
22

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

2 2:40 p.m.

3 CHAIRPERSON MILLER: Okay. We're  
4 back on the record. We're actually in the  
5 third case of the morning session. So, Ms.  
6 Bailey, are you ready to call that case?

7 MS. BAILEY: I am, Madam Chair.  
8 And that's Application No. 17743 of The Verde  
9 Group LLC, pursuant to 11 DCMR 3103.2, for a  
10 variance from the floor area ratio  
11 requirements under section 401, a variance  
12 from the lot occupancy requirements under  
13 section 403, and a variance from the parking  
14 requirements under subsection 2101.1, to allow  
15 the construction of a three unit apartment  
16 building in the R-5-B District at premises  
17 1439 W Street, N.W., Square 202, Lot 803.

18 CHAIRPERSON MILLER: Good  
19 afternoon.

20 MR. BROWN: Good afternoon, Madam  
21 Chairman and Members of the Board. Patrick  
22 Brown from Greenstein, DeLorme and Luchs on

1       behalf of the applicant. To my right is the  
2       project designer, David Bamford, and also to  
3       my left is Mr. Spalding from ANC, who I  
4       thought would be easier to have him join us  
5       from the get-go.

6               I think we can keep this short and  
7       to the point, which would be to everybody's  
8       benefit. This is, I think, a classic case of  
9       an infill development where you encounter  
10      certain unique conditions and some  
11      difficulties related to those in trying to  
12      reach a successful infill development project.

13             I would like to note briefly that  
14      the variances being requested, floor area, lot  
15      occupancy and parking. And in particular,  
16      since the application was first filed, we have  
17      amended the application to, in short, push the  
18      rear of the structure back 3 feet. In the  
19      process of doing that, remove the rear deck,  
20      decks, that existed, which while we increased  
21      lot occupancy and FAR removing the deck, we  
22      decreased lot occupancy, as we have noted in

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1 our prehearing statement to give you where we  
2 were with that change.

3 The other issue that I would like  
4 to address up front and perhaps attempt to at  
5 least focus in on it or and even perhaps reach  
6 closure, the Office of Planning in their  
7 report has indicated that they believe a side  
8 yard variance is necessary.

9 In short, I disagree with that  
10 determination. We're proposing a row house.  
11 A row house being built from side lot line to  
12 side lot line, so that our property would have  
13 no side yards. We would build right up to the  
14 property lines.

15 The question arises that the  
16 adjoining property to the east has a 2 foot  
17 passage way side yard between the property  
18 line and that building. And that has  
19 occasioned the Office of Planning to believe  
20 that a side yard variance is required.

21 I think if you go through the  
22 regulations 405.3 read in conjunction with

1 405.6, which appears to eliminate the  
2 requirement for a side yard, and then you take  
3 that in the context of a recent Board decision  
4 that I have referenced, an Appeal Case 17085,  
5 which I think clearly rejected the notion that  
6 in a new row house construction, in the  
7 similar situation where there was a space  
8 between the property line and the adjoining  
9 house, that no side yard would be required for  
10 the new infill construction.

11 And that's an outgrowth of the  
12 Pritchard case and all that came with that in  
13 subsequent cases.

14 So I think from my perspective,  
15 and I think if we can eliminate discussion of  
16 side yard, which certainly we would be  
17 entitled to a variance for a side yard, but if  
18 we could eliminate that from the discussion,  
19 I think that would move things along quickly.

20 CHAIRPERSON MILLER: I don't know  
21 if Office of Planning wants to respond, but we  
22 did read the Office of Planning report. And

1 the Board did have occasion to study the exact  
2 regulations that you were referring to and I  
3 believe it's the consensus of the Board, but  
4 correct me others if I'm wrong, that we agree  
5 with you that side yard relief wouldn't be  
6 required. And it's your application. Okay.  
7 So you can move on.

8 MR. BROWN: With that, I would  
9 like to reintroduce Mr. Bamford and let him  
10 briefly walk you through the project and the  
11 specific conditions and difficulties  
12 encountered as we went from an idea to  
13 designing and envisioning this project.

14 MR. BAMFORD: Good afternoon,  
15 everybody.

16 CHAIRPERSON MILLER: You're going  
17 to need a mike of some sort.

18 MR. BAMFORD: Is there a --

19 COMMISSIONER JEFFRIES: Can you  
20 start some of your testimony from the table  
21 until he gets the mike?

22 MR. BAMFORD: That first -- the

1 first board that is up right now is a picture  
2 of the existing lot. The lot itself, that  
3 clear area, is 21 feet 6 inches. The building  
4 to the right has the 2 foot side yard. Okay.  
5 Thanks, Phil.

6 This is great. The -- as you can  
7 see, there is some more sort of extensive  
8 photograph on the right of the buildings that  
9 we are tying into to the west that in our  
10 discussions with historic asked us to look at  
11 those as our precedent. And the photograph on  
12 the left is a picture from the lot looking  
13 across the street, just to give you a taste of  
14 what the building fabric is on the south side  
15 of the street. There are four story apartment  
16 buildings on an elevated basement.

17 This board shows based on the  
18 Office of Planning map what the adjacent  
19 properties on sort of the western half of that  
20 block look like and what there lot occupancy  
21 is. They are estimated numbers, but they  
22 range from the two buildings immediately to

1 the east are just under 60 percent. And some  
2 of the buildings float well above 80 percent.

3 Historic and the client's  
4 inclination to do a -- the client was happy to  
5 go along with this, was to do a facade that  
6 both in material and scale and rhythm matched  
7 those houses to the west. So we have a  
8 rusticated masonry-base, two kind of full  
9 floors of brick facade and then the third  
10 floor is up in that roof form with a gable.

11 And we are tying -- historic asked  
12 us and I think based on a previous  
13 neighborhood project that didn't tie in to the  
14 historic precedent very well, historic  
15 particularly asked us to tie into the existing  
16 window sills and pick up some of our detailing  
17 there, which led us to sort of set floor  
18 heights that may be a little higher than we  
19 needed. But just to honor that.

20 Okay. Thanks. Unless you have  
21 questions, I don't think we need to look at  
22 the sections in the plans.

1 CHAIRPERSON MILLER: Setting the  
2 floor heights higher, does that impact the  
3 relief you are seeking?

4 MR. BAMFORD: It does, because it  
5 pushes the -- particularly this stairway.  
6 Just need to be another two steps higher,  
7 which has added another sort of -- about  
8 another 2 feet of depth to that stairwell.

9 And we initially -- our initial  
10 plan had been to take the rear facade to the  
11 adjacent properties to the east and we worked  
12 very hard with that boundary. And then we had  
13 a deck off the back. And it was just after  
14 quite a bit of designing, it just became  
15 really unworkable. The spaces are still  
16 really tight. So we proposed to the client  
17 that we remove the deck and extend a couple of  
18 feet off the back.

19 The rear facade is plain like the  
20 other rear facades. One thing maybe to note,  
21 we have -- in the rear we have done casement  
22 windows, because they are much more energy

1 efficient. And we are trying to get a LEED-  
2 platinum rating on this project. So we are  
3 doing a very tight building envelope. We're  
4 doing prefabricated components for both the  
5 basement and all the walls and the roof.

6 We're doing -- particularly, the  
7 reason the client was interested in this site  
8 is he wanted to do ground source geothermal  
9 for the heat and cooling. So we're with an  
10 open lot, easy accessibility, we're going to  
11 hopefully drill some wells and have the  
12 heating and cooling system cycle through that.

13 And then on the roof we have,  
14 approximately, four kilowatts of intakes and  
15 then some solar thermal towards the back. And  
16 also a planted roof, a green roof. And I  
17 don't know if we need to look at the floor  
18 plans.

19 MR. BROWN: Actually, David, could  
20 you just briefly run through probably the  
21 first floor level the relationship between the  
22 party wall to the west and also the filling in

1 the court niche as well as also the  
2 difficulties in building the eastern wall?

3 MR. BAMFORD: Sure. So we did  
4 have some unique circumstances here that we  
5 have an existing party wall, but the client is  
6 not interested in tying into that as a  
7 structure, so we need to build our own  
8 structural wall. So we're losing a little bit  
9 of floor area there.

10 And on the eastern side where  
11 there is that 2 foot wide access way, we also  
12 need to build a structural wall. The client  
13 and I have done two of these projects. This  
14 is the most extensive. But typically for --  
15 especially for -- maybe not the bedrooms, but  
16 the living spaces, we often expose the walls  
17 and leave the brick.

18 So in some spots we're losing over  
19 a foot of width to deal with that  
20 circumstance. And then we're also -- have a  
21 small -- as we set up along the western edge,  
22 we set up that new party wall. We have just

1 a strange court condition. It's just 6 inch  
2 wide by about 7 foot long that we're just  
3 going to end up filling in and losing. It's  
4 not usable floor area.

5 CHAIRPERSON MILLER: Could you  
6 just explain a little more the relationship  
7 between what you are doing with the walls and  
8 then the relationship to, is it, your relief  
9 from the FAR requirements?

10 MR. BAMFORD: And the lot  
11 occupancy.

12 CHAIRPERSON MILLER: And the lot  
13 occupancy, yeah.

14 MR. BAMFORD: Yeah.

15 CHAIRPERSON MILLER: And you just  
16 visually show us that?

17 MR. BAMFORD: Sure. So the  
18 typical -- let's see if I can -- well,  
19 typically, in these we -- our property extends  
20 into that existing party wall 6 inches, that  
21 first course of bricks. But we are not going  
22 to use that as bearing at all.

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1           So we have to build our own  
2 structural wall along this edge. And at the  
3 basement level, that's 10 inches wide. And at  
4 the upper floor levels it is 2 x 6  
5 construction. So it's 5.5 inches plus  
6 drywall. So we are losing -- it looks like an  
7 insignificant amount, but if you add up that  
8 we're losing 6 inches on this side and then  
9 this condition again, we would -- if there  
10 wasn't this 2 foot wide alleyway and they have  
11 a party wall there, we could bear on that.

12           So both of those widths on every  
13 floor and sort of space it in the typical  
14 condition we could use this floor area. We  
15 are also -- since we do have to build our own  
16 wall here, we're making the walls out of sip  
17 panels for insulation reasons.

18           The client, at least at this  
19 point, has opted to try to get some thinner,  
20 but more expensive panels, just again to try  
21 to save as much floor space.

22           CHAIRPERSON MILLER: Why aren't

1       you using the wall where you have a party  
2       wall?

3               MR. BAMFORD:   The -- we would have  
4       to be underpinning that wall. It's an old  
5       wall. It's a new structure. The client is  
6       conservative. And then there is also  
7       liability issues as we get in and if damage is  
8       done, if the party wall shifts because of our  
9       new structure bearing on it, then we are  
10      potentially responsible for damage on the  
11      other side.

12             COMMISSIONER JEFFRIES:   What's the  
13      interior width remaining?

14             MR. BAMFORD:   The clear width?

15             COMMISSIONER JEFFRIES:   Yeah.

16             MR. BAMFORD:   It's -- the exterior  
17      width is 19.5, so it's about 18.6.

18             COMMISSIONER JEFFRIES:   Oh, okay.

19             MR. BROWN:   And you see this first  
20      in lot occupancy, but then it is magnified or  
21      multiplied as you discuss FAR as you go up.  
22      David, if you could, the question of building

1 a partial top floor to reduce FAR, if you  
2 could respond to that?

3 MR. BAMFORD: Well, the -- that  
4 got discussed with Office of Planning to  
5 reduce the FAR doing that third floor. It  
6 provides some kind of added structural  
7 complications. It changes the structural  
8 loading from its rear wall to interior wall  
9 and transfer that out. And it is also -- I  
10 think this -- the amount of building area is  
11 about a minimum that the client is going to --  
12 it's economically feasible for him.

13 So to reduce that top floor -- and  
14 I don't know that we ever calculated how much  
15 we would have to reduce it, but it would be  
16 very significant. It would reduce much of the  
17 top floor, I think if we were going to try to  
18 get down to the FAR. It would just make the  
19 development too small for him.

20 MR. BROWN: And for Historic  
21 Preservation purposes you couldn't build a two  
22 story building. Is that correct?

1                   MR. BAMFORD: Historic really  
2                   wanted us to tie into these buildings, these  
3                   buildings here on the west side. There are  
4                   two buildings. The first couple of buildings  
5                   to the east are a little shorter and then they  
6                   start to get tall again.

7                   And part of the reason the client  
8                   is interested in this project is that it was  
9                   near a Metro Station and it was sort of  
10                  interesting looking, like what is comfortable  
11                  density in this neighborhood in this sort of  
12                  building size. And we have -- the two  
13                  projects we have done in Adams Morgan, we sort  
14                  of have a sense of what are kind of minimal  
15                  size bedrooms that people are willing to live  
16                  in and that work for people. And we are sort  
17                  of barely hitting that with this project.

18                 MR. BROWN: And then one last  
19                 point, David. If you could just point out the  
20                 lack of access, alley access to the rear?

21                 MR. BAMFORD: Sure. The vehicular  
22                 alleyway comes off of Florida Avenue here and

1 cuts over towards 14<sup>th</sup> Street. There is a  
2 pedestrian alleyway coming off of Florida here  
3 from the west that ends actually right there.  
4 Then there is another one. I'm not sure how  
5 this one gets accessed.

6 And then this access way, it's a  
7 little -- these are actually private, but it  
8 really seems to be providing access to these  
9 two and there is another one here that is  
10 providing access to those two.

11 CHAIRPERSON MILLER: Okay.  
12 Anything else?

13 MR. BROWN: Open it up to  
14 questions.

15 CHAIRPERSON MILLER: Any questions  
16 from the Board? No questions. Oh, Office of  
17 Planning has a question? Oh, okay. Okay.  
18 Then we will go to Office of Planning next.

19 MR. JESICK: Thank you, Madam  
20 Chair and Members of the Board. My name is  
21 Matt Jesick. As with any variance request, we  
22 analyzed this application using the three part

1 test. The first part of that test being is  
2 there anything unique or exceptional about  
3 this property?

4 And as has been testified to this  
5 afternoon, there are a number of things. One  
6 is the requirement that the ceiling heights be  
7 taller than would normally be expected. This  
8 results in stairwells that are longer and take  
9 up more floor area within the footprint of  
10 each floor.

11 Another uniqueness is, that as has  
12 been mentioned, the party wall that exists on  
13 the west side of the property. It is not  
14 structurally viable and, therefore, it is just  
15 occupying space on the lot that cannot be used  
16 for the actual interior of the building.

17 Another area that is unusual to  
18 this property is that the home on the east  
19 side is not built up to the property line, as  
20 would be expected in a row house neighborhood.  
21 It is actually setback 2 feet from their  
22 property line.

1           And the final area of uniqueness  
2           is that there is no alley which serves the  
3           rear of this property.

4           Those uniquenesses come together  
5           to form practical difficulties for the  
6           applicant, which is the second part of the  
7           variance test. The lot occupancy has been  
8           increased. Again, this is partially due to  
9           the existing party wall on the west side. And  
10          it is also Office of Planning's understanding  
11          that on the east side, the structural wall  
12          needs to be wider, because there is not a  
13          party wall on that side. That also adds to  
14          lot occupancy.

15          And finally, the applicant has  
16          told the Office of Planning that due to the  
17          increased area of the stairwells, the room  
18          sizes were not viable. So they needed to  
19          enlarge the footprint of the building to get  
20          a usable room size.

21          This increase in lot occupancy  
22          also increases the FAR. As you increase the

1 building footprint and then go up from that  
2 footprint, you are also increasing the FAR.  
3 And the Office of Planning did inquire with  
4 the applicant whether it would be possible to  
5 either eliminate the third floor entirely or  
6 build a partial third floor. But the  
7 applicant has indicated that would not be  
8 financially feasible, given the parameters of  
9 the project.

10 The Office of Planning does feel  
11 that relief is needed from section 405.3.  
12 Because the Board has indicated they feel that  
13 that relief is not needed, I won't go into  
14 great detail on that. But we do feel it is  
15 required and we would support that relief.

16 And again, on the parking, there  
17 is no alley access and that would make  
18 providing parking difficult. A curb cut would  
19 be required on W Street. The Office of  
20 Planning would not support, in concept, a curb  
21 cut on W Street. It would eliminate on-street  
22 parking and it would interrupt the pedestrian

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1 feel of W Street.

2 The third part of the test asks  
3 can the relief be granted without detriment to  
4 the public good or without impairing the  
5 intent of the Zoning Regulations? I think  
6 clearly on the public good question, there  
7 will be no impact.

8 On the intent of the Zoning  
9 Regulations, certainly the R-5-B Regulations  
10 were put in place to create a certain feel for  
11 a neighborhood. This neighborhood, however,  
12 was entirely built-out prior to the Zoning  
13 Regulations. Therefore, most of the buildings  
14 are nonconforming in one way or another. So  
15 this building would not be out of character  
16 with those other developments.

17 So we support the variance request  
18 and I would be happy to take any questions.

19 CHAIRPERSON MILLER: Did you look  
20 at 405.6 when you were determining that the  
21 side yard was required?

22 MR. JESICK: Yes, we did look at

1 405.6. It is my understanding that 405.3 was  
2 inserted after the rest of section 405. And  
3 while taking the section as a whole, I think,  
4 when you look at 405.3, it's very hard for the  
5 Office of Planning to see a different reading  
6 than requiring a side yard for a building that  
7 does not share a common building wall with  
8 another building.

9 CHAIRPERSON MILLER: When the  
10 applicant presented their case, they were  
11 talking about the window sills being higher as  
12 a result of floor levels being higher. Is  
13 that all connected with the ceiling being  
14 higher or is the ceiling height a different  
15 issue?

16 MR. JESICK: I'm not sure if they  
17 are exactly connected, but I know that they  
18 tried to match the widow heights on their  
19 building with the structures to the west, so  
20 that those would line up. And I believe the  
21 ceiling heights also line up with the historic  
22 buildings that are to the west.

1 CHAIRPERSON MILLER: Okay. Any  
2 other Board questions? Okay. That's a very  
3 thorough report. Thank you.

4 VICE CHAIRMAN LOUD: I'm sorry,  
5 Madam Chair?

6 CHAIRPERSON MILLER: Yes.

7 VICE CHAIRMAN LOUD: One question.  
8 I don't believe you asked this and I was  
9 waiting to see if Mr. Dettman would ask it,  
10 because I think he raised it in our prior  
11 deliberation. But in terms of 405.6, was  
12 there some consideration as to whether or not  
13 405.6 would apply in this case by OP? 405.6  
14 essentially exempts properties, in this case,  
15 in the R-5-B from a side yard requirement. I  
16 think Mr. Brown mentioned it, too, in his  
17 opening.

18 MR. JESICK: It is very confusing  
19 reading those two provisions together, so I  
20 think when we see two conflicting provisions,  
21 we usually say that the more restrictive one  
22 applies. In this case, that would be 405.3.

1 So but again, we have no problem with, in this  
2 case, affording relief for that requirement,  
3 because it is a very unique arrangement of  
4 buildings where you would expect, you know,  
5 row houses to all be abutting. There is that  
6 tiny gap, so we feel that it meets the  
7 variance test.

8 MEMBER DETTMAN: Well, I'll  
9 probably just frame this in sort of a  
10 recommendation to DCOP that maybe it might be  
11 worthwhile to go back and look at the language  
12 of 405.3, because if we look at the plans and  
13 I was to ask you to point to me on the plans  
14 where this particular building, this proposal  
15 doesn't share a common division wall with an  
16 existing building. I think we would have  
17 trouble identifying that.

18 I think it does share a common  
19 division wall with an existing building to the  
20 west. And so as -- if you read the plain  
21 language of 405.3, it says that "A side yard  
22 would be required on each resulting free

1 standing wall when a building does not share  
2 a common wall with an existing building or a  
3 building being constructed together with that  
4 building."

5 Again, I think if we look at the  
6 plans, we can see that this clearly does share  
7 a common division wall with an existing  
8 building to the west. And that leads me to  
9 think my interpretation of 405.3 says that a  
10 side yard would not be required. I think this  
11 really comes into play when we are really  
12 looking at an end unit of a row house and to  
13 say that it does share the common division  
14 wall, and so the side yard wouldn't be  
15 required.

16 And so just again, maybe when we  
17 are looking at the rewrite of the Zoning Regs  
18 we might want to clarify when we really,  
19 really want to require a side yard when it  
20 comes to a row dwelling and an end unit of a  
21 row dwelling.

22 CHAIRPERSON MILLER: Okay. Does

1 the applicant have any questions for Office of  
2 Planning? You do have a copy of Office of  
3 Planning's report? Okay. Then, Mr. Spalding,  
4 do you have testimony from the ANC?

5 MR. SPALDING: Phil Spalding  
6 representing ANC-1B. I live at 1929 13<sup>th</sup>  
7 Street, N.W. I would ask the Chair if you  
8 have received a copy of our letter of support?

9 CHAIRPERSON MILLER: Yes.

10 MR. SPALDING: In that case,  
11 looking at the hour, we will stand on that  
12 support.

13 CHAIRPERSON MILLER: Okay. Yes.  
14 The ANC voted 7-0 to support the application  
15 and it was at a regularly scheduled meeting  
16 and there was a quorum present and it meets  
17 the great weight requirements. Okay. And the  
18 only other thing, they were encouraged by the  
19 energy efficient green design of this  
20 building.

21 MR. SPALDING: Yes, we were and  
22 it's a very difficult situation when you have

1 an irregular block, you have an infill lot,  
2 you have an Historic District, you know, the  
3 layer is that these people who approach these  
4 lots have to go through in order to fill these  
5 lots is a difficult one.

6 This is an exemplary example of  
7 trying to accomplish a number of things on a  
8 small lot.

9 COMMISSIONER JEFFRIES: Mr.  
10 Spalding, just a quick question.

11 MR. SPALDING: Yes.

12 COMMISSIONER JEFFRIES: And this  
13 is unrelated. Where does the Historic  
14 District start? Is the northern boundary  
15 Florida Avenue?

16 MR. SPALDING: It's partly on  
17 Florida Avenue and in a few cases it goes up  
18 into the row just above Florida Avenue.

19 COMMISSIONER JEFFRIES: Belmont?

20 MR. SPALDING: It does leak up to  
21 Belmont at one little point right by 14<sup>th</sup>  
22 Street, but then it drops back down to Florida

1 Avenue. It's got a very irregular border on  
2 its top edge.

3 COMMISSIONER JEFFRIES: Okay.  
4 Okay. Thank you.

5 CHAIRPERSON MILLER: How is it an  
6 irregular lot?

7 MR. SPALDING: I would consider  
8 anything that is 50 feet deep, 20 feet wide,  
9 does not get service by any alley service to  
10 be a reasonably irregular lot. I live on a  
11 very standard lot, which is only 16 feet wide,  
12 but it's 100 feet deep and it has an alley  
13 behind it. A lot that does not have alley  
14 service at all and that's only 50 feet deep  
15 really puts a constraint on the type of  
16 property you can put in.

17 It's hard to put in even a  
18 traditional row house in that context. But I  
19 think the design that has been developed  
20 between the architect and the Historic  
21 Preservation adequately mirrors the rest of  
22 the buildings on the block and is serviceable.

1 And it is the kind of infill that we really  
2 want to encourage for the few spots that we  
3 have left that need infill.

4 COMMISSIONER JEFFRIES: There is  
5 also some elevation, there's also some slope  
6 behind or is that the next block?

7 MR. SPALDING: That is the next  
8 block.

9 COMMISSIONER JEFFRIES: That's the  
10 next block, okay.

11 MR. SPALDING: That's the next  
12 block north.

13 COMMISSIONER JEFFRIES: Okay.  
14 From Florida Avenue north.

15 MR. SPALDING: This block is  
16 actually reasonably flat.

17 COMMISSIONER JEFFRIES: Oh, yeah,  
18 okay.

19 CHAIRPERSON MILLER: There's not a  
20 parking issue, I gather?

21 MR. SPALDING: The parking issue  
22 has come up in a number of cases before BZA in

1 the last year where we have dealt with either  
2 nonconforming or irregular lots where they  
3 don't have alley service. And this property  
4 is within a block and a half or so of the  
5 Green Line Stop at 13<sup>th</sup> and U. It is next to  
6 bus stops on 14<sup>th</sup> Street, 16<sup>th</sup> Street, a number  
7 of transportation options are available.

8 CHAIRPERSON MILLER: Any other  
9 questions, Board Members? Okay. Thank you  
10 very much. Did you have any questions for the  
11 Office of Planning or the applicant?

12 MR. SPALDING: No, I don't.

13 CHAIRPERSON MILLER: Okay.

14 MR. SPALDING: I don't have  
15 questions for either.

16 CHAIRPERSON MILLER: Okay. Thank  
17 you. Is there anybody else here in the  
18 audience who wishes to testify in support of  
19 this application? Anybody who wishes to  
20 testify in opposition? Are there any other  
21 Board questions?

22 MEMBER DETTMAN: Just --

1 CHAIRPERSON MILLER: Yes?

2 MEMBER DETTMAN: Just one comment,  
3 Madam Chair, because I'm being goaded by my  
4 colleague here, because I have become roof  
5 structure man on the Board apparently. I see  
6 that in this particular application we have  
7 some solar panels and photovoltaic on the  
8 roof. And I hope we continue to see a lot  
9 more of this.

10 But maybe again in the zoning  
11 rewrite, we can start to look at as we start  
12 to see a lot more of these roof structures,  
13 these sustainability structures, how we are  
14 going to deal with them in terms of the  
15 appropriate setbacks that are necessary,  
16 especially in a Historic District like this  
17 one.

18 MR. BAMFORD: Can I make a comment  
19 about that? Just a for your information  
20 comment. The photovoltaic panels are at a  
21 much lower and -- lower than the solar hot  
22 water, so it generally works out well that the

1 lower pitch panels would be towards the front  
2 of the house and much less visible, units that  
3 are taller, solar thermal in the rear, which  
4 is what we have done in this project.

5 MEMBER WALKER: How tall are they?

6 MR. BAMFORD: The -- let me show  
7 you the section. These are the photovoltaic  
8 panels here, which you saw also ended up being  
9 as a result of pushing the building back 3  
10 feet. We were allowed to slide all this back  
11 3 feet. The PV panels probably at their  
12 highest point are 4 feet and the solar thermal  
13 panels at their highest point are probably  
14 about 9 feet.

15 CHAIRPERSON MILLER: Okay. Any  
16 closing remarks, Mr. Brown?

17 MR. BROWN: No, I think I'll stand  
18 on the record by Mr. Bamford, OP and then Mr.  
19 Spalding. I think they made the case quite  
20 completely.

21 CHAIRPERSON MILLER: Okay. I just  
22 want to just clarify before the Board

1 deliberates. The relief that was sought is it  
2 the same that was advertised, that being FAR,  
3 lot occupancy and parking? Because I thought  
4 you were talking about some amended --

5 MR. BROWN: Well, the specific --  
6 in both instances, originally and as amended,  
7 the same three variances are requested. And  
8 I believe lot occupancy has actually slightly  
9 -- the volume of variance has slightly  
10 decreased, FAR increased slightly, but again,  
11 as we originally applied and provided notice,  
12 the three variances are still the same,  
13 parking, lot occupancy and FAR.

14 CHAIRPERSON MILLER: And also the  
15 plans that are attached to the prehearing  
16 statement, they reflect all the changes? Is  
17 that correct or no?

18 MR. BROWN: With the exception of  
19 the plans in our prehearing statement still  
20 show the rear deck, which we had indicated  
21 that we are going to remove. If it would  
22 help, we could submit into the record right

1 now a -- and, in fact, I think we have a hard  
2 copy of the boards here. We could submit that  
3 and tie the approval to this as exhibit  
4 whatever.

5 CHAIRPERSON MILLER: So that would  
6 reflect the accurate plans? Yes, that would  
7 be a good idea.

8 MR. BROWN: Okay.

9 CHAIRPERSON MILLER: Yes.

10 MR. BROWN: And again, the only  
11 difference being that the deck has been  
12 removed off of these.

13 CHAIRPERSON MILLER: Okay. I  
14 think we're going to try to do this one fairly  
15 speedily also, because we're running late in  
16 the afternoon.

17 So, therefore, I would like to  
18 make a motion, at this time, to approve  
19 Application No. 17743 of The Verde Group LLC,  
20 pursuant to 11 DCMR 3103.2, for a variance  
21 from the floor area ratio requirements under  
22 section 401, a variance from the lot occupancy

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1 requirements under section 403, and a variance  
2 from the parking requirements under subsection  
3 2101.1, to allow the construction of a three  
4 unit apartment building at premises 1439 W  
5 Street, N.W.

6 Do I have a second?

7 COMMISSIONER JEFFRIES: Second.

8 CHAIRPERSON MILLER: Okay. I  
9 think I would like to be fairly brief on this,  
10 because I think the Office of Planning  
11 addressed this fully as did applicant and the  
12 ANC. I think both the variances for lot  
13 occupancy and FAR can be treated similarly.  
14 We're talking about an infill here and we  
15 heard that there were specific constraints on  
16 this property, because of fitting into the  
17 space, number one.

18 Two, it's in an Historic District.  
19 And HPRB put certain constraints on it with  
20 respect to the height of windows, which then  
21 caused the stairway to take up more space,  
22 which then seemed to cause the applicant to

1 expand the footprint of the building to make  
2 larger rooms. And when they explored  
3 decreasing the FAR, you know, by eliminating  
4 the third floor and making it smaller, it was  
5 not viable for the applicant.

6 And the practical difficulties  
7 that I heard were related to having to put up  
8 two walls which took up -- which counted  
9 towards the FAR. If this were next to a newer  
10 house, they wouldn't have had to put up a  
11 separate wall. That was one of them. And  
12 then the other side, there is that unusual 2  
13 feet next to it.

14 Let's see, what else. Other  
15 people can certainly jump in. I certainly  
16 heard that there is no substantial detriment,  
17 that this is actually a very beneficial  
18 addition to a neighborhood. We have had this  
19 vacant area and it's certainly consistent with  
20 the Comprehensive Plan to fill in these types  
21 of areas. And it is being done in a very  
22 green way. It is compatible with its

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1 surrounding properties.

2 And then with respect to the  
3 parking, we heard that there is no alley  
4 access, so that's an exceptional situation.  
5 And, you know, there are always these problems  
6 to do a curb cut, which DDOT wouldn't normally  
7 want. It takes up a space by creating a  
8 space. So that doesn't really do anything.  
9 And they are very close to the Metro, so  
10 that's the key facts that I see.

11 Others want to add?

12 COMMISSIONER JEFFRIES: Did you  
13 mention Historic Preservation Review Board?

14 CHAIRPERSON MILLER: I did a  
15 little bit --

16 COMMISSIONER JEFFRIES: Oh, okay.

17 CHAIRPERSON MILLER: -- with  
18 respect to --

19 COMMISSIONER JEFFRIES: Okay.

20 CHAIRPERSON MILLER: -- the  
21 heights of the --

22 COMMISSIONER JEFFRIES: Okay.

1 Okay. I'm sorry.

2 CHAIRPERSON MILLER: -- window  
3 sills.

4 COMMISSIONER JEFFRIES: Okay.  
5 Thank you.

6 CHAIRPERSON MILLER: And then also  
7 I think we -- I don't know if I said anything  
8 about the heights of the ceilings, that it  
9 also be in line with that. And it is  
10 compatible with that. And then the other  
11 thing that Office of Planning said was, and I  
12 think the applicant also, that the lot  
13 occupancy, even though it's nonconforming, is  
14 actually compatible with the other buildings  
15 around it, which were built before the Zoning  
16 Regulations and are also nonconforming.

17 VICE CHAIRMAN LOUD: With respect,  
18 Madam Chair, to the element under variance for  
19 substantial detriment to the public good, we  
20 do have the ANC report which is our Exhibit  
21 26. They having voted 7-0 to approve the  
22 project. There are no witnesses in opposition

1 as well.

2 And in terms of there being  
3 substantial impairment to the intent of the  
4 Zone Plan, the R-5-B encourages a wide variety  
5 of residential and this is an excellent  
6 example of them doing a thorough project that  
7 sort of fits in with the surrounding, as Mr.  
8 Bamford put it, rhythm and scale of the  
9 architecture in that area.

10 So it doesn't appear that there is  
11 any evidence to concern us that those elements  
12 of the variance test would be compromised.

13 CHAIRPERSON MILLER: Thank you. I  
14 also note in the record that we have a letter  
15 from Wilford Gordene, who lives at 1427 1/2 W  
16 Street, N.W., who said that he supports this  
17 application and he compliments the staff of  
18 the Board of Zoning Adjustment for their  
19 service.

20 So okay, anything else? Any other  
21 deliberations? Okay.

22 All those in favor say aye.

1 ALL: Aye.

2 CHAIRPERSON MILLER: All those  
3 opposed? All those abstaining? And would you  
4 call the vote, please?

5 MS. BAILEY: Madam Chair, the vote  
6 is recorded as 5-0-0 to grant the application.  
7 The motion was made by Mrs. Miller, seconded  
8 by Mr. Jeffries. Mr. Dettman, Mrs. Walker and  
9 Mr. Loud support the motion. And the  
10 application is approved based on revised plans  
11 that the Board received today.

12 CHAIRPERSON MILLER: Thank you.  
13 And this can be a summary order as well, as  
14 there is no party in opposition in this case.  
15 Thank you.

16 MR. BROWN: Thank you.

17 CHAIRPERSON MILLER: Ms. Bailey,  
18 we're ready for the next case when you are.

19 MS. BAILEY: Madam Chair,  
20 Application No. 17656 of Alley Cat Mews, LLC,  
21 pursuant to 11 DCMR 3103.2, for a variance to  
22 allow the construction of a detached single-

1 family dwelling on an alley lot that does not  
2 directly abut an alley, that is at least 30  
3 feet in width and is not directly accessible  
4 from a public street along an alley or alleys  
5 of not less than 30 feet in width under  
6 subsection 2507.2, on an alley lot at the rear  
7 of Reno Road, Chevy Chase Parkway and Harrison  
8 Street, N.W., the property is Zoned R-1-B. It  
9 is located in Square 1877, Lot 37.

10 This is a continuation case. As  
11 the Board Members know, by consensus on  
12 October 2, 2007, the Board determined that the  
13 application would be heard as a use variance.  
14 There are three parties in -- three parties,  
15 Madam Chair, who are associated with this  
16 application. GreenPiece Park, LLC; George and  
17 Margaret Eads and, of course, ANC-3/4G.

18 CHAIRPERSON MILLER: Okay. Could  
19 you all start by introducing yourselves for  
20 the record, please?

21 MR. HUGHS: Good afternoon, Madam  
22 Chair, I'm just out of order here. Dennis

1 Hughs of Holland and Knight on behalf of  
2 Kenneth Woodring, the applicant.

3 MS. DUMAS: Kinley Dumas with the  
4 Law Firm of Arent Fox on behalf of GreenPiece,  
5 LLC.

6 MR. EADS: George Eads on behalf  
7 of myself and my wife.

8 CHAIRPERSON MILLER: And is  
9 anybody here from the ANC? Okay. Now, we  
10 have one more case after you and I was just  
11 wondering if you all have a sense at all of  
12 how much time your case might take, if you do?  
13 Just for the benefit of those who are waiting.  
14 I don't know how many witnesses you all have.

15 MS. DUMAS: We have three  
16 witnesses for GreenPiece, LLC and we expect  
17 that our case, not including cross  
18 examination, should take between 20 and 25  
19 minutes.

20 MR. HUGHS: Madam Chair, we also  
21 have three witnesses and I believe a half an  
22 hour would probably be about right or less.

1 CHAIRPERSON MILLER: Okay.

2 MR. EADS: And I expect I'll take  
3 10 to 15 minutes.

4 CHAIRPERSON MILLER: Okay. All  
5 right. Then we shouldn't have any problem  
6 getting to the case after yours, so why don't  
7 you proceed, unless there are any other Board  
8 preliminary questions? Okay.

9 MR. HUGHS: Good afternoon, Madam  
10 Chair, Members of the Board. For the record  
11 again, my name is Dennis Hughes of the Law Firm  
12 of Holland and Knight, LLP. Joining me to day  
13 is Jeff Johnson, also with Holland and Knight.  
14 At the outset, I would like to thank the Board  
15 for estoppel consideration to the application.

16 To date, it has been going on for  
17 quite a while. And for allowing us to return  
18 to the Board to make our presentation in light  
19 of the direction you gave us most recently, I  
20 guess, at the October 2007 Public Meeting,  
21 where you determined that you considered our  
22 application to be in the vein of a use

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1 variance, a use variance application.

2 On that note, I respectfully want  
3 to note our continued belief that this is more  
4 appropriately considered an area variance, so  
5 much that if any of the surrounding alleys,  
6 just to remind everyone what we are dealing  
7 with, were but 10 feet wider, which is  
8 essentially from me to you, we -- maybe even  
9 less, the single-family use that we are  
10 proposing would be a matter-of-right use on  
11 this property.

12 That said, not to go and resurrect  
13 the argument, we believe that the practical  
14 effect of the application of section 2507.2 in  
15 terms of reasonable development of this  
16 property is so burdensome that relief from the  
17 Board is appropriate here under either  
18 standard the Board chooses.

19 As I noted, the Board has already  
20 reviewed an extensive amount of paper in this  
21 case, both from our side and from the  
22 opposition, most of which has been directed at

1 competing theories as to standards for review  
2 the Board should employ.

3 At this point, in appreciating  
4 that different theories are likely to follow  
5 this afternoon, I would like to take a quick  
6 step back before moving forward and remind the  
7 Board just what the application -- what the  
8 applicant is proposing in its application.

9 The applicant appears before you  
10 today desiring to construct a single-family  
11 house on a large undeveloped residentially  
12 zoned lot that is surrounded by other single-  
13 family houses. The lot is roughly equivalent  
14 in size to other lots in the square, which  
15 have all been developed and long occupied as  
16 single-family houses.

17 Because the lot is surrounded by  
18 alleys, it is subjected to additional  
19 restrictions than the other lots in the  
20 square, aside from Mr. Eads' lot.

21 Relevant here is the requirement  
22 of section 2507.2 that requires a 30 foot wide

1 alley. Here we are dealing with a property  
2 surrounded by 20 foot wide alleys, thus, as I  
3 said before, were just one of the alleys  
4 leading to any of the three streets that  
5 surround Square 1877 only 10 feet wider, the  
6 Zoning Regulations would allow the proposed  
7 single-family residential use as a matter-of-  
8 right.

9 Yet, we are powerless to change  
10 that fact. We cannot consolidate the property  
11 with any other property to provide some street  
12 frontage here.

13 As the Board receives the  
14 testimony presented this afternoon, I would  
15 ask you to remember the simple fact,  
16 especially when weighing the burden this  
17 regulation places upon this particular  
18 property in conjunction with the already  
19 restrictive R-1-B residential zoning.

20 The Board is well-aware of the  
21 three prong test for variance relief set forth  
22 in section 3103.2 of the regulations, which

1 requires a showing that the property in  
2 question is somehow exceptionally impacted,  
3 that the property is unable to be utilized  
4 without some practical difficulty or undue  
5 hardship in complying with a particular  
6 regulation and that relief can be granted  
7 without substantial detriment to the public  
8 good or harm to the Zoning Plan.

9 With respect to the first prong,  
10 the exceptional condition of the property, the  
11 applicant's evidence and testimony will show  
12 that the property is, indeed, impacted by a  
13 number of conditions that when considered as  
14 a whole qualify the property for relief.

15 Here we have a property that is  
16 trying -- a triangular lot in the R-1-B  
17 District and bounded on all sides by 20 foot  
18 wide public alleys that prevent the property  
19 from being joined with any other properties to  
20 gain street frontage. This alone is a very  
21 unusual circumstance in this area of the  
22 District and is a product of the intersections

1 of the non-grid streets with the orthogonal  
2 streets.

3 No. 2, another element is that  
4 these 20 foot wide alleys satisfy the  
5 requirements of the D.C. Fire Code in terms of  
6 providing necessary emergency access.

7 No. 3 is the property is of the  
8 size and configuration to fully comply with  
9 all other requirements applicable in the R-1-B  
10 District.

11 Turning to the second prong, our  
12 evidence and testimony will show that the  
13 applicant is experiencing an undue hardship in  
14 developing this, approximately, 7,300 square  
15 foot residentially zoned lot consistent with  
16 the regulations without some relief from  
17 section 2507.2, given the very limited  
18 development options available in the  
19 underlying R-1-B District.

20 In short, this residentially zoned  
21 property cannot be reasonably -- cannot  
22 reasonably be developed for any use permitted

1 in the R-1-B District without the relief  
2 requested.

3 As will be shown through the  
4 applicant's testimony, aside from the variance  
5 relief we are here requesting, the only way  
6 that this residentially zoned property could  
7 comply with 2507.2 is if the current alley  
8 system were somehow to be expanded by action  
9 of the D.C. Council. No other reasonable use  
10 of the property is available to the applicant.

11 And as for the final prong, the  
12 evidence and testimony will show that the  
13 relief can be granted without any substantial  
14 detriment to the public good or harm to the  
15 Zone Plan.

16 To that end, it appears clear that  
17 the dimensional requirement established in  
18 section 2507.2 is primarily intended to secure  
19 adequate emergency access to the dwellings  
20 established on alley lots. In support of that  
21 policy, we note that the application has both  
22 been -- has been reviewed by the Fire and

1       Emergency Medical Services Department, which  
2       has included a site visit with a ladder truck  
3       and that office has determined that sufficient  
4       access is provided to the property through the  
5       existing alley network.

6               In addition, the proposed single-  
7       family dwelling has been designed and oriented  
8       to minimize the impact on neighboring  
9       properties. This includes lot occupancy and  
10      height. The height as Mr. Johnson, our  
11      architect, will show is actually lower than  
12      would be permitted for an alley lot on a 30  
13      foot wide alley.

14             Given that the proposed use is  
15      consistent with the zoning category for the  
16      property and the neighborhood and only single-  
17      family residential use is proposed here, the  
18      applicant does not believe that approval of  
19      the application will work any detriment to the  
20      public good.

21             Likewise even were other uses of  
22      the lot determined to be economically

1 feasible, which our testimony will show that  
2 they are not, such uses including multiple  
3 artist studios or parking garages, arguably  
4 would work a greater detriment to the public  
5 good in terms of traffic, noise and safety  
6 issues then would the proposed single-family  
7 house.

8 And with respect to the Zoning  
9 Plan, this application for infill development  
10 is consistent with a number of provisions of  
11 the Comprehensive Plan which we have set forth  
12 in our prehearing statement to the Board.  
13 Moreover, the Board's approval here would  
14 facilitate construction of a single-family  
15 house in a District zoned for single-family  
16 houses, hardly a result that would alter the  
17 character of the R-1-B District.

18 Finally, and perhaps most  
19 importantly, approval here represents an  
20 appropriate use of the Board's role as a  
21 safety valve regarding application of the  
22 Zoning Regulations, including protecting

1 Zoning Legislation from Constitutional attack,  
2 alleviating an otherwise unjust invasion of  
3 property rights and preventing usable land in  
4 the District from remaining idle. And that's  
5 language taken from the Palmer case.

6 I would now like to proceed with  
7 the brief testimony from our witnesses to  
8 supplement and clarify the information that  
9 has been provided in our Statement of Support.  
10 To that end, I would like to introduce first,  
11 to my right, Mr. Kenneth Woodring, who is the  
12 contract purchaser of the property from the  
13 current owner, which is Alley Cat Mews, LLC.

14 Next, to his right, is Donald  
15 Johnson, our project architect. And finally,  
16 sitting behind Mr. Johnson, is Lindsley  
17 Williams, Senior Land Use Planner, with  
18 Holland and Knight. And as a note, Mr.  
19 Williams is taking on a great duty today. He  
20 is standing in for Mr. Steven Sher who has  
21 taken ill today and can't join us.

22 So when we present the outline of

1 testimony, it will be the testimony outlined  
2 from Mr. Sher, but Mr. Williams will try to  
3 answer your questions as best we can.

4 And from there, I would like to  
5 say in introducing Mr. Woodring, he will  
6 briefly share with the Board his background in  
7 real estate development in the Metro  
8 Washington area, give some background of his  
9 relationship with the current owner, discuss  
10 the plans for development of the property and  
11 review the difficulties of developing the  
12 property for any reasonable use aside from the  
13 single-family residential use proposed. And  
14 with that, I'll turn it over.

15 CHAIRPERSON MILLER: I just want  
16 to ask for clarification, because it has been  
17 a while since we heard this case.

18 MR. HUGHS: Okay.

19 CHAIRPERSON MILLER: The applicant  
20 is the contract purchaser, not the owner? I  
21 just want to make sure. Is that correct?

