

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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PUBLIC HEARING

+ + + + +

TUESDAY,

JANUARY 8, 2008

+ + + + +

The public hearing convened in Room 220
South, 441 4th Street, N.W., Washington, D.C.,
pursuant to notice at 1:00 p.m., RUTHANNE G. MILLER,
Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

RUTHANNE G. MILLER, Chairperson
MARC LOUD, Vice Chairman
SHANE DETTMAN, Board Member (NCPC)

ZONING COMMISSION MEMBER PRESENT:

MICHAEL G. TURNBULL, FAIA, Commissioner (AOC)

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY, Secretary
BEVERLEY BAILEY, Sr. Zoning Specialist
JOHN NYARKU, Zoning Specialist

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

LORI MONROE, ESQ.

OFFICE OF PLANNING STAFF PRESENT:

STEVEN COCHRAN

PAUL GOLDSTEIN

STEPHEN MORDFIN

JENNIFER STEINGASSER

This transcript constitutes the minutes
from the public hearing held on January 8, 2008.

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

(3:51 p.m.)

CHAIRPERSON MILLER: This hearing will please come to order. Good afternoon, ladies and gentlemen. This is the January 8th, 2008 public hearing of the Board of Zoning Adjustment of the District of Columbia.

My name is RuthAnne Miller. I am the Chair of the BZA. To my right is Mr. Turnbull from the Zoning Commission. To my left is Mr. Marc Loud, our Vice Chair. And next to Mr. Loud is Mr. Dettman, our other Board member.

Also with us is Lori Monroe from the Office of Attorney General. And next to her is Ms. Beverley Bailey. And coming in the door is Mr. Clifford Moy, both from the Office of Zoning.

Copies of today's hearing agenda are available to you and are located to my left in the wall bin near the door. Please be aware that this proceeding is being recorded by a court reporter and is also webcast live. Accordingly, we must ask you to refrain from any disruptive noises or actions in the

1 hearing room.

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

8 All persons planning to testify, either in
9 favor or in opposition, are to fill out two witness
10 cards. These cards are located to my left on the
11 table near the door and on the witness tables.

12 Upon coming forward to speak to the Board,
13 please give both cards to the reporter sitting to my
14 right. The order procedure for special exceptions and
15 variances is as follows: one, statement and witnesses
16 of the applicant; two, government reports, including
17 Office of Planning, Department of Public Works, DDOT,
18 et cetera; three, report of the advisory neighborhood
19 commission; four, parties or persons in support; five,
20 parties or persons in opposition; six, closing remarks
21 by the applicant.

22 Pursuant to sections 3117.4 and 3117.5,

1 the following time constraints will be maintained:
2 the applicant, persons and parties except an ANC in
3 support, including witnesses, 60 minutes collectively;
4 persons and parties except an ANC in opposition,
5 including witnesses, 60 minutes collectively;
6 individuals, 3 minutes. These time restraints do not
7 include cross-examination and/or questions from the
8 Board.

9 Cross-examination of witnesses is
10 permitted by the applicant or parties. The ANC within
11 which the property is located is automatically a party
12 in a special exception of variance case.

13 Nothing prohibits the Board from placing
14 reasonable restrictions on cross-examination,
15 including time limits and limitations on the scope of
16 cross-examination.

17 The record will be closed at the
18 conclusion of each case except for any materials
19 specifically requested by the Board. The Board and
20 the staff will specify at the end of the hearing
21 exactly what is expected and the date when the persons
22 must submit the evidence to the Office of Zoning.

1