22 MR. HUGHS: That's correct.

1 CHAIRPERSON MILLER: And so the  
2 practical difficulties will go to the contract  
3 purchaser?

4 MR. HUGHS: Well, it's the undue  
5 hardship, I believe.

6 CHAIRPERSON MILLER: As opposed to  
7 the -- oh, the undue hardship, correct.

8 MR. HUGHS: Will go to practical  
9 difficulty, but, yes.

10 CHAIRPERSON MILLER: Okay.

11 MR. HUGHS: We believe we can make  
12 the case in either event, but, obviously, from  
13 Mr. Woodring's perspective in terms of his  
14 testimony, it will be focused on impact to  
15 him, but we'll certainly be mindful of the  
16 other issue, there is a property owner.

17 CHAIRPERSON MILLER: Okay. Thank  
18 you.

19 MR. WOODRING: Thank you. As he  
20 said, I am the contract purchaser for Lot 37,  
21 which is Zoned R-1-B. I've been a real estate  
22 broker and a developer in the Washington area

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1 for, approximately, 45 years. And during that  
2 period of time, I have brokered thousands of  
3 houses in the Washington area. And I have  
4 also developed and built numerous homes. I  
5 have developed two retirement communities in  
6 Prince Georges County.

7 And during the savings and loan  
8 crisis, I contracted for a lot of savings and  
9 loans and FDIC to finish a lot of developments  
10 that builders had lost at foreclosure. So I  
11 have a lot of experience in building and  
12 development in the Washington area.

13 My most recent development was a  
14 30 acre resort community in Fenwick Island.  
15 And I must say that every development, every  
16 new home that I have built during this 45 year  
17 period, the end result has always been that it  
18 was an asset to the neighborhood and added  
19 value to the community. And I think building  
20 this single-family home on this alley lot will  
21 also have the same result, added value to the  
22 community.

1 I became aware of this lot by  
2 accident. In the office, one of the agents  
3 came to me and said she had a builder who  
4 wanted to build a new home for a client in the  
5 Chevy Chase area. And she found this lot on  
6 the multiple listing system, so she asked me  
7 my advice of was it worth pursuing. So I did  
8 a little due diligence.

9 And I said well, if your client  
10 wants to start building immediately, this is  
11 not the lot, because it's going to be a six  
12 month period in order to get a variance.  
13 Little did I know it was going to be 18  
14 months, but I said it was going to be an  
15 extended period of time.

16 So that didn't work out. So I  
17 decided just to drive down there myself and  
18 look at the lot. And in looking at the lot  
19 and going a little research, you know, I said,  
20 you know, this is kind of a unique property.  
21 It's in a great location. And I think I might  
22 be interested in pursuing this myself.

1           So I put a contract in, made an  
2           offer on the lot with Mr. Merwin, which was  
3           rejected and he made a counteroffer. And I  
4           accepted the counteroffer contingent on  
5           getting the variance, knowing that it was  
6           going to take time and also expense on getting  
7           the variance.

8           But in doing my due diligence and  
9           deciding what was the best use for this  
10          property, I noted in the permitted uses in R-  
11          1-B was single-family home, garages and artist  
12          studio were the three most reasonable. There  
13          is other uses like churches, except it  
14          wouldn't fit there.

15          And so I decided to do, you know,  
16          proforma on all the different uses and looking  
17          at the garages with the amount of lot coverage  
18          you can get for garages and what the revenue  
19          would be from these garages and then,  
20          secondly, is there, in fact, a need for  
21          garages in that area. I determined that this  
22          was not the best use for the property.

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1           Most of the adjoining property  
2 owners have garages or off-street parking.  
3 Nobody is going to rent a garage and get the  
4 Metro downtown.

5           Then I look at artist studio and  
6 figured what it would cost to develop it, as  
7 far as construction costs, architectural  
8 engineering and what the revenue would be. I  
9 decided there was no need for that. I'm  
10 familiar with one other development that has  
11 artist studios available and it has been a  
12 disaster in trying to sell them or even rent  
13 them.

14           So I said, you know, that's not --  
15 that will not work. Even if I were to get  
16 this --

17           CHAIRPERSON MILLER: Can I  
18 interrupt you for a second?

19           MR. WOODRING: Yeah.

20           CHAIRPERSON MILLER: What do you  
21 mean by artist studio?

22           MR. WOODRING: Well, a permitted

1 use is an artist studio where you can have, I  
2 think, a maximum of 450 square feet. You  
3 can't live there. You can do your sculpturing  
4 and painting and you can, I think, have one  
5 other person work there with you and that  
6 would be the extent of the use. You can't  
7 stay there overnight or live there.

8 So, you know, I think we figured  
9 we could get, I think, 8 or 10 artist studios  
10 on the property. But like I said, the cost of  
11 building these, the construction costs and  
12 everything else and then what you could rent  
13 them for or even sell them if you wanted to do  
14 a condominium concept, the numbers just didn't  
15 work out.

16 I mean, we would have to be  
17 charging downtown prices for square footage  
18 for rent. So that wouldn't work.

19 Also, with the special exception  
20 in R-1-B, you can't have parking lot. And but  
21 then in reading the special exception for a  
22 parking lot to be put in, it would have to be

1 within 200 feet of a retail or a commercial  
2 area. This doesn't qualify.

3 So as I say, even if I got the  
4 land for free, none of these uses would work  
5 out from an economic basis. So I went back to  
6 the single-family and said this is the best  
7 use for the property.

8 So, you know, I then started doing  
9 some research with my architect and we talked  
10 to the Fire Marshal's office. They, in fact,  
11 did a field study with their trucks and  
12 everything and they gave us approval that it  
13 was no problem with their emergency vehicles.  
14 In fact, they made a comment that when we come  
15 down Harrison Street with the parked -- cars  
16 parked on both sides, we have more room in  
17 your alley than we do on Harrison Street. So  
18 I think we got the approval of the Fire  
19 Marshal for emergency vehicles.

20 We also talked to some staff  
21 members down here at BZA and told them what we  
22 were going to be applying for to kind of get

1 a feel for what their thoughts were. And  
2 they, of course, didn't encourage us or  
3 discourage us. They just said well, it sounds  
4 like it's a reasonable request.

5 But then we went before the ANC  
6 and, in fact, the Chairman of the ANC for that  
7 Ward is either a real estate or zoning  
8 attorney and I think he wrote a letter in  
9 favor of it. He thought based on his  
10 knowledge of the Zoning Regulations, we should  
11 be granted the variance whether its a use or  
12 area variance. And also, I think the Co-  
13 Chairman of ANC also voted in favor of it.

14 So in talking to all these people  
15 and doing my proformas, I decided -- and then  
16 in talking to Holland and Knight who we  
17 retained to represent us, and they are doing  
18 their research, I thought we had a reasonable  
19 chance of having the variance granted. And so  
20 that way I went ahead and decided to make the  
21 financial investment to go through the -- you  
22 know, this hearing and the other things, the

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1 architectural fees that we had to do.

2 So I think that we have, you know,  
3 a reasonable request here to put a single-  
4 family. It won't be a detriment to the  
5 neighborhood. In fact, in looking at the sale  
6 prices of homes in that neighborhood as of  
7 2006, you know, the average price in there was  
8 anywhere from \$800,000 to \$1.2 million or \$1.3  
9 million.

10 This house would probably be  
11 priced at about, you know, over \$1.4 million  
12 or \$1.5 million. So it would be one of the  
13 most expensive houses in the neighborhood.  
14 And our architect will show you what type of  
15 house we have designed, you know, for this  
16 particular lot.

17 But if the variance isn't granted,  
18 then there is nothing that I could do with the  
19 property and there is nothing Alley Cat Mews  
20 can do with the property except pay taxes on  
21 it for, I guess, eternity. There is just  
22 nothing else that you could use this property

1 for, from an economic standpoint, unless you  
2 want to have a picnic there or something.

3 So in any case, that's about my  
4 presentation as to, you know, the study that  
5 I have done. And I think we have a reasonable  
6 request to put a single-family house on this  
7 unusual lot.

8 I think one of our hearings, prior  
9 hearings, one of the Board Members here made  
10 a comment that we need to look at this case  
11 carefully, because we don't want to set a  
12 precedent here. And my thoughts on that are  
13 this is such a unique property, how many lots  
14 are there in D.C. that have you are bounded by  
15 three 20 foot alleys in this type of area that  
16 I don't think you would be setting a  
17 precedent, because I don't think -- you would  
18 be hard put to find another lot that is  
19 similar to this.

20 So my case rested.

21 MR. HUGHS: Thank you. Madam  
22 Chair, may we go on with our other witnesses

1 or do you want to --

2 MS. DUMAS: I would actually like  
3 to do cross, if possible.

4 CHAIRPERSON MILLER: If there are  
5 different, you know, subject matters, I think  
6 it might make sense. And is that what you are  
7 saying, Ms. Dumas, also, you would like to  
8 question the witness before we go to another  
9 witness?

10 MS. DUMAS: If the witnesses will  
11 be dealing with different subject matter,  
12 that's correct.

13 CHAIRPERSON MILLER: Yeah, I think  
14 that makes sense. Do you have a problem with  
15 that?

16 MR. HUGHS: That's okay.

17 CHAIRPERSON MILLER: Well, why  
18 don't you go ahead, unless the Board has any  
19 burning questions? Okay. Well, why don't you  
20 go first?

21 MS. DUMAS: Thank you, Madam  
22 Chair.

## 1 CROSS EXAMINATION

2 MS. DUMAS: Mr. Woodring, you seem  
3 to have done quite a bit of research on this  
4 property. Did I hear you say that you entered  
5 the contract with -- to purchase with Alley  
6 Cat Mews with a contingency that variance  
7 relief would be granted?

8 MR. WOODRING: Yes, I did.

9 MS. DUMAS: And am I correct in  
10 the statement that if a variance isn't  
11 granted, you aren't bound to purchase the  
12 property at all?

13 MR. WOODRING: No, I'm not.

14 MS. DUMAS: Okay. Are you  
15 familiar with Lot 38 in Square 1877?

16 MR. WOODRING: I believe that's an  
17 Eads' lot, yes.

18 MS. DUMAS: And is the Eads' lot  
19 bounded on three sides by a public alleys?

20 MR. WOODRING: I believe two  
21 sides. Maybe the tips of it probably,  
22 probably three sides.

1 MS. DUMAS: Okay. And that's an  
2 undeveloped lot, as well?

3 MR. WOODRING: Correct.

4 MS. DUMAS: Okay. And were you  
5 present for the D.C. Fire EMS field test?

6 MR. WOODRING: No, I was not.

7 MS. DUMAS: So you don't know  
8 which alley they actually drove down?

9 MR. WOODRING: I would assume they  
10 probably drove down all. Two, there's only  
11 two of them that are improved. Probably down  
12 two of them.

13 MS. DUMAS: Okay. That's all I  
14 have.

15 MR. EADS: I have one question  
16 related to what was just asked. Is it your  
17 position that the alley is everywhere 20 feet  
18 wide?

19 MR. WOODRING: That's what our  
20 site plan records show, yes.

21 MR. EADS: Have you measured it?

22 MR. WOODRING: No, I haven't been

1 out to measure the alley. I just -- it's  
2 platted as a 20 foot alley.

3 MR. EADS: So it's your position--  
4 all right.

5 CHAIRPERSON MILLER: Oh, I have a  
6 quick question. Again, it's kind of based on  
7 my recollection of this case from a while  
8 back, but I seem to recall that this lot was  
9 part of a larger lot that was sold off. Are  
10 you familiar with that? Is that --

11 MR. WOODRING: I don't believe  
12 that that's exactly the case. I think  
13 somebody had owned a house that was on the  
14 other side of the alley and they also owned  
15 this lot, so I don't --

16 MR. EADS: I can go into that when  
17 my presentation is.

18 CHAIRPERSON MILLER: Oh, okay. You  
19 plan to do that in your presentation? Okay.  
20 I was just asking you because you seemed --  
21 you know, had done research or whatever.

22 MR. WOODRING: I just had heard

1       that the lady that owned the lot prior two  
2       years ago owned the house on either Reno or  
3       Harrison and she also had this lot here.

4               CHAIRPERSON MILLER:   Okay.   Thank  
5       you.

6               MR.   HUGHS:   So may we continue  
7       now?   Oh, thank you.   Mr. Johnson, if you  
8       will, briefly review the plans for the house  
9       and confirm that the relief requested --  
10      confirm that aside from the relief requested,  
11      there are no other -- that the property meets  
12      all other applicable area requirements.

13              MR.   JOHNSON:   Good afternoon,  
14      ladies and gentlemen.

15              CHAIRPERSON MILLER:   Excuse me.  
16      In order for the Court Reporter to pick you  
17      up, you need to speak into a mike.   Thank you.

18              MR.   JOHNSON:   I'll start again and  
19      say good afternoon.

20              CHAIRPERSON       MILLER:   Good  
21      afternoon.

22              MR.   JOHNSON:   The plan that you

1 see in front of you is the site plan of the  
2 property, which shows the 7,300 square foot  
3 lot in the green with the proposed development  
4 of, approximately, 2,100 square feet, which  
5 is, approximately, 20 percent and we are -- of  
6 lot occupancy, and we are allowed 40 percent.  
7 So we are one-half.

8 The house, as you can see, is  
9 oriented towards the triangle tip with the  
10 entry out front. The land is partially  
11 wooded, it's mostly fallen down trees on our  
12 property, but it is a wooded area. Also, the  
13 land slope is about 5 percent from the front  
14 to the side and east and west also.

15 So the topography is really not a  
16 significant problem for us. Also, public  
17 utilities, according to my research with the  
18 Department of Water and Sewer, are available  
19 from all three streets surrounding the site.

20 What we have proposed is a two  
21 story and basement traditional type home that  
22 is compatible with the surrounding

1 neighborhood. Now, what I have, the height  
2 restriction that we have is 28 feet and I  
3 believe we are at 23 feet.

4 Now, I took some pictures of all  
5 of the 27 -- or the surrounding neighborhood.  
6 And I'll be glad to pass these around if you  
7 want. But in general, they are all two story.  
8 I think there is one one story, but they are  
9 all two story homes with all pitched roofs at  
10 slopes of either 6 or 9 to 12, which is what  
11 we have designed.

12 The -- one more question on the --  
13 one more statement on the site plan. When I  
14 surveyed the -- for the spot elevations, all  
15 three of the entrances from Harrison, Reno and  
16 Chevy Chase Parkway all have new 25 foot wide  
17 concrete aprons and they are all finished and  
18 brand new. So all these access points are  
19 wide.

20 The alley itself, other than maybe  
21 a little bit of encroachment by I think there  
22 is a retaining wall along one of these, is

1 more than adequate and I have pictures here  
2 showing that. And that was verified by the  
3 Fire Department.

4 Now, I have, in addition, floor  
5 plans of each of the three floors. Now,  
6 rather than go into it, I'll just say that  
7 they are typical three-bedroom house with a  
8 studio at the lower level and a sunken  
9 courtyard in the lower level.

10 Also, I should point out that we  
11 meet every zoning requirement or exceed it  
12 and, particularly, the side yard requirement  
13 and the rear yard. We have the 25 foot rear  
14 yard, which is right here, and the 8 foot side  
15 yard. You will notice on this plan that we  
16 only tip at three places to the minimum 8  
17 foot. All the rest are considerably wider,  
18 thus preserving the green space.

19 The other thing that I wanted to  
20 bring up was as near as I can tell, we have  
21 about seven trees that are, you know, worth  
22 saving. We are going to try, somewhere at

1 this point and in here, to save those as much  
2 as possible, because I don't anticipate a lot  
3 of grading that has to be done.

4 Now, if you want, I'll go through  
5 the floor plans if you are interested,  
6 otherwise, I'll just skip over that.

7 CHAIRPERSON MILLER: I think in  
8 the interest of time, you should skip over it,  
9 unless there is some connection between them  
10 specifically to the variance relief requested.  
11 We do have copies of the plans.

12 MR. JOHNSON: Not really.

13 CHAIRPERSON MILLER: Okay.

14 MR. JOHNSON: Okay. I believe  
15 that concludes my presentation.

16 CHAIRPERSON MILLER: Okay. Thank  
17 you very much. If you want to put the  
18 pictures in, you're welcome to. It's your  
19 call.

20 MR. JOHNSON: If I want to do  
21 what?

22 CHAIRPERSON MILLER: You may. If

1     you would like to put those pictures in, you  
2     may, but you would need to show them to the  
3     opposing parties. If you want to put them in.  
4     You made reference to some photographs.

5                 MR. JOHNSON: Oh, these pictures.

6                 CHAIRPERSON MILLER: It's up to  
7     you. But you would need to show them to the  
8     opposing parties first before you put them in.

9                 VICE CHAIRMAN LOUD: Mr. Johnson,  
10    is it?

11                MR. JOHNSON: Yes.

12                VICE CHAIRMAN LOUD: Hi, Mr.  
13    Johnson. Just one quick question on the  
14    diagram that you had up there that showed the  
15    triangular lot. Yes, that's it. Thank you.  
16    Just refresh my recollection as to what abuts  
17    the property from the south.

18                MR. JOHNSON: It's all  
19    residential. There is 27 hours that surround  
20    all three sides.

21                VICE CHAIRMAN LOUD: So well --

22                MR. JOHNSON: And all of the

1 houses front either Chevy Chase Parkway, Reno  
2 Road or Harrison Street.

3 VICE CHAIRMAN LOUD: Okay. But --

4 MR. JOHNSON: This is the Eads'  
5 property right here.

6 VICE CHAIRMAN LOUD: This would  
7 not be on any of the three sides, but more at  
8 the apex?

9 MR. JOHNSON: That's correct.

10 VICE CHAIRMAN LOUD: And is there  
11 residential that would abut the property? The  
12 lot at the apex of the triangle?

13 MR. JOHNSON: No, no, it's mostly  
14 straight through to the continuation of the  
15 alley.

16 VICE CHAIRMAN LOUD: Okay. Thank  
17 you.

18 MR. JOHNSON: All of the residents  
19 that -- who abut, the 26, they all are well  
20 over 100 feet from the back of all of their  
21 present residences to any point on ours. That  
22 excludes all of the houses have garages,

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1 detached garages that are along here.

2 VICE CHAIRMAN LOUD: Okay. Thank  
3 you, sir.

4 CHAIRPERSON MILLER: Can I just  
5 ask you did you say that you mentioned Reno  
6 Road and Harrison Streets, can you show where  
7 they are on that?

8 MR. JOHNSON: Yeah. This is --  
9 Harrison is on the other side of the Eads' lot  
10 up here. And Reno Road is -- well, it's down  
11 here.

12 CHAIRPERSON MILLER: So those  
13 alleys feed into Reno Road, is that it?

14 MR. JOHNSON: There is a slope.

15 CHAIRPERSON MILLER: My Board  
16 Member is showing me, right? Okay.

17 MR. JOHNSON: Pardon me? I think  
18 she has it.

19 MEMBER DETTMAN: If I remember  
20 correctly, the alley that is shown on the  
21 north side of the property, that was -- that  
22 doesn't actually exist, right?

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1 MR. JOHNSON: That's correct.

2 MEMBER DETTMAN: It sort of exists  
3 on paper.

4 MR. JOHNSON: That's paper.

5 MEMBER DETTMAN: That exists on  
6 paper?

7 MR. JOHNSON: That's correct.

8 MEMBER DETTMAN: Okay.

9 MR. JOHNSON: That's the alley  
10 that bisects these three.

11 MEMBER DETTMAN: Right.

12 MR. HUGHS: Madam Chair, I'm a  
13 little late to the game here, but if the Board  
14 Members have copies of our original  
15 application, there is a plat that, Tab G, sets  
16 forth.

17 CHAIRPERSON MILLER: Any other  
18 Board questions? Do the opposition parties  
19 have any cross examination?

20 MS. DUMAS: I do. In addition to  
21 wanting to know what was being passed to the  
22 Board right now, because I don't think that I

1 have seen that.

2 CROSS EXAMINATION

3 MS. DUMAS: I would like to ask,  
4 Mr. Johnson, you mentioned that the field  
5 elevations at the entrances to the alley are  
6 all 25 feet in width. But did you personally  
7 measure anywhere else along the alleys?

8 MR. JOHNSON: Yes, I did.

9 MS. DUMAS: At what point along  
10 the alleys did you measure and on which?

11 MR. JOHNSON: Some of these  
12 pictures show the day I was out there to  
13 measure the three entrances here, here and  
14 here, up here. That's at the 25 foot with the  
15 new concrete apron and 5 foot radius. So I  
16 then walked along and took pictures and  
17 measured the width of the alley.

18 And for example, I believe there  
19 is a retaining wall right here along this one  
20 on this alley right here. No, actually right  
21 here, right there. And I measured that and I  
22 believe I got some of those at 19.5 feet.

1 Some actually like in this picture or this is  
2 a better one, this picture here shows the  
3 alley width and when I measured it, it was  
4 considerably wider than the 20 feet, the  
5 concrete pavement, that is.

6 I did find one or two telephone  
7 poles that it did encroach about a foot on the  
8 alley. And also along right here, that was  
9 overgrown with plants on part of that alley  
10 there, which I believe is the Eads' property.

11 MS. DUMAS: Thank you. Were you  
12 present for the D.C. Fire EMS field visit?

13 MR. JOHNSON: Not for the field,  
14 but I attended two meetings or one meeting  
15 with the Fire Marshal and explained everything  
16 with him.

17 MS. DUMAS: Were you at the  
18 property?

19 MR. JOHNSON: Yes. I've been at  
20 the property numbers of times.

21 MS. DUMAS: Well, no, were you at  
22 the property with the Fire Marshal?

1 MR. JOHNSON: No, no, I wasn't.

2 MS. DUMAS: Okay. That's all I  
3 have.

4 CHAIRPERSON MILLER: I just want  
5 to back up for a minute. Ms. Dumas, do you  
6 have any objection or does Mr. Eads have any  
7 objection to the pictures being entered into  
8 the record?

9 MS. DUMAS: I haven't seen the  
10 photographs.

11 CHAIRPERSON MILLER: Okay.

12 MS. DUMAS: I have seen this  
13 exhibit, which was just passed out. I don't  
14 have any objection to this being entered into  
15 the record.

16 CHAIRPERSON MILLER: What is this  
17 that Ms. Dumas is referring? Oh, that's for  
18 Mr. Williams presentation.

19 MS. DUMAS: Okay.

20 CHAIRPERSON MILLER: And he is  
21 going to address later. Okay.

22 MS. DUMAS: Okay. But I would

1 like to see the photographs to make a  
2 determination. I don't anticipate having an  
3 objection.

4 MR. HUGHS: Madam Chair, I don't  
5 object to him entering the photographs, but I  
6 don't have copies and I don't have any  
7 captions to know or to identify where in the  
8 alley system these pictures are taken.

9 CHAIRPERSON MILLER: Right.

10 MR. HUGHS: So I'm not sure that  
11 they offer anything more than what we  
12 presented in our prior filings.

13 CHAIRPERSON MILLER: Right. So  
14 you want to not put them into the record?

15 MR. HUGHS: I would prefer not to.

16 CHAIRPERSON MILLER: Yes, I  
17 thought they started to raise questions in my  
18 head also, you know, who took them, when did  
19 they take them, etcetera. Okay. Mr. Eads, do  
20 you have any questions? Okay. I don't see  
21 any other questions from Board Members. Do  
22 you want to go on to your next witness?

1                   MR. HUGHS: I will certainly. And  
2 I have a question for the Chair. I understand  
3 Ms. Dumas is raising some questions about the  
4 actual -- you were asking a couple of my  
5 witnesses if they were present for the site  
6 visit. I believe I'm the only one who had any  
7 conversation with the particular folks at the  
8 Fire Marshal's office beyond our initial  
9 visit.

10                   I'm not certainly representing  
11 that I'm a witness, but I'm a little bit torn.  
12 I don't know. I was -- the information was  
13 conveyed to me from the Fire Marshal, so I  
14 don't know how to get that before the Board.

15                   MS. DUMAS: I certainly don't mean  
16 to belabor the point. We will address it in  
17 our case, but I'm simply asking whether  
18 anybody else was present to take the  
19 measurements, because the letter on its face  
20 does not seem to indicate whether any  
21 measurements were actually taken.

22                   CHAIRPERSON MILLER: What letter

1 are you referring to?

2 MS. DUMAS: Both Mr. Woodring and  
3 Mr. Johnson indicated that the D.C. -- and Mr.  
4 Hughs have indicated that the D.C. Fire  
5 Department has approved the alley access after  
6 reviewing the Fire Code requirements. And I  
7 understand that there is a letter in the  
8 applicant's prehearing statement from the Fire  
9 Marshal. Our contention is that that letter  
10 is rather inconclusive or does not state the  
11 basis upon which any conclusion is -- has been  
12 formed.

13 CHAIRPERSON MILLER: Okay. So you  
14 have seen the letter. It's not just your  
15 understanding that there is a letter? There  
16 is a letter.

17 MS. DUMAS: There is a letter.

18 CHAIRPERSON MILLER: Okay. Okay.  
19 We're going to take a moment to see if we have  
20 that letter, since it seems to be an important  
21 document in this case.

22 MR. HUGHS: Madam Chair?

1 CHAIRPERSON MILLER: It's attached  
2 to your prehearing statement?

3 MR. HUGHS: It's Exhibit C to our  
4 filing of September 11, '07. It's on the Fire  
5 and Emergency Medical Services Department  
6 letterhead and that letter is dated August  
7 24<sup>th</sup> and addressed to me from Gary Palmer, the  
8 Fire Marshal.

9 MR. MOY: Madam Chair, I believe  
10 that is Exhibit 28.

11 CHAIRPERSON MILLER: I have it. A  
12 few of us have located it. Okay. Ms. Dumas,  
13 did you say you were going to be addressing  
14 this later in your case presentation?

15 MS. DUMAS: That's correct.

16 CHAIRPERSON MILLER: Okay, fine.  
17 All right. Mr. Hughs, were you looking for  
18 some kind of response from the Board or are  
19 you just making a statement?

20 MR. HUGHS: Well, Madam Chair, we  
21 can address it then when it is raised by the  
22 party in opposition.

1 CHAIRPERSON MILLER: Okay. Good.

2 MR. HUGHS: So I'll defer that  
3 issue. Then if we're ready to go to our next  
4 witness, is that right? Okay. If I might, I  
5 would like to bring forward Lindsley Williams,  
6 who has been qualified by this Board on a  
7 number of occasions as an expert in zoning and  
8 planning issues, and who I request to be  
9 qualified in the present case.

10 And as I mentioned before, we're  
11 under unusual circumstances in terms of our  
12 qualifying Mr. Williams, given that he only  
13 heard about it today. So we would like to  
14 submit Mr. Williams' resume and then he is  
15 going to be utilizing Mr. Sher's testimony  
16 outline.

17 CHAIRPERSON MILLER: Okay. Any  
18 objections?

19 MS. DUMAS: No objection.

20 CHAIRPERSON MILLER: Okay. I  
21 believe Mr. Williams has been qualified as an  
22 expert before this Board before. And so has

1 Mr. Sher, so I don't see any problems. Do  
2 you? Okay.

3 MR. HUGHS: Thank you, Madam  
4 Chair.

5 MS. BAILEY: Mr. Williams?  
6 (Whereupon, the witness was  
7 sworn.)

8 MS. BAILEY: Thank you.

9 CHAIRPERSON MILLER: I have a  
10 question. Do we have this testimony of Mr.  
11 Sher before us or we don't in our record? Is  
12 it attached to the hearing statement?

13 MR. HUGHS: I believe I submitted  
14 it when we came before the Board in December,  
15 but I cannot be sure. It's unchanged from  
16 that time, so I'm not sure if that happened or  
17 not.

18 CHAIRPERSON MILLER: Okay. I hear  
19 it's our Exhibit 35. Okay. Thank you. Okay.  
20 Ms. Bailey has just given us new copies, so we  
21 all have copies so we can follow along that  
22 way. Thank you.

1 MR. WILLIAMS: Would you like me  
2 to begin?

3 CHAIRPERSON MILLER: Okay. I  
4 think we're ready when you are.

5 MR. WILLIAMS: Excellent. Good  
6 afternoon, ladies and gentlemen of the Board,  
7 members of the Office of Planning and members  
8 of the community and the audience. My name is  
9 Lindsley Williams and thank you for granting  
10 me the status that I earned before again in  
11 this case to be an expert in this particular  
12 pleading.

13 My resume, which you have, will  
14 tell you, and many of you know this already,  
15 that I have lived in the city for some 40  
16 years now and I can tell you as a matter of  
17 personal history that while I originally lived  
18 in Chevy Chase, Maryland, I lived out on  
19 Connecticut Avenue and came down Connecticut  
20 Avenue to get to the city. And so Chevy Chase  
21 Parkway was one of my ways of traversing,  
22 avoiding some lights and probably doing this

1 neighbors wish I hadn't done.

2 But later in my life, my children  
3 attended piano lessons from Rose DeMur, a lady  
4 who lived on a segment of Chevy Chase Parkway  
5 across from the square that is the subject of  
6 today's discussion. So I have a series of  
7 knowledges of the area that are different from  
8 my usual level of expertise and it goes back.

9 I have been in the alley systems  
10 in the past, not recently, and today I  
11 revisited the area from my computer and  
12 generated the diagram that was submitted to  
13 you earlier, which answers some of the  
14 questions about where is Harrison, where is  
15 Reno, where is Chevy Chase Parkway and where  
16 is the site. The site, if you haven't figured  
17 it out, is the big dot in the middle.

18 And I'm here today to go over the  
19 testimony that Steve had prepared to talk to  
20 you about, Steve Sher prepared to talk with  
21 you about, on December 11<sup>th</sup>, but that for a  
22 variety of circumstances didn't take place

1 that day and won't take place today with him,  
2 because he became ill.

3 So here I am. Now, what I would  
4 like to do is to walk down through his outline  
5 and hopefully lead you to the conclusion that  
6 he came to and that I now share with him,  
7 having gone over his outline and argument, and  
8 the fact that, as I understand them, in this  
9 case.

10 The site is located in the center  
11 of a square bounded by Harrison Street, Reno  
12 Road and Chevy Chase Parkway, as identified  
13 now on the diagram in front of you. It is  
14 identified as Lot 37, which doesn't show on  
15 this diagram. It is a lot that was created in  
16 the 1920s, something that I confirmed myself  
17 this morning by examining the 1925-based Atlas  
18 for the area which shows these lots as they  
19 existed then, which is just about the same as  
20 they exist now.

21 There may be a few ANT lot  
22 deviations, but Lots 37 and 38 right there in

1 the middle of the square then surrounded by  
2 platted alleys of a width of 20 feet. So  
3 whether the alleys are, in fact, 20 feet  
4 paved, I don't know. I haven't been there  
5 recently enough to testify to that, but I can  
6 tell you absolutely on the based-Atlas each  
7 and every one of them has got a 20 foot width.

8 And if you look at my diagram, you  
9 will see that not only Lot 38, but Lot 37 have  
10 clipped corners. Those clipped corners  
11 facilitate turning movement, so that, indeed,  
12 at those points the alley is even wider than  
13 the 20 foot distance. This is a standard  
14 practice in the city when there is a 90 degree  
15 turn or sharper that you try to clip a little  
16 bit back.

17 And so what's a triangular lot  
18 actually becomes a hexagonal lot, etcetera,  
19 etcetera, but it's the -- the shapes are there  
20 as you see it. The lot has, as we know, no  
21 street frontage. It has the three 20 foot  
22 wide alleys, two of which have been described

1 as being improved or paved.

2 There are actually three improved  
3 alleys in the overall square. The fourth one  
4 is the one that is a paper alley that bisects  
5 the larger triangle, if you will, that is  
6 formed by the two interior lots, 37 and 38.

7 The land area on the lot in  
8 question is 7,302 square feet. And I am  
9 advised and the aerial photograph confirms  
10 that it is currently wooded or covered with  
11 other spontaneous vegetation. The area is  
12 surrounded by single-family dwellings on the  
13 three streets. I count 26 of them. Many of  
14 them have garages.

15 And the one lot to the north, Lot  
16 38, is vacant. The area in general is  
17 predominantly single-family detached  
18 dwellings. There are multi-family structures  
19 located along Connecticut Avenue, but that is  
20 not in the square in question. There is --  
21 and the zoning there is a combination of R-3  
22 to the north of Harrison Street and R-5-D to

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1 the south running between Chevy Chase Parkway  
2 all the way down to Nebraska Avenue.

3 Nebraska Avenue, the frontage  
4 there, which you can see at the corner of my  
5 or the side of my diagram, is an R-2 Zone, but  
6 it is basically a residential community and  
7 that residential zoning continues in the  
8 general direction to the east toward Reno Road  
9 and past on its way to Wisconsin Avenue.

10 In the R-1-B Zone District, the  
11 one-family detached dwelling is permitted as  
12 a matter-of-right, that's in section 201(a).  
13 A maximum height is ordinarily allowed of  
14 three stories or 40 feet. It has to have  
15 5,000 square feet. Remember, this lot has  
16 over 7,000. Lot occupancy is limited to 40  
17 percent. Rear yard is set at 25 feet. Side  
18 yard at 8 feet for each side and parking one  
19 to a dwelling.

20 Now, what I want you to do is go  
21 back to this drawing, if you will, with me for  
22 a second. And you will see that a little bit

1 above and slightly to the left of that dot,  
2 you will see kind of a mark. And it actually  
3 says 50 feet. That's my little mark that was  
4 added to what I produced off the computer this  
5 morning.

6 And what I'm trying to do is to  
7 give you a sense of the scale of what could be  
8 the closest house as it is currently developed  
9 to the site in question, not counting the 8  
10 feet that is going to be removed from the side  
11 yard. I scaled that out as being something in  
12 the order of 50 feet.

13 Another way of looking at this is  
14 what is the rear yard requirement for all the  
15 houses in the zone, not just our's, but the  
16 ones that are surrounding it. And the answer  
17 is it has to have a 25 foot side yard.

18 So if you take -- I mean, excuse  
19 me, rear yard. And if you take the 25 feet  
20 that is required, if you add to that the width  
21 of the alley, if you add to that the width of  
22 the side yard that the applicant is proposing,

1 you come up with something in excess of 50  
2 feet.

3 What's 50 feet? 50 feet is the  
4 distance from the end of this room through the  
5 second column here. That's a good separation  
6 in a resident zone from one house to the next.

7 The proposed development, as we  
8 know, is a detached single-family dwelling.  
9 And as the architect has indicated, it is  
10 complying with all height, all area and all  
11 bulk requirements of the regulations. What we  
12 have is a situation where the alleys were  
13 platted at a time before the Zoning  
14 Regulations that establish the 30 foot  
15 requirement were put in place. Why would you  
16 leave it as -- as near as I can tell, the  
17 alley requirements came about in 1958, the 30  
18 foot rule.

19 And the area was subdivided by the  
20 Chevy Chase Land Company in the '20s and was  
21 established with the alleys that they have  
22 right now and the result had been what we

1 have. We have a 30 foot requirement. We have  
2 alleys that are providing 20 feet. And the  
3 variance is -- that is needed is 10 feet.

4 What's the situation in the area  
5 in general? Well, I did a survey this morning  
6 trying to get familiar with the facts that I  
7 would need to bring to your attention to  
8 demonstrate the tests that are involved in  
9 this situation.

10 And one of the tests that we have  
11 to do is to show that it is an uncommon or  
12 unusual situation. Well, this is ladies and  
13 gentlemen an unusual situation. We have the  
14 diagonal streets, particularly Nebraska Avenue  
15 and Connecticut Avenue. We have the  
16 serpentine Reno Road. And we have laid on top  
17 of this, in this case, the grid formed by  
18 Harrison.

19 This whole serpentine and  
20 triangular pattern extends throughout much of  
21 the area north of Albemarle and west of  
22 Wisconsin up to the top of the District of

1 Columbia, if you will. However, while that is  
2 the case, I have only been able to identify  
3 about five squares in which there are interior  
4 lots that are triangular and they are  
5 different from this situation in several  
6 respects.

7 Two of them are located  
8 immediately along side of either Wisconsin  
9 Avenue or Connecticut Avenue. And they are  
10 abutting a Commercial District and what has  
11 happened in those cases is that there is an  
12 alley system that runs behind the buildings  
13 and they are used as parking lots for the  
14 flanking commercial establishments. And they  
15 are 15 foot alleys.

16 There are other situations located  
17 along Nebraska Avenue, particularly at Broad  
18 Branch and once at Military, where there are  
19 other interior triangular lots and they are  
20 served, either or both, by 15 foot alleys.  
21 There are no other 20 foot alley systems in  
22 the entire, what I'm going to call, Chevy

1 Chase area that serve these interior  
2 constrained alley lots.

3 They are either -- they have got  
4 the 15 foot alleys and several of them are  
5 less than, and I think most of them are less  
6 than 5,000 square feet. So they fail the test  
7 of whether they could be developed by right in  
8 terms of the area standard that would apply in  
9 the first case.

10 So what we have, as I look at the  
11 situation, is that we have one case, this  
12 case, where we have the alley serving them of  
13 greater width than is prevailing in the other  
14 situations and where there is enough land area  
15 to actually use it for that which is intended  
16 by the zone in question.

17 So going back a little bit to the  
18 outline Steve provided you on page 3 the  
19 standards for the variance relief, the usual  
20 three prong test, and I won't repeat them for  
21 the sake of saving everybody the time to read  
22 that. I believe as he does that the variance

1 standards are met.

2 We have an extraordinary situation  
3 formed by the confluence of the triangular  
4 shape of the property, the presence of  
5 improved lots and different ownerships on  
6 alleys leading to the surrounding streets  
7 making it impossible to, basically, get street  
8 access, so as to cure the problem in some  
9 other way.

10 There is no other reasonable use  
11 for the property for the purpose for which  
12 it's zoned. We are in an R-1 Zone District,  
13 which is the most restrictive of the Zone  
14 Districts in the District of Columbia. But  
15 there, we do allow, as we know full well, one  
16 family-dwellings.

17 It is the only type of use that is  
18 habitable that's permitted in an alley lot.  
19 The other uses aren't places of habitation.  
20 They are churches, Sunday school buildings,  
21 transportation rights-of-way, farms, fair  
22 grounds, private garages, which the applicant

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1 spoke about earlier or public school. I can't  
2 imagine that being there.

3 And other lists that were  
4 identified as we walk down through the chart.  
5 And to my way of thinking, all of those other  
6 uses would pose something of a challenge to be  
7 assimilated into the community in which it  
8 would be otherwise thrust.

9 Uses are permitted by special  
10 exception. We are not asking for any of the  
11 special exception relief that is identified in  
12 the eight or so types of special exceptions  
13 that are where something is possible.

14 So what we have is that this is an  
15 alley lot where none of the other uses make  
16 sense because of size, location or other  
17 suitability standards.

18 This application can, in our view  
19 and in my view, be granted without substantial  
20 detriment to the public good. It meets the  
21 requirements for the Zone District in terms of  
22 area requirements. It satisfies the height,

1 bulk and setback requirements. All the  
2 surrounding houses are substantially removed  
3 from the proposed dwelling, that was the 50  
4 foot wall to post analogy that I gave you  
5 earlier.

6 Single-family dwelling use is  
7 compatible. It is the most compatible use in  
8 structure to the other buildings that are  
9 surrounding in the area. The lot is the same.  
10 It is comparable to the other lots. Some of  
11 them are smaller, some of them are larger, but  
12 this is not a tiny lot where we are trying to  
13 shoehorn in something like Cinderella's  
14 sisters were trying to get into the slipper.

15 The conclusions. The site is  
16 affected by exceptional conditions with regard  
17 to shape, location and practical inability to  
18 gain frontage on the 30 foot alley. There is  
19 undue hardship resulting from the inability to  
20 put the property to any other reasonable use  
21 without a variance. This is the only  
22 habitable structure permitted as a single-

1 family dwelling.

2 Other uses permitted are not  
3 reasonable uses for the property. The  
4 proposed dwelling meets the requirements of  
5 the R-1-B District. It is comparable to other  
6 lots in the square and it's 50 percent larger  
7 than the minimum that is required. The house  
8 is consistent with the size and character of  
9 other homes. The architect described to you  
10 the nature of the pitch of the roofs, the type  
11 of dwellings. This is something that fits the  
12 character of that community.

13 Thus, ladies and gentlemen, I'm  
14 happy to tell you I conclude the application  
15 should be granted.

16 MR. HUGHS: Thank you.

17 CHAIRPERSON MILLER: Why don't you  
18 go first, Ms. Dumas? Do you have questions?

19 MS. DUMAS: I do have just a few.

20 CHAIRPERSON MILLER: Okay.

21 MS. DUMAS: But I'm happy to defer  
22 to the Board, if you would prefer to go first.

1 CHAIRPERSON MILLER: Okay. I  
2 mean, I have a question, but all right. What  
3 was my first question? The undue hardship.  
4 Oh, no, my first question is what do you  
5 believe is the purpose of 2507.2?

6 MR. WILLIAMS: 2507.2, the  
7 requirement.

8 CHAIRPERSON MILLER: You know, the  
9 Zoning Commission's intent. Mr. Williams was,  
10 for those of you who are interested, on the  
11 Zoning Commission at one point, so perhaps you  
12 never dealt with this regulation.

13 MR. WILLIAMS: I was on the Zoning  
14 Commission, as you indicated. I can tell you  
15 that I did not have a lot of experience from  
16 the vantage point of the Zoning Commission  
17 with that. I remember one case in my  
18 community that came up shortly after, as I  
19 remember, I was on, it was a Macomb Street  
20 alley lot case. But this is a general  
21 standard and it's designed to say we want to  
22 have a width that is more like that of a

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1 street.

2 I mean, I'm just saying that's  
3 what the measurement is. It's approaching  
4 street right-of-way width. And in Georgetown  
5 and Reed-Cooke, for example, the curb to curb  
6 distance in many of the communities is 30 feet  
7 and a right-of-way that is 50.

8 So 30 foot is kind of like a  
9 street. Can I find that expression of theory  
10 in the Zoning Regulations? No. Is there any  
11 history that I can tell you about how 30 foot  
12 came to be created? No. What I can tell you  
13 is that in any number of cases where there  
14 have been development plans and rearrangements  
15 of alleys downtown, the Government has  
16 negotiated in situations where there has been  
17 a 10 or a 12 foot alley or a 15 foot alley and  
18 the desire is to maintain two-way traffic.

19 And the Government negotiates and  
20 says if you are going to have alley access, we  
21 really need you to create an easement, so that  
22 we have effectively a 20 foot wide alley,

1 that's what we have here from the get-go, but  
2 I can't answer your question of 30 feet,  
3 what's the magic of that number.

4 CHAIRPERSON MILLER: Okay. And  
5 then my question about undue hardship. Do you  
6 think that it's an undue hardship not to be  
7 able to build on a lot per se?

8 MR. WILLIAMS: I think the Board  
9 is authorized, and I'm glad it is, to look at  
10 the entire body of Zoning Regulations and to  
11 make appropriate judgments. In this case,  
12 when you have a lot where it can be reasonably  
13 utilized as we are proposing to do it and the  
14 circumstances of a regulatory provision deny  
15 it, but for the relief that can be earned and  
16 granted through this Board, I think it's an  
17 undue hardship.

18 CHAIRPERSON MILLER: I see.

19 MR. WILLIAMS: To just say the  
20 rule is the rule, it's a 30 foot rule.

21 CHAIRPERSON MILLER: No, I don't  
22 think the Board will be saying the rule is the

1 rule. I think the Board would be looking at  
2 the three prong test. And so my question went  
3 to the undue hardship, because it sounds like  
4 that's the argument that is being made, that  
5 there is no building that would work here  
6 other than a single-family dwelling, because  
7 you have looked at all these others uses and  
8 they are not economically viable, they are not  
9 needed, they are not whatever.

10 MR. WILLIAMS: They are not  
11 appropriate.

12 CHAIRPERSON MILLER: They are not  
13 appropriate. So that would leave no building?

14 MR. WILLIAMS: Well, but we're  
15 contending that a single-family dwelling is a  
16 viable use, that it can be provided in a  
17 manner that will be consistent and compatible  
18 with the community, be an asset to the  
19 community, generally speaking. And that to  
20 say that you should be prevented from using  
21 the land for a purpose that the land is  
22 already zoned for, because of a measurement

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1 issue having to do solely with the alley,  
2 which is very unusual in its circumstances, it  
3 is -- that to us is something that brings us  
4 to the Board saying we would like relief as  
5 you are authorized to grant it and we think  
6 you can provide it and you should.

7 CHAIRPERSON MILLER: Okay. Any  
8 other questions?

9 MEMBER DETTMAN: Just one, Madam  
10 Chair. Mr. Williams, I heard Mr. Hughs  
11 mention that putting this piece of land back  
12 to productive use as a single-family dwelling  
13 would be an asset to the community. And I  
14 think you just sort of reiterated that point.

15 Given the apparent opposition to  
16 this project from the surrounding community,  
17 could you just sort of clarify what you mean  
18 by that this would be an asset to the  
19 community?

20 MR. WILLIAMS: Well, what I mean  
21 by that is that right now it is, essentially,  
22 a vacant piece of land. And vacant land does

1 not always invite the kind of attention that  
2 an occupied piece of land will do. And to my  
3 way of thinking, having something where there  
4 is somebody that lives in the property that  
5 wants to maintain it, all yards are their  
6 yards to maintain and show and enjoy.

7 It creates a different type of a  
8 climate than something where you have a piece  
9 of land that is overgrown with voluntary  
10 vegetation and where -- I don't know the whole  
11 history, but it's the kind of property that  
12 could become a target of clean it or leave it.  
13 I don't know the property. I haven't been  
14 there today to see what condition it is in.

15 But it is the type of thing which  
16 is at risk of becoming under-attended. It's  
17 a term I'm just making up to answer your  
18 question. So to me having the property that  
19 is occupied and used is far better than having  
20 a piece of land that is sort of not quite  
21 right for anything, but which because it is in  
22 somebody else's ownership, isn't something

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1 where you can just sort of open it up to the  
2 community and say you all come and somehow  
3 make it work.

4 There are liability issues to the  
5 current property owner. And I would suspect  
6 they might have to fence it off or do other  
7 things to protect themselves from risks that  
8 others might find on the grounds if they  
9 weren't there to attend to it. That's a  
10 theory. I haven't -- I can't say what this  
11 particular property would do. I haven't been  
12 able to study it in the half day that I have  
13 been aware of this afternoon's duties.

14 CHAIRPERSON MILLER: I mean, a lot  
15 of vacant properties, you know, do attract  
16 criminals and loiters, etcetera, but this  
17 vacant property has been around, been vacant  
18 for how many years?

19 MR. WILLIAMS: I don't know how  
20 long.

21 CHAIRPERSON MILLER: Oh, okay.

22 MR. WILLIAMS: But it was platted.

1 It was on the '25-based Atlas and I don't  
2 think much has happened since. What I would  
3 say about other vacant land is that we often  
4 have unbuilt lots next to somebody else's  
5 house. And so there is a side yard. But it  
6 typically is owned by the owner, the other, of  
7 the abutting persons and it become a part of  
8 what they consider theirs and what is treated  
9 and becomes a part of their yard, their  
10 maintenance and so on and so forth.

11 It's a different situation than  
12 when it is across a dividing line formed by an  
13 alley of any width.

14 CHAIRPERSON MILLER: Okay.  
15 Anything else?

16 COMMISSIONER JEFFRIES: Yeah. Mr.  
17 Williams, I'm trying to -- in some of your  
18 testimony you talked about other alley lots  
19 and some successful alley lots that you would  
20 say in terms of development?

21 MR. WILLIAMS: I don't know that  
22 I'm prepared to say they were successful, Mr.

1 Jeffries. I was -- I did indicate that I  
2 believe that I found that two of the five  
3 other lots that I was familiar with in this  
4 sort of study of Chevy Chase were used as  
5 parking lots for adjacent development.

6 One is the lot directly behind the  
7 Huntington Apartment Building on Connecticut  
8 Avenue and the block just north of Chevy Chase  
9 Parkway. The second is the alley lot that is  
10 located behind the commercial strip that is  
11 located on Wisconsin Avenue between Fessenden  
12 and Ellicott. Yeah, Fessenden and Ellicott  
13 Streets on Wisconsin on the west side.

14 COMMISSIONER JEFFRIES: There was  
15 a similar configuration? I mean, it was --  
16 they were surrounded by residential and --

17 MR. WILLIAMS: Well --

18 COMMISSIONER JEFFRIES: I mean, I  
19 understand the alley row ways were not as  
20 wide, but --

21 MR. WILLIAMS: In those two cases,  
22 the triangular area that has been formed by

1 the alley system and the interior of the lots  
2 seems to be used as parking that is accessory  
3 to either the commercial properties on  
4 Wisconsin Avenue or the apartment building  
5 that is the Huntington Towers on Connecticut  
6 Avenue.

7 The other three that I have  
8 identified, which are off of Nebraska Avenue  
9 either at Broad Branch or at Military are  
10 served by 15 foot alleys, but appear to be  
11 just plain vacant, but at least two of them  
12 are smaller than the minimum size of 5,000  
13 square feet. They are just vacant. And I  
14 haven't been to them to see whether they are--  
15 what character they have.

16 COMMISSIONER JEFFRIES: So are you  
17 saying as far as you know, this would be the--  
18 I mean, this configuration with an alley lot  
19 would be the first configuration with a  
20 single-family home?

21 MR. HUGHS: Mr. Jeffries, I'm  
22 afraid Mr. Williams is at a bit of a --

1 COMMISSIONER JEFFRIES: Oh, okay.

2 MR. HUGHS: -- disadvantage, since  
3 he hasn't had much time --

4 COMMISSIONER JEFFRIES: Sure,  
5 sure.

6 MR. HUGHS: -- to prepare. But he  
7 did mention a case, based on his experience,  
8 I think in the public sphere earlier which was  
9 the Rothblum case. And Mr. Sher was prepared  
10 to talk about that case. I've got a copy of  
11 the BZA order. It's a very similar case. In  
12 fact, it's the only other case that we're  
13 aware of where the Board reviewed a lot that  
14 was surrounded by alleys in an R-1-B District.

15 The Board handled it as an area  
16 variance, approved it and from our research it  
17 has been a quite successful -- the house was  
18 constructed and would be -- so that I don't  
19 testify on this issue, I'll be pleased to have  
20 Mr. Sher submit something into the record for  
21 your consideration after the hearing. The  
22 opposition can certainly --

1 COMMISSIONER JEFFRIES: Because  
2 I'm interested in knowing what successful  
3 means.

4 MR. HUGHS: It certainly hasn't  
5 lowered the property values.

6 COMMISSIONER JEFFRIES: Okay.  
7 Well, I mean, there could be complaints from,  
8 you know, adjacent owners. I mean --

9 MR. HUGHS: I believe Mr.  
10 Rothblum, this is something of a digression,  
11 is now on the -- I'm not sure, the various  
12 ANC, but he is an ANC Commissioner.

13 COMMISSIONER JEFFRIES: Okay. He  
14 is.

15 MR. HUGHS: So --

16 COMMISSIONER JEFFRIES: Okay.

17 MR. HUGHS: Would you like me to  
18 submit that for the record?

19 COMMISSIONER JEFFRIES: I don't --

20 CHAIRPERSON MILLER: That case  
21 that you are making reference to --

22 MR. HUGHS: Yes, Madam Chair.

1 CHAIRPERSON MILLER: -- was that--  
2 I would think you would have referred to that  
3 earlier on in the proceedings --

4 MR. HUGHS: We did.

5 CHAIRPERSON MILLER: -- when we  
6 were considering. Okay. So it's in our file?

7 MR. HUGHS: It's in my statement  
8 on -- back when we first came before you, I  
9 quoted from that order. So it's in our --  
10 it's buried amongst the paper that is already  
11 in the record. I just --

12 COMMISSIONER JEFFRIES: But it  
13 would be making a case for an area variance  
14 and we have already covered that ground.

15 MR. HUGHS: It's a case for a  
16 variance that was requested and that  
17 particular Board determined that it was an  
18 area variance, but I think in terms of the  
19 degree of relief needed, it was the same sort  
20 of analysis went into it that there was little  
21 to nothing that could be done with the  
22 property absent what was proposed.

1 COMMISSIONER JEFFRIES: Okay. I  
2 mean, Madam Chair, I mean, my only interest  
3 was less around the discussion of use versus  
4 area variance just around, you know, really  
5 understanding just operationally how this all  
6 works. I mean, this will be a house that sits  
7 around, what's the front, what's the back?  
8 You know, I mean, there is a number of things  
9 that, you know, I just, you know, wanted to  
10 get my arms around. And so that was really  
11 the basis of just wanting to know about, you  
12 know, comparable locations.

13 CHAIRPERSON MILLER: Well, is that  
14 discussed in the order? I don't know what --  
15 you know, this order is a summary order, a  
16 full order?

17 MR. HUGHS: I believe it's a full  
18 order.

19 CHAIRPERSON MILLER: It's a full  
20 order. So there might be facts going to those  
21 points that Mr. Jeffries is interested in.  
22 What's the number on it?

1 MR. HUGHS: It's Application No.  
2 13963 of Richard S. and Marcia H. Rothblum.

3 CHAIRPERSON MILLER: And what's  
4 the year?

5 MR. HUGHS: 1983.

6 CHAIRPERSON MILLER: Okay.

7 MR. WILLIAMS: And I was quickly  
8 reading and I might just say I served on the  
9 Commission at that time and thankfully I was  
10 not on the case and had simply forgotten about  
11 it. It is in the ANC that I was associated  
12 with and, indeed, your ANC as well, Madam  
13 Chairman.

14 CHAIRPERSON MILLER: Okay. But I  
15 wasn't on the ANC then.

16 MR. WILLIAMS: No, you weren't,  
17 nor was I.

18 CHAIRPERSON MILLER: So I'm not  
19 personally familiar with any alley cases  
20 surrounding a lot, just for the record. Okay.

21 COMMISSIONER JEFFRIES: One last  
22 question. And so based on all your background

1 information, due diligence, the only use -- I  
2 mean, single-family home, I mean, obviously,  
3 R-1-B, is really the best use and function for  
4 this overall?

5 MR. WILLIAMS: I have no  
6 reservation coming to that conclusion. None  
7 whatsoever. To me it seems like it's a large  
8 enough piece of land to accommodate a house of  
9 some -- of a reasonable size. It's not out of  
10 scale with the community. The height is not  
11 out of scale. The pitch of the roof, the  
12 whole design is designed to be something that  
13 fits into the community. It is more -- it is  
14 filling in of an opportunity and it goes to  
15 the infill language, if you will, of the  
16 Comprehensive Plan.

17 COMMISSIONER JEFFRIES: But if I'm  
18 coming out of the front of the house, I'm  
19 walking out of the front of the house, what am  
20 I looking at?

21 MR. WILLIAMS: I'm pointing to the  
22 architect thinking he can better describe that

1       than I, Mr. Jeffries.

2                   COMMISSIONER JEFFRIES:   So you're  
3       looking straight down at the apex.   And then,  
4       I mean, am I seeing trash?   I mean, am I  
5       seeing bins, waste paper bins?   I mean, I  
6       would imagine the other side of the house, you  
7       know, it works well for the paper alley to the  
8       north.   But I'm just trying to understand, you  
9       know, the suitability of that front entrance.

10                   I mean, it looks very nice in  
11       terms of how you have configured it on the  
12       site, but it would be interesting to see a  
13       shot as you're walking out of that house from  
14       the front what you would be looking at.

15                   MR. JOHNSON:   You can see on this  
16       larger plat, that's the front of the house  
17       right there.

18                   COMMISSIONER JEFFRIES:   You're  
19       looking down at the south, right?

20                   MR. JOHNSON:   No, excuse me.

21                   COMMISSIONER JEFFRIES:   Right.

22                   MR. JOHNSON:   The front of the

1 house is here. There's just really three  
2 lots. I didn't take pictures up there to see  
3 if there are any retaining walls. But most of  
4 the houses along the alley have either walls  
5 or fences, brick walls or fences that abut the  
6 alley. I believe that's what will show on the  
7 pictures.

8 COMMISSIONER JEFFRIES: Okay.

9 MR. JOHNSON: There is no rear  
10 yard that opens directly to an alley, that I  
11 know of.

12 COMMISSIONER JEFFRIES: Okay.

13 MR. JOHNSON: There are -- the  
14 residents do use the backyard for their trash  
15 cans and whatnot. I did envision that. But  
16 I think when we oriented it in this direction,  
17 we picked the nicest front elevation that we  
18 could have with a portico and with the  
19 confluence of the three alleys.

20 COMMISSIONER JEFFRIES: And I  
21 understand that and I think it does look very  
22 nice. I'm just trying to understand once I

1 walk out of that house exactly what am I  
2 looking at? No, no, I got it from a bird'seye  
3 view looking at a plan. I'm talking about  
4 perspective. I'm talking about what does a  
5 person who is walking out of a house, who is  
6 looking, what's my landscape? What am I  
7 looking at? You don't have a photograph of  
8 it?

9 MR. JOHNSON: No.

10 COMMISSIONER JEFFRIES: No.

11 MR. JOHNSON: Well --

12 COMMISSIONER JEFFRIES: I mean,  
13 this is just the inherent issue with it,  
14 because this house is in the round. It's a  
15 figural element in a field that has to somehow  
16 operate in this field. But yet, it's  
17 directional. I mean, you know, the front of  
18 the house is at the apex there, so that's, you  
19 know, what I'm trying to get my arms around.

20 I mean, clearly someone will buy  
21 the house. I'm clear on that. But I just --  
22 I'm just dealing with, you know, issues around

1       suitability and livability and so forth.

2                   MR. JOHNSON: Well, when I stood  
3       here, you -- I don't say you can see Reno  
4       Road, but you can pretty close to it, you  
5       know, and the nice channel street going up  
6       there. It's nothing bad about that, the way  
7       I see it. And I thought that that was the  
8       better orientation than either of the other  
9       two.

10                   COMMISSIONER JEFFRIES: I see.  
11       Okay. Thank you. Thank you very much.

12                   MR. HUGHS: Mr. Jeffries, if I  
13       could, sorry, step back. The application, the  
14       Rothblum case that I referenced, it is in our  
15       filing of September 28 at Tab 3, so we don't  
16       need to submit it again, just so you have it.

17                   CHAIRPERSON MILLER: Do you have  
18       an exhibit number on that by any chance?

19                   MR. HUGHS: I don't have it.

20                   COMMISSIONER JEFFRIES: September  
21       28<sup>th</sup>? Is that --

22                   MR. HUGHS: It was our filing of

1 September 28<sup>th</sup>.

2 COMMISSIONER JEFFRIES: Yeah,  
3 okay.

4 MR. HUGHS: But I don't have the  
5 record.

6 CHAIRPERSON MILLER: Okay. We  
7 will find it.

8 MR. MOY: Madam Chair, I believe  
9 that is Exhibit 36.

10 CHAIRPERSON MILLER: Thank you.

11 COMMISSIONER JEFFRIES: Oh, 1979.

12 MR. HUGHS: There is a 3 and a  
13 3(a) or just 3.

14 COMMISSIONER JEFFRIES: I only  
15 have -- is it a Tab 3 and a Tab 3(a)?

16 MR. HUGHS: No, there is a Tab  
17 3(a). I didn't want you to confuse it. It's  
18 Tab 3 of this bound document.

19 COMMISSIONER JEFFRIES: Oh, maybe  
20 I'm looking -- oh, you know what, I'm in the--  
21 okay. Sorry, I'm in the wrong place.

22 CHAIRPERSON MILLER: Okay. Any

1 other Board questions? There weren't any  
2 other cross examination questions, were there?  
3 There are? You didn't start. Okay. Go  
4 ahead.

5 CROSS EXAMINATION

6 MS. DUMAS: Did I hear you  
7 correctly say that you are not aware of any  
8 other triangular lots which are not abutting  
9 commercial in the surrounding neighborhood,  
10 based on your review?

11 MR. WILLIAMS: I would not have  
12 meant to have said that. I don't think I said  
13 that. I think what I said or what I would say  
14 is that in the Chevy Chase community area,  
15 which I define as running from, essentially,  
16 the west side of Wisconsin Avenue north of  
17 Albemarle up over to the park and out to the  
18 District boundary, I found, approximately,  
19 five, one, two, three, four, six triangular  
20 lot situations which are formed by alley  
21 systems.

22 This is the only one of them that

1 is served by alleys that are all 20 feet wide.  
2 Of those alley lots that I found, I believe  
3 that five of them are in residence Districts.  
4 One, the one on Wisconsin between Fessenden  
5 and Ellicott is abutting a Commercial  
6 District. The one on Connecticut Avenue that  
7 backs up from the Huntington Apartment is  
8 owned by the same ownership as the Huntington  
9 and seems to be in use as a parking lot that  
10 is accessory to that are. That would be Zoned  
11 R-5-B. The others, I believe, are in R-1-A or  
12 R-1-B. I haven't evaluated that.

13 MS. DUMAS: Can you identify the  
14 squares in which you found those lots?

15 MR. WILLIAMS: I believe so.  
16 Okay. And they are 1991, 2027, I believe, and  
17 2024 and then I'm afraid my numbers are not  
18 legible for the lot on Wisconsin Avenue  
19 between Fessenden and Ellicott Street.

20 MS. DUMAS: Okay.

21 MR. WILLIAMS: And then there is,  
22 of course, the lot in question and then the

1       Huntington lot, I believe, is 1874.  Again,  
2       the number is a little murky.

3               MS. DUMAS:  Okay.  Is lot 38 in  
4       Square 1877 not identical in character as you  
5       have described it bounded on three sides with  
6       20 foot alleys --

7               MR. WILLIAMS:  Yes.

8               MS. DUMAS:  -- from Lot 37?  
9       Identical to, I should say.

10              MR. WILLIAMS:  It is identical in  
11      that sense, but it is not identical in that it  
12      is not another alley system which is all part  
13      of the same alley system.  And I'm taking the  
14      uniqueness as the overall alley system.  And  
15      since the paper alley is not developed, I did  
16      not consider that in the same way.  If you  
17      want to make a distinction that there is  
18      another lot, yes, there is clearly.

19              MS. DUMAS:  And that lot does have  
20      alley frontage on its eastern and western  
21      sides as well, does it not?

22              MR. WILLIAMS:  It has alley --

1 developed alley frontage on its north. It  
2 also has alley frontage on the east and west  
3 sides. And it has sort of a theoretical alley  
4 to the south.

5 MS. DUMAS: And if a variance were  
6 to be granted on the subject property allowing  
7 for the development of a single-family house,  
8 other than perhaps bulk and area requirements,  
9 which I'm sure you haven't evaluated, what  
10 would prevent the Board from also granting a  
11 use variance to allow a single-family dwelling  
12 on that Lot 38?

13 MR. WILLIAMS: I think that's a  
14 legal question as to whether or not there is  
15 something that would prevent it. I don't feel  
16 I should answer a legal question.

17 MS. DUMAS: Are you -- you're a  
18 land planner?

19 MR. WILLIAMS: I'm a land planner.

20 MS. DUMAS: Are you familiar with  
21 other neighborhoods in the District of  
22 Columbia or elsewhere in which a development

1 pattern allowing a front facing lot to abut a  
2 rear yard is encouraged or allowed?

3 MR. WILLIAMS: I don't believe I  
4 understand your question as you have phrased  
5 it.

6 MS. DUMAS: Are you aware of other  
7 -- I'll be happy to rephrase. Are there other  
8 neighborhoods in the District of Columbia or  
9 elsewhere that you are aware of in which as an  
10 urban designer, a land planning policy front  
11 to back configurations are either encouraged  
12 or allowed?

13 MR. WILLIAMS: Well, what I would  
14 say in the District of Columbia whether it is  
15 in Dupont Circle or throughout Chevy Chase  
16 area, as you look at the street pattern which  
17 has often got any number of diagonals that  
18 slice through which are the blessing of Mr.  
19 L'Enfant, but they also create situations  
20 where one person's backyard is opening up to  
21 another person's side yard. And it creates an  
22 eclectic pattern throughout the entire city.

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1                   So in that sense, this is far from  
2                   -- this is the norm of development in the  
3                   District of Columbia in its most interesting  
4                   communities.

5                   MS. DUMAS: Can you identify for  
6                   me a neighborhood in which there is a home  
7                   that where a front yard faces a rear yard?  
8                   Opens onto a rear yard across a public right-  
9                   of-way?

10                  MR. WILLIAMS: Across a public  
11                  right-of-way?

12                  MS. DUMAS: Either an alley or a  
13                  street.

14                  MR. WILLIAMS: There would be such  
15                  situations in any of the lots, for example,  
16                  where there is a through lot. I'm thinking  
17                  right now of the houses on Ordway Street which  
18                  run on the north side of Ordway Street and  
19                  that open up to the exposure from the through  
20                  lot from Highland Place that is adjacent to  
21                  the National Child Research Center that has a  
22                  garage directly across the street from it. It

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1 also opens up to the rear of the entire  
2 National Child Research Center, so there are  
3 about a half a dozen houses right there where  
4 their front yards are directly exposed into  
5 somebody else's rear yard. That's just one  
6 example.

7 MS. DUMAS: Are you familiar with  
8 the Alley Dwelling Act?

9 MR. WILLIAMS: No.

10 MS. DUMAS: So you have not  
11 reviewed the D.C. Code with respect to alley  
12 dwellings?

13 MR. WILLIAMS: As you probably  
14 understand, I became aware that I was  
15 substituting for Mr. Sher who is ill earlier  
16 this morning and in the time since then, I  
17 have not reviewed the Alley Act.

18 MS. DUMAS: I have no further  
19 questions.

20 MEMBER DETTMAN: Well, I just have  
21 one observation and then one question, which  
22 is probably best direct to Mr. Hughs. I'm not

1     sure I can buy into this argument that this  
2     lot is a result of diagonal streets cutting  
3     through particular neighborhoods.

4             I know in my neighborhood there is  
5     this exact situation and it's called Crispus  
6     Attucks Park. It's actually a fairly large  
7     piece of land. It's an alley lot. Yes, it's  
8     an alley lot and I think it's surrounded by  
9     alleys that are less than 30 feet. The  
10    property has gone through a significant  
11    history, but it's now a community park. It's  
12    collectively owned by an LLC that is made up  
13    of the owners that surround this park.

14            Which I think -- which leads me to  
15    my question. Which I think we have sort of  
16    heard that there is an interest in doing this  
17    in this situation with GreenPiece, LLC. And  
18    so, Mr. Hughs, in your filing Exhibit No. 41,  
19    page 6, you sort of address the idea of the  
20    party opponents propose purchase of the  
21    property is not an economically viable use.

22            And not having too much experience

1 with use variances and not being an attorney,  
2 I sort of find myself asking in terms of an  
3 undue hardship, how much is enough? And so  
4 maybe you could help me clarify in my mind how  
5 much is enough? What constitutes an economic  
6 burden? What constitutes and undue burden  
7 with respect to the idea that there is sort of  
8 an offer on the table?

9 MR. HUGHS: Mr. Dettman, there is  
10 no offer on the table to my client. And as  
11 far as we are told from the owner, there was  
12 no -- the -- I have an affidavit from Alley  
13 Cat Mews that could go to the discussions or  
14 non-discussions regarding the potential  
15 purchase by the party in opposition.

16 However, in terms of the  
17 jurisprudence on this issue, I'll just quote  
18 from or paraphrase, because I don't know if I  
19 have all the words exactly right. But I think  
20 it's pretty close to a quote from the Palmer  
21 case which, I think, recognizes a pretty  
22 important case in distinguishing area and use

1 variances and the test and so forth is that a  
2 use variance requires a demonstration that a  
3 reasonable use of the property cannot be made  
4 in a manner consistent with the Zoning  
5 Regulations.

6 There is nothing in that or any  
7 other case that obligates a property owner to  
8 sell its property to whether it be an LLC  
9 which has ostensibly an honorable purpose or  
10 another property owner that may be the only  
11 one that could benefit from that property.

12 For instance, there is a case  
13 called Rumel that there was a substandard lot  
14 and the closest any board that I have seen or  
15 any Court, the Court of Appeals, has come to  
16 suggesting potential purchase of the property  
17 by another owner was by a neighboring property  
18 owner that was abutting that property, which  
19 if that abutting property owner, probably  
20 owner B, were to have acquired this  
21 substandard lot, could ostensibly have  
22 consolidated the properties and thereby taken

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1 away the substandard nature of the lot.

2 But in terms of what is enough  
3 here, and aside from the fact that there is no  
4 agreement between -- well, I don't even want  
5 to digress in terms of any negotiations  
6 between the party opponent and the current  
7 owner. There is no obligations I've said,  
8 I'll pity myself now, that a property owner  
9 divest itself of its property to save itself  
10 from suffering an undue hardship.

11 And I'll leave it at that and I  
12 note the Chair has looked at me, so we have  
13 some level of questions.

14 MEMBER DETTMAN: Well, I guess  
15 maybe sort of pulling back with my question  
16 and how I phrased it in terms of there is an  
17 offer on the table, because maybe there is  
18 not. But, you know, the regs has a list of  
19 viable uses that you have sort of laid out  
20 that they are not actually viable, churches  
21 and parking lots and stuff.

22 But it seems to me that there

1 might be a viable use that could be a  
2 community asset that might not be in the regs  
3 and this is maybe a community park. A  
4 privately owned park open to the community.  
5 And I'm just wondering what your reaction and  
6 maybe Mr. Williams could answer this, what  
7 your reaction to that in terms of why isn't  
8 that a viable use?

9 It's not particularly directly  
10 stated in the regs, but why can't we view that  
11 as a viable use?

12 MR. WILLIAMS: Well, the regs do  
13 permit a public recreation or community center  
14 and I know that's -- the distinction between  
15 a public and private recreation, to me, is one  
16 that could be evaluated by others. I would  
17 not personally find that to be antithetical to  
18 the purposes and character of the area.

19 But it isn't a list that leaps out  
20 as being specifically permitted. I don't know  
21 what would happen if they went down and tried  
22 to get an occupancy permit to do that. It is

1 nothing that I have specifically evaluated.  
2 But inherently, inherently, it is not  
3 something that is going to be at fundamental  
4 odds.

5 How one gets there, I don't know.  
6 What I'm trying to say is that we have a use  
7 here that is being sought that is expressly  
8 permitted and, I won't go through all this, it  
9 fits, it works, there's no relief needed  
10 except for this alley width requirement.

11 MR. HUGHS: And again, just to  
12 clarify, Mr. Woodring testified here before.  
13 He is the contract purchaser of the property.  
14 He entered into that contract arms length  
15 negotiation. Any discussions -- he has not  
16 been -- it is my understand Mr. Woodring could  
17 certainly testify that he has not been  
18 approached by anyone to -- with any sort of  
19 purchase offer.

20 MS. DUMAS: Madam Chair, if I may,  
21 I think we can spend a lot of time debating  
22 what constitutes an undue hardship and that

1 that is a legal question that the lawyers  
2 probably ought to brief as part of our  
3 summation in this case. Given -- with all due  
4 respect, given the fact that our clients have  
5 been to the -- this Board no less than four  
6 times without having had the opportunity to  
7 testify, I would suggest that we move on and  
8 be able to present our entire case and leave  
9 those types of questions.

10 I understand Mr. Dettman's  
11 question and I would like to address it as  
12 well, but I think it might be more appropriate  
13 to address it in writing in the form of either  
14 a written summation or a proposed findings of  
15 fact and conclusions of law at the conclusion  
16 of the hearing.

17 CHAIRPERSON MILLER: Are you  
18 saying that because there are people here who  
19 have to leave? I mean, because we can go out  
20 of order, but there is a difference between  
21 being able to ask a witness a question and  
22 then getting something in writing. So I don't

1 want to preclude Board Members from asking  
2 questions.

3 MS. DUMAS: That's not my  
4 intention at all.

5 CHAIRPERSON MILLER: Okay.

6 MS. DUMAS: My intention is only  
7 that we be able to complete our entire case  
8 before the Board has to leave today, so that  
9 we don't have to return.

10 CHAIRPERSON MILLER: Yes, you  
11 will. I mean, we're planning -- we're going  
12 to finish your case. We hope to get to the  
13 next case as well. But I think that a part of  
14 this is legal and part of it is factual. So  
15 I think we are almost finished wrapping this  
16 up. But I do want to ask Mr. Williams and Mr.  
17 Hughs if they are of the opinion that a park  
18 would not be a permitted use on the subject  
19 property?

20 MR. HUGHS: I'm not saying it's  
21 not a permitted use. It's not an economically  
22 viable use of the property.

1 CHAIRPERSON MILLER: It's not  
2 economically viable for the owner?

3 MR. HUGHS: For the owner or the  
4 applicant.

5 CHAIRPERSON MILLER: Okay. Then  
6 this is my last question though, well, no,  
7 double question. One is the regulations read  
8 to undue hardship on the owner, correct?  
9 We're not talking about undue hardship on the  
10 contract purchaser. Is that your  
11 understanding, too?

12 MR. HUGHS: Certainly we can  
13 approach it that way, Madam Chair. I don't  
14 necessarily agree with that, but I --

15 CHAIRPERSON MILLER: Okay. Okay.  
16 Maybe we can be persuaded, too.

17 MR. HUGHS: But I think we meet  
18 that test in either regard, so --

19 CHAIRPERSON MILLER: Okay. Well,  
20 what's the undue hardship upon the owner if he  
21 is selling the property? If he can sell the  
22 property.

1                   MR.    HUGHS:  Well, if we're  
2                   standing in the shoes of the owner, if this  
3                   application is denied, there is really nothing  
4                   that the owner can do with the property that  
5                   the -- the owner cannot -- the issues that Mr.  
6                   Woodring has raised as a contract purchaser  
7                   are the same things that would be raised by  
8                   the current owner of the property.

9                   MR.    WOODRING:  There's no  
10                  difference.

11                  MR.  HUGHS:  Say for the closed  
12                  universe of some folks --

13                  CHAIRPERSON MILLER:  And I think  
14                  Ms. Dumas is probably going to get into this  
15                  and I'm sorry for jumping the gun, but we're  
16                  just trying to zero in here.  Often we might  
17                  have vacant land and, you know, grant a  
18                  variance, because otherwise say there might be  
19                  nothing that would be done to it, like there  
20                  wouldn't be a park.  It might be between two  
21                  buildings or something and it would be  
22                  attractive to loiterers or whatever.  And

1       that's not the case here it seems.

2                   And we will hear from the other  
3       side, but from what we know from the pleadings  
4       it sounds like there is a case that may be  
5       made that somebody else might want to buy it  
6       for open space.   So --

7                   MR.   HUGHS:   The property was  
8       listed with a multiple listing service.

9                   CHAIRPERSON MILLER:   Okay.

10                  MR.   HUGHS:   And the applicant  
11       purchased it six months after it was listed,  
12       so the applicant put a contract.

13                  MS.   DUMAS:   I think, if I may,  
14       this is a very interesting question, because  
15       the applicant is Alley Cat Mews.  The  
16       applicant is the owner of the property.  The  
17       owner of the property has authorized Mr.  
18       Woodring as contract purchaser to file this  
19       application.

20                  But with respect to who has to  
21       show the undue hardship or who the offer to  
22       purchase has been made to, the offer to

1 purchase has been made to the applicant, Alley  
2 Cat Mews. So in that respect, there is an  
3 offer on the table and actually there have  
4 been multiple offers made to purchase the  
5 property and we will get into that in our case  
6 in chief.

7 CHAIRPERSON MILLER: Okay. I just  
8 want to give them one more opportunity before  
9 we move to, you know, Office of Planning and  
10 then opposition. You're not testifying that  
11 you have tried to sell it to other bodies, for  
12 instance, or the owner has and has been unable  
13 to sell it for that purpose?

14 MR. HUGHS: Could you repeat that  
15 last question? We're not testifying to what?

16 CHAIRPERSON MILLER: That the  
17 owner has tried to sell it to somebody else to  
18 use for open space, park, for instance, and  
19 has been unable to. Like, you know, sometimes  
20 we hear --

21 MR. HUGHS: That's correct.

22 CHAIRPERSON MILLER: -- that --

1 MR. HUGHS: We do have, as I said,  
2 an affidavit from Alley Cat Mews if the Board  
3 would like us to submit that.

4 CHAIRPERSON MILLER: It's your  
5 case. If you have a --

6 MS. DUMAS: I would object to it.

7 CHAIRPERSON MILLER: You would  
8 object on what grounds?

9 MS. DUMAS: On the grounds that  
10 Alley Cat Mews is not here to testify.

11 CHAIRPERSON MILLER: To cross  
12 examine?

13 MS. DUMAS: And that we can't  
14 cross examine them, Alley Cat Mews.

15 CHAIRPERSON MILLER: Do you have  
16 something to say to that, Mr. Hughs?

17 MR. HUGHS: No, Madam Chair, I  
18 don't. And just in terms of responding to the  
19 question raised by Ms. Dumas or the statement  
20 that she is confused by the nature of the  
21 applicant here, I think it's pretty standard  
22 course that contract purchasers of property

1 file applications on behalf of the current  
2 property owners. I know we have done that on  
3 a number of occasions on commercial  
4 properties.

5 CHAIRPERSON MILLER: Okay. You  
6 may file it on behalf.

7 MR. HUGHS: And we have --

8 CHAIRPERSON MILLER: I think the  
9 confusion --

10 MR. HUGHS: -- a letter of  
11 authorization from Alley Cat Mews --

12 CHAIRPERSON MILLER: Okay. But  
13 the confusion goes --

14 MR. HUGHS: -- to submit the  
15 application.

16 CHAIRPERSON MILLER: -- to really  
17 the question that I asked initially at this  
18 hearing and I'm still asking with respect to  
19 whose undue hardship are we looking at? And  
20 the regs --

21 MR. HUGHS: Well, we're certainly  
22 agreeable.

1 CHAIRPERSON MILLER: Yeah.

2 MR. HUGHS: Mr. Woodring has  
3 undertaken certain expenses in addition to  
4 Alley Cat Mews in terms of the purchase price  
5 from him, from Alley Cat Mews versus what  
6 Alley Cat Mews may have purchased the property  
7 for originally. In addition to fees he has  
8 undertaken for his due diligence and architect  
9 costs. But nonetheless, we are willing and we  
10 believe our case succeeds based upon even the  
11 lesser amount.

12 The permitted uses, the reasonable  
13 uses in the R-1-B District for this property  
14 without the relief granted today, it's a very  
15 small universe. And looking at it from the  
16 current owner's perspective, looking at it  
17 from Mr. Woodring's perspective, I don't think  
18 it makes any difference in terms of the  
19 reasonable return one could get on a property.

20 There is no obligation. There is  
21 no -- no Court in the District of Columbia has  
22 stated that there is an obligation to sell

1 your property to a neighboring property owner  
2 to avoid an undue hardship.

3 (Whereupon, at 5:00 p.m. the  
4 Public Hearing continued into the evening  
5 session.)

6  
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1 E-V-E-N-I-N-G S-E-S-S-I-O-N

2 5:00 p.m.

3 CHAIRPERSON MILLER: Okay. And  
4 you are kind of testifying, but somebody else  
5 may fill in that evidence. But basically,  
6 your undue hardship is that the applicant,  
7 one, that they can't build any of the  
8 reasonable uses that are listed in the  
9 regulations as matter-of-right uses.

10 MR. HUGHS: That was Mr.  
11 Woodring's testimony, yes.

12 CHAIRPERSON MILLER: And that was  
13 Mr. Williams, too, I think.

14 MR. HUGHS: Yes, sorry.

15 CHAIRPERSON MILLER: And then you  
16 added something about a right of a reasonable  
17 return or something on your property. I don't  
18 think we have a witness, but that's your  
19 theory?

20 MR. HUGHS: That's more of a --  
21 that's just based on jurisprudence that we can  
22 get to whenever we --

1 CHAIRPERSON MILLER: Okay.

2 MR. HUGHS: -- want to .

3 CHAIRPERSON MILLER: Okay. So  
4 that will go at the end. Okay. Any other  
5 questions?

6 VICE CHAIRMAN LOUD: Just a quick  
7 follow-up question to your line of inquiry,  
8 Madam Chair. Wouldn't it be reasonable for  
9 the Board to probe this whole idea of whether  
10 there are any reasonable uses of the property  
11 for the purpose for which it is zoned and for  
12 that to be an inquiry that is made of the  
13 owner of the property, which would relate to  
14 whether or not there are other offers on the  
15 property that the owner had pursued and/or may  
16 still be available, whether it is GreenPiece  
17 or not, that constitute reasonable uses, at  
18 least in the eyes of the contract -- the  
19 potential contract purchasers?

20 Wouldn't that be a reasonable  
21 inquiry for us to make that would help answer  
22 for us the second element of this variance

1 test?

2 MR. HUGHS: Is that a question to  
3 me or to the Chair?

4 VICE CHAIRMAN LOUD: No, that's a  
5 question to counsel.

6 MR. HUGHS: Okay. I'm sorry. I  
7 understood it to be a question to the Chair.  
8 Well, in terms of other offers on the table,  
9 this was the offer that -- Mr. Woodring's was  
10 the offer that is under contract. I mean,  
11 they are under contract. He is a contingent  
12 purchaser. Are you asking if there were --

13 VICE CHAIRMAN LOUD: I understand  
14 that.

15 MR. HUGHS: -- other contracts  
16 or --

17 VICE CHAIRMAN LOUD: I understand  
18 that. But if we're trying to clarify whether  
19 there is any other reasonable use for this  
20 property for which it is zoned and there are  
21 a number of different items that you  
22 identified and Mr. Sher has identified in his

1 testimony, wouldn't that be tied to whether or  
2 not there are other offers that were made on  
3 this property, and I'm assuming, I'm making a  
4 big assumption, that they were not for  
5 residential development, that would have given  
6 the owner some value for the property?

7 Would that be a relevant inquiry  
8 to make?

9 MR. HUGHS: Offers that were less  
10 than the owner purchased the property for?

11 VICE CHAIRMAN LOUD: No.

12 MR. HUGHS: Or just any inquiries?

13 VICE CHAIRMAN LOUD: Any offers  
14 made on the property as to which the owner  
15 considered those offers. They were viable  
16 bonafide offers, that relate to whether or not  
17 there were some other uses for this property  
18 that made it viable for this particular owner  
19 for sale.

20 MR. HUGHS: In terms of to sell  
21 the property?

22 VICE CHAIRMAN LOUD: That's

1 correct.

2 MR. HUGHS: As opposed to develop  
3 himself?

4 VICE CHAIRMAN LOUD: That's  
5 correct. Well, the owner is not developing it  
6 himself, as I understand it. It's a contract  
7 purchaser.

8 MR. HUGHS: That's -- he has --  
9 but if this purchaser withdraws or is unable  
10 to obtain the variance, then the owner would,  
11 obviously, retain the property and be saddled  
12 with the same zoning limitations on the  
13 property.

14 VICE CHAIRMAN LOUD: Were there  
15 other offers?

16 MR. HUGHS: And I don't know that  
17 there would be other offers, at that time. i  
18 don't know if there were other offers.

19 VICE CHAIRMAN LOUD: Okay.

20 MR. HUGHS: And I'm sure that's  
21 something Ms. Dumas will get into and Mr.  
22 Eads.

1 CHAIRPERSON MILLER: Well, let me  
2 say this. I think Ms. Dumas is going to get  
3 into this, so we should probably let her. She  
4 has got evidence it sounds like she is trying  
5 to put in. And then maybe see if we need  
6 anything else. But it also looks like it is  
7 the applicant's burden of proof and it sounds  
8 like it's not an area that they are anxious to  
9 prove, that it sounds like you may not think  
10 you need to prove that and that's a legal  
11 argument.

12 So we can see where we are at the  
13 end of the hearing, what do you think, as to  
14 whether we need more, because I do think that  
15 Ms. Dumas is going to be offering testimony on  
16 that issue. Is that okay with you?

17 VICE CHAIRMAN LOUD: Yes, it's  
18 fine with me.

19 CHAIRPERSON MILLER: Okay.

20 VICE CHAIRMAN LOUD: It's just  
21 again, and I guess you sort of alluded to it,  
22 as part of the applicant's case in chief, one

1 might want to hear some of that testimony  
2 directly as opposed, sort of pinching it from  
3 the cross examination of the opposing party.

4 MR. HUGHS: Okay. I think I'm --  
5 just to revisit. We went through the  
6 exercise, what Mr. Woodring did as the  
7 contract purchaser and what the permitted uses  
8 are in the R-1-B District. Even were one to  
9 take that argument from the standpoint of the  
10 property owner, it's the same exercise.

11 What I'm not following is I think  
12 you are saying another option aside from  
13 developing your property is that someone has  
14 suggested that they have made an offer to buy  
15 it and that that is -- that the property owner  
16 was somehow obligated to purchase the property  
17 at whatever offer was made, if it were a  
18 reasonable offer.

19 And that by not accepting that  
20 offer, they are somehow precluded from making  
21 an argument for undue hardship to develop the  
22 property?

1                   VICE CHAIRMAN LOUD: No, I'm  
2                   saying analytically, I can see a distinction  
3                   between the property owner and the test for  
4                   the property owner and the contract purchaser  
5                   and the test for the contract purchaser,  
6                   because the contract purchaser has a much  
7                   narrower interest particularly in this case  
8                   where they want to develop it residentially,  
9                   which is only one of the matter-of-right uses  
10                  for that particular property.

11                 But that's just my personal sort  
12                 of take on this.

13                 MR. HUGHS: But the only matter-  
14                 of-right uses in the R-1-B Zone are the uses--  
15                 the artist studio and the parking garage are  
16                 the only potential, possible -- I mean, I  
17                 guess, we could revisit the list and how they  
18                 are not feasible based on parking and loading  
19                 requirements or what have you. But I think  
20                 that we just kind of maybe wrongly jumped  
21                 through that exercise, because they are just,  
22                 you know, formally -- not compatible for an R-

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1 1-B Zone of this size in this location.

2 And may I -- there was something  
3 raised by Ms. Dumas, a question raised of Mr.  
4 Williams that I would like to sort of get on  
5 redirect before we go, a question she raised  
6 about back to front and so forth.

7 CHAIRPERSON MILLER: Okay.

8 MR. HUGHS: Once the Board has  
9 completed its round.

10 CHAIRPERSON MILLER: I think that,  
11 you know, we will come back to this later, but  
12 it's already 5:00. So I think we should go  
13 into your redirect.

14 REDIRECT EXAMINATION

15 MR. HUGHS: It's a very simple  
16 thing. There are -- Ms. Dumas raised a  
17 question about are you aware of other  
18 neighborhoods where front to back sort of  
19 configurations are allowed. And if this were  
20 a 30 foot wide alley, do the Zoning  
21 Regulations address that relationship, in  
22 absence of 2507.2?

1                   MR. WILLIAMS: It would -- I'm not  
2                   sure I understand your question, Mr. Hughs,  
3                   here or request for my clarification that  
4                   would add 10 feet or greater distance than  
5                   what is there right now, but I sense I'm  
6                   missing your point.

7                   MR. HUGHS: That's fine. It's not  
8                   a terribly relevant point, I think.

9                   CHAIRPERSON MILLER: Okay. Is  
10                  there any more cross examination? Okay. Yes,  
11                  Mr. Jeffries?

12                 COMMISSIONER JEFFRIES: Madam  
13                 Chair, I'm sorry to interrupt here, but I am  
14                 going to have to part because of a family  
15                 emergency. I will be reading the record. I  
16                 did want to make certain that the applicant  
17                 understands, you know, this business of  
18                 contract purchaser and owner and so forth.

19                 I mean, you know, I'll leave that  
20                 all for the attorneys. I am more focused on,  
21                 you know, operationally how this works and  
22                 whether this is appropriate for this

1 particular area and if it's going to create  
2 certain hardships and so forth. And that's  
3 how I'm going to judge it.

4 So I'm really interested in  
5 hearing from the residents as to, you know, in  
6 terms of infrastructure, how this general area  
7 works. I'm very focused again on the front  
8 door of this single-family home and exactly  
9 what you are going to be seeing once you walk  
10 out of there.

11 And I clearly understand the  
12 applicant's point of view about, you know,  
13 offers being made. I mean, clearly, there is  
14 more profit in a single-family home than  
15 perhaps having a community garden, but again,  
16 I just -- you know, at this point, where I'm  
17 at, I'm just really looking at the viability  
18 of this single-family home in this context.  
19 And that's how I want to look at it and how it  
20 impacts the adjacent neighbors.

21 MR. HUGHS: Mr. Jeffries, may I  
22 just suggest that when you -- it's not

1 necessarily an either/or consideration.

2 COMMISSIONER JEFFRIES: Um-hum.

3 MR. HUGHS: It's -- and you are  
4 looking at it from the perspective of coming  
5 out the front door of this proposed building,  
6 but also the inverse of that which is what  
7 would the neighbors to the south or other  
8 directions see from their rear yards and so  
9 forth.

10 And to respond -- to return to  
11 Mr. Woodring's testimony, other potential  
12 options that were studied, but determined not  
13 feasible, but are permitted uses in the R-1-B,  
14 technically are parking garages and artist  
15 studios.

16 COMMISSIONER JEFFRIES:

17 Absolutely.

18 MR. HUGHS: So I just don't want  
19 to be necessarily -- it's not an either/or.

20 COMMISSIONER JEFFRIES:

21 Absolutely.

22 MR. HUGHS: Okay.

1                   COMMISSIONER JEFFRIES: And I  
2 think you might recall when I started my  
3 miniature discourse here, is that, you know,  
4 this house is in the round. It's a circular  
5 figure element that's in a field. And so I am  
6 not just interested in the front door, but the  
7 back door, the sides and how it relates to all  
8 of the -- within the context. And that's what  
9 I'm most interested in.

10                   So I just apologize in terms of  
11 having to leave and miss the testimony, but I  
12 will review the record. So okay, thank you.

13                   CHAIRPERSON MILLER: Thank you,  
14 Mr. Jeffries. Mr. Jackson, good afternoon.

15                   MR. JACKSON: Thank you, Madam  
16 Chair. My name is Arthur Jackson. I'm a  
17 Development Review Specialist of the District  
18 of Columbia Office of Planning. Before you,  
19 you have a report from the Office of Planning.  
20 I'm not sure how you want me to proceed. If  
21 you are thoroughly familiar with the report,  
22 we can answer questions or I can briefly go

1 through and highlight the salient points.  
2 What's your direction?

3 CHAIRPERSON MILLER: Well, I think  
4 it might be helpful if you want to highlight  
5 the three prong test, you know.

6 MR. JACKSON: Okay.

7 CHAIRPERSON MILLER: Whether you  
8 think it meets uniqueness, undue hardship and  
9 substantial detriment.

10 MR. JACKSON: All right,  
11 certainly. According to the preliminary  
12 statement of the compliance submitted by the  
13 applicant, the extraordinary conditions of  
14 this case are that the property is bounded on  
15 three sides by alleys that are less than 30  
16 feet wide. And the applicant is unable to  
17 remove this limitation by consolidating this  
18 property with adjacent lot.

19 The unusual shape, location and  
20 physical isolation of the property are key  
21 characteristics identified. Granted the site  
22 is unique, however, the listed characteristics

1 of the location, it is being bounded by  
2 alleys, is consistent with the definition of  
3 an alley lot. So since all alley lots meet  
4 this definition, these characteristics are  
5 really not unique.

6 I would say that in terms of  
7 exceptional and undue hardship, the contract  
8 purchaser is unable to construct a one-family  
9 detached dwelling on this alley lot due to the  
10 referenced zoning provisions that -- so this  
11 limitation and based on the preliminary  
12 statement, there appears to be little  
13 economical use of the property that would not  
14 require relief by the Board.

15 But again, with reference to the  
16 previous statements, there are a number of  
17 uses that could be allowed on the property  
18 that are entirely consistent with the location  
19 and characteristics of the site. Again, I  
20 think the fact that this square, this triangle  
21 is in the square surrounded by residences, are  
22 -- gives it a certain sense of isolation,

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1 which is indicative of the uses that would be  
2 appropriate there, which we think really are  
3 parking and the -- highlighted parking and the  
4 garages and the use as an artist studio.

5 We also find that while this lot  
6 is undeveloped, the neighboring Lot 38 is  
7 partially cleared and used for gardening.  
8 There is a basketball court and other backyard  
9 uses there. So there are other uses for this  
10 alley lot.

11 The applicant's statement also  
12 does not accurately explain how the existing  
13 regulations create an exceptional and  
14 extraordinary undue hardship. A review of the  
15 regulations prior to entering the purchase  
16 document would clearly have informed the  
17 applicant of the limitations of the uses on  
18 the site.

19 The development of the subject  
20 property for one-family dwelling and possibly  
21 encouraging similar development to neighboring  
22 alley lots and other alley lots within the

1 area is not desirable due to the site  
2 constraints and potential disruption of impact  
3 on a stable residential neighborhood.

4 The front and side yards of the  
5 alley lot would face rear yards of existing  
6 dwellings or, in this case, garages, because  
7 I think the property is pretty much surrounded  
8 by garages on every side.

9 And this is undesirable  
10 orientation for the affected properties in an  
11 urban design perspective, particularly with  
12 respect to maintaining the market values made  
13 on the adjacent streets.

14 In addition, the alley system is  
15 established specifically to provide vehicular  
16 access to rear yards or properties facing  
17 adjacent streets for parking and service. And  
18 not to provide access to isolated residential  
19 developments therein.

20 In terms of the intent, purpose  
21 and integrity of the Zone Plan, the statement  
22 indicates the variance could be granted

1 without substantial detriment to public good,  
2 without impairing integrity of the Zone Plan.

3           However, the prohibitions against  
4 construction of alley lots less than 30 feet  
5 are -- really is a longstanding provision and  
6 it dates all the way back to the Lewis Plan  
7 for regulations that were adopted in 1958.  
8 The proposal also impacts the privacy,  
9 enjoyment of the neighboring dwellings and  
10 rear yards and would encourage similar  
11 development proposals on other alley lots in  
12 the area.

13           Finally, in looking at the maps  
14 that were provided by the applicant and even  
15 maps of the general area, this would be the  
16 only alley lot with a residence in the entire  
17 -- in this entire area of the District. So it  
18 would be entirely consistent with existing  
19 housing pattern in this part of town.

20           So I'm sorry, part of the  
21 District. So in light of these concerns,  
22 creating the required variance would impair

1 the intent, purpose and integrity of the  
2 Zoning Regulations as they were anticipated to  
3 serve the citizens of the District.

4 That reflects largely the comments  
5 from the Office of Planning and we're  
6 available to answer questions.

7 CHAIRPERSON MILLER: I don't have  
8 any questions. I think it was a very thorough  
9 report. Thank you. Do other Board Members  
10 have questions?

11 VICE CHAIRMAN LOUD: Just one  
12 follow-up question. I understand your  
13 testimony to say that the lot is not unique  
14 and that alley lots -- I guess I'll just read  
15 from your testimony. In that "Lots bounded by  
16 alleys are consistent with the definition of  
17 an alley lot and all alley lots in the  
18 District meet this definition."

19 MR. JACKSON: Right.

20 VICE CHAIRMAN LOUD: But on the  
21 other hand, you're saying that this is the  
22 only alley lot in this part of town that is

1       zoned residential?

2                   MR. JACKSON:  No, I -- if I said  
3       that, that's not what I meant.

4                   VICE CHAIRMAN LOUD:  Okay.

5                   MR. JACKSON:  What I'm saying was  
6       that there are a number of residential -- a  
7       number of alley lots in residential areas.  In  
8       fact, the alley across Connecticut Avenue is  
9       in R-2 Zone District and this is the R-1-A.  
10      What I was noting was that none of these alley  
11      lots that are identified in a -- we did a look  
12      at existing lots between Military Road,  
13      Connecticut Avenue, Nebraska and the alley  
14      lots that exist, none of the alley lots that  
15      exist have any residential development on  
16      them.

17                   They       are       either       vacant,  
18      undeveloped or used for parking.  So this  
19      would be a unique circumstance in that we are  
20      creating a single-family residence in the  
21      interior of a square on an alley lot that's  
22      entirely surrounded by alleys.  So that in

1       itself would be -- we would be creating a  
2       unique circumstance.

3               VICE CHAIRMAN LOUD:   So in other  
4       words, there are a number of these alley lots  
5       that are zoned residential.

6               MR. JACKSON:   Yes.

7               VICE CHAIRMAN LOUD:   That are  
8       bounded on all sides by 20 foot alleys?

9               MR. JACKSON:   Well, I wouldn't say  
10      20 foot alleys, but there are alleys.   And  
11      some of these are, essentially, triangle  
12      parks, so I won't say they are -- that all of  
13      them are interior lots, but they are bounded  
14      by right-of-way alleys and the ones that are  
15      interior to squares, though are by definition  
16      alley lots.

17              VICE CHAIRMAN LOUD:   But isn't  
18      part of what the applicant is saying in this  
19      case is what makes this lot unique is that  
20      it's bounded on all three sides by these 20  
21      foot alleys.

22              MR. JACKSON:   Um-hum.

1                   VICE CHAIRMAN LOUD: Which require  
2                   some relief from 2507.2, I think, before they  
3                   can be developed? Otherwise, it could be  
4                   developed as matter-of-right, I think.

5                   MR. JACKSON: Well, yes. I think  
6                   even if you look at the filing by the  
7                   applicant and the map on the back of the  
8                   applicant, there is a map. There is a  
9                   triangle lot right across Connecticut Avenue  
10                  that they are showing there. So there are  
11                  other lots in the area that are triangularly  
12                  shaped that are -- but there are -- none of  
13                  them are developed as residential uses.

14                  They are all developed either  
15                  vacant, undeveloped or developed with parking.  
16                  So the unique characteristic that would be --  
17                  we would be placing in this case is that we  
18                  would be creating a residential lot, creating  
19                  a residential development on an alley lot in  
20                  this part of the town. That would be a unique  
21                  circumstance that we would be creating.

22                  MEMBER WALKER: Mr. Jackson, are

1       these other lots that exist undeveloped  
2       because of the width of the alleys?

3               MR. JACKSON: That would be the  
4       assumption, either that or they are more  
5       useful for the purposes that they are being --  
6       that we made of them now. For instance, the  
7       adjacent lot to the north of this property is  
8       an alley lot, which is also -- exceeds the --  
9       it appears to exceed the minimum requirements  
10      in this Zone District.

11              However, it's being used for  
12      recreational purposes and being kept natural  
13      to serve the neighbors that currently exist.  
14      The alley lot north of -- east of Connecticut  
15      Avenue behind the Huntington appears to be  
16      used for parking. But again, that's just for  
17      the -- from the aerial. So since it's next to  
18      an apartment building, one would assume that  
19      the more pertinent use for that lot would be  
20      for parking, since it's next to a multi-family  
21      dwelling.

22              CHAIRPERSON MILLER: Any other

1 Board questions? Does the applicant have any  
2 cross examination for Office of Planning?

3 MR. HUGHS: Yes, Chairman.

4 CHAIRPERSON MILLER: Okay.

5 MR. HUGHS: Your Honor.

6 CROSS EXAMINATION

7 MR. HUGHS: Mr. Jackson, just to  
8 clarify that point for me.

9 MR. JACKSON: Um-hum.

10 MR. HUGHS: And you heard Mr.  
11 Williams' testimony regarding the universe of  
12 lots that he identified.

13 MR. JACKSON: Um-hum.

14 MR. HUGHS: Alley lots, these are  
15 interior lots surrounded by public alleys.

16 MR. JACKSON: Right.

17 MR. HUGHS: In this rough area.

18 MR. JACKSON: Right.

19 MR. HUGHS: Which I think we are  
20 all on the same page. You studied that as  
21 well.

22 MR. JACKSON: Well, I would have

1 to say I can -- I only identified -- I had  
2 prepared a map for my own for the area and the  
3 map that I have only includes -- only  
4 identified the two in the subject square and  
5 then one across Connecticut.

6 MR. HUGHS: Okay.

7 MR. JACKSON: I didn't see the  
8 others.

9 MR. HUGHS: And you don't have it  
10 in front of you, but is it R-1-B zoning across  
11 Connecticut as well?

12 MR. JACKSON: No, it's R-2.

13 MR. HUGHS: Okay. And is it -- is  
14 that alley lot surrounded by 20 foot wide  
15 alleys?

16 MR. JACKSON: I don't have the  
17 dimensions. But I would note in R-2 the  
18 minimum lot size would be 3,000 square feet.

19 MR. HUGHS: And what's the lot  
20 area of that particular lot?

21 MR. JACKSON: It appears to be,  
22 approximately, the same size as -- slightly

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1 smaller than the lot we are discussing today.  
2 And so it's probably more than 3,000 square  
3 feet.

4 MR. HUGHS: But we don't know.  
5 And I could look at the plat to determine, but  
6 we don't know if that's surrounded by 20 foot  
7 wide alleys?

8 MR. JACKSON: No, it's surrounded  
9 by alleys, but there is no dimension that I  
10 can read.

11 MR. HUGHS: Okay. Just a couple  
12 more questions. You mentioned in your report  
13 of September 10, '07, and I believe you have  
14 repeated that here today, concerns about  
15 retaining or maintaining the market values of  
16 properties fronting the adjacent streets.

17 MR. JACKSON: Yes.

18 MR. HUGHS: Are you familiar with  
19 other alley lot single-family house  
20 developments on alley lots that have reduced  
21 the market values in a, you know, similarly  
22 situated?

1                   MR. JACKSON: I have to admit that  
2 mostly all the alley lots that I know of that  
3 have -- that are developed are current  
4 existing situations and most of them are  
5 located in more expensive areas, Capitol Hill,  
6 areas like that. So I -- since they already  
7 existed, I can't --

8                   MR. HUGHS: And they are not  
9 necessarily single-family developments,  
10 either, is that right?

11                  MR. JACKSON: I --

12                  MR. HUGHS: Or let me just stop  
13 myself. Are you familiar with the Rothblum  
14 case that I mentioned earlier?

15                  MR. JACKSON: No, I'm not.

16                  MR. HUGHS: And the Macomb Street,  
17 that development?

18                  MR. JACKSON: No, I'm not.

19                  MR. HUGHS: Okay. I'll leave it  
20 at that. And then finally, just to clarify,  
21 in your -- again on page 3, you talk about the  
22 Lewis Plan that was adopted in 1958. Do you

1 know when this alley was platted?

2 MR. JACKSON: Platted? No, I do  
3 not.

4 MR. HUGHS: Okay. Would it  
5 surprise you that it was platted prior to  
6 1958?

7 MR. JACKSON: No, because in the  
8 Lewis Plan, well, the whole intent of the  
9 Lewis Plan is that their goal was to create a  
10 city of a certain character. They wanted to  
11 eliminate probably to avoid mistakes of the  
12 past and the thought would be that they talked  
13 about minimum sizes of certain lots. Of  
14 course, that was translated into the Zoning  
15 Regulations for minimum lot sizes in certain  
16 Zone Districts. And they talked about some  
17 other minimums.

18 The thought would be that they  
19 probably looked at that standard as being a  
20 minimum one to develop the city and the  
21 character they thought was -- would be  
22 appropriate in the nation's capitol. Beyond

1 that, there wasn't a lot of detail of why they  
2 chose that number.

3 So but I think they thought of  
4 that as being a minimum that should be carried  
5 through to the Zoning Regulations and it,  
6 obviously, has been.

7 MR. HUGHS: And is it your  
8 understanding that the Office of Planning has  
9 never supported an application for a variance  
10 from that -- from this provision, based on  
11 that?

12 MR. JACKSON: I don't have -- I do  
13 not have that understanding, no.

14 MR. HUGHS: Okay. And are you  
15 familiar with the infill provisions of the  
16 Comprehensive Plan?

17 MR. JACKSON: Yes.

18 MR. HUGHS: And does this project,  
19 the infill development, satisfy those policies  
20 to your understanding?

21 MR. JACKSON: Well, one of the  
22 other sections of that development is it talks

1 to the character of the using area.

2 MR. HUGHS: Sure.

3 MR. JACKSON: And that the infill  
4 should not be necessarily conflicting with  
5 existing character development. It would  
6 appear, based on the submission and our  
7 analysis of the surrounding area that  
8 development of this interior lot, alley lot  
9 would be contrary to the character of the  
10 other urban development, although the design  
11 of the house per se is not inconsistent with  
12 the other houses that are surrounding the  
13 property.

14 MR. HUGHS: That's just based on  
15 what element? If the property is -- well, I  
16 don't want to put words in your mouth. What's  
17 the basis for that?

18 MR. JACKSON: Well, the character  
19 -- well, they announced that the surrounding  
20 area there, there are no other alley lots that  
21 are developed with single-family residences.  
22 Again, this goes to my earlier report, earlier

1 statement that was that in the vicinity,  
2 northwest of Nebraska, northwest and west of  
3 Connecticut and below Military Highway, at  
4 least -- there are no other alley lots that  
5 are developed with single-family residences.

6 MR. HUGHS: Okay.

7 MR. JACKSON: Now, I'm not talking  
8 about --

9 MR. HUGHS: We're not talking  
10 about Macomb Street or --

11 MR. JACKSON: No, we're not  
12 talking about city-wide.

13 MR. HUGHS: Just this  
14 neighborhood?

15 MR. JACKSON: We're talking about  
16 -- yes.

17 MR. HUGHS: Okay. That's all.  
18 Thank you very much.

19 MR. JACKSON: Um-hum.

20 MS. DUMAS: I have just a few  
21 questions. I'll be very brief. Mr. Jackson,  
22 if I'm correct in reading your report, OP

1 referred this to the Department of  
2 Transportation and D.C. Fire EMS, but did not  
3 receive a response?

4 MR. JACKSON: That's correct.

5 MS. DUMAS: Okay. And have you  
6 visited the property?

7 MR. JACKSON: Yes.

8 MS. DUMAS: And is there any  
9 information in the record that OP examined to  
10 indicate that the alley is a continuous  
11 unobstructed 20 feet in width? I'm sorry,  
12 that the alleys are continuous unobstructed 20  
13 foot?

14 MR. JACKSON: We did not measure  
15 the alleys while we were out there. One thing  
16 we noted was that there are no curbs on either  
17 side, so the actual platting of the alley to  
18 determine the actual width probably would have  
19 to refer back to deeds and such and it may not  
20 be visible out in the field.

21 MS. DUMAS: Okay. And just one  
22 last or actually two last questions. Are you

1 familiar with the Alley Dwelling Act?

2 MR. JACKSON: No, I'm not.

3 MS. DUMAS: Okay. Just to recall  
4 your testimony about your review of other  
5 similar lots in this area of the District of  
6 Columbia.

7 MR. JACKSON: Yes.

8 MS. DUMAS: Was it your testimony  
9 that you did, in fact, find other interior  
10 triangular lots that are surrounded by alleys  
11 of indeterminate width?

12 MR. JACKSON: Yes.

13 MS. DUMAS: Thank you.

14 CHAIRPERSON MILLER: Any other  
15 cross? Okay. Then thank you, Mr. Jackson.  
16 And I think we are ready to go to either Ms.  
17 Dumas. Mr. Eads are you two coordinating or  
18 are you --

19 MS. DUMAS: We have coordinated in  
20 terms of figuring out how much time we will  
21 need.

22 CHAIRPERSON MILLER: Okay.

1 MS. DUMAS: But since Mr. Eads has  
2 a shorter presentation, I suggest that he go  
3 first.

4 CHAIRPERSON MILLER: Okay. That's  
5 fine with us. Whatever is your pleasure  
6 there. Is that something you gave to the  
7 applicant as well, Mr. Eads?

8 MR. EADS: Yes.

9 CHAIRPERSON MILLER: Okay. Do you  
10 want to identify what it is?

11 MR. EADS: We've talked an awful  
12 lot about and seen a lot of diagrams today and  
13 I wanted to show people what the actual  
14 properties look like in the area. Since a lot  
15 of this has been discussed, I won't need to go  
16 through it.

17 Suffice it to say that the first  
18 picture is taken from Google Earth and shows  
19 the large triangle. The triangle, the very,  
20 very top of the picture is Harrison Street.  
21 On the left the slight angle is Reno. And the  
22 other angular street is Chevy Chase Parkway.

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1           The property in question is part  
2 of this interior triangle and you can see the  
3 three existing alleys behind the houses on  
4 Harrison Street, Reno Road and Chevy Chase  
5 Parkway.

6           In the second, I zoom in on the  
7 interior triangle in question and I've drawn  
8 a line that has best I can, given the scale,  
9 shows the actual lot in question, the area  
10 above this, above the line across is our 50  
11 feet plus, as best I could get it, 20 feet for  
12 the paper alley. So this is what the triangle  
13 looks like at the time this was taken. I  
14 think this was taken in the winter. The trees  
15 are -- or early spring. The trees haven't  
16 leafed out.

17           Okay. So I -- just for your own  
18 reference. The other pictures here are  
19 intended to show -- and I took all of these  
20 other pictures. Intended to show -- Picture  
21 3 shows the alley behind our house down  
22 Harrison Street and on the right is the

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1 gardening area that we have developed over the  
2 years.

3 Picture 4 is a picture of the --  
4 of Lot 38 presently. You see the Hazmers who  
5 sold to Alley Cat Mews who bought it in 1941.

6 MR. HUGHS: Mine aren't numbered  
7 the same as your's.

8 MR. EADS: Huh?

9 MR. HUGHS: Mine aren't numbered  
10 the same as your's.

11 MR. EADS: I'm sorry.

12 MR. HUGHS: That's all right.

13 MR. EADS: Yeah, great. Oh, I  
14 think I skipped. In my pack it doesn't have  
15 one. My pack, No. 4, right is the other part  
16 of our property. The part -- that's our puppy  
17 dog there. And we have thinned out trees and  
18 done a lot of work, spent quite a bit of money  
19 to make the place look nice.

20 The final three pictures are -- is  
21 -- walks you through where the paper alley is.  
22 The first one starts from the alley behind

1 Reno Road and looks to the east. Our property  
2 is on the left. The property you are talking  
3 about is on the right. And there is -- this  
4 is not professionally surveyed. We did our  
5 best to estimate it and use a tape brewer.

6 The second one is -- wait, I may  
7 have got them reversed. There is one in the  
8 center, just again, showing the trees within  
9 and trees without it. And there is one  
10 showing the very end, which is the alley off  
11 Chevy Chase Parkway. So it gives you a sense  
12 of what the property currently looks like.

13 I will skip discussions of -- more  
14 discussions of it, because, for example, the  
15 people whose houses abut where the triangle --  
16 where the front door ends, they are here and  
17 will be talking later, so they can describe  
18 what it looks like.

19 But just to give you some history,  
20 we own 3718 Harrison Street. We have owned it  
21 since 1979. We also own this Lot 38. It is  
22 due north of the subject property. We bought

1 it in November 1991.

2 We bought the -- this house in  
3 part because of our experience in our previous  
4 house. We owned a house on one of these other  
5 triangles. We owned a lot -- we owned a house  
6 that backed onto Lot 34 in Square 2025, which  
7 is the triangle that was -- a triangular lot  
8 formed by Nebraska, Military and 34<sup>th</sup> Street.  
9 It has alleys. And again, I didn't measure  
10 them, but they were as serviceable as the  
11 alleys we have got now.

12 On two sides, the third side I  
13 assume was a paper alley. I never checked the  
14 zoning at that point. And the area was not  
15 wooded. It was grassed and the neighborhood  
16 took care of it and we liked that aspect, so  
17 when I moved back from California in the -- in  
18 '79, I looked for a lot that had one of these  
19 triangles, because it was -- we thought it was  
20 a very nice amenity.

21 And in fact, several of the people  
22 that have bought houses since we bought them

1 have told me directly that one of the things  
2 that attracted them to the neighborhood was  
3 the fact that there was this area of green  
4 space there behind.

5 We purchased it from Mrs. Wotris,  
6 Roberta Wotris. She resided at 5031 Reno  
7 Road. She used just one corner near our house  
8 as a garden for raising Daffodils. She was a  
9 world renowned hybridizer of miniature  
10 Daffodils. And she had that area very heavily  
11 mulched and fenced and all.

12 She was selling her house and she  
13 asked us if we wanted to purchase it, purchase  
14 the lot that she owned. We had been taking  
15 care of the rest of the lot, the part she  
16 wasn't gardening for many years. We had been  
17 trimming trees, eradicating poison ivy and  
18 also getting rid of Mexican Bamboo and we had  
19 indicated a number of times to Mrs. Wotris  
20 that if she ever did want to sell it, we would  
21 like to buy it or like to try to buy it.

22 She proposed a very low price,

1 just a couple of thousand dollars and it was  
2 based upon her -- upon our commitment to her,  
3 verbal commitment, which we have kept that we  
4 would keep it a green space. Over the years,  
5 we have spent a great deal of time and money  
6 in making this place a nice place for us and  
7 for the neighborhood.

8 Some mentioned earlier about if  
9 you didn't live on the lot, you would let it  
10 go to hell. Well, we haven't. And if you --  
11 also that if you wanted to preserve it, you  
12 would put a fence around it. Well, we don't  
13 want to put fence around it, that's precisely  
14 one of the things we don't want to have to do.

15 The only place there is a fence is  
16 where we're actually growing vegetables to  
17 keep varmints out of it.

18 We were aware that the Hazmer  
19 family owned Lot 37. They had once lived in  
20 the neighborhood, but they had moved to  
21 northwest long before we purchased our house.  
22 The son, the Hazmer son returned periodically

1 to clean up the lot and my wife and I had also  
2 treated the lot for poison ivy and Mexican  
3 Bamboo and we had also had some of the trees  
4 trimmed.

5 On at least one of the visits, we  
6 indicated to the son that we would like to buy  
7 the lot if they ever wished to sell it in  
8 order to assure that the entire triangle  
9 remained a green space. But he had indicated  
10 and this is sort of a little sign that he put  
11 up, the Hazmers planned to keep it forever, in  
12 his point of view.

13 He died of a heart attack about a  
14 year and a half before the lot was sold. Mrs.  
15 Hazmer, the mother, apparently felt  
16 differently about keeping the lot and to the  
17 best of our knowledge, she never contacted  
18 anyone in the neighborhood about buying it  
19 before she sold it to Alley Cat Mews.

20 Now, why did we want Lot 38? Why  
21 didn't we buy 38 to begin? Why were we  
22 willing to buy part or all of Lot 37? My wife

1 likes to garden and we also believe that the  
2 triangle in its unbuilt state makes the whole  
3 neighborhood much more pleasant.

4 On 38, we continue to garden the  
5 site and expand the garden and spend more  
6 money on it. And I can describe what our  
7 plans are for it, if you wish. Why do we  
8 oppose this development of Lot 38?

9 There are several things. First,  
10 there has been some discussion that the  
11 property is not, in fact, level, that it  
12 slopes. And, in fact, it slopes a small  
13 amount this direction down the alley from Reno  
14 Road. It slopes more steeply this direction  
15 and it slopes mostly from here. It's sort of  
16 flat up here. It takes a fairly steep slope  
17 here.

18 And it was characterized it wasn't  
19 a very -- it wasn't a particular problem and  
20 maybe it isn't much of a problem for building  
21 here, but when there is rain, this lot -- this  
22 alley runs like a torrent.

1           Basically, this area feeds Broad  
2     Branch. And it collects water from the Fort  
3     Reno Park area and the whole area sort of  
4     feeds toward Broad Branch. One of our major  
5     concerns is that the soil here is not -- it is  
6     rocky fairly close to the surface. And we  
7     have had a couple of trees already be  
8     undermined and fall down.

9           And we are concerned that with  
10    runoff, especially with this property being  
11    covered as much as it is, and I think they say  
12    it's -- they could have covered a lot more, I  
13    don't see how they could actually build a  
14    house that conformed that would cover more  
15    given the way the land is.

16           There is going to be not only the  
17    house itself, but the area back here and the  
18    driveway in front and all that is,  
19    essentially, shedding water. And we are  
20    concerned that the runoff will undermine the  
21    trees we have continued to maintain, as well  
22    as trees in the public alley, because there

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1 are quite a few of them, too.

2 So that's one concern. We haven't  
3 seen anything in the plans about how they  
4 would treat runoff.

5 A second area, a second issue  
6 consists of the -- of what would happen in  
7 construction and soon thereafter. We don't  
8 see how they are going to manage to build on  
9 that lot without doing some damage to the  
10 trees certainly on the city property. As you  
11 can see from the pictures, it's sort of like  
12 a continuous growth of trees. And if they are  
13 damaged or destroyed, it will take a very long  
14 time for them to grow back. They don't grow  
15 that fast. And if they are gone, we will get  
16 more erosion.

17 We are concerned that under the  
18 proposed plan, our lot will become a de facto  
19 backyard for the house that is proposed,  
20 unless we were to build a fence. And we  
21 really would not like to build a fence. I  
22 mean, the expense is one thing, but as bad as

1       having this house there, it would -- having a  
2       fence across the whole thing would destroy the  
3       character of the neighborhood even more.

4               We are concerned also -- it has  
5       been said that the -- all the utilities are  
6       accessible. In fact, there is no water, sewer  
7       or electricity or gas in this triangle, at  
8       this present. There are telephone poles that  
9       carry the street lights, but in terms of  
10      everything, electric service, water, sewage,  
11      gas is all going to have to be brought in.

12             These distances I have measured  
13      this particular one, it's 170 feet from -- and  
14      that's the closest one to another street. And  
15      my understanding from reading the Building  
16      Codes is that a house is not deemed to have  
17      access, a private house is not deemed to have  
18      access to utilities if it's more than 100 feet  
19      from existing service.

20             If it requires -- if it has to be  
21      more than 100 feet, then they have to apply to  
22      have the city build connections and that has

1 to go into the regular budget. So we don't  
2 know how they are going to get this and we  
3 also are concerned that they are going to have  
4 to come through some of the people's property.  
5 Again, this is a concern that maybe can be  
6 settled, but we're not aware of what the  
7 answer is going to be.

8 MR. HUGHS: Madam Chair, I  
9 appreciate Mr. Eads' testimony, but the issues  
10 he is raising are not zoning issues. If we  
11 could --

12 CHAIRPERSON MILLER: I think from  
13 what I heard, he is probably going to  
14 substantial detriment to the public and the  
15 part about his facing your rear yard would be  
16 a zoning issue. But I think are you saying  
17 that this part about construction and  
18 telephones and all that stuff --

19 MR. HUGHS: I'm just --

20 CHAIRPERSON MILLER: -- that's  
21 not.

22 MR. HUGHS: I mean, there are

1 issues regarding soil, erosion and control,  
2 urban forced preservation, utilities, Building  
3 Code, those are all, obviously, things that  
4 would have to be approved in the permit  
5 process.

6 CHAIRPERSON MILLER: That's true.  
7 That's true. So we don't need to hear too  
8 much about that.

9 MR. EADS: Okay.

10 CHAIRPERSON MILLER: Because  
11 that's beyond our jurisdiction, those issues.  
12 Okay.

13 MR. EADS: Well, again, the  
14 principal concern we have is that the property  
15 which we bought and have maintained and we  
16 believe is valuable to the neighborhood as a  
17 whole would be damaged by a house being built  
18 there. We would prefer that a house not be  
19 built there. We are prepared to join with the  
20 neighbors to buy the property or if they can't  
21 buy it, then we're prepared to buy it  
22 ourselves. Thank you.

1 CHAIRPERSON MILLER: Okay. This  
2 issue came up earlier. I'm not sure if this  
3 is the time to pursue it again, but there was  
4 a question about whether there were other  
5 offers for this property. So it's your  
6 testimony that -- did you make an offer or  
7 you're willing to make an offer?

8 MR. EADS: We were part of offers  
9 that were made by Alley Cat Mews and if there  
10 is any question -- not about -- by the  
11 previous LLC, right to Alley Cat Mews. And if  
12 there was any question about whether an offer  
13 would be made if the thing gets turned down,  
14 I'm just saying we would be prepared to make  
15 an offer. I don't think there is any offer  
16 pending right now. I think the Alley Cat --  
17 the GreenPiece, LLC offer expired, but it  
18 could easily be renewed. It would be part of  
19 her renewal, too.

20 CHAIRPERSON MILLER: Okay. Other  
21 Board questions right now? Cross? Oh, are  
22 you finished with your testimony? Okay.

1 Cross examination?

2 MR. HUGHS: Just a couple of  
3 questions. I think we already raised the main  
4 issue about non-zoning-related points being  
5 raised.

6 CROSS EXAMINATION

7 MR. HUGHS: But, Mr. Eads, do you  
8 appreciate that the property is Zoned R-1-B  
9 and that it is -- there are certain uses that  
10 we have discussed here that aren't necessarily  
11 reasonably economically feasible that the  
12 property could be put to use or when you  
13 purchase the property was it your  
14 understanding that there was nothing that the  
15 property could be used for?

16 MR. EADS: No, it was our  
17 understanding that there were things it could  
18 be used for, but, you know, houses couldn't be  
19 built on it without a variance. And my wife  
20 actually talked to Mr. Merwin before he bought  
21 it to make sure he understood that, too.  
22 There was some question about what the

1 property really was.

2 And originally he seemed to have  
3 thought that our property was included in the  
4 triangle. And when a for sale sign went up,  
5 they put it on our property as well as the  
6 other corner and we told them that it's not  
7 for sale.

8 MRS. EADS: It was on ours.

9 MR. EADS: It was on ours, yes.

10 MRS. EADS: Not on theirs.

11 CHAIRPERSON MILLER: Could you  
12 clarify who he is that you are referring to?  
13 Who did your wife talk to?

14 MRS. EADS: Merwin.

15 CHAIRPERSON MILLER: The --

16 MR. EADS: My wife, that's my wife  
17 talking.

18 CHAIRPERSON MILLER: Oh.

19 MR. EADS: She talked to Mr.  
20 Merwin.

21 CHAIRPERSON MILLER: Mr. Merwin  
22 who is the owner?

1 MR. EADS: Yeah.

2 CHAIRPERSON MILLER: He is the  
3 owner of Alley Cat Mews?

4 MR. EADS: Yes, Alley Cat Mews,  
5 right.

6 CHAIRPERSON MILLER: Okay.

7 MR. HUGHS: Mr. Eads, would it be  
8 your understanding in terms of the uses that  
9 have been discussed today, single-family house  
10 on this property or a possibility of  
11 construction of artist studios or parking  
12 garages, private garages, which would be the  
13 most consistent with the surrounding  
14 neighborhood? Do you have any thoughts on  
15 that?

16 MR. EADS: Was your question which  
17 of those?

18 MR. HUGHS: Yes.

19 MR. EADS: We wouldn't -- we would  
20 prefer that it stay green, but we wouldn't  
21 object to the other -- to the construction of  
22 the other things.

1 MR. HUGHS: So you're --

2 MR. EADS: They are smaller. They  
3 are less intrusive. We wouldn't object.

4 MR. HUGHS: So you would not  
5 object to those uses even though they might  
6 involve the same issues that you have raised  
7 here in terms of runoff, in terms of the order  
8 of preservation, the access to utilities, the  
9 need for construction of a fence? Is that  
10 correct?

11 CHAIRPERSON MILLER: But those  
12 aren't zoning issues, so why ask that  
13 inappropriate question?

14 MR. HUGHS: It's just going back  
15 as you said, Madam Chair, to the compatibility  
16 or the impact on the public good between uses  
17 that are permitted versus the one that we're--  
18 as a matter-of-right versus the one that we  
19 are proposing. We believe that it is more  
20 consistent in addition to being more  
21 economically feasible.

22 I'm sorry, I got a little bit of

1 feedback. It's also -- it also goes -- it's  
2 more consistent with the surrounding fabric  
3 than the uses that are permitted as a matter-  
4 of-right.

5 MR. EADS: I don't think it would  
6 pose exactly the same issues. Here we're  
7 talking about a large house with a large total  
8 percentage of the land covered. I just think  
9 that this is -- you know, the others -- I  
10 mean, there are places that are -- where there  
11 are garages built in the alleys and they don't  
12 cover anything like the space of this.

13 And I assume that when the sizes  
14 of artist studios would not be that large  
15 either.

16 MR. HUGHS: No further questions.

17 MS. DUMAS: I just have one very  
18 brief question for the applicant. You  
19 mentioned that you had lived --

20 CHAIRPERSON MILLER: For the  
21 applicant? How is --

22 MS. DUMAS: I'm sorry. Not for

1 the applicant.

2 CHAIRPERSON MILLER: No.

3 MS. DUMAS: For Mr. Eads. You had  
4 lived on a property prior to moving away. Do  
5 you have the address of that? Because I think  
6 you said the lot and described it, but I  
7 didn't --

8 MR. EADS: Yeah. Where we lived  
9 before was on 3718 -- sorry, 5412 32<sup>nd</sup> Street,  
10 that was where we lived. The triangle was  
11 behind it.

12 CHAIRPERSON MILLER: What was the  
13 point you made about the triangle?

14 MR. EADS: I mentioned at the  
15 beginning of my testimony that in the house we  
16 had lived in in Washington before, there was  
17 an unbuilt triangle behind it of similar size.  
18 I don't know what the width of the alleys  
19 were, but the alleys were serviceable, the  
20 same way the alleys are here for access to  
21 driving and all.

22 And it -- two sides of the

1 triangle were -- had built alleys. The third  
2 wasn't built, I assumed that it was -- had a  
3 similar situation like a paper alley. But the  
4 point is that that was one where the  
5 neighborhood kept it and we all enjoyed it and  
6 we all maintained it and we liked that thing,  
7 so when we came back, we looked for a place  
8 that had that kind of situation.

9 CHAIRPERSON MILLER: And are they  
10 comparable in size or no?

11 MR. EADS: I believe so.

12 CHAIRPERSON MILLER: Okay. Thank  
13 you. Anything else?

14 MS. DUMAS: Mr. Eads, do you know  
15 what the zoning classification of your former  
16 property was?

17 MR. EADS: R-1-B.

18 CHAIRPERSON MILLER: Okay. I  
19 think that's it for your case, Mr. Eads?  
20 Okay. Thank you very much. Okay. Ms. Dumas?

21 MS. DUMAS: I'll be very brief. I  
22 don't think there is a real need for a full

1 opening statement, except to remind the Board  
2 who my client, GreenPiece, LLC is.

3 And GreenPiece is a limited  
4 liability corporation or a company that was  
5 founded by many, if not all, of the property  
6 owners in Square 1877, whose homes front on  
7 Reno, Harrison and Chevy Chase Parkway, and  
8 whose rear yards face the subject property and  
9 Mr. Eads' property, Lot 38, in the interior of  
10 the square.

11 You will hear from three property  
12 owners and perhaps you can even reduce it to  
13 two if we get repetitive. The first is David  
14 Chu, who is a property owner on Chevy Chase  
15 Parkway. So if Mr. Chu could come to the  
16 table?

17 MR. CHU: Good evening. My name  
18 is David Chu and I reside at 5120 Chevy Chase  
19 Parkway, N.W., in D.C. My wife and I  
20 purchased this home in 1999. It sits on Lot  
21 812 in Square 1877. So across from the --  
22 across the southeastern alley from the subject

1 property.

2 Like our neighbors, we have  
3 cherished the quiet, the privacy and the  
4 greenness of the undeveloped Hazmer lot. And  
5 we were dismayed when the lot was sold and  
6 then upset when we heard plans to construct a  
7 home there, as it concerned -- because of our  
8 concerns, we joined GreenPiece, LLC, along  
9 with many of the other neighbors who surround  
10 this lot.

11 And I started to read up on some  
12 of the zoning issues. I became curious about  
13 this observation that the property was unique  
14 and that the applicant was claiming there  
15 weren't other similar lots in the area. So I  
16 decided to do some research and I looked at  
17 the Office of Zoning website at the Zoning  
18 Maps and looked at Northwest D.C.

19 My review found, you know, a  
20 couple dozen alley bound lots, but I  
21 eventually narrowed my look at five lots that  
22 appeared to be Zoned R-1-B and were alley

1 bound lots.

2 I then went to Google Earth to  
3 locate the lots and the images confirmed that  
4 these lots were undeveloped. And then one  
5 afternoon I got in my car and I drove to the  
6 five lots and looked at them myself. I did  
7 some measurement and eyeballing and in my  
8 opinion, while I'm not a surveyor, I think the  
9 surrounding alleys were all less than 30 feet  
10 in width.

11 So I'll summarize by saying the  
12 following: I found five lots in Northwest  
13 D.C. located with a similar network of  
14 internal alleys. The surrounding alleys  
15 appeared, to me, to be less than 30 feet in  
16 width. And all five of the lots are  
17 undeveloped, although two have very nice  
18 gardens on them. Four of these lots --

19 CHAIRPERSON MILLER: I'm sorry,  
20 your voice dropped there. I didn't catch it  
21 all.

22 MR. CHU: Two of them have very

1 nice gardens on them.

2 CHAIRPERSON MILLER: Oh, gardens.  
3 Thank you.

4 MR. CHU: Four of the lots seemed  
5 to be Zoned R-1-B, according to the Office of  
6 Zoning Maps. For the record, I'm entering  
7 both the Zoning Map excerpt and the Google  
8 Earth image of these four lots and they are  
9 located in Squares 2958, 2024, 1991 and 2027.

10 It's worth noting that three of  
11 those four similar lots are within a short 10  
12 block walk of the subject lot we are talking  
13 about today, so they are very much in the  
14 neighborhood. The Zoning Map shows that the  
15 fifth alley lot I looked at in Square 1966 is  
16 Zoned R-2, rather than R-1-B.

17 I'm not an expert here, but, in my  
18 opinion, all these lots share very strong  
19 characteristics with the subject lot here.  
20 And I really don't accept the applicant's  
21 claim that the Hazmer lot is unique.

22 CHAIRPERSON MILLER: Okay. What

1 has been distributed to the Board and I assume  
2 the other parties, is that right? I think  
3 it's public record. It's all from the Zoning  
4 website. Is that right?

5 MR. CHU: It's from the Zoning  
6 website.

7 CHAIRPERSON MILLER: And Google?

8 MR. CHU: And Google and the red  
9 circle is my addition from Adobe.

10 CHAIRPERSON MILLER: Okay. So is  
11 there any objection from the other parties?  
12 Okay. Thank you. Does that conclude your  
13 testimony?

14 MR. CHU: Yes, it does.

15 CHAIRPERSON MILLER: Are there  
16 questions for Mr. Chu? Any questions? Thank  
17 you. Yes, you have a question?

18 MR. HUGHS: I have a question.

19 CHAIRPERSON MILLER: Okay.

20 MR. HUGHS: Yes.

21 CROSS EXAMINATION

22 MR. HUGHS: Mr. Chu, my

1 understanding is that these lots aside from  
2 the lots you have circled in blue, the  
3 applicant's and Mr. -- I'm sorry, yeah, the  
4 applicant's and Mr. Eads' lots are surrounded  
5 by at least -- they are surrounded by alleys.  
6 I understand that. But that not all of the  
7 alleys that surround these lots are at least  
8 20 feet in width. Do you have any knowledge  
9 of that?

10 MR. CHU: I --

11 MR. HUGHS: I understand you said  
12 they were 30.

13 MR. CHU: -- only was looking at  
14 less than 30. I was not looking at minimum  
15 width. They were all very accessible by car,  
16 so it was my impression that they were usable,  
17 but they were, I think, less than 30 feet in  
18 width.

19 MR. HUGHS: That's my only  
20 question. Thank you.

21 MR. CHU: Okay.

22 CHAIRPERSON MILLER: Thank you

1 very much. Thank you for your patience in  
2 waiting all this time. Do you have another  
3 witness?

4 MS. DUMAS: I do. Mr. Larry  
5 Hanauer.

6 MR. HANAUER: Good evening. My  
7 name is Larry Hanauer. I own the house at  
8 5116 Chevy Chase Parkway, which is Lot 36 in  
9 Square 1877. And just to point out, it is  
10 right here bordering on this alley on Chevy  
11 Chase Parkway. So this triangular shape lot  
12 is mine.

13 I purchased the property with my  
14 wife in 2004 and my wife and I are both  
15 members of GreenPiece Park, LLC. I have three  
16 objectives I'm going to address.

17 No. 1, I plan to show that the  
18 owner and the contract purchaser both were  
19 aware of the Zoning Regulations, the limited  
20 use of the property and that we discussed this  
21 to some extent before, but I have some other  
22 details that will go to that, and that their

1 inability to develop the property without  
2 relief is a self-created hardship.

3 Secondly, also show that  
4 GreenPiece Park, LLC offered to purchase the  
5 property for 39 percent more than the owner's  
6 purchase price, 67 percent more than its  
7 assessed value and 32 times what the owner,  
8 Alley Cat Mews actually invested in it up  
9 front.

10 I will also discuss the adverse  
11 impact the development of the subject property  
12 will have on the community, including some  
13 safety issues.

14 Just some background. I learned  
15 that the lot had been sold when I received a  
16 letter dated August 10, 2006 from Stephanie  
17 Merwin. She is the managing agent or managing  
18 partner of Alley Cat Mews. In this letter,  
19 she offered the property for sale. The letter  
20 was left at my door and the doors of all 27  
21 surrounding homes, which indicates that there  
22 is a universe of at least 27 individual

1 purchasers that might buy the property in  
2 addition to GreenPiece.

3 CHAIRPERSON MILLER: There was a  
4 letter dated August 10 what?

5 MR. HANAUER: Yes. And in fact --

6 CHAIRPERSON MILLER: What year?

7 MR. HANAUER: August 10, 2006.

8 And in fact, I would like to enter this letter  
9 into the record, if I may? Ms. Dumas is  
10 distributing that now.

11 CHAIRPERSON MILLER: Would you  
12 show it to the applicant?

13 MR. HUGHS: I've received it, yes.

14 CHAIRPERSON MILLER: Do you have  
15 an objection?

16 MR. HUGHS: No.

17 CHAIRPERSON MILLER: Okay.

18 MR. HANAUER: The letter doesn't  
19 list a price, but Ms. Merwin writes that the  
20 property has "several intriguing permitted  
21 uses." This limiting language suggested to  
22 me, at least, that the owner was aware that

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1 some uses for the property would be  
2 prohibited.

3 I then looked up the MLS listing  
4 for the property soon afterwards. And the  
5 listing suggests "accessory building, garage,  
6 etcetera" as permitted uses and states "do  
7 your due diligence." This language again  
8 suggested to me that the owner knew and the  
9 real estate agent knew that a single-family  
10 home could not be developed on the property.  
11 It was not specifically stated among these  
12 other lists -- uses.

13 And I would like to enter the MLS  
14 listing into the record as well.

15 CHAIRPERSON MILLER: I'm sorry,  
16 what letter? What are you entering into the  
17 record now?

18 MR. HANAUER: This is the  
19 printout, basically, from the Internet of the  
20 MLS listing and the real estate database  
21 showing the property for sale. It shows the  
22 sale price \$125,000. And again, it has these

1 somewhat limiting uses described for it that  
2 it's usable for an accessory building or  
3 garage and it suggests do your due diligence,  
4 so it suggests that it's really not a typical  
5 lot, a typical R-1-B lot in the typical -- for  
6 typical uses in the neighborhood.

7 The property was sold by the  
8 previous owner to Alley Cat Mews, LLC on  
9 August 7, 2006, as shown by the HUD-1 form,  
10 which I would also like to enter into the  
11 record. This is the HUD-1 form from when Mr.  
12 Merwin -- excuse me, Alley Cat Mews, Mr. and  
13 Mrs. Merwin are the owners, bought the  
14 property from Mrs. Hazmer, the previous owner.

15 The HUD-1 shows the sale price  
16 that Alley Cat Mews paid was \$36,000. The  
17 closing costs were slightly in excess of  
18 \$15,000. So there was a deed of trust for  
19 \$50,300. The HUD-1 also shows that Alley Cat  
20 Mews paid just \$1,119.39 in cash down on the  
21 purchase. And as far as we know, this  
22 represents Alley Cat Mews sole cash investment

1 in the property, the rest is debt, again, as  
2 far as we know.

3 On August 30, 2006, I made a  
4 verbal offer to Mr. Merwin and Alley Cat Mews,  
5 LLC to purchase the property for \$30,000.  
6 This was the first of two offers by the  
7 neighbors to purchase the property. I was  
8 acting on behalf of --

9 MR. HUGHS: I'm sorry, could you  
10 repeat the date?

11 MR. HANAUER: Sure. August 30,  
12 2006.

13 MR. HUGHS: Okay.

14 MR. HANAUER: Again, that was a  
15 verbal offer on the telephone with Mr. Merwin.  
16 I was acting on behalf of a group of neighbors  
17 who subsequently agreed to form GreenPiece  
18 Park, LLC. We decided to make this offer,  
19 because we felt that keeping the lot green and  
20 undeveloped was a desirable use for the  
21 property, despite the lack of economic return,  
22 and that despite the claims of the applicant's

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1 expert witness, a green and undeveloped lot  
2 that we would maintain, much like Crispus  
3 Attucks Park that Mr. Dettman referenced, is  
4 a greater asset to the community than a  
5 single-family dwelling and a reasonable use  
6 for the lot.

7 So that's why we decided to make  
8 the offer to purchase for \$30,000. And we  
9 offered that amount, because that was the  
10 value at which the property was assessed for  
11 tax purposes by the D.C. Government.

12 During this phone conversation,  
13 Mr. Merwin reviewed the possible uses for the  
14 property to me and he stated clearly that to  
15 build a residence on the property, he would  
16 need a zoning variance. So he understood what  
17 the limitations on the use of the land were.

18 The following day on August 31,  
19 2006, Mr. Merwin faxed me the HUD-1, which is  
20 how I acquired it, to demonstrate why he  
21 thought our \$30,000 offer was inadequate.  
22 Now, we have since learned that Alley Cat Mews

1 entered into a contingent contract to sell the  
2 subject property to Mr. Woodring for \$125,000,  
3 if the variance is granted, or \$85,000 in the  
4 event the BZA does not grant the variance.

5 The contract also permits Mr.  
6 Woodring to walk away without any additional  
7 investment. This contract was provided to me  
8 by Jack Merwin on behalf of Ms. Merwin, the  
9 managing member of Alley Cat Mews, and it is  
10 dated December 13, 2006. And I would like to  
11 enter that contract into the record as well.

12 MS. BAILEY: We're working as fast  
13 as we can.

14 MR. HANAUER: I'm sorry. I'm  
15 introducing quite a number of exhibits, so I'm  
16 sorry for the paperwork I'm distributing.  
17 Shall I wait until the paperwork makes its way  
18 or shall I just simply continue?

19 CHAIRPERSON MILLER: You can keep  
20 going.

21 MR. HANAUER: Okay.

22 CHAIRPERSON MILLER: Since, you

1 know, it's getting late.

2 MR. HANAUER: Okay. That's fine.

3 CHAIRPERSON MILLER: Okay.

4 MR. HANAUER: Paragraph 1(b) of  
5 the contract, and it's a standard real estate  
6 contract, shows that Mr. Woodring has only  
7 \$2,500 invested in the subject property in the  
8 form of a deposit. The contract was to expire  
9 six months from ratification, unless extended  
10 by the seller, Alley Cat Mews, at seller's  
11 sole discretion. And the original expiration  
12 date of the contract has passed. We assume  
13 that the contract has been extended because we  
14 are here.

15 So not only did Mr. Woodring know  
16 prior to entering into a contract to purchase  
17 the property that he would not be able to  
18 develop it for his intended use without zoning  
19 relief, the contract is specifically  
20 contingent upon obtaining such relief.

21 Paragraph 2 of the contract  
22 addendum states "Contract is subject to

1 obtaining a BZA variance." Paragraph 4 of the  
2 addendum states "Settlement will be  
3 consummated upon final approval of the BZA  
4 variance." These two paragraphs of the  
5 contract demonstrate that Mr. Woodring knew he  
6 was purchasing a property that would require  
7 zoning relief in order to develop the intended  
8 purpose.

9 Further, paragraph 7 of the  
10 addendum provides that "If BZA variance is not  
11 approved, purchaser, Mr. Woodring, shall have  
12 the option to purchase the property for  
13 \$85,000." This language indicates that both  
14 Mr. Woodring and the owners of Alley Cat Mews  
15 were aware of the possibility that the Zoning  
16 Board might not grant the relief.

17 And it also indicates that Mr.  
18 Woodring can walk away from the contract with  
19 no additional investment if the BZA fails to  
20 grant a variance, because he only had the  
21 option to purchase it for \$85,000.

22 On May 19, 2007, Jack Merwin sent

1 me an email in which he offered to sell the  
2 entire limited liability company that owns the  
3 subject property, so all of Alley Cat Mews to  
4 GreenPiece Park for \$25,000. And if I may, I  
5 would like to enter that email into the record  
6 as well.

7 MEMBER WALKER: What's the date of  
8 that email?

9 MR. HANAUER: It is May 19, 2007.  
10 So this is, if my memory serves me correctly,  
11 after the application for variance was  
12 submitted to the BZA, but before our first  
13 hearing.

14 In his email, Mr. Merwin wrote  
15 that in selling us the LLC, "he would be  
16 foregoing a gross profit of \$125,000 minus  
17 \$36,000 equals \$89,000, but it gets me out of  
18 the transaction once and for all." This  
19 indicates that Mr. Merwin considered \$36,000  
20 to be his cost when calculating profit,  
21 suggesting that he had few other costs  
22 invested in the property beyond the purchase

1 price.

2 And it was in response to my  
3 request for details on the LLC's assets and  
4 liabilities on May 29, 2007 that Mr. Merwin  
5 sent me a copy of the contract with Mr.  
6 Woodring that I referenced.

7 Because Alley Cat Mews never  
8 provided the detailed list of the LLC's assets  
9 and liabilities and obligations, we weren't  
10 interested in buying the LLC. So GreenPiece  
11 then renewed our efforts to purchase the  
12 property from Alley Cat Mews. And GreenPiece  
13 Park made a second offer to purchase the  
14 subject property for \$50,000 in writing on  
15 August 4, 2007. And I would like to enter  
16 that letter into the record as well. This was  
17 our written offer to purchase.

18 This offer of \$50,000 represented  
19 39 percent over Alley Cat Mews original  
20 purchase price of \$36,000, 67 percent more  
21 than the assessed value of the property,  
22 \$30,000, a 3,200 percent increase over Alley

1 Cat Mews actual investment of \$1,119.39, the  
2 only amount paid in cash at closing and 20  
3 times the \$2,500 deposit paid by Mr. Woodring.

4 Our offer was rejected by email on  
5 August 9, 2007 by Stephanie Merwin stating  
6 that she already had another contract. The  
7 contract with Mr. Woodring that we are  
8 discussing.

9 So to summarize the relevant key  
10 points that I just made for the transactions  
11 I discussed. First, both the Merwins, as  
12 owners of Alley Cat Mews, and Mr. Woodring  
13 were aware of the zoning limitations. And  
14 they knew what they were getting into when  
15 they purchased or contracted to purchase the  
16 property.

17 Second, Alley Cat Mews, the  
18 current owner, was presented with an offer of  
19 \$50,000, a substantial profit over it's  
20 purchase price, and an exorbitant profit over  
21 it's up front cash investment, making it  
22 impossible to conclude that the owner suffered

1 any hardship at all, much less an undue  
2 hardship if he were to accept our offer.

3 And third, Mr. Woodring's purchase  
4 of the property is contingent on receiving a  
5 variance from the Board, meaning that if the  
6 Board decides not to grant the variance, he  
7 suffers no loss and thus, endures no hardship  
8 at all.

9 Before closing, I would like to  
10 briefly note the impact that this development  
11 would have on the community's safety and  
12 quality of life. The development of this  
13 property will have an extremely adverse impact  
14 on the community's quality of life, but rather  
15 than discuss all of these details, I would  
16 like to submit a separate statement for the  
17 record here. In fact, this was a statement I  
18 had originally prepared back in September,  
19 when I expected to focus some testimony on  
20 that, and I believe that has been distributed  
21 as well.

22 But I would like to highlight one

1 area. And in contrast to Mr. Hughs'  
2 statement, the alley system does not meet the  
3 standards for the D.C. Fire Prevention Code.  
4 If the BZA grants this variance, the  
5 construction of a new house on the property  
6 would pose a threat to the community's safety  
7 by violating the Fire Code provisions on alley  
8 access that no one under the Fire Code has the  
9 authority to waive.

10 And with that, I would like to  
11 enter into the record an exhibit that has  
12 three color photos on it showing the alley  
13 entrances. And this is, I think, to some  
14 extent why we were discussing whether anyone  
15 had actually measured the alley entrances  
16 before.

17 And I would like to point out as a  
18 side matter, particular from Mr. Jeffries if  
19 he reviews the tapes or the transcript, that  
20 in these photos, which were meant to show the  
21 width of the alley, you will also see a series  
22 of garages and dumpsters going up and down the

1 alley. So in answer to the question of what  
2 one would see when exiting this proposed \$1.4  
3 million house, one would see a lot of trash  
4 dumpsters and garages and sort of unkempt  
5 leaves that were not really raked. So that's  
6 what one would see at ground level.

7 But notwithstanding the letter  
8 from the Fire Marshal that applicant has  
9 introduced into the record, I took actual  
10 measurements of the alley entrances to the  
11 alley system in Square 1877 on September 23,  
12 2007, which was a few days or a week or so  
13 before our first hearing.

14 And I found that the alleys all  
15 measure 17 feet or less at their narrowest  
16 points. You will see from the photos that the  
17 alley entrance at Chevy Chase Parkway close to  
18 Reno Road measures only 15 feet between the  
19 lamp post and the fence, which is, in fact, my  
20 fence.

21 On the Chevy Chase Parkway eastern  
22 alley entrance, which is the one closer to

1 Connecticut Avenue, between the tree and the  
2 telephone pole or lamp post, it measures only  
3 16.5 feet. And at the Reno Road alley  
4 entrance between a fence and a lamp post, it  
5 measures only 17 feet. And all of these  
6 distances were marked by those orange cones,  
7 so they are hopefully easily visible.

8 Now, the fact that these alleys  
9 actually -- that the alley entrances are  
10 actually less than 20 feet is important,  
11 because it violates two sections of the D.C.  
12 Fire Prevention Code. Section 503.2.1, which  
13 states that "Fire apparatus access roads shall  
14 have an unobstructed width of not less than 20  
15 feet." And section 503.4 which states that  
16 "The minimum widths and clearances established  
17 in section 503.2.1 shall be maintained at all  
18 times."

19 MEMBER WALKER: What was the  
20 second provision?

21 MR. HANAUER: Section 503.4 which  
22 states that "The minimum widths and clearances

1 established in the previous section," 20 feet,  
2 unobstructed 20 feet, "shall be maintained at  
3 all times." And as these photos show, none of  
4 the alleys, none of the three alleys that  
5 access the lot in question have unobstructed  
6 access of 20 feet. They are all substantially  
7 less.

8 And to clear these obstructions  
9 would involve moving fences, moving telephone  
10 poles, taking out trees and doing other things  
11 that may or may not be possible. I simply  
12 don't know. But in any case, at the current  
13 time, there is no unobstructed 20 feet of  
14 access to any of those alleys.

15 And what I would like to do is  
16 enter the relevant chapter of the Fire Code  
17 into the record, so that you have that for  
18 easy reference and that's in the packet that  
19 has been distributed.

20 Finally, just before the September  
21 BZA hearing, I spoke with a Fire Department  
22 lieutenant, Lieutenant Ronald Murphy, of the

1 office of the Fire Marshal Fire Prevention  
2 Division who told me that a fire truck did,  
3 indeed, drive down the alley in order to do a  
4 survey and determine whether a fire vehicle  
5 could access the property.

6 However, the lieutenant told me  
7 that the fire truck simply entered the alley  
8 in one place and drove straight through on the  
9 opposite side. The crew made no measurements,  
10 for example, to determine whether the alley  
11 access was sufficiently wide under the Fire  
12 Code or how far it is from the property to a  
13 fire hydrant or anything else. It just simply  
14 entered and drove out.

15 So the letter that the -- the Fire  
16 Marshal letter that the applicant has placed  
17 into the record doesn't state the basis for  
18 the conclusion that the alley meets the Fire  
19 Code requirements. First, a neighbor who  
20 witnessed the Fire Department survey, Andre  
21 Wincoop, told me that the fire truck went down  
22 one alley that doesn't even abut the property

1 in question. It's the alley parallel to  
2 Harrison Street. And I believe Mr. Eads' wife  
3 also witnessed the same survey.

4 And secondly, the D.C. Fire  
5 Prevention Code does not give the Fire Marshal  
6 or any other official the authority to waive  
7 the provisions on alley access, the 20 foot  
8 permanent 20 foot unobstructed access.

9 So in a nutshell, if the BZA were  
10 to grant a variance to the applicant, the  
11 proposed structure would cause a violation of  
12 the D.C. Fire Prevention Code that would  
13 endanger the safety of all the surrounding  
14 homeowners and which no one has the authority  
15 to waive. And that concludes my testimony.  
16 Thank you.

17 CHAIRPERSON MILLER: How do you  
18 know no one has the authority to waive it?

19 MR. HANAUER: Well, there is no --

20 CHAIRPERSON MILLER: Did --

21 MR. HANAUER: -- provision for  
22 waiving.

1 CHAIRPERSON MILLER: There is no  
2 provision.

3 MR. HANAUER: There's no specific  
4 provision, but there is no provision allowing  
5 anyone to waive that requirement. There is,  
6 however -- I can pull up the actual Fire Code  
7 language right here. There is a provision  
8 that allows a different section to be waived.  
9 And if I'm not mistaken, the provision is to  
10 extend the 30 foot requirement -- or excuse me  
11 20 foot requirement.

12 I'm sorry, I can't find that right  
13 now. There is an exception, for example, in  
14 503.1.1 on buildings. The code official is  
15 authorized to increase the dimension of 150  
16 feet. This is the circumference of the  
17 facility. And again, there are provisions for  
18 a fire official to change the regulations.  
19 There are exceptions in the code. There is no  
20 exception for this.

21 CHAIRPERSON MILLER: Okay.

22 MR. HANAUER: So given that they

1 are existing exceptions that suggest to me  
2 that the absence of an exception here or the  
3 absence of authority to waive is deliberate.

4 CHAIRPERSON MILLER: Are you a  
5 lawyer by any chance?

6 MR. HANAUER: I'm not.

7 CHAIRPERSON MILLER: Okay.

8 MR. HANAUER: Actually, I play one  
9 on TV.

10 CHAIRPERSON MILLER: You're on TV?  
11 Like right here on TV, right?

12 MR. HANAUER: Yeah, right. I'm on  
13 your webcast back there.

14 CHAIRPERSON MILLER: Okay. Now,  
15 you put a lot of things in evidence.

16 MR. HANAUER: Um-hum.

17 CHAIRPERSON MILLER: First of all,  
18 I want to see if the applicant has any  
19 objections. A lot of them seem pretty  
20 relevant. You know, some of them are public  
21 information like Google or Zoning Maps that I  
22 think there's not an issue that I can imagine.

1 You know, we talked about photographs before  
2 and then the applicant may, you know, I don't  
3 know if you want to question, you know, those  
4 photographs at all? I'm just raising it.  
5 Sometimes there are questions as to who took  
6 them, when, etcetera.

7 MR. HANAUER: Well, the  
8 photographs I personally took. So I can  
9 attest to the providence of those.

10 CHAIRPERSON MILLER: Okay.

11 MR. HUGHS: No, Madam Chair, I  
12 don't think that I need to cross examine Mr.  
13 Hanauer on measurements he took and so forth.  
14 I would just like to ask -- this is a lot of  
15 paper that I'm trying to catch up with, so I  
16 just want to ask a few questions as I have  
17 them, if I might. Is it appropriate? Okay.

18 CROSS EXAMINATION

19 MR. HUGHS: Mr. Hanauer, is it  
20 your understanding that the alleys that are  
21 surrounding the subject property, Lot 37, and  
22 one of which runs to the rear of your property

1 is platted at 20 feet in width on the records  
2 of the surveyor?

3 MR. HANAUER: My understanding is  
4 that on paper, on the plats they are recorded  
5 as 20 feet, but as I showed in practice, they  
6 are actually not 20 feet wide.

7 MR. HUGHS: So would these items  
8 that are shown in your images, the lamp post  
9 the fence and so forth, would they -- would it  
10 take that those are intrusions into the public  
11 space?

12 MR. HANAUER: Well, I'm neither a  
13 surveyor nor a land use specialist, so I'm not  
14 sure I can say that.

15 MR. HUGHS: Well, okay.

16 MR. HANAUER: But I'm not sure why  
17 trees grew where they grew.

18 MR. HUGHS: I'm not talking about  
19 trees, necessarily.

20 MR. HANAUER: Or why telephone  
21 poles were placed where they were placed.

22 MR. HUGHS: But the right-of-way

1 is 20 feet in width.

2 MR. HANAUER: Well, the right-of-  
3 way in practice again is substantially less  
4 than 20 feet. I mean, I agree with you on  
5 paper, on the plat they are listed as being 20  
6 feet wide, in practice, because of trees and  
7 lamp posts and other things, they are less.

8 MR. HUGHS: Okay. In your --

9 MR. HANAUER: And again, as I  
10 said, the Fire Code says that "The fire  
11 apparatus access road shall have an  
12 unobstructed width of not less than 20 feet at  
13 all times." So it doesn't really discuss what  
14 the reason for that obstruction might be. It  
15 says unobstructed.

16 MR. HUGHS: So in absence of the  
17 variance request here, if a use such as -- and  
18 again, this is hypothetical, because our  
19 position is that they are not financially or  
20 economically feasible, but if a use such as  
21 one of the permitted uses that are listed in  
22 the R-1-B District were to be constructed on

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1       this site or a similar -- let's just say on  
2       this site, the Fire Code would apply to those  
3       uses as well, this provision that you are  
4       referencing, correct?

5                   MR. HANAUER: I would imagine so.

6                   MR. HUGHS: And so were you  
7       suggesting that that would preclude  
8       development on this lot, based on the Fire  
9       Code?

10                  MR. HANAUER: Well, again, as  
11       neither a lawyer nor a land use specialist,  
12       I'm not sure how to apply the D.C. Fire  
13       Prevention Code to the regulations governing  
14       the use of the land. I'm merely pointing out  
15       that if the proposed house were built on this  
16       lot, that the Fire Code would be violated.

17                  I would point out as well that  
18       there is actually no current violation of the  
19       D.C. Fire Code, even though the alleys are  
20       currently less than 20 feet, because the Fire  
21       Code defines a fire apparatus access road as  
22       a road that provides access from a fire

1 station to a facility, building or portion  
2 thereof. Since there is no facility, building  
3 or portion thereof within the alley, I guess,  
4 at the moment, the alleys are technically not  
5 a fire apparatus access road.

6 If something was built, they would  
7 become a fire apparatus access road and the  
8 Fire Code would be violated.

9 MR. HUGHS: So you're suggesting--  
10 okay, okay. And then you mentioned back --  
11 I'm stepping backwards here that these items  
12 that intrude upon the alley right-of-way, the  
13 fence, the lamp post, in the event that those  
14 were needed to be moved to provide compliance  
15 with the fire code, that would be the  
16 obligation of the infringing property owners.  
17 Is that not correct?

18 MR. HANAUER: Well, I don't know  
19 that these trees or the property of any --

20 MR. HUGHS: I'm not talking about  
21 the trees.

22 MR. HANAUER: -- one in particular

1 or the --

2 MR. HUGHS: But I understand --

3 MR. HANAUER: Well, the telephone  
4 poles. I mean, I supposed one could petition  
5 Pepco or Verizon or whomever to move their  
6 telephone pole, I don't know what the process  
7 is for that.

8 MR. HUGHS: But in terms of fences  
9 and lamp posts, well, you --

10 MR. HANAUER: Yes, I suppose to  
11 develop the lot, the applicant could petition  
12 whoever is responsible for all those  
13 intrusions to move them if that's feasible or  
14 practical. I simply don't know if they are.

15 MR. HUGHS: Okay. And not to go  
16 too far afield then, the -- and I don't know  
17 if Ms. Dumas has other witnesses or if we want  
18 to get to it at another time, but it seems  
19 there has been some discussion about the  
20 adequacy of the input from the Fire Marshal's  
21 office on this issue. And I don't know if the  
22 Board would be amenable.

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1 I had a conversation with the Fire  
2 Marshal who submitted this letter.

3 MS. DUMAS: I object to any  
4 testimony from counsel.

5 MR. HUGHS: I am not suggesting to  
6 provide other than I would, you know -- of  
7 course, there is a lot of -- there has been  
8 historically a lot of turnover in that office,  
9 but if need be, I would like the opportunity  
10 to have that office submit a supplemental  
11 letter explaining what actually transpired in  
12 terms of the site visit and analysis from that  
13 office.

14 MR. HANAUER: Well, if I might  
15 again, since I spoke with someone at the Fire  
16 Marshal who did explain what transpired to me,  
17 he had told me on the phone that the truck  
18 entered the alley and drove straight through  
19 without taking any measurements or stopping.

20 MR. HUGHS: And I got -- I was  
21 given different information. So I don't  
22 want --

1 MRS. EADS: I saw that, too.

2 MS. DUMAS: I think we have other  
3 witnesses who could testify to what transpired  
4 when the fire truck went through the alley.  
5 And I might be able to clear up some of  
6 counsel's questions by redirecting our  
7 witness.

8 CHAIRPERSON MILLER: Okay.

9 MR. HUGHS: I would just like the  
10 request open to have --

11 CHAIRPERSON MILLER: I hear your  
12 request.

13 MR. HUGHS: -- the office  
14 supplement it.

15 CHAIRPERSON MILLER: And I think  
16 what we do is, you know, let's keep that in  
17 mind and then when we get to the end of the  
18 hearing, we will decide what we're going to  
19 keep the record open for. Sometimes we work  
20 with the Office of Planning in getting further  
21 documentation from other agencies or testimony  
22 from other agencies if it's necessary.

1                   So why don't we keep going and  
2                   then hear all that testimony and then you can  
3                   bring it up at the end, if it's still  
4                   something you would like to pursue. Okay?

5                   MR. HUGHS: Okay. And I'm not  
6                   even going to be able to go the length,  
7                   because I have not seen these emails that Mr.  
8                   Hanauer has provided.

9                   CHAIRPERSON MILLER: That was kind  
10                  of a question --

11                  MR. HUGHS: But just so --

12                  CHAIRPERSON MILLER: -- I had in  
13                  my mind. I was looking at the regulations and  
14                  there are certainly requirements for the  
15                  applicant to file a prehearing statement and  
16                  documents, etcetera, and I'm not -- I think  
17                  that maybe, you know, one of the weaknesses in  
18                  our regulations, but we do have a situation  
19                  where this is all given to the applicant last  
20                  minute.

21                  Now, he may -- they maybe should  
22                  have been aware of a lot of these documents

1        anyway, but I don't know, Ms. Dumas, do you  
2        want to -- this is your witness. Is there a  
3        reason why they were just put in at the, you  
4        know, hearing?

5                    Mr. Hughs, are you saying you  
6        would like some time afterwards to be able to  
7        respond to some of these documents?

8                    MR. HUGHS: Ideally, I would like  
9        to have some time to review the documents.

10                   CHAIRPERSON MILLER: Because we  
11        have so much.

12                   MR. HUGHS: I haven't seen many of  
13        them, internal emails and so forth. I was  
14        trying to follow Mr. Hanauer's testimony and  
15        I believe it is different than the letter that  
16        he submitted, so this is yet again additional  
17        testimony which is fine, I just haven't had a  
18        chance to digest it. So I would, if the Board  
19        would indulge me, like some opportunity to  
20        respond to that, but I don't know how we would  
21        do that, save for a continuation.

22                   MS. DUMAS: I have no objection to

1 the applicant responding to the testimony and  
2 evidence that we have placed in the record  
3 today in the form of proposed conclusions of--  
4 findings of fact and conclusions of law or  
5 even a brief. I would object to a  
6 continuation of the hearing. I think the  
7 purpose of all the documents that have been  
8 entered into the record is to provide written  
9 documentation of what Mr. Hanauer has  
10 testifying to, to the extent internal emails  
11 that would -- the applicant would not have  
12 been privy to have been entered.

13 The remainder are either  
14 documentation of measurements that Mr. Hanauer  
15 took or are the, for instance, the contract  
16 between Mr. Woodring and Alley Cat Mews which  
17 Mr. Woodring clearly had knowledge of.

18 So I don't think a continuation is  
19 warranted. But I have no objection to all  
20 parties having the opportunity to respond  
21 after the hearing in the form of a written  
22 summation. I think that would be an excellent

1 idea, given the late hour.

2 CHAIRPERSON MILLER: Mr. Hughs, do  
3 you think that that is satisfactory to you?

4 MR. HUGHS: No. Yeah, I think in  
5 terms of responding to the issues raised in  
6 this series of emails and the documents that  
7 Mr. Hanauer has provided that I had not seen  
8 before this evening, I think that's fine. I  
9 don't feel that I necessarily have the need to  
10 cross examine him on what is going on. I just  
11 need to understand what has been presented.  
12 So that's fine with me.

13 In terms of the Fire Code  
14 references, we have already addressed that.  
15 I would like an opportunity to provide a  
16 posthearing submission on that or have the  
17 office of the Fire Marshal, the FEMS file  
18 something supplemental to their earlier  
19 submission.

20 CHAIRPERSON MILLER: I just want  
21 to make sure that we're waiting for you, Mr.  
22 Hughs, to see if you have any other questions.

1 MR. HUGHS: No, I'm sorry.

2 CHAIRPERSON MILLER: You're  
3 finished?

4 MR. HUGHS: I don't have any  
5 other. Yes. I don't have any other  
6 questions.

7 CHAIRPERSON MILLER: Any redirect?

8 MS. DUMAS: I do have just a few  
9 questions on redirect.

10 CHAIRPERSON MILLER: Okay.

11 REDIRECT EXAMINATION

12 MS. DUMAS: Mr. Hanauer, am I  
13 correct in assuming that you have read the  
14 applicant's submissions in this case?

15 MR. HANAUER: Yes, I have.

16 MS. DUMAS: And was your research  
17 prompted, research into the Fire Code  
18 specifically prompted by any of the filings  
19 made by the applicant?

20 MR. HANAUER: Well, my  
21 understanding that the Fire Department had  
22 done a survey of the alleys prompted me to

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1 research the Fire Code to find out what the  
2 requirements actually were, because it seemed  
3 odd to me that the -- since my understanding  
4 was that one of the reasons for having this  
5 alley width requirement was to ensure  
6 emergency vehicle access and other purposes,  
7 that I thought it was odd that the Fire  
8 Department would then make a -- have no  
9 objection to the development.

10 The letter simply had one  
11 operative sentence which was we have no  
12 objection to the development. So thinking  
13 that odd, I decided to research the Fire Code  
14 and find out exactly what the requirements  
15 were. And I found that there was an apparent  
16 contradiction.

17 MS. DUMAS: Okay. That's all I  
18 have.

19 CHAIRPERSON MILLER: Okay. Do you  
20 have any other witnesses?

21 MS. DUMAS: We have one last  
22 witness and that is Alan Joaquin, who is also

1 a resident in Square 1877, who I believe is  
2 testifying about the adverse impact prong of  
3 the variance test.

4 MR. JOAQUIN: Hi, good evening.  
5 My name is Alan Joaquin. I live right next to  
6 Mr. Chu and a couple houses down from Mr.  
7 Hanauer.

8 CHAIRPERSON MILLER: Why don't you  
9 give your exact address?

10 MR. JOAQUIN: Sure. It's 5124  
11 Chevy Chase Parkway.

12 CHAIRPERSON MILLER: Thank you.

13 MR. JOAQUIN: And I'm here really  
14 to address some of the things that Mr.  
15 Jeffries was concerned about. And it's really  
16 the privacy issues. And it seems pretty  
17 obvious that if you cut down some large mature  
18 trees and erect a two story building in their  
19 place, it will curtail the property of  
20 everyone who lives around that area.

21 If you take a walk around the  
22 alley, you will see that many of the homes

1 have very large windows in the back. We are  
2 very close side-to-side. And in the front, as  
3 someone testified, it's a very busy street.  
4 A lot of people drive by to miss the lights.  
5 And the only place you really have is the  
6 back.

7 And we have a picnic table out  
8 there and a fireplace out there and really the  
9 homes go to a certain point and stop. So you  
10 really do -- if you stay close to your house,  
11 it's very private. And because of the windows  
12 the way they are, it really looks -- when you  
13 are in the house, you get the feeling almost  
14 like you're in the woods. It's always -- you  
15 know, in the summertime it's green. In the  
16 fall it's -- there's a lot of foliage. And  
17 when it snows, it looks like Narnia. It's a  
18 really beautiful spot.

19 And when we used to live on 32<sup>nd</sup>  
20 and Reno, in that area, not Reno in  
21 Rittenhouse, and when we went to move, it was  
22 my wife Mary and I and we have four children,

1 when we were moving, we were really  
2 considering getting more space, especially  
3 because of the kids.

4 And one of the ideas was to move  
5 into Montgomery County somewhere and we came  
6 across this spot, which is very close. And we  
7 didn't -- it was a very big investment, which  
8 we really didn't want to make unless we were  
9 sure that green space was going to stay in the  
10 back. And we did our homework, as I  
11 understand a lot of our neighbors did.

12 And we talked to the neighbors.  
13 We talked to our real estate agent at the  
14 time. And we did look at the regulations and  
15 the Zoning Regulations and we were assured by  
16 our neighbors and the realtor and our own  
17 review of the regulations that that was --  
18 that no home was going to be built back there.

19 And as a result, we bought the  
20 house. In fact, we got into a bidding war and  
21 we paid a lot more than what the asking price  
22 was. And there was some suggestion that if it

1 isn't developed in some way, that the property  
2 is going to fall into disrepair. Well, we --  
3 the Hazmers who used to live in that lot, I  
4 mean, used to own that lot had a son, as was  
5 in the testimony today.

6 Had a son who would come in and  
7 twice a year or once a year he would come in  
8 and clean out the dead trees and the brush.  
9 And our families put in between \$700 to \$1,200  
10 a year building up that spot that was behind  
11 us, making sure that the weeds were killed and  
12 that the trees weren't dying, they wouldn't  
13 fall and would be safe, because our kids used  
14 that as part of their play area.

15 And then we were not the only ones  
16 who did that. There were a lot of people,  
17 including the Eads, not only did they invest  
18 in their own site, but as was testified to,  
19 they improved the other areas.

20 It really is an urban oasis. It's  
21 really where our neighborhood begins. You  
22 know, we have, you know, drinks on Friday

1 night back there. We have, you know, snowball  
2 fights with the kids. It's really just  
3 another area that we have to make use of. And  
4 it's very safe and there aren't people who are  
5 strangers walking by there.

6 Although, there are people who we  
7 might not necessarily know, but they are  
8 familiar faces. A lot of people use that area  
9 to walk their dogs and to walk in. And I  
10 think that's very evident. And the LLC isn't  
11 only the homes that surround the lot, but it's  
12 people who live across the street from us and  
13 people across the street from Harrison who  
14 have access to that lot and who really do want  
15 to keep it green.

16 They have not only joined  
17 GreenPiece, but have agreed to donate \$2,000  
18 to \$3,000 to the cause. And when we built the  
19 LLC, it's not only to purchase the property  
20 from Mr. Merwin and Alley Cat Mews, but it's  
21 always -- we have also taken the opportunity  
22 to look into how we would maintain it and what

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1 kind of insurance we would need for it and we  
2 want to do it responsibly.

3 No one wants to take on the risk  
4 and we looked at that in order to get people  
5 to contribute, we had to do that due  
6 diligence, which we did take up.

7 And the opposition and a lot of  
8 the cases that I think that the other side has  
9 referred to, there were no opposition with  
10 respect to some of the variances that were  
11 mentioned in their brief.

12 But here, every one of the houses  
13 that were -- that they were provided -- they  
14 were required to give us notice of their  
15 applicant -- of their application. Each one  
16 of those people have signed a petition that I  
17 think is part of the papers that we have  
18 submitted in opposition to the application.

19 In addition to that, I think we  
20 have 73 other people who live in the  
21 neighborhood who have signed opposition  
22 papers. So there is, approximately, 100

1 petitions that have been signed.

2 We also have this GreenPiece  
3 organization and people have spent thousands  
4 of dollars. And the ANC also issued a report  
5 that was on our side as well. And the other  
6 side mentioned there was an opposition by the  
7 chairman, who was a former partner of Holland  
8 and Knight, but he did oppose it. But the ANC  
9 did give us the opinion that we wanted.

10 The -- what seems to have happened  
11 here is that Mr. Merwin saw an opportunity and  
12 knowing the regulations, he took a risk. He  
13 bought the property for 36 or whatever it was,  
14 \$30,000 some odd, and he decided to flip it  
15 for \$125,000. He could have bought it on a  
16 contingency basis, but he wanted to take that  
17 risk.

18 And taking that risk is not  
19 permitted by a use variance. He is gambling  
20 with the property values of the neighborhood.  
21 He is gambling with very little of his own  
22 money. And the neighborhood just feels that

1 that is improper and we hope that the BZA will  
2 help us to prevent that from happening. Thank  
3 you.

4 CHAIRPERSON MILLER: Thank you.  
5 Any Board questions? Cross?

6 MR. HUGHS: I'm sorry, could you  
7 pronounce your last name for me?

8 MR. JOAQUIN: Joaquin.

9 CROSS EXAMINATION

10 MR. HUGHS: Mr. Joaquin, just a  
11 few questions. At the first hearing, I had --  
12 or when we qualified parties, I had made --  
13 raised an objection not understanding what the  
14 extent of the LLC, the GreenPiece Park, LLC  
15 included. You indicated for the first time  
16 that I have heard tonight that it includes  
17 members or property owners beyond just Square  
18 1877. Is that right?

19 MR. JOAQUIN: To be honest, I'm  
20 not sure. Contributing members to the  
21 GreenPiece, LLC is clearly beyond that  
22 neighborhood. Whether or not they are not --

1       they are actual members, I am not sure.  There  
2       are people in the room that could testify to  
3       that, but I'm not sure.  But there are people  
4       that are outside the neighborhood who have  
5       contributed and have agreed to contribute  
6       thousands of dollars, even though they are not  
7       directly --

8               MR. HUGHS:  Contributing thousands  
9       of dollars for the acquisition of the  
10       property?

11              MR. JOAQUIN:  Yes, that's right.  
12       If we were successful in purchasing the  
13       property, that's correct.

14              MR. HUGHS:  And then you agree --  
15       and again, this goes back to the information  
16       I just haven't had a chance to get to it, Mr.  
17       Hanauer's representation, I mean, this is  
18       where it last stood.  There was an offer made  
19       to Mr. Merwin in August of '09 -- or August 9,  
20       '07.  Is that the date I have?  I'm just not  
21       sure.  Is that the last point offer that was  
22       made or the last offer that was made?

1                   MR. JOAQUIN: Well, it is  
2                   interesting because both Mr. Merwin -- is when  
3                   I lived in 32<sup>nd</sup> and Rittenhouse Street, Mr.  
4                   Merwin was a neighbor, so I know Mr. Merwin.  
5                   And his real estate agent, Tom Williams, is  
6                   someone that I know as well. And I see them  
7                   periodically. And believe me, I raised this  
8                   often, especially with Mr. Williams, and tell  
9                   him that the neighborhood is really upset with  
10                  him and that we stand willing and ready to  
11                  buy.

12                 I have no doubt that Mr. Merwin  
13                 knows that we would take that property for him  
14                 at a much higher value than what he paid for  
15                 it.

16                 MR. HUGHS: So there is an offer  
17                 on the table to --

18                 MR. JOAQUIN: My understanding is  
19                 that -- I'm not sure if there is a written  
20                 offer, but I know that I communicated as a  
21                 part of the GreenPiece that the neighborhood  
22                 is willing to buy. And I personally am

1 willing to buy on my own. Which is a very  
2 interesting thing as well is not only did Mr.  
3 Eads offer to buy this property from the  
4 Hazmers, we offered to buy it. And I know  
5 there are many other neighbors who have  
6 offered to buy it.

7 It isn't as though we want this  
8 free and, you know, isn't this nice, we have  
9 green in our backyard and we don't want to do  
10 -- and we don't want to pay for it. We just  
11 want to stop it from being taken away from us.  
12 There are many neighbors who individually have  
13 wanted to buy it. And we formed a group,  
14 because we wanted to make sure that the whole  
15 neighborhood would be happy with the way we  
16 maintained it. And that's why we main -- that  
17 we started the GreenPiece LLC.

18 MR. HUGHS: If Mr. Merwin or  
19 another property owner purchased that property  
20 or owned that property or Mr. Eads, for that  
21 matter not knowing that any restrictions he  
22 may have on his property, were to develop that

1 property consistent with the permitted uses of  
2 the Zoning Regulations, would you have an  
3 objection to that?

4 MR. JOAQUIN: I think that if  
5 someone is going to use it consistent with the  
6 Zoning Regulations, that whether or not I  
7 wanted to object really wouldn't matter,  
8 because you --

9 CHAIRPERSON MILLER: I want to  
10 interrupt here, because it's 6:30 and strictly  
11 speaking, you should only be crossing him on  
12 the matters he testified to. And so I think  
13 that's going beyond that, so I --

14 MR. HUGHS: Well, he -- Madam  
15 Chair --

16 CHAIRPERSON MILLER: Did he  
17 testify?

18 MR. HUGHS: -- he said that based  
19 on research that he had done, that no house  
20 would be developed there. I just wanted to --  
21 and maybe I wasn't direct enough in  
22 understanding. Was it only the construction

1 of a house that you were concerned about or  
2 any construction?

3 MR. JOAQUIN: If I had no basis to  
4 oppose it, if there was, for example, an art  
5 studio that was being built that was within  
6 all the regulations and it was being  
7 constructed, I have --

8 MR. HUGHS: But you --

9 MR. JOAQUIN: -- no basis.

10 MR. HUGHS: I'm sorry. You  
11 understood that when you purchased your  
12 property?

13 MR. JOAQUIN: I did.

14 MR. HUGHS: Okay. And  
15 understanding the late hour, I'm sorry, that's  
16 the end of my questions. I'm sorry, you  
17 mentioned a petition that was signed. I just  
18 don't know about that in the record.

19 MR. JOAQUIN: I think the petition  
20 has been in since the ANC hearing.

21 MR. HUGHS: Well, there is a  
22 reference and we can get to this when you get

1 back to the ANC that the ANC letter references  
2 a petition, but at least in the copy that I  
3 have or was presented there, there is no such  
4 petition. So I just wanted to see it.

5 MS. DUMAS: There is a petition in  
6 the record that was submitted if not by  
7 GreenPiece, then, let's see who submitted it.

8 MR. HANAUER: By the ANC, I think,  
9 you might have put it in.

10 MS. DUMAS: It was exhibit --

11 MR. HUGHS: Well, I never got the  
12 exhibit.

13 MS. DUMAS: Okay.

14 MR. HUGHS: I never got the  
15 exhibit.

16 MS. DUMAS: We have the petition.  
17 It's -- it dates back to the ANC's June 11,  
18 2007 hearing on the matter. And I understand  
19 Mr. Hanauer has enough copies to distribute to  
20 the Board and we can submit it into the  
21 record. My understanding is that there are  
22 multiple letters that may overlap many if not

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1 all of these property owners in the record for  
2 the BZA that were submitted very early on in  
3 the proceedings.

4 CHAIRPERSON MILLER: Okay. Just  
5 for the record, we have a big record here, you  
6 know, and again it has been a while since we  
7 have looked at it all. But was it in the  
8 record or was it not in the record and you are  
9 adding it now or you are not sure?

10 MS. DUMAS: It looks to me like  
11 this is something different than what I have  
12 seen in the record.

13 CHAIRPERSON MILLER: Okay.

14 MS. DUMAS: And that Mr. Hanauer  
15 has just confirmed that.

16 CHAIRPERSON MILLER: Okay.

17 MS. DUMAS: So I would like to  
18 provide it now for the record.

19 CHAIRPERSON MILLER: Okay. Any  
20 other questions? I have one follow-up  
21 question. Since you were asked about offers  
22 by Mr. Hughs, did you get turned down by Mr.

1 Merwin --

2 MR. JOAQUIN: Yep.

3 CHAIRPERSON MILLER: -- from these  
4 offers?

5 MR. JOAQUIN: Yeah, but my  
6 original offers were for the people who he --  
7 from whom Mr. Merwin bought it from. They  
8 were from Oregon. Since Mr. Merwin has had  
9 it, the only offers that I have made are  
10 through GreenPiece and they have rejected each  
11 one.

12 CHAIRPERSON MILLER: And is the  
13 reason that the price wasn't high enough?

14 MR. JOAQUIN: Well, I --

15 CHAIRPERSON MILLER: Do you know?

16 MR. JOAQUIN: Well, as Mr. Hanauer  
17 testified to, the last response, I think, was  
18 the written response by Mrs. Merwin saying  
19 that they had another contract buyer.  
20 Although, she didn't mention that it was  
21 contingent.

22 CHAIRPERSON MILLER: Okay.

1 Anything else? Anything else? Okay. The way  
2 our procedures are for applications as opposed  
3 to appeals is that, as I understand it, this  
4 would be the time, Ms. Dumas, if you have any  
5 kind of closing or any kind of remarks to  
6 make, this is it.

7 MS. DUMAS: Okay.

8 CHAIRPERSON MILLER: Legal  
9 argument, whatever.

10 MS. DUMAS: Sure, I'm happy to.  
11 This Board is well-aware of the requirements  
12 for granting a variance under the District of  
13 Columbia Zoning Regulations. I just remind  
14 the Board that they -- that you did determine  
15 last fall that this is, indeed, consistent  
16 with prior decisions of the Board and the case  
17 law in the District of Columbia, a use  
18 variance, and so the standard is undue  
19 hardship as opposed to practical difficulty.

20 But I would like to back up and  
21 talk about the uniqueness of this property.  
22 GreenPiece has presented evidence that has

1       been confirmed by the Office of Planning and  
2       even by the applicant that not only is there  
3       a similarly situated property in the exact  
4       square we are talking about, but that there  
5       are at least a handful of others in the  
6       surrounding neighborhood, which are impacted  
7       in the same way that the subject property is  
8       impacted.

9               The applicant has really put forth  
10       no other uniqueness for the Board to consider,  
11       no other purported characteristic which would  
12       establish that the property is unique for the  
13       Board to consider.

14              And to grant a variance from the  
15       alley use restrictions based on the fact that  
16       the property is simply on an alley would be to  
17       turn the regulations on their head. And I'm  
18       reminded of the Gilmartin case citing Capitol  
19       Hill Restoration Society and I quote "The  
20       rationale behind the uniqueness test is that  
21       difficulties that are common to or affect an  
22       entire neighborhood or a substantial portion

1       thereof are properly addressed by seeking  
2       amendment of the regulations themselves."

3               And to continue "If such problems  
4       were addressed through individual variances,  
5       the effect would be a de facto amendment of  
6       the Zoning Regulations by the BZA, because  
7       requests by other owners similarly situated  
8       would have to be granted as a matter of equal  
9       protection under the Due Process Clause."

10              I would submit that Mr. Eads would  
11       be entitled to a use variance if Mr. Eads or  
12       any successor in interest who does not, as Mr.  
13       Eads currently chooses to keep his property  
14       green, decides to develop it at some later  
15       date, that they -- if the variance is granted  
16       in this case, that that property owner as well  
17       as the property owner of the handful of other  
18       lots that have been identified in today's  
19       hearing would be entitled to a use variance.

20              The second prong of the variance  
21       test is an undue hardship on the applicant in  
22       complying strictly with the requirements of

1 the Zoning Regulations that relates directly  
2 to the uniqueness identified. And there is no  
3 proforma in the record, although we heard Mr.  
4 Woodring refer to it. There, in fact, other  
5 than the information that has been submitted  
6 by GreenPiece, is no information in the record  
7 about any economic hardship.

8 Again, the applicant seems to rest  
9 on the fact that no single-family home can be  
10 developed on this property without a variance,  
11 as being both his uniqueness and his hardship.  
12 And those are just not sufficient to meet the  
13 legal test.

14 To refer you to other case law,  
15 the 900 -- the case of 900 G Street Associates  
16 vs. Department of Housing and Community  
17 Development, although was a Mayor's Agent for  
18 historic preservation case, the District of  
19 Columbia Board of Zoning Adjustment uses the  
20 same standard for determining undue hardship  
21 in a use variance case.

22 And a use variance cannot be

1 granted unless a situation arises where a  
2 reasonable use of the property cannot be made  
3 in a manner consistent with the Zoning  
4 Regulations. The inability to put the  
5 property to more profitable use or loss of  
6 economic advantage is not sufficient to  
7 constitute hardship, such as will warrant  
8 granting a use variance.

9 Rather, it must be shown that the  
10 Zoning Regulations preclude the use of the  
11 property in question for any purpose for which  
12 it is reasonably adapted. That is any use  
13 with fair, reasonable return arising out of  
14 ownership. And I'm citing there from the  
15 Palmer case, which the applicant has brought  
16 up.

17 Not only are there other uses  
18 permitted for this property under the Zoning  
19 Regulations, but the applicant has provided no  
20 evidence that he attempted to pursue these  
21 uses or that these uses could not provide a  
22 fair, reasonable return.

1           Indeed, there is evidence in the  
2           record that the applicant has been -- the  
3           applicant being Alley Cat Mews has been  
4           presented with offers to purchase the property  
5           for either the amount that he -- that Alley  
6           Cat Mews acquired the property or in excess of  
7           that amount and those offers have been  
8           rejected.

9           The contract between Mr. Woodring  
10          and Alley Cat Mews states that "The intended  
11          use is for a single-family home" and  
12          acknowledges the fact that the relief from the  
13          Zoning Regulations is required. The applicant  
14          does not have any undue hardship. In fact, he  
15          may walk away from this contract if relief is  
16          not granted.

17          And moreover, the neighbors have  
18          demonstrated through their efforts to purchase  
19          the property at a significant profit that --  
20          above the actual investment of both the  
21          applicant and the contract purchaser, that  
22          leaving the land as open space, which is a

1 permitted use under the Zoning Regulations,  
2 would provide a fair and reasonable economic  
3 return.

4 With respect to adverse impact,  
5 GreenPiece has testified that the construction  
6 of a home on the subject property would create  
7 adverse impacts in terms of light, air,  
8 traffic in the alley, construction of  
9 utilities in the alley and elsewhere to serve  
10 the new home, storm water runoff and  
11 diminution in value of surrounding property.

12 For all intents and purposes, if  
13 the variance is granted, the applicant would  
14 be constructing a home that would face the  
15 backyards of numerous homes in the square. It  
16 would be placed in a fishbowl. And with all  
17 of the rear facing windows of existing homes  
18 peering into the new home and likewise, the  
19 new home's exterior windows peering out into  
20 the backyards of those properties in the  
21 square.

22 The proposal represents poor urban

1 design and planning. Numerous other local  
2 jurisdictions prohibit a front to back  
3 configuration preventing this privacy issue  
4 from even coming to light.

5 The last point that I have is  
6 addressed in some of our prior pleadings on  
7 this matter and I don't think there is a need  
8 to go into it in detail. However, in the  
9 event that the applicant does submit any  
10 additional testimony or evidence into the  
11 record as he has suggested to rebut the  
12 evidence Mr. Hanauer placed in the record,  
13 with respect to self-created hardship.

14 Self-created hardship is a bar to  
15 relief in a use variance case. The applicant  
16 has argued in its prehearing or supplemental  
17 prehearing statement that the notice defense  
18 in taking jurisprudence actually precludes the  
19 argument of self-created hardship in a use  
20 variance. And the District of Columbia Court  
21 of Appeals has not abandoned the self-created  
22 hardship rule in use variance cases.

1           The applicant, Alley Cat Mews,  
2           purchased this property with full knowledge of  
3           the zoning restrictions. Likewise, the  
4           contract purchaser, Mr. Woodring, entered into  
5           a completely contingent contract acknowledging  
6           the restrictions prohibiting the development  
7           of this property for his intended use.

8           He replaced the standard  
9           feasibility study provisions of the Greater  
10          Capitol Area Association of Realtors regional  
11          contract with his own addendum containing  
12          these contingency provisions. Neither Mr.  
13          Woodring nor Alley Cat have made a substantial  
14          investment of funds. The settlement statement  
15          and contract show a combined cash outlay of,  
16          approximately, \$3,600.

17          And Mr. Woodring has no obligation  
18          to close on the contract unless the BZA relief  
19          is granted.

20          So notwithstanding the fact we  
21          believe that no hardship has been presented,  
22          to the extent any hardship has been presented

1 that has been created by the applicant and  
2 then would be deemed a bar to relief.

3 And we thank you for your time  
4 this evening.

5 CHAIRPERSON MILLER: Thank you.  
6 Do you have an opinion as to whether the  
7 hardship in this analysis goes to the owner or  
8 the applicant?

9 MS. DUMAS: My opinion from  
10 reading the application is that the owner of  
11 the property, Mr. Merwin, through Alley Cat  
12 Mews has authorized Mr. Woodring to file the  
13 application and prosecute it on his behalf.  
14 Typically, in cases that I bring to the Board,  
15 I would not posture the case in this manner.

16 I would have the applicant be the  
17 contract purchaser himself authorized by the  
18 property owner to pursue the application. I  
19 think it's difficult to determine whose burden  
20 it is, but the applicant is Alley Cat Mews.  
21 And there is clear knowledge imputed to both  
22 parties, Alley Cat Mews and Mr. Woodring, of

1 the zoning restrictions, which I think rise to  
2 self-created hardship.

3 CHAIRPERSON MILLER: Okay. I  
4 think I might have probably misphrased that,  
5 because the applicant is the owner. Is that  
6 correct? But Mr. Woodring is authorized to  
7 bring it as the contract purchaser. Yes,  
8 okay.

9 MS. DUMAS: Right. But I think  
10 the knowledge can be imputed to either party.

11 CHAIRPERSON MILLER: Any other  
12 questions? Is there anybody here in the  
13 audience who wishes to testify in support of  
14 this application, who hasn't testified?  
15 Anybody in opposition? Okay.

16 MRS. EADS: I just wanted to say  
17 one thing.

18 CHAIRPERSON MILLER: You need to  
19 come to the table. Okay.

20 MRS. EADS: I just want to --

21 CHAIRPERSON MILLER: Wait. You  
22 can't -- we want to get you on record.

1 MRS. EADS: Sorry. I'm Maggie  
2 Eads. I live at 3718 Harrison Street. And  
3 I'm the one who gardens the back. It's my  
4 garden and I like it. I did, because I'm out  
5 in the garden a lot, speak to Mr. Merwin when  
6 he first came to the property. He drove  
7 through someone's driveway at the house  
8 adjacent to me. He didn't even come through  
9 the alley.

10 And I saw him looking out to the  
11 property. He was in a truck. And because I'm  
12 out there and I know who goes through,  
13 generally speaking, I went over to his truck.  
14 And I said can I help you? What are you  
15 looking for? And he told me that this land  
16 was available for purchase and I said I don't  
17 think so.

18 And he said yeah, he had been down  
19 to the Board of -- you know, the D.C.  
20 Government Agency where they have the plats  
21 and all of that stuff. And I said I don't  
22 think so. I said I own this property 50 feet

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1 in. It's mine. It is not for sale. So he  
2 was not even aware of that.

3 But then of what the property was  
4 he was looking at, but then the second piece  
5 was he -- I told him that nothing could be  
6 built on it. I knew that. We have known it  
7 ever since we purchased. And I told him at  
8 that point. And he heard from me. That's all  
9 I have to say.

10 I just wanted to make it clear he  
11 knew from the very beginning that nothing  
12 could be built on it. And he had to be  
13 apprised of what the lot was additionally. I  
14 believe the architect person had to be  
15 apprised as well. I saw him one day coming  
16 and looking over the lot. He needed to be  
17 apprised as well as to what the boundaries of  
18 the lot were. That's all.

19 CHAIRPERSON MILLER: Thank you  
20 very much. Mr. Hughs, you don't have any  
21 cross, do you?

22 MR. HUGHS: She is not --

1 CHAIRPERSON MILLER: She's not a  
2 party or anything, no.

3 MR. HUGHS: No, I don't.

4 CHAIRPERSON MILLER: Okay. I  
5 think then if there are no further questions  
6 from the Board, Mr. Hughs, do you have any  
7 closing?

8 MR. HUGHS: I promise it will be  
9 very quick. I just want to respond to some  
10 things raised by Ms. Dumas and I think it will  
11 sum up our argument as well.

12 The three prong test I have heard  
13 ad nauseam, but I just -- there are a couple  
14 of things and I guess I'm going to couch my  
15 closing statement and make some requests of  
16 the Board at the same time.

17 We have heard Mr. Williams on a  
18 day's notice testimony regarding the other  
19 alley lots in the general area.

20 CHAIRPERSON MILLER: You know  
21 what, I see a mike on. Do you want to shut  
22 that off, so we can hear better?

1 MR. HUGHS: Okay.

2 CHAIRPERSON MILLER: Thanks.

3 MR. HUGHS: And then we have heard  
4 from Mr. Jackson. We heard from Mr. Chu and  
5 we have received some items. It all seems to  
6 me that there are -- there is a universe in  
7 this area of maybe five or six lots in this  
8 area that are surrounded by alleys. Most are  
9 in the R-1-B.

10 What our point is to make this  
11 unique and we're not saying that -- I say this  
12 universe is Lots 37 and 38. They are  
13 surrounded by alleys. They are surrounded by  
14 20 foot wide alleys, at least with respect to  
15 Lot 37 and I presume, but not sure with Lot  
16 38. They meet other -- all the other  
17 requirements, absent the lot width issue that  
18 would allow for a single-family house  
19 development.

20 And that's what Mr. -- our  
21 architect went to that there is no other area  
22 of relief being requested for this

1 construction. The other lots, I don't know  
2 about, as I said if they are substandard lots.  
3 I do believe and we can certainly supplement  
4 this as well, that they do not, I don't know  
5 if enjoy is the word, but they aren't  
6 confronted with 20 foot wide public alleys in  
7 all directions.

8 And the reason and the  
9 significance of that, which you are probably  
10 well-aware, is the Fire Code. And we believe  
11 that, as we have put in our pleadings, the  
12 significance of 2507.2 is to provide emergency  
13 access, primarily, to these lots. And we  
14 believe -- and again this is going to go to  
15 request of the Board to supplement, to allow  
16 for the Fire Marshal's office to provide a  
17 more detailed statement as to what actually  
18 was undertaken in terms of studying that  
19 configuration and why they had no objection to  
20 our application.

21 But that's why we believe that  
22 this property is unique. It's not just that

1 it's surrounded by alleys. It's -- they are  
2 20 foot wide alleys in an R-1-B District. And  
3 so we've got the very tight zoning constraints  
4 and we are one of the few lots or a couple of  
5 lots that would be allowed to be developed  
6 under the Fire Code.

7 Ms. Dumas raised the case of  
8 Capitol Hill Restoration Society and from what  
9 I understand about that case, the relief --  
10 the applicant postured that it was unique  
11 because it was, primarily, a row lot in  
12 Capitol Hill that was in the Capitol Hill  
13 Historic District.

14 There may have been a couple of  
15 other small elements, but that's the gist of  
16 it. And the Board and the Court said that's  
17 not enough, because there are so many other  
18 properties. The universe is not sufficiently  
19 narrowed.

20 Here when you look at our  
21 universe, it's 37 and arguably 38. That's the  
22 only lots we are aware of in this area that

1 are confronted with that. The one lot that is  
2 somewhat similarly confronted was the Rothblum  
3 lot which is over on Macomb Street, which the  
4 Board did approve and has been constructed and  
5 we believe has been a successful integration  
6 into the neighborhood.

7 So I believe that the property is  
8 unique and I think our testimony has shown  
9 that.

10 In terms of the undue hardship, if  
11 you -- this is very confusing. I understand  
12 we have got Alley Cat Mews. We have got the  
13 contract purchaser, Mr. Woodring is the  
14 contract purchaser, but I think we have made  
15 clear throughout that he based his analysis  
16 and we can again -- he provided it through  
17 written testimony. He shared with the Board  
18 that he studied it and determined here is what  
19 the potential uses in this zone on this  
20 property could be.

21 And it was narrowed down to an  
22 artist studio, a private garage, construction

1 of private garages on the lot or with the  
2 Board's approval a single-family house. And  
3 for -- Ms. Dumas said there is absolutely  
4 nothing in the record to support that.

5 If the Board would like that --  
6 those calculations to be provided to aid in  
7 showing that that's something that was  
8 actually undertaken, then that's fine. And  
9 that can even be done, you know, disregarding  
10 the fact that Mr. Woodring despite what has  
11 been suggested by the opposition has  
12 undertaken very real-life costs.

13 I mean, he has got me here. He  
14 has got his architect involved. And the  
15 counter point is that that's a self-inflicted  
16 hardship. Same with Mr. Merwin of Alley Cat  
17 Mews. His real cash -- I keep -- I hear, I  
18 believe, the term real cash investment or his  
19 exposure to this property is negligible. But  
20 he has a deed of trust on this property for  
21 which he is obligated.

22 And there is discussion and I do

1 want to go through more of Mr. Hanauer's  
2 chronologies to what went on and when offers  
3 were made and rejected and so forth. But as  
4 far as I know, no offer has been made to Mr.  
5 Woodring to purchase the property by the  
6 opposition and there is no contract offer on  
7 the table to Alley Cat Mews to purchase the  
8 property.

9 And so -- and if this Board were  
10 to deny this application, I seriously doubt  
11 that there would be such an offer made by  
12 anyone to purchase this property. So it's a  
13 very real -- it's a real-life circumstance.

14 And then to get to the notion of  
15 self-created hardship and this distinction  
16 between area and use, we went all through that  
17 in the fall. This is really an issue of  
18 degree. The hardship is that Mr. Merwin  
19 purchased the property. That's the action  
20 that was taken by Mr. Merwin. I misspoke.

21 And the same for Mr. Woodring. He  
22 has put an offer to purchase the property. He

1 has a contract to purchase the property.

2 There is not -- they have not done anything to  
3 the property to change it. Cases that talk  
4 about self-created hardship use for area  
5 variance, the jurisprudence shows that it is--  
6 there is an affirmative act required. It's  
7 something along the lines of, I think, the  
8 Russell Court referenced an estoppel,  
9 equitable remedy of estoppel.

10 There is no affirmative act here.  
11 They purchased the property. Mr. Merwin's  
12 predecessor in interest could have made an  
13 application under the regulations and it's  
14 just that point. A property owner has certain  
15 rights to its -- to a reasonable expectation  
16 into his property. And that's what we've  
17 tried to show here cannot be done absent a  
18 variance.

19 They can't realize the reasonable  
20 expectations. And to say well, they could  
21 sell it to this one group that has expressed  
22 some interest in the past, that is not the

1 same nor has any court required a property  
2 owner to undertake that conveyance in order to  
3 avoid a hardship.

4 And again, going back to the  
5 point, I don't know that there will be an  
6 offer on the table the day after the Board  
7 were to deny this application.

8 So finally, in terms of the impact  
9 on the Zone Plan and the property owners, I'm  
10 just going to leave it, you know, at what we  
11 set forth in our statement in support of that.  
12 It's consistent with the infill objectives of  
13 the Comprehensive Plan and we don't believe it  
14 results in any -- will result in any  
15 diminution in value. And thank you for your  
16 time.

17 CHAIRPERSON MILLER: Thank you. I  
18 would like to ask you one question though  
19 about the 20 feet and the measurement of the  
20 alleys. What if the measurement is less than  
21 20 feet? What does that do to the  
22 application, in your assessment?

1           MR. HUGHS: Given that the public  
2 right-of-way is 20 feet, I guess that could  
3 apply anywhere in the District if there would  
4 need -- well, two things. It would need to be  
5 a corrective action if anything -- if the Fire  
6 Marshal determined that corrective action were  
7 needed, that would be something that would  
8 need to be addressed by any property owners  
9 that are projecting into the public space.

10           But I think the Fire Marshal's  
11 report shows they undertook an analysis of the  
12 property and determined that it -- there was  
13 no violation of the Fire Code and thus, they  
14 supported the application.

15           CHAIRPERSON MILLER: Okay. Did  
16 you want to respond to that question?

17           MR. EADS: No. Could I make a  
18 final --

19           MS. DUMAS: Actually --

20           CHAIRPERSON MILLER: I'm sorry, I  
21 treated you all as like one party --

22           MR. EADS: Oh, okay.

1 CHAIRPERSON MILLER: -- with the  
2 final remark.

3 MS. DUMAS: Right. Well, we are  
4 separate parties.

5 CHAIRPERSON MILLER: Yes.

6 MS. DUMAS: But if I may, with all  
7 due respect, Madam Chair, I have taken a look  
8 at the Zoning Regulations and for purposes of  
9 applications as well as purposes of appeals,  
10 the parties generally are entitled to file  
11 proposed findings of fact and conclusions of  
12 law. And I would really relish the  
13 opportunity to do that, given the record in  
14 this case, because it is so vast.

15 And I think it would also give the  
16 applicant the opportunity to focus its  
17 attention to the information that has been  
18 submitted to the record today, which, you  
19 know, clearly is -- there has not been a lot  
20 of time to digest.

21 Mr. Eads, I think, wanted to make  
22 a statement as well to conclude.

1 CHAIRPERSON MILLER: Do you want  
2 to make a short statement? I'm sorry, I did  
3 overlook you.

4 MR. EADS: Yes. Two things.  
5 First, it has been suggested that the whole  
6 notion of offering money to buy this property  
7 has been a sham and that as the -- if the  
8 Board overrules, says no, then the offers will  
9 disappear.

10 I said earlier and I repeat right  
11 now there will be an offer from me for at  
12 least the amount of the last offer that  
13 GreenPiece made, so first.

14 Secondly, I'm being told that I  
15 should actually be sitting over here, because  
16 I'm equivalent -- I'm giving up a lot of money  
17 by opposing this, that, you know, if they win,  
18 then I could get \$125,000 or more for my --  
19 for our lot, because we're -- we would then be  
20 all covered.

21 I think that's really the wrong  
22 way to look at it. And what will happen is

1 that our cost will be raised, to mention  
2 something, but it will already -- I mean, when  
3 a lot sells for a certain price, the taxes  
4 people raise -- so our taxes are going to go  
5 up, even if we don't do anything with it.

6 And secondly, the value of the  
7 property to us, the reason we bought it, will  
8 be reduced, because it will not then be part  
9 of the contiguous green space. It will be a  
10 strip of land perhaps with a fence behind it  
11 that, you know, we're sort of shaded by a  
12 house and that's -- we will pay more, have  
13 something worth less and that's why I'm  
14 opposing it.

15 CHAIRPERSON MILLER: Okay. I  
16 think that should conclude the testimony and  
17 argument in this case. And so now we should  
18 do a schedule. I think it's appropriate for  
19 proposed findings and conclusions of law to be  
20 filed in this case.

21 Then there is the question about  
22 asking the Fire Department for further

1 supplementation. I believe that would go to  
2 more information with respect to what their  
3 on-site visit consisted of and the basis for  
4 their not objecting to the application.

5 And then I don't know if we want  
6 to get into any more information being  
7 requested with respect to the measurement of  
8 the alley. I guess I want to hear from the  
9 parties and then the Board with respect to  
10 that issue. I guess, Mr. Hughs, you're the  
11 one that raised it to begin with.

12 MR. HUGHS: Raised the issue of  
13 the supplemental information from the Fire EMS  
14 or the measurements?

15 CHAIRPERSON MILLER: Supplemental  
16 information from the Fire Department.

17 MR. HUGHS: Right. I would  
18 appreciate that. I'm not sure how the Board  
19 would prefer to have that obtained.

20 CHAIRPERSON MILLER: Well, I think  
21 that we would prefer to have it obtained  
22 through the Office of Planning, that they are

1 the more objective entity here at the  
2 Government as opposed to one of the parties.

3 MR. HUGHS: This is going to sound  
4 somewhat unorthodox, Madam Chair, but is it  
5 possible -- I'm agreeable not to contact that  
6 department and to have the Office of Planning  
7 or your office, your staff make that request  
8 if we can get the same commitment from the  
9 opposition. Because I understand there was  
10 some lobbying involved and I don't -- I want  
11 to avoid that.

12 MS. DUMAS: Well, I'm not sure  
13 exactly where that is coming from. I think  
14 the purpose of hearing so much from GreenPiece  
15 about -- in terms of questioning the --  
16 whether these alleys actually conform to the  
17 Fire Code requirements is because it's  
18 somewhat unorthodox for an applicant to  
19 provide a letter from the Fire Marshal to the  
20 applicant's counsel as part of an application  
21 to the BZA.

22 Typically, if the Fire Department

1 or DDOT or any of the other agencies outside  
2 of the Office of Planning are to comment,  
3 those are funneled through the Office of  
4 Planning. And they are -- the applications  
5 are referred by the Office of Planning to  
6 those agencies as a matter of course.

7 So I --

8 MR. HUGHS: I can explain that.

9 MS. DUMAS: -- don't think that we  
10 would be --

11 CHAIRPERSON MILLER: I don't want  
12 to get --

13 MS. DUMAS: -- confined to the  
14 Fire Department.

15 CHAIRPERSON MILLER: -- bogged  
16 down here. I don't want to get bogged down.

17 MS. DUMAS: Right.

18 CHAIRPERSON MILLER: It's already  
19 7:00. What I want is just to know is, you  
20 know, from the parties and from the Board, at  
21 this point, now that we have heard the whole  
22 case, basically, except, you know, you will

1 file supplemental filings, do we need more  
2 information from the Fire Department?

3 There is a question raised, and I  
4 was trying to see where it was going, if the  
5 alley is not wide enough, then, you know, is  
6 there an issue with respect to this  
7 application? If it's not even an issue, I'm  
8 not sure we need to pursue this further. I'm  
9 not clear of the nexus actually at this point  
10 for proving a use variance case here or  
11 disproving.

12 MR. HUGHS: Madam Chair, in terms  
13 of our argument, the 20 feet width is a  
14 product of our visiting with the Fire  
15 Department prior to filing the application and  
16 confirming, based on our belief, that the  
17 point of that regulation is to protect  
18 adequate emergency egress into the alley.

19 So we met with a member of that  
20 office. And I don't know if that's how it  
21 ended up, the letter came -- was routed  
22 through me or not. However, I think this is

1 similar to what the objection I raised with  
2 Mr. Eads in terms of Building Code, urban  
3 force preservation, etcetera, utilities in  
4 terms of actual compliance with those other  
5 non-zoning laws or regulations.

6 My point is that the platted alley  
7 is 20 feet wide. The Fire and EMS office have  
8 confirmed that it is satisfactory for their  
9 purposes in their letter and so that's to  
10 support our position that it is the third  
11 prong of the test there is no negative impact  
12 to the neighborhood. So I don't think it's  
13 necessary.

14 CHAIRPERSON MILLER: You're not  
15 requesting it any more?

16 MR. HUGHS: If -- I'm not saying  
17 that I wouldn't appreciate a clarification  
18 from that office, since I, obviously, can't  
19 testify as to conversations, but I'm saying I  
20 think in terms of the technicalities of it,  
21 it's not needed to get into the issue of  
22 measured versus platted lot widths.

1 CHAIRPERSON MILLER: No, but does  
2 it go to the issue of substantial detriment?

3 MS. DUMAS: We submit that it  
4 does.

5 CHAIRPERSON MILLER: Okay.

6 MS. DUMAS: And although I feel  
7 confident that we have sufficiently impeached  
8 the letter that the applicant has provided to  
9 the extent that the Office of Planning can  
10 secure any further information from D.C. Fire  
11 EMS, which states that it has tested all of  
12 the alleys in the square, we would welcome  
13 that information.

14 CHAIRPERSON MILLER: Okay. If  
15 it's okay with the other Board Members, I  
16 would suggest Mr. Jackson, if it would be  
17 possible for the Office of Planning to request  
18 a supplemental letter from the Fire Marshal  
19 which would describe further the visit, what  
20 the visit consisted of and what the basis for  
21 finding no objection was and also whether or  
22 not they have confirmation, I guess.

1 I don't know how to phrase this  
2 exactly, you can probably help me, Ms. Walker,  
3 but whether the alley widths are, in fact, 20  
4 feet wide. And if they aren't, whether there  
5 might be a substantial detriment were a home  
6 put on that lot.

7 MEMBER WALKER: For --

8 CHAIRPERSON MILLER: Does that  
9 sound about right? Yeah, go ahead.

10 MEMBER WALKER: Mr. Jackson, to  
11 the extent they can share with you how any  
12 obstructions in the alley would be addressed  
13 if they cause the alley to be less than 20  
14 feet in some places. If there are trees or  
15 telephone poles that are actually within the  
16 20 feet width, who would be responsible for  
17 addressing those issues.

18 MR. JACKSON: All right. Let me  
19 see if I have this now. Request supplemental  
20 letter to describe the site visit, the basis  
21 for the finding of no objections, and confirm  
22 the facts and whether it as confirmed that the

1 alley was actually 20 feet wide or not, and to  
2 indicate whether the -- if it isn't, whether  
3 that's detrimental to the health and safety --  
4 their ability to provide fire protection and  
5 who -- how would obstructions in the alley be  
6 addressed. Who would be responsible to  
7 address obstructions in the alley. Okay.

8 MEMBER WALKER: Yes, thank you.

9 MR. JACKSON: All right.

10 CHAIRPERSON MILLER: Okay. I  
11 think that covers it. Now, I just need to do  
12 a schedule for the proposed findings and  
13 conclusions of law. We usually do our  
14 decisions on the first Tuesday of the month.  
15 I think May might be too soon. Perhaps we  
16 should go to June 3<sup>rd</sup>. Is that all right with  
17 the parties?

18 MS. DUMAS: That's fine provided  
19 we can obtain the transcript within that.

20 CHAIRPERSON MILLER: Right. That  
21 also will give you time to go over the  
22 transcript and time for the Board to have the

1 transcript as well. How long does it take to  
2 get a transcript, Mr. Moy, about?

3 MR. MOY: On average between 10  
4 and 14 days.

5 CHAIRPERSON MILLER: Mr. Jackson,  
6 how long do you think it will take to get the  
7 letter from the Fire Department?

8 MR. JACKSON: Well, if you set a  
9 date certain when you want it turned in, I  
10 could tell them we need to have a response by  
11 that date and ask them to send it directly to  
12 the Office of Zoning.

13 CHAIRPERSON MILLER: And can you--  
14 somebody would need to serve the parties, too.  
15 Would you be able to do that or would you want  
16 the Office of Zoning to do that? I don't know  
17 how that's normally done when the Office of  
18 Planning gets a document. Do you, Mr. Moy?

19 MR. JACKSON: Well, I would be  
20 just requesting that it be forward to your --  
21 actually sent to the Board from the Fire  
22 Department. And I assume Mr. Moy would take

1 care of it from there.

2 CHAIRPERSON MILLER: Okay. Mr.  
3 Moy is nodding that the Office of Zoning would  
4 distribute it to the parties. Because that's  
5 the first document you need that to include  
6 responding to in your proposed findings and  
7 conclusions of law probably. So okay.

8 Ms. Bailey, do you want to count  
9 back then what we need? I don't believe that  
10 you need to respond to each other, do you?  
11 Okay. I see you are nodding your head. Okay.  
12 So we need two dates, one for proposed  
13 findings and conclusions of law and one for  
14 the Office of Planning to supply the Office of  
15 Zoning with the letter from the Fire  
16 Department.

17 MS. BAILEY: I would probably  
18 start with the easiest one and that's the  
19 proposed findings, May 26, since there will be  
20 no response. Well, that's Memorial Day. I  
21 guess May 27<sup>th</sup>, I'm sorry. The response from  
22 the Fire Department, April, maybe, 28<sup>th</sup> to

1 give them as much time as possible.

2 MR. JACKSON: Okay.

3 MS. BAILEY: Or we could do it  
4 later than that. We could do it sometime in  
5 May.

6 CHAIRPERSON MILLER: It's a simple  
7 letter, but I don't know how long it will take  
8 them to get on this. I'm sure for the parties  
9 the sooner the better, but, Mr. Jackson, do  
10 you have an opinion between April 28<sup>th</sup> and May  
11 5<sup>th</sup>?

12 MR. JACKSON: I can request April  
13 28<sup>th</sup>.

14 CHAIRPERSON MILLER: Okay. Thank  
15 you.

16 MS. BAILEY: So again, Madam  
17 Chair, just to repeat the dates. The letter  
18 from the department, the Fire Department EMS  
19 is April 28. The findings of fact is May  
20 27<sup>th</sup>. And the Board's decision is June 3<sup>rd</sup>.

21 MR. JACKSON: Okay.

22 CHAIRPERSON MILLER: Okay. Is

1 that acceptable to the parties? Okay. Then  
2 I think this case is concluded.

3 MS. DUMAS: Many thanks to the  
4 Board for its time and to the others in the  
5 audience.

6 CHAIRPERSON MILLER: Thank you.

7 (Whereupon, at 7:16 p.m. a recess  
8 until 7:37 p.m.)

9 CHAIRPERSON MILLER: Now we can  
10 say good evening. Sorry, this happens every  
11 once in a great while, so you're the lucky  
12 ones to share it with us. We were waiting for  
13 the video-stream to get working again, but  
14 apparently that's not going to happen.  
15 However, the proceedings are being  
16 transcribed, so we're going to proceed.

17 Now, I'm going to turn to the  
18 parties to introduce yourself for the record.

19 MR. EPTING: I'm John Epting with  
20 Pillsbury Winthrop Shaw Pittman.

21 MR. AVITABILE: Dave Avitabile,  
22 also with Pillsbury Winthrop Shaw Pittman.

1 MS. ADAMS: Andy Adams,  
2 Architectural Historian with Pillsbury  
3 Winthrop Shaw Pittman.

4 MR. SCHONBERGER: Jeffrey  
5 Schonberger of Alturas Real Estate Interest  
6 LLC.

7 CHAIRPERSON MILLER: Okay. And is  
8 the ANC here? Okay. I believe we do have a  
9 party status application from a Ms. Paulette  
10 Siegrist. Is she here? Okay. Would you like  
11 to come forward to the table and we can  
12 discuss your party status application?

13 MS. SIEGRIST: I don't understand  
14 exactly what that means, but --

15 CHAIRPERSON MILLER: Okay. That's  
16 what we're going to talk about. First,  
17 though, if you would just state your name and  
18 address for the record.

19 MS. SIEGRIST: Do I got to press  
20 on here? Okay. My name is Paulette Siegrist.  
21 I live at 1343 Corcoran Street, N.W., 25 feet  
22 from this construction.

1 CHAIRPERSON MILLER: Okay. There  
2 are two ways in which persons can participate  
3 in our hearings. One is as a party. If they  
4 make a showing that they have an impact that  
5 is different from the general public and that  
6 allows that person or entity to cross examine  
7 the applicant's witnesses and things like  
8 that. It's a high level of participation.

9 The other is as a person. You are  
10 allowed to testify without, you know, having  
11 to make any kind of showing whatsoever. So if  
12 all you wish to do is testify, you don't need  
13 to be granted party status.

14 MS. SIEGRIST: Well, I would like  
15 to make a little bit of a showing. I am  
16 licensed by D.C. Government to do a bed and  
17 breakfast business in my house. If this  
18 construction goes on with all the noise that  
19 will happen with it, it will put me right out  
20 of business.

21 CHAIRPERSON MILLER: Okay. Let me  
22 just -- wait. Let me just come right in here.

1 We don't have jurisdiction over construction  
2 whatsoever.

3 MS. SIEGRIST: Well --

4 CHAIRPERSON MILLER: Our  
5 jurisdiction is zoning and what the building  
6 is going to look like when it is built.

7 MS. SIEGRIST: Well, the thing is  
8 that if you okay the zoning, then there will  
9 be construction.

10 CHAIRPERSON MILLER: Yes, that's  
11 always the case, but we can't do anything  
12 about it. So we can't -- we don't take  
13 testimony about it, because we don't want to  
14 waste people's time. It's just not -- we  
15 can't deny a building or a project because the  
16 construction is going to be disruptive to you.

17 MS. SIEGRIST: Or if it makes me  
18 ill, I'll be 86 years-old in two months and I  
19 don't know how I can withstand it.

20 CHAIRPERSON MILLER: You know, I  
21 mean, what I -- I can be and the Board can be  
22 sympathetic to your situation.

1 MS. SIEGRIST: Um-hum.

2 CHAIRPERSON MILLER: But we're a  
3 body that is bound by laws and we don't have  
4 any jurisdiction.

5 MS. SIEGRIST: Okay. Do you have  
6 any jurisdiction with some of the other  
7 departments here, that when things are going  
8 to come up and it's going to be before the ANC  
9 or any place else, that people who are and  
10 will be affected by these things will get  
11 written notices. I got a written notice of  
12 this hearing from you. And I have never  
13 gotten anything from anybody else.

14 And I want to know why that is.  
15 This is the only city I have ever lived in  
16 that that happens. Things are a done deal  
17 before we find out about it.

18 CHAIRPERSON MILLER: Yeah, I know.  
19 I mean, we hear a lot of stories about things  
20 that people go through in the city that they  
21 shouldn't -- that shouldn't happen to them.  
22 And I wish that we could cure all those

1 problems, but I can't. I don't want to tell  
2 you we can, when we can't.

3 You know, I would say you might go  
4 to your Council Member or your ANC  
5 Commissioner or whatever with your concerns,  
6 because I would say this, from my general  
7 knowledge of how things work, that sometimes  
8 the developers do work with the ANCs and work  
9 out like Construction Management Agreements.

10 And so, therefore, certain things  
11 are taken care of. So such as like hours  
12 during which they can do their construction  
13 and things like that. That's one option I can  
14 suggest. But it's like we can deny. We  
15 cannot make our decision on whether to grant  
16 or deny an application based on the  
17 construction will disrupt neighbors.

18 MS. SIEGRIST: Um-hum. Okay. So  
19 well, they are asking to tear down three small  
20 buildings as I understand it and build up and  
21 that's what they want approval for you -- from  
22 you for here. Is that correct?

1 CHAIRPERSON MILLER: Let me see.  
2 I have to kind of stay within our procedure,  
3 so --

4 MS. SIEGRIST: Well, then let's  
5 hear from them and then I'll have something to  
6 say.

7 CHAIRPERSON MILLER: Okay. Is  
8 that what you would like to do testify?  
9 Because that's what -- how the process would  
10 go if you just testify as a person, they will  
11 put on their case first and then you could  
12 come up and testify. All right. Then you  
13 don't want party status. Is that right?

14 MS. SIEGRIST: Well, I guess --

15 CHAIRPERSON MILLER: No, come to  
16 the mike. No, no, I just -- you need to speak  
17 into the mike. You were saying you didn't  
18 know how it worked. And what I wanted to say  
19 to you is so that you --

20 MS. SIEGRIST: Yeah. Well, I  
21 would like to participate.

22 CHAIRPERSON MILLER: Okay.

1 MS. SIEGRIST: Whatever that  
2 means.

3 CHAIRPERSON MILLER: Well, there  
4 are ways of -- if you would like to testify,  
5 you don't need to seek party status. If you  
6 want -- if you are saying in your application,  
7 which you have filed, you want to be able to  
8 cross examine the witnesses and things like  
9 that, then --

10 MS. SIEGRIST: I would like to ask  
11 some questions possibly. I don't know until  
12 I hear what they have to say. I have received  
13 nothing in writing otherwise.

14 CHAIRPERSON MILLER: Okay. Let me  
15 say this then. If we look at your party  
16 status application, you live very close to the  
17 property.

18 MS. SIEGRIST: Yes.

19 CHAIRPERSON MILLER: Okay. Which  
20 would make you impacted more than the general  
21 public. However, a lot of what you are  
22 concerned about that you set forth in your

1 party status application deals with  
2 construction, which we cannot address at all.  
3 You can't ask questions about it really, in  
4 general, because you have to stick to the  
5 zoning issues.

6 MS. SIEGRIST: Okay.

7 CHAIRPERSON MILLER: The other  
8 thing you did though raise is light and air  
9 that you would be affected by this building.  
10 Do you want to elaborate on that at all? If  
11 you want us to consider your participating  
12 more fully in the proceeding.

13 MS. SIEGRIST: Yes, that will  
14 affect me also.

15 CHAIRPERSON MILLER: And how will  
16 it affect you?

17 MS. SIEGRIST: The air quality  
18 will be not very good with the -- all the dust  
19 and the dirt and everything coming up from  
20 this construction.

21 CHAIRPERSON MILLER: Okay. We  
22 can't get into construction. Okay. We're

1 talking about the building actually.

2 MS. SIEGRIST: Well, that's all  
3 part of it. I mean, that's where it's going  
4 to come from.

5 CHAIRPERSON MILLER: Does the  
6 applicant have a position on the party status  
7 application?

8 MR. EPTING: Yes, Madam Chair. I  
9 mean, I'm sympathetic, too, but I think all  
10 the issues she is raising are general issues,  
11 not related to the standards for party status,  
12 which was clarified in 2000 that you have to  
13 be specifically related to the zoning relief  
14 requested and more affected than others.

15 And here, the noise, the  
16 construction are all general issues that would  
17 happen under any construction scenario. Here  
18 we have got a lot of, I can see, issues  
19 because we're doing -- we have an existing  
20 building. If the building was commercial, the  
21 building would still be what it is and we're  
22 doing multiple roof structures. And one of

1 the reasons for that is to minimize the  
2 heights of those structures.

3 So I don't see that as  
4 contributing. And the other issue that we're  
5 requesting relief from is this 14<sup>th</sup> Street  
6 Generic Restaurant Overlay. And I don't see  
7 that affecting her either, because it's around  
8 the corner from her.

9 So I think with all the factors  
10 she has spelled out, I understand them, they  
11 can be addressed during the construction  
12 process, but they are not issues related to  
13 the specific zoning relief. And I apologize,  
14 I'm a little bit hoarse.

15 CHAIRPERSON MILLER: And, I'm  
16 sorry, Mr. Epting, could you -- where did you  
17 say they would be addressed?

18 MR. EPTING: Well, you know, some  
19 of those are permit issues, the dust that she  
20 raises, rats and we have to do vector control,  
21 before we do any demolition. If damage to the  
22 property is proved, that has to be fixed. But

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1 they are all issues that come up in any normal  
2 construction project.

3 MS. SIEGRIST: Okay. I'll ask  
4 questions afterwards.

5 CHAIRPERSON MILLER: I'm not sure  
6 you will be able to ask questions, that's the  
7 point.

8 MS. SIEGRIST: I can't ask any  
9 questions?

10 CHAIRPERSON MILLER: Well, if  
11 you're not a party. But I think what Mr.  
12 Epting is saying and maybe you can elaborate  
13 a little bit more, Mr. Epting, because you are  
14 probably more familiar with DCRA, but he is  
15 saying, and this is all I have heard from you  
16 is basically concerns with the impact of  
17 construction, which could be very disruptive  
18 to you, but that's not a zoning issue that we  
19 are going to be considering.

20 At DCRA, how is it that she  
21 could --

22 MR. EPTING: Well, I guess there's

1 a couple of different things. In terms of  
2 rats, you do have to do vector control, rat  
3 abatement before you do any demolition. And  
4 there is a requirement of a certain number of  
5 days and then they come back and make sure  
6 everything is off.

7 In terms of noise, there are  
8 specific Noise Regulations in the Construction  
9 Code that govern not only the times at which  
10 you can construct, but also the level of noise  
11 at a specific place. And I forget what it is,  
12 but it's not very loud.

13 Here in terms of construction  
14 impacts, we're not doing much demolition, so  
15 in terms of, you know, the overall  
16 construction impact is fairly minor.

17 If there is a violation of the  
18 Construction Code, inspectors can come out and  
19 either require us to fix the building, fix the  
20 construction or they can shut -- do a stop  
21 work order. So -- and it happens all the  
22 time. I mean, you hear examples where it

1 doesn't happen, but it does happen all the  
2 time.

3 So there are enforcement  
4 mechanisms in DCRA for this -- just these  
5 types of things. And we also -- the final  
6 thing she raises blocking the alley, we can't  
7 block the alley. You know, the police could  
8 move the trucks or whatever, but, you know,  
9 that's not a zoning issue, but we can't do it  
10 anyway.

11 So I think everything --

12 CHAIRPERSON MILLER: Okay.

13 MR. EPTING: -- can be addressed  
14 in other forms.

15 MS. SIEGRIST: Okay. I want it in  
16 writing that you will repair my property if  
17 anything happens to it.

18 CHAIRPERSON MILLER: Okay. I  
19 don't -- you know, that's the type of  
20 conversation that you would need to have  
21 outside of this proceeding. Okay. So I guess  
22 as I understand it Ms. Siegrist is going to

1       come back and testify as a person, because her  
2       issues all involve construction and those  
3       issues are within the jurisdiction of DCRA and  
4       they can be addressed at the permitting stage,  
5       correct?

6                   MR. EPTING:   Yes.

7                   CHAIRPERSON MILLER:   Okay.   And  
8       also I would also suggest, you know, that she  
9       can seek the assistance of the ANC if those  
10      problems arise.   Okay.

11                  MR. EPTING:   Well, can I just say  
12      the applicant has talked to her at least once  
13      in person, once over the phone and so we will  
14      continue those discussions, because, I mean,  
15      I think there are things that we can do to  
16      address these issues.

17                  CHAIRPERSON MILLER:   Okay.   That's  
18      great to hear.   And I think that it's just not  
19      within the purview of the Board at this  
20      hearing.   Is that the consensus of my Board  
21      Members?   Okay.   Then I guess party status  
22      application would -- Ms. Siegrist, I just want

1 to clarify for the record.

2 Are you withdrawing your party  
3 status application request?

4 MR. AVITABILE: Yes, yes, yes,  
5 yes.

6 CHAIRPERSON MILLER: Okay.

7 MR. AVITABILE: Since I can't say  
8 -- I've got to wait another half hour here  
9 though.

10 CHAIRPERSON MILLER: Okay. So you  
11 will have the opportunity to testify though.  
12 Okay. Mr. Epting, do you want to go forward  
13 with your case then?

14 MR. AVITABILE: Okay. I'm  
15 actually going to start.

16 CHAIRPERSON MILLER: I'm sorry.

17 MR. AVITABILE: That's okay.

18 Again, for the record, my name is David  
19 Avitabile with Pillsbury Winthrop Shaw  
20 Pittman. I'm accompanied by Jeffrey  
21 Schonberger from Alturas, who is the contract  
22 purchaser and developer of the property. Also

1 with me today is John Epting and Andy Adams  
2 from Pillsbury.

3 And we have submitted a number of  
4 pretty detailed prehearing statements. We  
5 appreciate the detailed Office of Planning  
6 report and the support there. What we  
7 submitted to you for the -- for your  
8 consideration today, the first item is Andy  
9 Adams' professional resume.

10 And as a preliminary matter, we  
11 would like to have her qualified as an expert  
12 witness, as an architectural historian. Andy  
13 has been before you, I think, most recently  
14 about a month ago as an expert and I think  
15 that there shouldn't be any issues with that.

16 CHAIRPERSON MILLER: No, there  
17 shouldn't be.

18 MR. AVITABILE: Okay.

19 CHAIRPERSON MILLER: Once an  
20 expert, always an expert. No, but in any  
21 event, do my Board Members have any concerns  
22 in qualifying her? Okay. Then she is

1 qualified as an expert, as an architectural  
2 historian.

3 MR. AVITABILE: Great.

4 CHAIRPERSON MILLER: Okay.

5 MR. AVITABILE: And then the next  
6 item we submitted is a copy of our  
7 presentation, which we -- if you would like,  
8 we're happy to go forward with. And then the  
9 final item we submitted, it's our  
10 understanding we appeared before the Advisory  
11 Neighborhood Commission back actually in  
12 November and December and we understood that  
13 they were going to submit a letter, but we  
14 don't believe that they did.

15 So what we have provided you with  
16 are copies of their minutes and we have  
17 highlighted the relevant portions that discuss  
18 the project and discuss the fact that they  
19 have considered and said they were going to  
20 submit a letter approving the relief we  
21 requested. So that's the best that we can do.

22 I know that that, obviously, can't

1 be afforded great weight, but we thought that  
2 we would at least give that to you to let you  
3 know our understanding of where the ANC stood  
4 and, you know, something that could  
5 substantiate that.

6 CHAIRPERSON MILLER: I'm not sure  
7 I have a copy, number one, of -- did you say  
8 you had an outline of your presentation?

9 MR. AVITABILE: It's a copy of the  
10 presentation. It's a PowerPoint, a number of  
11 images.

12 CHAIRPERSON MILLER: Oh, okay.  
13 The PowerPoint with the pictures. Okay.

14 MR. AVITABILE: Yes.

15 CHAIRPERSON MILLER: And then the  
16 minutes, how did you get the minutes? Were  
17 they on a website or something?

18 MR. AVITABILE: Yes, they are  
19 available on ANC-2F's website.

20 CHAIRPERSON MILLER: Okay.

21 MR. AVITABILE: Yes, it's public  
22 information. And with that, we're happy to go

1 forward with our full presentation. We would  
2 also be happy to stand on the record. We'll  
3 leave it up to the Board, considering the late  
4 hour. However you would like us to proceed.

5 CHAIRPERSON MILLER: Let's see,  
6 I'm sorry, this was supposed to be a  
7 PowerPoint presentation that you gave us? We  
8 have it in text, okay.

9 MR. AVITABILE: Yes. It's a  
10 PowerPoint presentation we're happy to go  
11 through with. You know, there's discussion,  
12 obviously, that would accompany the slides.  
13 We just gave you copies as we always do.

14 CHAIRPERSON MILLER: Okay.

15 MR. AVITABILE: The presentation  
16 it hasn't been triggered yet. We --

17 CHAIRPERSON MILLER: You want to  
18 see what we want to do? Is that it?

19 MR. AVITABILE: Yeah, I guess so.

20 CHAIRPERSON MILLER: Okay.

21 MR. AVITABILE: I mean, I -- we're  
22 all hooked up, we're ready to go.

1 CHAIRPERSON MILLER: Okay. I know  
2 it's late. I guess my suggestion is if it's  
3 not a big deal to put it up, I think it's good  
4 to really see it better visually. But I don't  
5 think we need a lot of detail about the  
6 project if you can kind of tailor it to the  
7 relief that is being sought, that would be  
8 good.

9 MR. AVITABILE: We would be happy  
10 to do so.

11 CHAIRPERSON MILLER: Then we could  
12 be focused.

13 MR. AVITABILE: We would be happy  
14 to do that.

15 CHAIRPERSON MILLER: Okay.

16 MR. AVITABILE: All right. And I  
17 think we just need to wait for the PowerPoint  
18 to be turned on. If there is technical  
19 difficulties that present the projector, we're  
20 happy to just go through sheet by sheet and  
21 we'll do it the old fashioned way.

22 MR. EPTING: It's the same

1 presentation.

2 CHAIRPERSON MILLER: Yes, I see  
3 that. All right. Maybe we should start and  
4 then if the visual comes up on the PowerPoint  
5 that will just be a bonus.

6 MR. AVITABILE: Okay.

7 CHAIRPERSON MILLER: Okay.

8 MR. COCHRAN: Excuse me, are there  
9 any other copies, so we could follow along?

10 CHAIRPERSON MILLER: Mr. Cochran  
11 needs a copy.

12 MR. COCHRAN: And maybe the  
13 audience members.

14 CHAIRPERSON MILLER: And --

15 MR. AVITABILE: We gave a copy to  
16 Ms. Siegrist, so that she could follow along.

17 CHAIRPERSON MILLER: Oh, Ms.  
18 Siegrist has a copy, too, that's terrific.  
19 Okay.

20 MR. AVITABILE: We don't have a  
21 projector, so we're just going to use the hard  
22 copies. Okay. Here we go. Very briefly to

1 talk about moving to, I guess, the first slide  
2 after the cover page, the existing zoning.  
3 The property which is kind of highlighted in  
4 the red outline is located in the C-3-A Zone  
5 District.

6 It is also located in the ARTS  
7 Overlay. It's at the intersection of 14<sup>th</sup> and  
8 R Streets, N.W. The ARTS Overlay requires  
9 uses that encourage pedestrian activity,  
10 especially retail, residential and  
11 entertainment uses. And it also offers  
12 density bonuses and incentives for providing  
13 those uses.

14 And another key feature of the  
15 ARTS Overlay is that it encourages the  
16 adaptation and preservation of historic  
17 structures, including their -- the  
18 construction of compatible new additions.

19 Prior to the creation of the ARTS  
20 Overlay, this property was located in the C/M-  
21 3 Zone District, which partly accounts for  
22 some of the existing features, particularly

1 the fact that it occupies almost 100 percent  
2 of the lot.

3 And another base fact of note is  
4 that the property is located in the Greater  
5 14<sup>th</sup> Street Historic District.

6 Moving on to the next slide, Andy  
7 is going to talk about the project in a little  
8 more detail to highlight some of the features  
9 relevant for the purposes of our zoning  
10 relief. But essentially, what we are doing is  
11 taking the historic structures that are on the  
12 site, renovating and preserving them and  
13 constructing in the rear of the property a new  
14 addition that is going to rise to 75 feet and  
15 will comply fully with all of the requirements  
16 of the Zoning Regulations.

17 And this all was previously  
18 reviewed and approved in concept by the  
19 Historic Preservation Review Board.

20 Moving to the next slide, there  
21 are, after some renovations from our initial  
22 notice, three areas of relief that we are

1 requesting. The first -- and these are all  
2 due to the fact that we are adapting the  
3 existing structures.

4 The first area of relief under is  
5 variance relief from the nonconforming  
6 structure provisions of the regulations.  
7 Right now, the existing structures, one of the  
8 structures is nonconforming as to rear yard  
9 and also once we convert the property to  
10 residential use, it will all not conform to  
11 lot occupancy.

12 And as you all know, under 2001.3,  
13 "Additions to nonconforming structures are  
14 permitted, so long as (1) the project conforms  
15 to lot occupancy; (2) the addition conforms to  
16 the use and structure requirements; and (3)  
17 the addition does not exacerbate the existing  
18 nonconformity nor create a new nonconformity  
19 of structure in addition combined."

20 Here, the addition is going to  
21 conform to the use and structure requirements  
22 of the regulations. It will conform with the

1 Height Regulation, the requirement for a 45  
2 degree setback above 50 feet and it will also  
3 provide the required rear yard.

4 Furthermore, the addition is not  
5 going to exacerbate the existing rear yard or  
6 lot occupancy nonconformities. It actually is  
7 going to slightly decrease the lot occupancy  
8 of the overall project.

9 However, because lot occupancy  
10 itself is just a baseline provision of this  
11 regulation, our combined structure is going to  
12 continue to exceed lot occupancy and so,  
13 therefore, we're going to need relief,  
14 variance relief from 2001.3, because the  
15 project does not conform to lot occupancy.

16 In addition to the variance relief  
17 we're requesting, we are also requesting two  
18 special exceptions. The first is for approval  
19 of multiple roof structures, which is  
20 permitted as a special exception. And then  
21 finally, we're going to request relief from  
22 the use restriction on eating and drinking

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1 establishments in the ARTS Overlay. And this  
2 is also permitted as a special exception under  
3 the provisions of the ARTS Overlay.

4 And so I'm now going to turn this  
5 over to Ms. Adams, who is going to testify as  
6 to the specific elements of the nonconforming  
7 structure variance and for the special  
8 exception for roof structures.

9 MS. ADAMS: Thank you. For the  
10 record again, my name is Andy Adams. I'm an  
11 Architectural Historian with Pillsbury  
12 Winthrop Shaw Pittman. If you turn to the  
13 next page in your packet which says "Site  
14 Context and Existing Photographs," the first  
15 thing I would like to do is talk a little bit  
16 about the existing buildings.

17 This is a historic preservation  
18 project in a Historic District and the  
19 preservation review process is really what has  
20 driven the evolution of this project.

21 The primary building on the site  
22 is shown in the center column of that picture

1 that you are looking at at 1631 14<sup>th</sup> Street,  
2 N.W. This is a 1922 building designed by  
3 Frederick Pyle and built by Workman  
4 Construction Company as a Studebaker Showroom.

5 In its later life it served as a  
6 Hudson Automobile Showroom and an auto supply  
7 store. And that is the primary building on  
8 the site. Adjacent to it to the south are  
9 three row houses, 1625, 27 and 29 14<sup>th</sup> Street,  
10 which were originally constructed as a group  
11 of three in 1883. They have all been  
12 substantially altered over time, primarily to  
13 do with their conversion to commercial use.

14 They had two story carriage houses  
15 in the back and over time additions have been  
16 built on the back that are noncontributing and  
17 not historic, not significant, but ultimately  
18 occupy almost all of the property.

19 The row house at 1625 14<sup>th</sup> Street  
20 which is the building at the bottom of the  
21 middle column there has a pantile roof. It's  
22 sort of Mediterranean revival style design.

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1 It dates from 1925 and it was designed by  
2 Appleton Clark, another very prominent  
3 Washington architect.

4 The other two buildings, 1627 and  
5 29, were combined at one point in time,  
6 probably some time between 1917 and 1925 into  
7 a single building and projections were removed  
8 and they took on more or less what they look  
9 like today. Although, the first floor of all  
10 three of these buildings, the first floor of  
11 all these buildings have been altered post-  
12 1925 and post-1911.

13 If you go to -- and actually, the  
14 right column on this particular picture shows  
15 the altered carriage houses on the back and  
16 some of the additions which are not  
17 significant.

18 As Dave said, the Historic  
19 Preservation Review Board reviewed this  
20 proposed project and granted it conceptual  
21 approval. This is a project that involves  
22 preservation or retention of the historic

1 aspects of these buildings and the historic  
2 parts of these buildings and their  
3 rehabilitation, the removal of non-original,  
4 noncompatible additions that you see in the  
5 back behind the row houses and the  
6 construction of a six story addition behind  
7 the row houses.

8 There will be no new construction  
9 above the Studebaker warehouse. And this is  
10 one of the things that is driving our need for  
11 variance relief, because the Historic  
12 Preservation Review Board saw that building as  
13 significant enough to retain in its existing  
14 configuration.

15 And what you see on this proposed  
16 project view from 14<sup>th</sup> Street, 14<sup>th</sup> and  
17 Corcoran Streets is a representation of what  
18 this project will look like. You see the  
19 addition, six story addition behind the three  
20 row houses. And again, that is occurring in  
21 the space formerly occupied by the one story  
22 additions and the noncontributing carriage

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1 houses.

2 The original main mass of the  
3 three historic row houses is being retained  
4 and the addition is all behind that, not above  
5 it.

6 If you go to the next page, you  
7 see a view from 14<sup>th</sup> Street. This is sort of  
8 proposed head one view and what you will see  
9 is the restoration of these buildings. The --  
10 on the Studebaker warehouse, the original show  
11 windows have all been bricked up. They will  
12 be reopened. And the building will be  
13 restored to its original appearance from 1922.

14 The Mediterranean revival style  
15 building will be restored. There are  
16 drawings, Appleton Clark drawings that we can  
17 use as a guide to the restoration of that  
18 building. And that's the representation you  
19 see here.

20 The other two buildings will be  
21 rehabilitated and restored to their,  
22 approximately, 1925 appearance based on other

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1 documentation that we have. You will see also  
2 above the -- behind the row houses, above them  
3 in this particular rendering the addition,  
4 which will be residential.

5 And if you go to the next shot,  
6 which says "View from 14<sup>th</sup> and R Streets,  
7 N.W.," one of the things that is a very  
8 significant aspect of this project becomes  
9 very evident. The project has been designed  
10 to allow the historic buildings to continue to  
11 read as separate buildings in the streetscape  
12 as opposed to something that has been  
13 incorporated into a larger project. They each  
14 retain their own individual architectural  
15 presence.

16 And what you see to the right of  
17 the row houses is another project. Please,  
18 don't confuse that with ours. It is a project  
19 that has been approved by the Review Board.  
20 It hasn't been built yet. It's just there to  
21 show you the sort of ultimate context of this  
22 block.

1           Again, the existing buildings in  
2           their current configuration occupy almost the  
3           entire square. And the retained historic  
4           elements of these buildings really do define  
5           and limit where we can build.

6           If you go to the next shot, which  
7           is the proposed section, let's see, you will  
8           see the uses and the heights of the building.  
9           The first floor of the historic buildings will  
10          be used for retail space. The mezzanine will  
11          be a combination of retail and residential  
12          uses. And the floors above will be  
13          residential. There is a single level of  
14          underground parking below the existing  
15          buildings, which will be retained in place  
16          while that is going on.

17          The additions comply with the  
18          Zoning Regulations, in that they -- it is 75  
19          feet tall and includes a 45 degree setback  
20          required by the ARTS Overlay. There is a  
21          conforming rear yard and, again, sufficient  
22          parking below. And you can see the setbacks

1 in the section.

2 14<sup>th</sup> Street is on the right. The  
3 blue shows, this is the section through the  
4 row houses, you see the existing three story  
5 row houses with the addition behind and above  
6 them.

7 MR. AVITABILE: If I can  
8 interject. One thing that we should note, I  
9 think I neglected to mention it before, behind  
10 the property is a 10 foot wide public alley  
11 and that is how the property -- the parking  
12 will be accessed. There is not going to be  
13 any new curb cuts on either 14<sup>th</sup> Street or R  
14 Street. Everyone is going to come in and go  
15 around through the alley in the rear.

16 MS. ADAMS: Clearly with the  
17 retention of the historic buildings, there is  
18 no place for a curb cut on either of those  
19 streets. That didn't get very -- that would  
20 never fly.

21 If you go to the next shot showing  
22 lot occupancy of existing structures, that's

1 an aerial view. You -- the property is  
2 outlined in red and you can see the various  
3 component parts of these buildings. On the  
4 right is the limestone four story Studebaker  
5 warehouse. Left, I'm sorry. It's the other  
6 right.

7 You will see the three row houses  
8 with their original historic components in the  
9 front on the bottom of this red outlined  
10 square and then the various additions that you  
11 will see in the back. And those are -- that's  
12 what is being removed to create a space for  
13 the new construction.

14 The existing structures occupy,  
15 approximately, 95 percent of the lot area.  
16 And the preservation and rehabilitation of the  
17 existing historic structures creates an  
18 exceptional condition.

19 The three part test for an area  
20 variance is well-established. First, the  
21 property must be affected by an exceptional  
22 condition. And here that condition, of

1 course, is created by the existing historic  
2 structures, their footprint, their -- and the  
3 extent of them, and there are four of them on  
4 this site.

5 As OP has noted, the existing  
6 buildings define the overall project's ground  
7 lot -- ground for lot occupancy, height and  
8 shape and they already occupy 95 percent of  
9 the lot. Furthermore, the need to preserve  
10 the historic structures and the inability to  
11 construct an addition, either above the  
12 limestone Studebaker warehouse or the row  
13 houses, severely limits and defines the area  
14 where construction can occur, which is to say  
15 only behind the retained row houses.

16 The second element of the test is  
17 that a practical difficulty arises from the  
18 exceptional condition. Here the practical  
19 difficulty arises from the preservation of the  
20 historic structure and the limited area on the  
21 lot where any addition may be constructed,  
22 which is again only between the back of the

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1 row houses and the rear property line.

2 Alternate approaches that would  
3 have been in compliance with the Zoning  
4 Regulations would not have been permitted by  
5 the Historic Preservation Review Board,  
6 because they would have either required  
7 construction over the limestone Studebaker  
8 warehouse, which they were very clear was not  
9 going to happen, or the historically  
10 significant portions of the row houses or they  
11 would have required demolition of significant  
12 historic fabric and that was not an  
13 alternative either.

14 These restrictions are significant  
15 particularly in light of the fact that the  
16 ARTS Overlay encourages construction of  
17 compatible additions and provides increased  
18 bonus density for the provision of residential  
19 -- the very residential use that triggers the  
20 need for our relief here.

21 Construction of a smaller rear  
22 addition would not be practical due to various

1 Building Code issues and efficiency  
2 considerations. Therefore, the only way the  
3 applicant can reasonably develop the property  
4 and comply with the broader purposes and  
5 intent of the ARTS Overlay is to seek variance  
6 relief from the strict provisions of the --  
7 related to lot occupancy.

8 The third part of the test is  
9 whether the variance relief can be granted  
10 without substantial detriment to public good  
11 and without impairing the Zone Plan. Here,  
12 there will be no adverse impact from the  
13 variance. Relief is required only at two of  
14 the floors of the six floor project, the rest  
15 of the project will conform with lot  
16 occupancy.

17 As mentioned, the incompatible  
18 rear additions of the row houses will be  
19 demolished and replaced by the addition. And  
20 the lot occupancy of the ground floor will  
21 decrease slightly to about 92 percent as  
22 opposed to the 95 percent of what it is, as it

1 is today.

2 The ground floor is devoted to  
3 retail use, which has no occupancy requirement  
4 in any event.

5 The second and third floors will  
6 contain entirely residential uses and occupy  
7 89 percent of the lot. There is a 75 percent  
8 lot occupancy limitation for residential uses  
9 in this zone. So these floors of the building  
10 will not comply with --

11 MR. EPTING: And if I could  
12 interject, if you go back to the section, you  
13 can see how the floors line up. So it's only  
14 two and three that we are talking about.

15 MS. ADAMS: Thank you. Let's see,  
16 the second and third floors will contain  
17 residential uses and occupy 89 percent of the  
18 lot, where there is a 75 percent lot occupancy  
19 limitation. So this triggers the requirement  
20 for variance relief from nonconforming  
21 structure provisions.

22 The rest of the project, however,

1 will conform with the lot occupancy  
2 requirements. At the fourth floor, the  
3 addition is setback from the property line  
4 behind the row houses and occupies about 75  
5 percent of the lot. At the fifth floor, the  
6 addition occupies 34 percent of the lot. And  
7 at the sixth floor, it occupies about 16  
8 percent of the lot.

9 The addition otherwise conforms  
10 with the lot occupancy and other setback  
11 requirements of this C-3-A Zone District and  
12 ARTS Overlay, so it does not generate  
13 additional adverse impacts.

14 The entire project is separated  
15 from the properties to the east by a 10 foot  
16 wide public alley, which combined with the  
17 rear yard creates adequate space for light,  
18 air and privacy.

19 Finally, the project furthers the  
20 goals and policies of the ARTS Overlay,  
21 including the adaptation and reuse of historic  
22 structures and the creation of retail and

1 residential uses. Therefore, the variance  
2 relief is fully warranted.

3 If you go to the next slide, it  
4 says multiple roof structures, we can talk  
5 about the special exception for multiple roof  
6 structures.

7 The project will feature two  
8 penthouses which are outlined in red. The  
9 larger penthouse is on the left, which is on  
10 the limestone Studebaker warehouse building  
11 and a smaller penthouse above the addition,  
12 which is on the right.

13 The first penthouse on the  
14 limestone building will be located above the  
15 elevator core, you know, the main core of the  
16 building and will enclose the elevator and the  
17 bulk of the mechanical equipment.

18 The second penthouse shown on the  
19 right will be smaller and lower and will  
20 accommodate additional equipment, primarily to  
21 serve the addition and, in particular, those  
22 portions of the addition above the limestone

1 building.

2 MR. EPTING: Maybe we should  
3 suggest they turn to the elevation.

4 MS. ADAMS: Oh, I was going to get  
5 there in a minute.

6 MR. EPTING: All right.

7 MS. ADAMS: And actually, if you  
8 want to see this in elevation, you can turn to  
9 the next page right now. The penthouses are  
10 also outlined in red. Generally, the Board is  
11 authorized to grant special exceptions where,  
12 in the judgment of the Board, special  
13 exception will be in harmony with the general  
14 purpose and intent of the Zoning Regulations  
15 and the Zoning Map and special exception will  
16 not tend to affect adversely the use of  
17 neighboring property in accordance with the  
18 Zone Regulations and Zone Map.

19 Under section 411, the Board may  
20 approve special exception relief from the  
21 strict requirements for roof structures where  
22 compliance is impractical because of operating

1 difficulties, size of building lot or other  
2 conditions relating to the building and  
3 surrounding area that make full compliance  
4 unduly restrictive, prohibitively costly or  
5 unreasonable.

6 And here, and you can see this  
7 very clearly in the elevation, the need for  
8 the two penthouses is created by the  
9 relationship between the existing historic  
10 structures and the proposed addition. The  
11 addition, which is allowed only behind the row  
12 houses, is taller than the roof of the  
13 limestone building, which you can't get to an  
14 approvable project that has one height roof  
15 where you can put the penthouse, because the  
16 Review Board said no, you can't build on top  
17 of the Studebaker warehouse, which is why  
18 we're doing what we're doing.

19 Otherwise, the penthouses conform  
20 with height and setback requirements and do  
21 not adversely affect the neighboring property.

22 Accordingly, the Board should

1 grant this request for special exception  
2 relief. And again, if you look at the  
3 elevation, that clearly sets -- explains where  
4 these penthouses are going to be and the --  
5 how they are driven by the existing buildings  
6 and their preservation and rehabilitation.

7 And at this point, I'll turn  
8 things over to Dave, who will talk about the  
9 overlay.

10 CHAIRPERSON MILLER: Okay. Before  
11 you go to the overlay though, I think it would  
12 be better, at least I think so, to deal with  
13 any questions related to these two variances,  
14 because they are very different topics.

15 I have a question with respect to  
16 the lot occupancy variances that relate to the  
17 residential use on some of the middle floors,  
18 I guess, why you can't comply with the 75  
19 percent lot occupancy requirement. I see in  
20 Exhibit No. 25, which was called Applicant's  
21 Final Statement, but that's right before.  
22 There was one more revision after that.

1           And it talks about that you can't  
2       do it in order to create -- let's see, because  
3       otherwise the project wouldn't be economically  
4       viable and aesthetically appropriate. So I'm  
5       just wondering if maybe using the PowerPoint  
6       you could show and explain why that's so.

7           MS. ADAMS: Use the floor plan?

8           CHAIRPERSON MILLER: I mean, I  
9       understand generally your argument is that the  
10      historic structures constrain the development,  
11      but I guess, and I could be wrong here, that  
12      I didn't know whether, you know, these were  
13      smaller somehow, then they might comply, but  
14      then you would say why they can't be smaller.  
15      I don't know.

16          MR. AVITABILE: Well, again,  
17      first, you know, the ground floor, the project  
18      already occupies 95 percent of the lot. So  
19      you have already established that it already  
20      occupies that percentage. And then I think  
21      moving up probably the best plan, and this is  
22      one that we would have had, if we could use

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1 the computer, but if you go to the original  
2 application package, the one that has the set  
3 of plans in it and turn to page 9 of the  
4 plans, so this would be Exhibit C to the  
5 original application.

6 That's the kind of basic floor  
7 plan for the second and third floors and I  
8 think that you --

9 MS. ADAMS: One of the issues is  
10 simply being able to get units that are big  
11 enough to make it worth building. We are  
12 going in the direction of less lot occupancy,  
13 so we're going in the right direction here,  
14 even though we are over what we should be.

15 But there are issues relating to  
16 egress and Building Code issues that take up  
17 certain amounts of space that dictate  
18 placement of units and needing to have units  
19 that are sufficiently large to be worth  
20 building, which is where you get on the second  
21 and third floors it gets less of an issue as  
22 you go up, because of the setback.

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1                   MR. SCHONBERGER: All right. This  
2                   is Jeffrey Schonberger. I just wanted to  
3                   comment as part of what Andy is testifying to.  
4                   If this project conformed to the 75 percent  
5                   lot coverage ratio, that would mean the rear  
6                   addition to the townhouses would have a --  
7                   would only be 880 square feet. There is no  
8                   possible way that you can build. I mean, you  
9                   can imagine how awkward it would be if that  
10                  880 square feet of building addition went up  
11                  behind the townhouses.

12                 And you have all sorts of problems  
13                 with egress, providing secondary egress to the  
14                 site, because then you have problems situating  
15                 or trying to situate a second stairwell. So  
16                 if you can look on -- look, I guess, at the  
17                 typical mid-level floor plan, if you could  
18                 imagine what this building would look like  
19                 basically cut off at the back of the stairs to  
20                 the south, that's what this project would look  
21                 like.

22                 And it would certainly be

1 economically unfeasible with any addition back  
2 there at all.

3 MR. EPTING: Again, that's Sheet  
4 9, so basically, in order to comply, you would  
5 have to -- what Jeffrey is saying is sort of  
6 cut off the rear of the new addition. And  
7 again, if this was commercial, this wouldn't  
8 be an issue. But once we get above that,  
9 starting at level four, we do more than  
10 comply, much more than comply.

11 So if you did an average, it would  
12 be well under the 75 percent.

13 CHAIRPERSON MILLER: If you did an  
14 average off the residential, you would be  
15 under 75 percent? That's what you're saying?

16 MR. EPTING: Yes.

17 CHAIRPERSON MILLER: But, you  
18 know, because, you know, I'm not an architect  
19 and so that's why I ask these kind of  
20 questions. But normally we don't see or I  
21 don't see lot occupancy expressed by floors.  
22 Usually it's --

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1 MR. EPTING: Well, again, I think  
2 Andy testified it's -- we have to deal with  
3 the existing configuration and where we can  
4 put new structure. And so that requires us to  
5 do floor by floor, because once we get to the  
6 Studebaker, over that then the whole -- it's  
7 only residential above.

8 So because the commercial -- the  
9 other goes away. So the lot occupancy goes  
10 less. But if you're occupying a new building  
11 and part of the old building, which is what  
12 we're doing, then your lot occupancy is much  
13 higher. And it seems to be difficult to  
14 penalize us in order not to let us use the  
15 existing building.

16 And we need to -- in order to  
17 build the addition, the addition can't be  
18 small in one place and then get bigger up top.  
19 You see what I'm saying? The floors two and  
20 three, the reason we have a lot occupancy  
21 issue is because we're using both the existing  
22 building and the addition. Once we get above

1 the Studebaker, we're only using the new  
2 addition.

3 So that goes to the existing  
4 buildings and the practical difficulty. And  
5 I think what Dave was saying, the ARTS Overlay  
6 is encouraging us to adapt buildings for other  
7 uses.

8 MR. AVITABILE: That's exactly it  
9 and convert them to residential use and it's  
10 converting to residential use that triggers  
11 the lot occupancy requirement in the first  
12 place. If this was a simply commercial  
13 development, there wouldn't be that 75 percent  
14 limitation. So it's only the fact that we're  
15 doing what the ARTS Overlay tells us to do,  
16 but on the same hand, on the other hand, we  
17 also have to do what Historic Preservation  
18 tells us to do, which is don't build on top of  
19 the existing structures.

20 And so we're caught in between a  
21 rock and a hard place. And the only way out  
22 is to try to get some zoning relief from this

1 lot occupancy nonconforming structure  
2 provision.

3 MS. ADAMS: And remember, we're at  
4 about 95 percent, 98 percent lot occupancy  
5 right now. With the addition -- it's 95, I'm  
6 sorry, with the existing additions,  
7 noncontributing additions, so we're talking  
8 those off and, as I said, going in the right  
9 direction toward lessening lot occupancy.

10 MR. EPTING: This is new. And I  
11 think if we go back to the section and maybe  
12 Andy can talk about this, too, the blue is the  
13 existing. So floors two and three you could  
14 see that we're using portions of the existing  
15 building for residential. And we're using all  
16 of the addition for residential.

17 So if we were only talking about  
18 the addition, we would comply with lot  
19 occupancy. And it seems like a practical  
20 difficulty not to allow us to use the existing  
21 building also, because the new addition in  
22 that place can't get any smaller.

1 CHAIRPERSON MILLER: Okay. And  
2 what were you looking at?

3 MR. EPTING: The section.

4 CHAIRPERSON MILLER: Oh, okay.

5 MS. ADAMS: The building section.

6 MR. EPTING: Which is in the  
7 handout that we gave out today.

8 MEMBER DETTMAN: And I think, and  
9 correct me if I'm wrong, but I think I'll try  
10 to summarize your argument here. Looking at  
11 the section and particularly with respect to  
12 the second and third floor which I think you  
13 said is 89 percent lot occupancy, you are  
14 proposing 89 percent lot occupancy.

15 If we were to do a similar cut  
16 through the existing conditions of the second  
17 and third floor, I think what you said is that  
18 you are in a -- you are upwards of around 90  
19 some percent with the existing improvements on  
20 the property.

21 And so after demolition and if you  
22 were to construct your existing, you're

1 actually decreasing the lot occupancy, the  
2 total lot occupancy for the second and third  
3 floor.

4 MR. EPTING: That's correct.

5 MEMBER DETTMAN: And with your  
6 proposal, a substantial proportion of the 89  
7 percent of lot occupancy is a result of the  
8 existing improvements on the property that you  
9 are required by HP to retain?

10 MR. EPTING: That's correct. You  
11 said it better than we did. But -- and you  
12 could say that once we get above the historic,  
13 then we do comply.

14 MEMBER DETTMAN: Yeah.

15 CHAIRPERSON MILLER: Okay. So you  
16 are basically not in compliance to begin with,  
17 that's why it's nonconforming. And the  
18 addition will decrease the nonconformity, but  
19 you will still not be in compliance with  
20 respect to the residential lot occupancy. Is  
21 that correct?

22 MR. AVITABILE: That's correct.

1 CHAIRPERSON MILLER: Okay.

2 MR. EPTING: On floors two and  
3 three.

4 CHAIRPERSON MILLER: Only on two  
5 floors. Okay. Okay. And to bring it into  
6 compliance would be not really a viable  
7 solution for the building, correct?

8 MS. ADAMS: That's correct.

9 CHAIRPERSON MILLER: Okay. Any  
10 other questions on this topic? Okay.

11 MR. AVITABILE: Okay. Well, then  
12 we --

13 CHAIRPERSON MILLER: Oh, Mr.  
14 Cochran, you have something to say on this  
15 topic before we -- they didn't finish yet.  
16 They are going to go to -- no. Okay. They're  
17 going to go to the overlay issue.

18 MR. AVITABILE: Right. And that's  
19 our last area of relief. And I'm going to  
20 handle discussing this. It's really a legal  
21 question. There isn't really a lot of fact  
22 behind this. It's just to kind of -- we need

1 relief because we can't predict the future.

2 Under section 1901.6, the ARTS  
3 Overlay imposes this broad restriction on the  
4 number of eating and drinking establishments  
5 that are allowed along its primary corridors,  
6 which are 14<sup>th</sup> Street and U Street. And they  
7 are limited to no more than 25 percent of the  
8 linear foot frontage along the entire street.

9 The exhibit that kind of helps is  
10 the second to the last page of our handout  
11 that says "ARTS Overlay Use Provisions." And  
12 the area in purple, this is the ARTS Overlay.  
13 And so you can see 14<sup>th</sup> Street runs north and  
14 south and then crosses and then U Street runs  
15 across. It's this one here. And you can see  
16 where our project is kind of highlighted in a  
17 bubble kind of in the center or middle,  
18 towards the left of the image.

19 So there is this requirement that  
20 you can only have 25 percent of the basically  
21 the street frontage along 14<sup>th</sup> Street and U  
22 Street devoted to eating and drinking

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1 establishments. This isn't new to the  
2 regulations. There is a similar provision in  
3 place in Cleveland Park that has been  
4 discussed in recent history.

5 But this is a different situation  
6 here, of course, because 14<sup>th</sup> Street and U  
7 Street are still being constantly redeveloped.  
8 It's not like Cleveland Park, which is in an  
9 established commercial corridor where you kind  
10 of -- you already have your established, you  
11 know, restaurant and eating and drinking  
12 establishments in place.

13 And so that really goes to the  
14 first problem of this, the imposition of the  
15 restriction in the ARTS Overlay. There is no  
16 way for us to figure out, at this point, now  
17 when we are doing our planning and asking for  
18 zoning relief, whether this requirement will  
19 apply, because the corridor is going to change  
20 between now and when we go and get our  
21 Certificate of Occupancy.

22 Right now, there is no reasonable

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1 way to determine what percentage of 14<sup>th</sup>  
2 Street is devoted to eating and drinking  
3 establishments.

4 CHAIRPERSON MILLER: Why can't you  
5 establish it right now?

6 MR. AVITABILE: Well --

7 CHAIRPERSON MILLER: Do you have  
8 any idea?

9 MR. AVITABILE: -- I suppose I  
10 could go out there right now and -- with the  
11 tape measure and try to do it, but tomorrow  
12 someone could open up a restaurant and then  
13 that would immediately change or build a  
14 building and we know that you have projects  
15 before you and there are projects before the  
16 Zoning Commission dealing with either 14<sup>th</sup>  
17 Street or U Street with new development that's  
18 going to go in, new retail and specifically  
19 potentially new eating and drinking  
20 establishments that may come on-line.

21 And so even if we could do this  
22 now, three, four, five years down the road

1       when we are ready to pull the Certificate of  
2       Occupancy for this, our potential restaurant,  
3       you know, we can't know now whether we're  
4       going to need relief down the road or not.

5               And so that's really part of -- a  
6       big part of the problem we are faced with  
7       right now.

8               The second part of this  
9       restriction that is a little vexing is that it  
10      actually conflicts with other provisions of  
11      the overlay that actually incentivize the  
12      provision of these eating and drinking  
13      establishments.

14              Generally speaking, there is a 1:1  
15      bonus density for them. And, in fact,  
16      restaurants get a 2:1 bonus density. So on  
17      the one hand, we're being told go ahead and  
18      provide a restaurant, we'll give you bonus  
19      density. But on the other hand, there is the  
20      potential that you could count on that, you  
21      could build your building, so that you're  
22      going to get bonus density, and then lo and

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1 behold when you go to get your C of O for the  
2 restaurant and find out that someone else down  
3 the street opened up a McDonalds and you can't  
4 count on that bonus density anymore, because  
5 you are Xed out.

6 And you could then, at that point,  
7 come to the Board for relief then, but it  
8 seems a little silly to have to go to the  
9 Board twice to get relief for the same project  
10 when you could try to come and take care of it  
11 all at once.

12 And part of the reason why here we  
13 think that there is a strong case is this  
14 building, the way it's designed, the fact that  
15 we have, basically, a 20 foot ground floor and  
16 then the mezzanine level on part of it, this  
17 could be a particularly potentially desirable  
18 location for a restaurant use. And so we  
19 wanted to approach this at the outset.

20 And so then the third problem  
21 here, of course, and this kind of goes to what  
22 I was talking about is the nature of timing

1 here. You know, we don't know at this point  
2 what our retail program is going to be. It's  
3 always evolving.

4 Traditionally, you don't really  
5 sign up your tenants until after you have gone  
6 through your zoning approvals and you are  
7 starting to actually finalize the space and at  
8 that point, you then enter into letter of  
9 intent with the potential restaurant or other  
10 retail user.

11 And so it's difficult to do that,  
12 if you have to then -- that person asked the  
13 question well, wait a minute. What happens if  
14 someone else down the street has built a  
15 restaurant and all of a sudden I can't go into  
16 your building?

17 So what we are left with here is  
18 the fact that this 25 percent limitation  
19 really limits our ability to plan for the  
20 ground floor use of this site. And so,  
21 essentially, what we are looking for here is  
22 perspective relief from this restriction to

1 say that look, if it does apply, you will get  
2 relief from it.

3 But what we also recognize is that  
4 there are -- and this is something that we had  
5 discussed with the Office of Planning, that we  
6 can't just get a blanket, you know, relief  
7 from this. And so what we have agreed to do  
8 is say look, we will only devote 50 percent of  
9 our linear front footage along 14<sup>th</sup> Street to  
10 a potential restaurant use.

11 So if you look at the final image  
12 in the package, it shows you what our ground  
13 floor plan looks like. And you see we have  
14 120 feet of frontage along 14<sup>th</sup> Street that  
15 could be potentially devoted to a restaurant  
16 use. And so what we will agree to do is a  
17 condition of approval for the special  
18 exception is if the 25 percent limitation  
19 would be in place at the time that we are  
20 ready to pull the Certificate of Occupancy, we  
21 will limit our restaurant use to only 50  
22 percent of our space.

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1           So it works out well in our  
2 building. We have two fairly well-defined  
3 spaces. Either the retail space in the old  
4 limestone building to the left or the retail  
5 space and the townhomes to the right. And so  
6 what we would do is either put it in one or  
7 the other.

8           And so the little kind of esoteric  
9 again, because we're asking for this relief  
10 before there is a specific plan in place, but  
11 it's the only way that we can reasonably plan  
12 for our future uses of the site. And so since  
13 we are already -- we're here, we thought it  
14 made sense, at this point, to ask for relief  
15 now.

16           And, John, I don't know if you  
17 have anything else to add to that.

18           MR. EPTING: No, I think that's  
19 correct. I mean, basically, as Dave pointed  
20 out, Cleveland Park was already built out.  
21 You already had the stores there. They  
22 haven't been --

1 CHAIRPERSON MILLER: I don't know  
2 why you keep bringing up Cleveland Park here.

3 MR. EPTING: Well, I -- because it  
4 has -- and I don't like that one either, but  
5 it has the same 25 percent linear --

6 CHAIRPERSON MILLER: I'm kidding.

7 MR. EPTING: So here, even to  
8 compound the issues that you have had with  
9 Cleveland Park or the Zoning Administrator has  
10 had with Cleveland Park, you don't even have  
11 the store fronts built yet and you don't know  
12 whether those store fronts are going to be --  
13 they could all be residential, so therefore  
14 they would basically be deducted from the 25  
15 percent or they could all be residential,  
16 which would be adding onto.

17 And then the other thing is that a  
18 restaurant could open tomorrow and then close,  
19 so the number goes back down. And that's what  
20 we're -- we're just trying to put some control  
21 on this, so we will know two years from now  
22 that if we want to do a restaurant, at least

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1 half of the frontage could be a restaurant.

2 And that's all we're asking.

3 CHAIRPERSON MILLER: Yeah, I mean,  
4 you would be reserving that space, basically,  
5 so perhaps somebody else couldn't open a  
6 restaurant, right? I mean, basically.

7 MR. EPTING: Well, I mean, this  
8 provision does seem to be, at least the way  
9 it's written, a first come, first serve.

10 MS. ADAMS: Yeah.

11 MR. EPTING: Again, except --

12 CHAIRPERSON MILLER: Okay.

13 MR. EPTING: And it is odd that it  
14 also has the bonus use for doing residential  
15 at the same time. But I can't put those two  
16 together.

17 MR. AVITABILE: I have a quick  
18 question. Does this provision apply to a  
19 block frontage or the length of 14<sup>th</sup> Street?

20 MEMBER DETTMAN: The length of 14<sup>th</sup>  
21 Street.

22 MR. AVITABILE: The length of 14<sup>th</sup>

1 Street that sits under the overlay?

2 MEMBER DETTMAN: Exactly.

3 MR. AVITABILE: Okay.

4 MEMBER DETTMAN: And so that's why  
5 if you look at the prior image you see it.  
6 It's a multiple block length. And then  
7 actually the way it's written, it's not clear  
8 to me whether it applies to 14<sup>th</sup>, the linear  
9 foot frontage along 14<sup>th</sup> Street and U Street  
10 or whether you look at 14<sup>th</sup> Street and U  
11 Street separately.

12 MR. AVITABILE: I vote for  
13 throwing this provision out honestly. I mean,  
14 do we know for sure that 14<sup>th</sup> Street is  
15 currently under the 25 percent limit for  
16 eating and drinking establishments? Because  
17 I frequent 14<sup>th</sup> Street and I'm willing to say  
18 that it's over 25 percent right now.

19 MR. EPTING: Again, and I know the  
20 Zoning Administrator doesn't have that number,  
21 so --

22 CHAIRPERSON MILLER: I mean, I

1 just disclose that I certainly looked at this  
2 issue when I was an ANC Commissioner with  
3 respect to Cleveland Park and I believe that  
4 we came to the conclusion, I think that  
5 Michael Johnson was the ZA, at that time, that  
6 we counted the whole area. So, you know, in  
7 which case it would be counting 14<sup>th</sup> and U, if  
8 that were correct.

9 And then your 50 percent of your  
10 linear frontage, do you know what, if we said  
11 yes, okay, we grant you 50 percent of your  
12 linear frontage, percentage of that -- what  
13 percentage is that of the whole total linear  
14 frontage of 14<sup>th</sup> and U?

15 MR. EPTING: Well, we're only  
16 asking for 60 feet, so I mean, it can't be  
17 much. I mean, it's got to be minuscule.

18 CHAIRPERSON MILLER: I mean, are  
19 we talking about like, you know, .5 percent,  
20 1 percent, 2 percent?

21 MR. EPTING: It can't be. I mean,  
22 this is -- it's -- you're talking 10 blocks or

1 more. I mean, it's a much larger area than  
2 Cleveland Park. So we would like 60 feet.

3 CHAIRPERSON MILLER: Mr. Dettman  
4 says that 14<sup>th</sup> Street has a lot of eating and  
5 drinking establishments.

6 MEMBER DETTMAN: It seems to.

7 CHAIRPERSON MILLER: So --

8 MEMBER DETTMAN: And it's getting  
9 more.

10 CHAIRPERSON MILLER: Okay. But U  
11 Street, I mean, I think we have to, even if we  
12 entertain this concept, have an idea of what  
13 the impact might be.

14 MEMBER WALKER: Right. Are you  
15 suggesting that we have already exceeded 25  
16 percent and that's why you need this special  
17 exception?

18 MR. EPTING: No, I don't believe  
19 we have.

20 MR. AVITABILE: No, no.

21 MEMBER WALKER: Do you have any  
22 idea?

1 MR. EPTING: No.

2 MR. AVITABILE: No, we're just  
3 saying we don't know and we can't possibly  
4 know five years from now what will be there.  
5 The -- you know, we -- you know, the fact is  
6 we could be up against a 25 percent limit in  
7 five years. And what we're asking for now is  
8 the relief now, so that five years from now  
9 when we have relied on the fact that we  
10 thought we could build the space out and we  
11 have designed the space for.

12 We ventured into a lease with a  
13 restaurant, we've built it out for a  
14 restaurant and then we go to get a Certificate  
15 of Occupancy and the Zoning Administrator, at  
16 that time, says I'm sorry, you know, we just  
17 hit the 25 percent limit last week, because,  
18 you know, someone else went in, up 14<sup>th</sup> Street  
19 and around the corner on U Street, you know,  
20 that's the situation here.

21 CHAIRPERSON MILLER: Right. But  
22 that on the same token, just to be devil's

1 advocate, if we were to grant this, that would  
2 mean, you know, say somebody wanted to open a  
3 restaurant tomorrow, that maybe they can't,  
4 because your space is being held for five  
5 years.

6 MR. EPTING: But they can ask for  
7 relief, too.

8 CHAIRPERSON MILLER: Oh, right,  
9 that's true, yeah.

10 MR. EPTING: Yeah.

11 CHAIRPERSON MILLER: Well, whether  
12 we can give this kind of relief, this is kind  
13 of what we're exploring, because it's novel.  
14 I don't think it has ever been done. It's  
15 perspective, you know.

16 MR. EPTING: Well, that's true.

17 CHAIRPERSON MILLER: But you're  
18 right. But that's a possibility.

19 MR. EPTING: That's true.

20 CHAIRPERSON MILLER: And the regs  
21 may change over the next few years. We're  
22 looking at redoing the Zoning Regulations.

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1 MR. EPTING: Right. Clearly,  
2 these regulations are -- there is some  
3 inconsistency in them. I mean, and this is a  
4 hard regulation to track, because it's hard to  
5 keep track on a linear square footage basis of  
6 what's a restaurant.

7 CHAIRPERSON MILLER: You said you  
8 couldn't get a number of the percentage of  
9 linear footage that is being used now by  
10 eating and drinking establishments. Why is  
11 that? Why wouldn't DCRA be able to come up  
12 with a number? I'll ask Office of Planning.  
13 Office of Planning, why wouldn't they be able  
14 to come up with a number? Do you want to come  
15 in this conversation?

16 MR. EPTING: I'll let Mr. Cochran  
17 speak to that.

18 MR. COCHRAN: If I have to answer  
19 on that last question, the answer is no. I  
20 don't want to get into this conversation.  
21 I'll address it in our report.

22 CHAIRPERSON MILLER: Okay. We'll

1 hold that one.

2 MR. AVITABILE: I think we're  
3 okay.

4 CHAIRPERSON MILLER: And do you  
5 have any authority for this type of relief?  
6 What regulation would we be going under  
7 exactly to grant the relief you are requesting  
8 for kind of a perspective exemption or  
9 something or right to have an eating  
10 establishment there?

11 MR. AVITABILE: Well, I think you  
12 really don't have to look any further than the  
13 special exception provisions in the ARTS  
14 Overlay, 1906.1, which simply says "Exceptions  
15 from the requirements of the ARTS District  
16 shall only be permitted if granted by the BZA  
17 after Public Hearing based on certain  
18 criteria, the uses, buildings or features at  
19 the size, intensity and location proposed will  
20 substantially advance the purposes of the ARTS  
21 Overlay and will not adversely affect  
22 neighboring properties, exceptional

1       circumstances make compliance with the  
2       requirements difficult or impossible or the  
3       development provides alternate public  
4       benefits," and then there are a number of  
5       other ones here.

6               But I think here the fact that  
7       this special exception talks about if doing --  
8       if the relief would advance the purposes of  
9       the overlay and the overlay does specifically  
10      call for the provision of eating and drinking  
11      establishments, restaurants, as things that  
12      are benefits.

13             If it didn't think they were  
14      benefits, it wouldn't grant you bonus density  
15      for them. So because it clearly does, at  
16      least in part, envision these as benefits, we  
17      think that the -- your authority under this  
18      provision here, 1906, does allow you the  
19      ability to say okay, we recognize that, you  
20      know, there is a benefit here and so we'll  
21      grant you this limited relief.

22             And, you know, if it applies, you

1 can only use 50 percent. You don't have a  
2 blank check to fill up the entire ground floor  
3 with this use. But I think it is consistent  
4 with this provision.

5 CHAIRPERSON MILLER: Okay. And I  
6 think I might have mischaracterized what you  
7 are asking for. You wouldn't be saving part  
8 of the 25 percent. You would say you want to  
9 be able -- if 25 percent is being used, you  
10 want to be able to exceed it.

11 MR. EPTING: Exactly.

12 CHAIRPERSON MILLER: Okay.

13 MR. AVITABILE: Exactly, yeah.

14 MR. EPTING: It would be exactly  
15 like if we had to come back here in three  
16 years and say, you know, we told you about  
17 this, but now we're asking for relief from it.

18 CHAIRPERSON MILLER: Okay. And is  
19 there anything like this type of relief that  
20 you have seen before? I mean, this kind of  
21 like perspective kind of if this situation  
22 arises, we want to get the exception now,

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1 because it might arise?

2 MR. EPTING: Well, I don't think  
3 the -- no, I think the answer is, because  
4 there aren't many other than Cleveland park,  
5 there aren't many of these linear overlay  
6 things that there is no absolute term here.  
7 It's not like height or FAR or percentage of  
8 lot I have seen. It's we don't know.

9 And, you know, you're not going to  
10 know until that day and you may not even know  
11 then. The Zoning Regulations are supposed to  
12 have some certainty to them and this one has  
13 uncertainty.

14 CHAIRPERSON MILLER: Well, I think  
15 that's true. I think what is different about  
16 this is it's dependent on what your neighbors  
17 are doing. And normally, Zoning Regulations  
18 are just confined to your own lot. Okay.  
19 Anything? That's fine. Anything else before  
20 we go to the Office of Planning?

21 MR. AVITABILE: No, that's all  
22 from us.

1 CHAIRPERSON MILLER: Okay. Mr.  
2 Cochran?

3 MR. COCHRAN: Okay. Thank you,  
4 Madam Chair. For the record, my name is Steve  
5 Cochran. I'm with the Office of Planning. I  
6 think I'm going to have to say a little bit  
7 more than just standing on the record, as I  
8 had hoped to be able to do.

9 It's a self-certified application.  
10 That's one reason we talked to the applicant  
11 about whether they needed certain relief or  
12 not. And as you know, after conversations  
13 with us, they withdrew one variance request  
14 and two special exception requests. And I  
15 don't think I need to go into that any more.

16 Now, for the remaining ones, for  
17 the variances, the applicant tonight has  
18 presented as if they need a variance only from  
19 2001.3. We think they really need -- if  
20 you're going to look at granting some relief  
21 for this addition to the nonconforming  
22 structure, that it would be more appropriate

1 for you to grant relief both from 2001.3 and  
2 from section 772.1.

3 If they built an all commercial  
4 structure, which they are permitted to do,  
5 there would be -- what you have now is not a  
6 nonconforming building. If they built an all  
7 commercial structure, it would not be a  
8 nonconforming building. It would still be in  
9 compliance.

10 What they are doing is creating a  
11 new nonconformity, because they want to  
12 advance the purposes of the ARTS Overlay and  
13 put in residential use. So I think you need  
14 to grant both the variance to exceed the  
15 residential lot occupancy requirements and the  
16 permission to expand. It's on the cusp. Are  
17 you expanding an existing nonconforming  
18 structure? No.

19 You are doing an addition to a  
20 structure that is now conforming, but would  
21 become nonconforming with that use with  
22 respect to area.

1 CHAIRPERSON MILLER: But I thought  
2 it wasn't conforming. They are representing  
3 that it is nonconforming with respect to lot  
4 occupancy now.

5 MR. AVITABILE: Well, it's  
6 actually -- even before that, the structure is  
7 nonconforming as to rear yard.

8 MR. COCHRAN: Right.

9 MR. AVITABILE: The existing  
10 limestone building doesn't have the required  
11 rear yard. So we are already in the  
12 nonconforming structure, you know, column so  
13 to speak.

14 MR. EPTING: Right. And if we're  
15 using any portion of the existing buildings  
16 for residential, that's the issue. If --  
17 Steve is right. If we were just converting to  
18 commercial, lot occupancy wouldn't be an  
19 issue. So it's whether or not we need both  
20 2001.3 relief and the 772.1. And we are  
21 perfectly fine to ask for both. It's the  
22 same.

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1 MR. COCHRAN: Right.

2 MR. EPTING: Our description  
3 doesn't change. It's one of those --

4 MR. COCHRAN: I was just  
5 suggesting that with -- to be cautious about  
6 it, go ahead and grant both reliefs, if you're  
7 going to grant any.

8 Now, I think that the applicant  
9 adequately addressed the special exception for  
10 the roof structures. I would like to talk a  
11 little bit more about the requested special  
12 exception from 1901.6.

13 CHAIRPERSON MILLER: Can I just --  
14 I know it's kind of late and so I'm a little  
15 tired and slower at this.

16 MR. COCHRAN: Okay.

17 CHAIRPERSON MILLER: But in your  
18 chart.

19 MR. COCHRAN: Um-hum.

20 CHAIRPERSON MILLER: And you talk  
21 about 772.1 there, and you say existing 94  
22 percent (nonconforming). What do you --

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1 MR. COCHRAN: It's nonconforming  
2 if it were to be used residentially. It is  
3 not nonconforming if they were to use it,  
4 continue to be using it all commercially.

5 CHAIRPERSON MILLER: Okay.  
6 Because the 100 percent is what applies to the  
7 commercial.

8 MR. COCHRAN: Right.

9 CHAIRPERSON MILLER: Okay.

10 MR. COCHRAN: Now, let me get at  
11 that a little bit more. The applicant as I  
12 believe Mr. Avitabile said is caught between  
13 a rock and a hard place, mostly because of the  
14 Historic Preservation requirements. They have  
15 talked already about not being able to build  
16 on top of the limestone structure and so on  
17 and so forth.

18 They can't build on top of the  
19 fronts of the brick structures, because HP is  
20 trying to maintain a certain sight line where  
21 you can't see any new construction from the  
22 front. At the same time, the ARTS Overlay

1 comes in and says okay, after you hit 50 feet,  
2 you've got to have a 45 degree setback for  
3 your building from the back, because they are  
4 adjacent to a Residential District.

5 So they are getting pinched from  
6 both sides. That's why if they are going to  
7 go anywhere, they need to increase their --  
8 they need to have somewhat greater lot  
9 occupancy at the floors below 50 feet than  
10 they could have above. If they didn't have  
11 the historic restrictions, there would be --  
12 you know, they could easily meet the 75  
13 percent lot occupancy requirements.

14 And the combination of the  
15 historic and the overlay physical  
16 restrictions, because that above 50 feet,  
17 you've got to go back at a 45 degree angle.  
18 Okay. Now what --

19 CHAIRPERSON MILLER: And their  
20 overall residential lot occupancy is under 75  
21 or no?

22 MR. COCHRAN: No, it's still in

1 excess.

2 CHAIRPERSON MILLER: Oh, it's  
3 still in excess. Right, okay. Their overall  
4 lot occupancy is less though than it was?

5 MR. COCHRAN: Yes.

6 CHAIRPERSON MILLER: Before the  
7 addition.

8 MR. COCHRAN: It's less than the  
9 commercial buildings are now.

10 CHAIRPERSON MILLER: Okay.

11 MR. COCHRAN: Because they are  
12 going to meet their rear yard requirements on  
13 the addition, which means they are pulling  
14 back and therefore making the coverage of the  
15 structure smaller.

16 CHAIRPERSON MILLER: Okay.

17 MR. COCHRAN: Okay. Now, I want--

18 MEMBER DETTMAN: I have one  
19 question.

20 MR. COCHRAN: Sure.

21 MEMBER DETTMAN: Before we get to  
22 the special exception. And with respect to

1 parking, I noted in your report that, and  
2 actually in your presentation, there is a  
3 little bit of leeway in terms of what use is  
4 going to end up on the mezzanine. And I know  
5 that you are providing 24 zoning legal parking  
6 spaces and then a few in vault space.

7           Depending on where the use of the  
8 mezzanine falls, are we -- I'm only concerned  
9 with the 24 zoning legal spaces. Depending on  
10 where the use of the mezzanine falls, are we  
11 going to have to be concerned with exceeding  
12 the 24 space lot?

13           MR. AVITABILE: Absolutely no.

14           MEMBER DETTMAN: Okay.

15           MR. AVITABILE: Under the new  
16 Historic Parking Regulations, you are only  
17 required to park your addition and here our  
18 addition actually -- if the mezzanine is used,  
19 as we are planning it now, all as retail, we  
20 would be required to have a total of 13  
21 parking spaces. And if the mezzanine is used  
22 for part residential and part retail, our

1 total requirement actually drops down to 8  
2 spaces.

3 MEMBER DETTMAN: Okay.

4 MR. AVITABILE: We are well above  
5 what the requirement would be.

6 MEMBER DETTMAN: Yeah.

7 MR. AVITABILE: So --

8 MR. COCHRAN: Just take a look at  
9 the second column and I gave figures for both.  
10 If the mezzanine is used residentially and if  
11 the mezzanine is used commercially. So for  
12 both of those rows I gave those.

13 Okay. Now, when you're looking at  
14 1901.6, which is the restriction to 25 percent  
15 of the frontage along 14<sup>th</sup> Street and U Street  
16 being used for residential -- excuse me, for  
17 restaurant or drinking establishment purposes,  
18 as the applicant has already said, there is --  
19 the overlay could be seen as encouraging -- as  
20 having somewhat conflicting encouragements.

21 I'm sure that's unprecedented in  
22 the Zoning Regulations, but we'll try to get

1 to that and fix it in the next three years.  
2 But we are well-aware of that for the zoning  
3 overlay and for the rewrite.

4 On the one hand, I'm not aware of  
5 anybody having come in and asked for relief on  
6 the 14<sup>th</sup> or the U Street corridors for this.  
7 I actually believe that the applicant could do  
8 the entire ground floor retail as a restaurant  
9 without going above the 25 percent. Now, I  
10 haven't taken my tape rule out there and  
11 measured it, but there is a perception that  
12 there are a lot of eating and drinking  
13 establishments on 14<sup>th</sup> Street.

14 But when you really consider  
15 things like the design oriented uses, the  
16 parking lots, the former auto repair places,  
17 the Reeves Center, etcetera, etcetera, I think  
18 you may find that you get up to -- that a lot  
19 more of the corridors are in non-eating and  
20 drinking establishments than you might  
21 imagine.

22 I think it just sort of shows the

1 orientation that some of us that are in this  
2 room have to whether we see an eating and  
3 drinking establishment or whether we see  
4 something else.

5           Nevertheless, we are coming out  
6 ahead on this, because they could probably get  
7 the entire thing for restaurant use. We want  
8 a mixed-use corridor. We want to get more  
9 retail functions. We don't, I believe, want  
10 it to become another Adams Morgan 18<sup>th</sup> Street.

11           So here we're getting a guarantee  
12 that half of the building is going to be for  
13 something other than eating and drinking. The  
14 Office of Planning feels that that is a real  
15 plus, which is why we encouraged them to go  
16 this way.

17           That's actually all I have to say,  
18 unless you have some more questions.

19           CHAIRPERSON MILLER: Why can't we  
20 get a count for what the percentage is now?

21           MR. COCHRAN: I think you are  
22 familiar with what the -- of some of the

1 limitations at the Department of Consumer and  
2 Regulatory Affairs. If that Department has  
3 been unable to get a count in a two block area  
4 like Cleveland Park, Woodley Park, etcetera,  
5 it seems extremely unlikely that they are  
6 going to be able to put the personnel on to  
7 get the count for this big an area.

8 That's why I think the applicant  
9 has done the right thing in asking for what  
10 may be necessary relief, what may be  
11 prospective relief. Either way, we're coming  
12 out ahead because we're getting half of their  
13 linear footage for something other than eating  
14 and drinking.

15 CHAIRPERSON MILLER: Why is that  
16 necessarily coming out ahead if the overlay  
17 supports these?

18 MR. COCHRAN: Because more than  
19 anything, the overlay supports mixed-use in  
20 establishing a fully functioning neighborhood.  
21 In a neighborhood that has more eating and  
22 drinking establishments, you may have a less

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1 fully functioning neighborhood and you may  
2 have less fully functioning residents. That  
3 was a joke.

4 MEMBER DETTMAN: I think, not a  
5 question, but an observation, as we see 14<sup>th</sup>  
6 Street continue to see the development that it  
7 is now experiencing, and we might start to see  
8 more and more cases come before the Board to  
9 seek relief of this 25 percent, we're going to  
10 need to figure out a way how to track this.

11 And so I just make a  
12 recommendation that we figure this out with  
13 DCRA as soon as possible.

14 MR. COCHRAN: Thank you. I'll  
15 take that back.

16 CHAIRPERSON MILLER: I think years  
17 ago we did get a number, but it's probably, in  
18 Cleveland Park, been, you know, somewhat  
19 contested, but I think that there was a number  
20 gotten. But I can understand. I think what  
21 you are saying is there are other priorities  
22 of DCRA perhaps.

1                   Now, we're talking about 25  
2           percent of an area. Can you testify, you  
3           know, as to your perception of either, just so  
4           we have a context, what percentage they might  
5           be at? You know, 10 percent or 5 percent.  
6           And then my second question was you said that  
7           their area was, or maybe the applicant did, a  
8           very small fraction of the percentage of the  
9           linear frontage of the whole area.

10                   MR. COCHRAN: I don't feel  
11           comfortable testifying -- giving a guess on  
12           what the percentage is. I'm not sure that I  
13           would agree. If the applicant testified that  
14           eating and drinking establishments are a very  
15           small percentage, I don't think I would be  
16           able to agree with that. But I surely don't  
17           see it as being overwhelming.

18                   CHAIRPERSON MILLER: I don't want  
19           to characterize that. I didn't say that.  
20           Maybe we can ask the applicant again what they  
21           think. I think they said that their linear  
22           frontage, 50 percent of their linear frontage

1 is a small fraction of the total linear  
2 frontage that would make up this overlay.

3 MR. COCHRAN: Well, that may be  
4 the case and that's often the case with any  
5 single case that comes before you. But, of  
6 course, we have to think of the cumulative  
7 impact also.

8 MEMBER WALKER: Well, can you give  
9 me some guidance on how this 25 percent is  
10 actually calculated? Is it 25 percent of, you  
11 know, what's along 14<sup>th</sup> Street, U Street,  
12 both?

13 MR. COCHRAN: It's along both 14<sup>th</sup>  
14 and U Street. There are other overlays where  
15 it refers to a specific block or as in many  
16 overlays it's two blocks, but here we're  
17 looking at the whole area. And I don't think  
18 there has ever been a ZA interpretation, a  
19 Zoning Administrator interpretation of it for  
20 this particular overlay.

21 And I'm not even -- I'm just  
22 trying to find that again. See, it says

1 "Shall occupy no more than 25 percent of the  
2 linear foot frontage within the Overlay  
3 District as measured along the lots fronting  
4 on 14<sup>th</sup> Street and U Street, N.W."

5 Does that mean that you simply  
6 measure the individual lots and add those up?  
7 Does it mean you include any alleys there  
8 might be? I don't know. I realize that our  
9 office wrote this some time ago before almost  
10 anybody that's there now was there. But there  
11 is clearly going to have to be a ZA  
12 interpretation of it until we get around to  
13 clarifying it in the zoning rewrite.

14 MR. AVITABILE: If I could to  
15 answer the very limited question of what  
16 percentage our linear foot frontages of the  
17 entire length of 14<sup>th</sup> Street and U Street  
18 within the ARTS Overlay, these are extremely  
19 rough calculations, but assuming that there  
20 are, it looks like there is, about nine blocks  
21 total on 14<sup>th</sup> and U Street in the overlay, and  
22 we take up about half a block, that means --

1 and of course, you're looking at both sides of  
2 the street here, so that means we're about  
3  $1/36^{\text{th}}$ , which is about 2.7, 2.8 percent of the  
4 total linear foot frontage.

5 So we're a rather relatively small  
6 percentage of the entire linear foot frontage  
7 in the ARTS Overlay.

8 CHAIRPERSON MILLER: Okay. I  
9 guess, you know, part of my problem with this  
10 and I'm not a great fan of this regulation  
11 either, I think it's pretty difficult, but  
12 it's hard to fashion, in my mind, an exemption  
13 or whatever from 1901.6. It's kind of like it  
14 doesn't read that it applies to a specific  
15 property and that, therefore, you can get a  
16 special exemption from a requirement on U.

17 It reads almost to me, you know,  
18 and feel free to respond, to the ZA almost  
19 that the ZA can't -- well, I don't know. I  
20 mean, the ZA doesn't come for a special  
21 exception. So it's just hard to figure --

22 MR. AVITABILE: Well, I think --

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1 CHAIRPERSON MILLER: -- out how to  
2 phrase this special exception.

3 MR. AVITABILE: It does read that  
4 way, but at the same time, when we would go in  
5 for -- to get our Certificate of Occupancy,  
6 the ZA would then be in charge of enforcing  
7 that provision and looking and seeing and  
8 trying to calculate. And I'm not sure what  
9 they do now when restaurants open up. They  
10 may very well not, you know, look at it.

11 CHAIRPERSON MILLER: Maybe it's  
12 not so different from it. If an overlay had  
13 reached 25 percent capacity and someone came  
14 in at that point and said I want to open a  
15 restaurant, there is this safety valve in here  
16 or whatever you want to call it.

17 MR. EPTING: He would either deny  
18 it or send us to the BZA.

19 MR. COCHRAN: I think, Ms. Miller,  
20 you know that, essentially, the regulatory  
21 mechanism for this kind of an overlay tends to  
22 be citizens feeling that the overlay -- that

1 that provision in the overlay has been  
2 violated or exceeded.

3 That's certainly how the issues  
4 came up within the overlays in more upper  
5 parts of the northwest. The citizens brought  
6 it to the attention of either the ZA or the  
7 BZA or OP. I'm being realistic. That tends  
8 to be how it happens.

9 I don't think you are going to see  
10 any citizen coming in and saying gosh, this 60  
11 feet, we don't think that that really fits  
12 within this overlay. So that's honestly how  
13 it usually gets dealt with. If somebody  
14 wanted to come in and challenge it, the ANC  
15 felt that these were out of balance, then  
16 maybe that would become a priority of the DCRA  
17 to look at it.

18 But as you pointed out, they do  
19 have other priorities and limited staff.

20 CHAIRPERSON MILLER: Okay. I  
21 think this is a case of first impression, as  
22 far as I know, before this Board. I mean, I

1 think that another scenario is that a lessee  
2 or an owner or whatever wanted to open a  
3 restaurant and it exceeded 25 percent would  
4 come in for a special exception.

5 And then, you know, perhaps there  
6 might be opposition in the neighborhood or  
7 maybe yes, maybe no. So we do have something  
8 to think about though with respect to, you  
9 know, a perspective kind of relief. But I  
10 understand what you're saying is you need to  
11 plan when you have a big development and you  
12 are going to seek tenants and if you were to  
13 have a restaurant that was interested, how  
14 could they -- I don't know how far in advance  
15 they commit though to something like this.

16 I mean, the difference, maybe you  
17 can just elaborate a little bit more factually  
18 the difference between seeking relief now and  
19 then seeking relief later when you are ready  
20 to really put tenants in a building.

21 MR. AVITABILE: Well, there are a  
22 couple of considerations. The first one

1 actually before we even get to the business  
2 aspect of all of this is the fact that well,  
3 we are already here. And you're right that  
4 you could have -- if you were just a matter-  
5 of-right developer, you would go through, you  
6 would do your plans, you would go -- you would  
7 get your building permit, you would build it  
8 out and then you would be told you have to go  
9 to the BZA. So that's one situation.

10 But here, we have already gone  
11 through the process and we have -- and we're  
12 already here, so there is an equitable  
13 argument of only having to go through the  
14 zoning hearing process once. So that's a part  
15 of it.

16 And then there, of course, is also  
17 the fact that it does make it more difficult  
18 if you are prudent. I mean, there are  
19 probably plenty of people who actually proceed  
20 in complete ignorance of this provision and  
21 don't realize and they would only find out if  
22 someone opposed it at the end. But we're Type

1 A cautious people by nature and so we look at  
2 this and worry about it and say well, this  
3 could be a problem.

4 And, you know, in order to have  
5 confidence in planning the space out and being  
6 able to really reel in potential tenants and  
7 get them comfortable, again, I mean, this also  
8 could be a question that would come up from a  
9 really, you know, on the ball potential tenant  
10 who could look and say well, what about this  
11 regulation? What's going to happen?

12 So I think really what this is is  
13 in the nature of being prudent and since we're  
14 here trying to hit it all at one point.

15 MR. EPTING: And I think to market  
16 it as a restaurant, you're going to need to  
17 show you have approval, because otherwise  
18 you're looking -- I mean, I think your agenda  
19 now, you're filling September. So if we found  
20 out about this today and had a restaurant, we  
21 could say to them oh, yeah, we'll get a  
22 hearing in September and we would never keep

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1       them hanging that long.

2                   So it's, you know, perspective,  
3       but it's also that we're trying to be  
4       realistic about the way, you know, the world  
5       works. You can't offer a space and say well,  
6       maybe we'll get it approved. But, please,  
7       sign our letter of intent.

8                   CHAIRPERSON MILLER: Mr. Cochran,  
9       I just want to ask you, in the event that by  
10      the time that this restaurant would open that  
11      this overlay had reached 25 percent, in your  
12      view, there would not be an adverse impact  
13      with the limitation that they only use 50  
14      percent of their linear footage?

15                  MR. COCHRAN: I beg your pardon,  
16      but would you mind asking that again?

17                  CHAIRPERSON MILLER: Okay. Okay.  
18      Let's project out, okay, and if we granted  
19      this relief and a few years from now or  
20      whenever this building goes into operation and  
21      a restaurant were to open, do you think 50  
22      percent of their linear frontage, if the

1 overlay did reach 25 percent, that is  
2 additional linear footage devoted to the  
3 restaurant would not be detrimental to the  
4 health, safety, convenience or general welfare  
5 of persons living, working or visiting in the  
6 area, per se, that's the standard under the  
7 special exception.

8 MR. COCHRAN: No, I don't.

9 CHAIRPERSON MILLER: It would not  
10 be, in your view?

11 MR. COCHRAN: No.

12 CHAIRPERSON MILLER: Okay.

13 MR. COCHRAN: And other  
14 restaurants will fail, so as they say, it's an  
15 up and down. I mean, a restaurant of about  
16 the same size that I thought would last for a  
17 long time just closed a block away.

18 MEMBER WALKER: Ms. Adams, you  
19 made reference to the project that abuts 1625.  
20 Do you have any sense of what the planned use  
21 for that adjoining -- the property that  
22 adjoins 1625 is?

1 MS. ADAMS: I don't.

2 MR. EPTING: It's retail ground  
3 floor and residential above, but all they have  
4 is HPRB approval, so --

5 MEMBER WALKER: No, I understand  
6 that. But do you know what the planned use  
7 is? What kind of retail, do we know?

8 MR. EPTING: No. I mean, HPRB  
9 concept plans, which were basically like this,  
10 so it showed retail on the bottom and  
11 residential above. And it's actually being  
12 marketed now for a potential purchaser. So we  
13 don't really know what's going on.

14 CHAIRPERSON MILLER: Okay. Were  
15 you finished, Mr. Cochran?

16 MR. COCHRAN: Yes, ma'am.

17 CHAIRPERSON MILLER: Okay. Did  
18 the applicant have any questions of the Office  
19 of Planning?

20 MR. EPTING: None.

21 CHAIRPERSON MILLER: Okay. The  
22 ANC is not here I know. At this point then,

1 I would -- I see there are other people in the  
2 audience who wish to present testimony  
3 perhaps. First, I would ask if there is  
4 anybody in the audience who wishes to testify  
5 in support of the application? And not  
6 hearing from anybody, is there anybody who  
7 wishes to testify in opposition to the  
8 application? No?

9 MS. SIEGRIST: Yes.

10 CHAIRPERSON MILLER: Yes, Ms.  
11 Siegrist.

12 MS. SIEGRIST: I would like to  
13 ask --

14 CHAIRPERSON MILLER: You need to  
15 come to the table, okay, so you can be on the  
16 record.

17 MS. SIEGRIST: Two weeks ago  
18 today, Jeffrey came to my house and I asked  
19 him how tall this addition would be and he  
20 said 70 feet. Now, tonight I'm hearing 75.  
21 What is it?

22 CHAIRPERSON MILLER: Ma'am, I'm

1 just going to say I'm going to give you just  
2 a little bit of leeway, because you are not a  
3 party. You are really only allowed to give  
4 testimony. But if you just have one or two  
5 questions, I'll give you that leeway.

6 MS. SIEGRIST: Well, because then  
7 I would be opposed if this is above the height  
8 of the church across the street on Corcoran.

9 CHAIRPERSON MILLER: Okay. Let me  
10 just say also that the height is within the  
11 regulations. So the height isn't an issue.

12 MS. SIEGRIST: What do you mean  
13 it's within the regulations?

14 CHAIRPERSON MILLER: They are  
15 allowed -- their project is in compliance with  
16 the height requirements, so that's not an  
17 issue in this case. All that's at issue is  
18 regulations that they are not complying with  
19 and height isn't one of them.

20 MS. SIEGRIST: All right. Then  
21 the setback from the alley, what is -- you are  
22 setback how far?

1 CHAIRPERSON MILLER: Okay. That's  
2 not an issue here either. I think that you  
3 need to have perhaps some conversation outside  
4 of the hearing on things that aren't at issue  
5 in the hearing. We have roof structures. We  
6 had this eating establishment special  
7 exception. And then we had lot occupancy.

8 MS. SIEGRIST: Well, I do believe  
9 that we have tons of restaurants on 14<sup>th</sup>  
10 Street. We really do. And we have four on  
11 one block on P Street between 14<sup>th</sup> and 15<sup>th</sup>.  
12 So and parking, I can't -- you mentioned in  
13 the parking the bulk space. What is bulk  
14 space?

15 MEMBER DETTMAN: I said vault  
16 space.

17 MS. SIEGRIST: Vault?

18 MEMBER DETTMAN: Vault, that's  
19 correct.

20 MS. SIEGRIST: What is that?  
21 Under the sidewalk?

22 MEMBER DETTMAN: That's right. So

1     what they are doing is they are providing 24  
2     spaces on-site, which is in excess of what  
3     they are required to provide. And then they  
4     are providing additional parking in vault  
5     space under the sidewalk. And so they are  
6     greatly exceeding the necessary parking that  
7     they need.

8                   MS. SIEGRIST: Well, I guess  
9     anything that I have cannot be taken up here.  
10    I don't know. It's a revolting development,  
11    I'll tell you that. But I do want to talk to  
12    you guys, because I want a bunch of this stuff  
13    in writing.

14                  MR. COCHRAN: Excuse me, Madam  
15    Chair, I wanted to be sure for the record,  
16    DDOT still has to give permission for the  
17    vault space and there is certainly a  
18    possibility that they won't. And even if they  
19    don't, they will still be within the  
20    prescribed limits.

21                  CHAIRPERSON MILLER: Okay. So  
22    that doesn't affect our analysis of the relief

1 requested, correct? Okay. Okay. One more  
2 item I was just looking for it, but the  
3 applicant handed to us, I think it's this --

4 MR. MOY: Madam Chair?

5 CHAIRPERSON MILLER: -- case.

6 MR. MOY: I think we have another  
7 individual for testimony.

8 CHAIRPERSON MILLER: I'm sorry,  
9 sir. Come on forward. I can look for that  
10 ANC record.

11 MR. JOHNSON: Thank you. My name  
12 is Jerry Johnson. I live at 1334 R Street,  
13 which is just outside some of these pictures.  
14 The first house after the institution next to  
15 the -- there is the Union, there's the Mission  
16 and then there is the Sun Building, which you  
17 see on the picture, and we're the first house  
18 after that.

19 CHAIRPERSON MILLER: Okay.

20 MR. JOHNSON: The one thing that I  
21 wanted to bring up here is that for some  
22 reason, a lot of people -- there were a number

1 of others here earlier today who left because  
2 they thought that -- a lot of us somehow never  
3 felt we got any input into the process, that  
4 perhaps not hearing from the ANC or whatever,  
5 and so we did feel that there was a general  
6 issue that we are impacted along that street  
7 between R and Corcoran and the alley along it.

8 We all have gardens out back there  
9 and that is -- there are a number of issues  
10 that come out of that feature. And I think  
11 some of them probably are not or cannot be  
12 addressed here at all.

13 One is the question of the traffic  
14 in the alley, that is a concern. I don't know  
15 whether there is anything that can be done as  
16 they develop the project to make it easier for  
17 the cars to move quickly, because the R is  
18 stuck already with occasional traffic jams in  
19 the alley. So that's an impact in the  
20 neighborhood of having the parking going in  
21 there.

22 As I understand it, that's not an

1 issue here though. This is not a zoning  
2 issue. But I just wanted to raise it,  
3 because, to my knowledge, it has not been  
4 raised in any other forum.

5 I think another issue that people  
6 were concerned about was the potential noise  
7 of rooftop machinery, of air conditioners and  
8 so on and we have no idea how that is to be  
9 addressed, but it is a concern, in that along  
10 the -- of the residents along there. Again,  
11 as I said, I don't think it's an issue here.

12 The one issue that did strike me  
13 as being an issue for you people is the one  
14 that -- to do with height. And as I recall,  
15 you said that height is not an issue, but it  
16 is somehow related to the lot occupancy  
17 calculation, as I understand it.

18 That was my understanding that all  
19 the discussion of this talked about how high  
20 these structures could be given what admit for  
21 lot occupancy. They seemed to talk about  
22 different levels and so on. The one thing I'm

1 very much aware of is that the existing  
2 building is already quite high, blocks quite  
3 a bit of light, but that's mainly just the  
4 houses.

5 This is in an area which basically  
6 will block the whole alleyway, raised much  
7 higher along there, that massing along the  
8 alley means that everybody along that alleyway  
9 is going to have their light severely affected  
10 by having this massive building right at the  
11 end of the alley. The addition is put behind  
12 the existing structures.

13 And I guess the view would be --  
14 if there is anything possible to have that not  
15 quite so high, it would be good. I mean, we  
16 are very happy to see 14<sup>th</sup> Street being  
17 developed. We're certainly -- several of us  
18 are very happy to see -- the whole plan looks  
19 very nice, but it's just the map, the scale of  
20 it that troubles us.

21 For example, we have a roof  
22 terrace. It will severely block our view as

1 we look to the west at the setting sun and so  
2 on having that there. That kind of thing will  
3 be a major detriment to the residents in the  
4 area. And it was that point that I wished to  
5 raise.

6 And as I understand it from the  
7 way the arguments that were being made for the  
8 variance on the lot occupancy, it did seem to  
9 have some relation to the height. And  
10 certainly from our point of view, that -- if  
11 that height were reduced by 10 feet or just  
12 one floor basically, it would make a  
13 significant difference in the amount of light  
14 that would be allowed to come through those  
15 areas.

16 I think those are the main things  
17 I wished to raise. I just wanted to think  
18 that -- you should perhaps think of if, in  
19 fact, height is in some way an issue at this  
20 point. Thank you.

21 CHAIRPERSON MILLER: Okay. I  
22 mean, I think you raised some good points.

1 And I think the applicant can respond to some  
2 of them. I guess my first question is though,  
3 was there an -- did you go to the ANC meeting,  
4 because sometimes at those meetings, that's  
5 when these kinds of questions get aired also.

6 MR. JOHNSON: Right. I'm aware of  
7 that and I -- unfortunately, I travel a lot,  
8 but it's also that I don't think they give  
9 very good notification. You hear a general  
10 notification. I don't think people know how  
11 the ANC works. I was just quite surprised  
12 somebody, I believe a document has been  
13 submitted here, one of our neighbors yesterday  
14 was sort of at the last minute desperately  
15 going around.

16 I think he got 40 or 50 signatures  
17 of people who are unhappy about this  
18 development. And I think mainly focusing on  
19 that height issue. And so it does raise a  
20 question, I think, like Ms. Siegrist raised  
21 before about how information gets out to  
22 people. It would seem to me a useful thing if

1       there's something like this that a sign could  
2       be put on the building that the ANC is going  
3       to consider this at such and such a point.  
4       And people could become aware of it.

5               Because unless you are a dedicated  
6       follower of it and/or happen to be in town at  
7       the right moment, you may not be able to have  
8       an input. Thank you.

9               CHAIRPERSON MILLER: Well, okay.  
10       Why doesn't the applicant address the height  
11       question?

12              MR. EPTING: Well, let me take a  
13       shot at it. I don't think -- I think Mr.  
14       Cochran used the height setback from the alley  
15       which is actually -- was the Zoning  
16       Regulations way to once you get above 50 feet  
17       to setback 1:1 to minimize the impact on the  
18       alley of any height above 50 feet.

19              I think Mr. Cochran was saying  
20       because of that, that's an additional reason  
21       why you needed more light you would see at the  
22       lower levels, because of that. We didn't

1     argue that, because, I mean, I understand it.  
2     But basically, we are getting more in terms of  
3     the existing buildings, once we are above the  
4     fourth floor, we more than exceed the lot  
5     occupancy. So the height really is not an  
6     issue at the taller heights.

7                 CHAIRPERSON MILLER: So you are  
8     within the Height Regulations?

9                 MR. EPTING: It allows 75 feet.

10                CHAIRPERSON MILLER: Okay. So the  
11     next question though is how does that affect  
12     neighboring property's light? Do you have an  
13     answer to that? Whether he says if you  
14     dropped it a floor or whatever, obviously,  
15     when any building goes up, they might block  
16     somebody's view that they had before. And  
17     that's not really protected by the Zoning  
18     Regulations. If it gets to be a more severe  
19     impact on light and air, it is. Do you want  
20     to address that?

21                MR. EPTING: Well, the Zoning  
22     Regulations, I guess, tried to address it,

1 maybe not adequately though by having the 1:1  
2 setback above 50. And that was their way they  
3 do across the city to address light and air  
4 issues. And this is north of the site and so  
5 it's not a shadow issue, per se, but it is a  
6 view or vista issue.

7 And again, that is the smaller  
8 part of the building. And again, the only  
9 place we could put the addition, so I think we  
10 have dealt with it before and HPRB did make --  
11 it is the quandary that we were talking about  
12 where we have the setback from the historic  
13 buildings and where is the height going to go?

14 MR. AVITABILE: If I could just  
15 add another portion to that. If this building  
16 was not -- if this project was not encumbered  
17 by historic buildings, the height, the 75 foot  
18 height would actually stretch across not just  
19 60 feet, but would stretch across 120 feet.  
20 So actually, the way this project is designed,  
21 it actually is effectively at a lower height  
22 through more of the building than it otherwise

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1 would.

2 The only other things I think I  
3 would like to add to kind of respond to some  
4 of the comments that were made, as far as the  
5 notice and posting, you know, there were not  
6 just one, but two different ANC meetings that  
7 considered this. There was the -- they have  
8 a community kind of development committee that  
9 a number of the ANCs have implemented where  
10 projects are discussed and then a  
11 recommendation is made to the full ANC.

12 So there were a couple of ANC  
13 meetings and that was in November and December  
14 of this year. And the other issue is that  
15 this project actually has been out there for  
16 a couple of years. The HPRB discussion was  
17 well over a year ago, as I understand it.

18 MS. SIEGRIST: Nobody gets notice  
19 of it.

20 MR. AVITABILE: Well, I'm not --

21 MS. SIEGRIST: How do we know that  
22 there is a meeting on this date, when you

1 don't get a notice of it?

2 MR. AVITABILE: Right. Well, I  
3 think here at least we know the notice  
4 provisions were complied with. Office of  
5 Planning sent out their letters and we posted  
6 the property and, I mean, that's -- in this  
7 case, that's the most we can do. We can't  
8 change the way the ANCs notice things.

9 Right. We post the property and  
10 also that notice is provided to all property  
11 owners within 200 feet of the proposed  
12 development. And we work, of course, as you  
13 know, with the Office of Zoning to make sure  
14 that that notice gets out.

15 And then what John said about the  
16 height, our height does comply with  
17 regulations that were written with this exact  
18 issue in mind of how is this additional height  
19 along the primary corridor that we're going to  
20 provide in order to accommodate the density we  
21 want to see for these residential and retail  
22 uses, that 45 degree setback requirement, the

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1 one we have discussed at length here, it was  
2 written in there in order to ameliorate these  
3 height impacts. And that's why it's in place.

4 And so I think that you have to  
5 look at the regulations and when you have a  
6 project that complies with them and just say  
7 well, the planners already considered this and  
8 this is the regulation they drafted. And so  
9 they have already considered this impact.

10 CHAIRPERSON MILLER: Okay. And  
11 traffic in the alley, is that impacted by the  
12 relief being sought?

13 MR. AVITABILE: No, it is not.

14 CHAIRPERSON MILLER: It's not.  
15 And the noise of the air conditioning, that's  
16 governed by Noise Regulations, I believe, and  
17 that will be reviewed I guess further down the  
18 road of the permitting process. Okay.

19 MS. SIEGRIST: May I ask one more  
20 question?

21 CHAIRPERSON MILLER: I don't -- I  
22 think we need to --

1 MS. SIEGRIST: We have a gas  
2 station. The property directly south of this  
3 proposed building was a gas station. And the  
4 reason construction is not going ahead on that  
5 is because of underground pollution and that  
6 ground all has to be cleaned and so on and so  
7 forth before they can construct there.

8 I'm wondering does that affect  
9 this property at all as to the leach over?

10 CHAIRPERSON MILLER: Okay. Okay.  
11 Ms. Siegrist, I'm going to have to, you know,  
12 have this the last point. That's an  
13 environmental issue. And again, I think that  
14 other agencies look at that, but that's not  
15 what we have jurisdiction to review in this  
16 case.

17 Okay. I think that covers that.  
18 I was about to say that we did receive a  
19 petition that says "We, by signing this  
20 document below, address the Government of the  
21 District of Columbia Board of Zoning  
22 Adjustment to show our opposition to adding

1 height to the structures in this case."

2 And I guess what we have stated is  
3 that height isn't really at issue in this  
4 case. But this will be in the record. And  
5 then we have the minutes from ANC-2F that was  
6 provided by the applicant that they got off  
7 the ANC's website showing support for this  
8 application, I believe.

9 MR. AVITABILE: What the minutes  
10 show to be absolutely --

11 CHAIRPERSON MILLER: Yeah, I'm  
12 looking for it.

13 MR. AVITABILE: -- clear.

14 CHAIRPERSON MILLER: What does it  
15 show? Could you direct us --

16 MR. AVITABILE: Sure.

17 CHAIRPERSON MILLER: -- to the  
18 right page?

19 MR. AVITABILE: The first couple  
20 of -- the first -- I guess on page 2 of what  
21 we handed out, this is from their Community  
22 Development Committee. And on page 2 you see

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1       that they voted to recommend to the full ANC  
2       a letter of support for the two roof top units  
3       of unequal height and from the lot occupancy--  
4       nonconforming lot size, that basically the lot  
5       occupancy relief.

6               They did not -- if you look at the  
7       paragraph above, basically, what they say is  
8       they reserve comments on the ARTS Overlay  
9       because of some ongoing discussions with what  
10      they say are undiscussed -- ongoing  
11      discussions with the Office of Planning and  
12      they also make no comment on what was then in  
13      the application, the inclusionary zoning  
14      relief.

15              So then when you go and turn to, I  
16      guess it's the, the very last page is the  
17      resolution of the ANC from that, their full  
18      ANC meeting that says "Further resolved that  
19      ANC send a letter to the BZA in support of a  
20      variance for the two rooftop units of unequal  
21      heights and relief of the nonconforming lot  
22      size, because the applicant, Central Union

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1 Mission redevelopment, successfully  
2 demonstrated that the physical characteristics  
3 make it difficult for the owner to use the  
4 property, that granting the application will  
5 not be a substantial detriment to the public  
6 good and that granting of the application will  
7 not be inconsistent with the general intent  
8 and purposes of the Zoning Regulations and  
9 Map."

10 So that's what the ANC's position  
11 was.

12 CHAIRPERSON MILLER: Okay. And  
13 they didn't take a position on the overlay  
14 question, correct? And we won't be giving  
15 this great weight, because it's not an ANC  
16 report, but it is an indication of what the  
17 ANC's position is.

18 Okay. And now, do you have any  
19 final remarks?

20 MR. AVITABILE: The only closing  
21 statement we would like to make is thank you  
22 for staying late for us and that we do believe

1 the record is complete and since there are no  
2 parties in opposition, we would like to  
3 request a Bench decision and, if possible, a  
4 summary order.

5 CHAIRPERSON MILLER: Okay. This  
6 has been kind of a marathon. We decided that  
7 we're not going to deliberate this right now.  
8 And I think what I would like to do is set  
9 this for our next decision meeting, which is  
10 in May, that would be May 6<sup>th</sup>.

11 Okay. We're going to close the  
12 record, except we were just discussing among  
13 ourselves whether to leave the record open if  
14 there is an ANC report that the ANC intended  
15 to submit.

16 Does the applicant have any  
17 knowledge about that?

18 MR. AVITABILE: Given that the  
19 meeting and the -- the meetings were back in  
20 November and December, if they haven't  
21 submitted it by now, I don't know that they  
22 are going to submit it. It's possible they

1 did and it didn't make it into the right file.  
2 I honestly don't know. I don't know if -- no,  
3 I --

4 CHAIRPERSON MILLER: Okay. You  
5 know, I don't think it's actually necessary.  
6 They are not here. No one is here  
7 participating or showing that much of an  
8 interest. So we do have an indication from  
9 their minutes. So I think it's not necessary.

10 Okay. So we're going to close the  
11 record and decide this case on May 6<sup>th</sup>.

12 Anything further? Oh, okay, then  
13 this hearing is adjourned.

14 (Whereupon, the Public Hearing was  
15 concluded at 9:32 p.m.)  
16  
17  
18  
19  
20  
21  
22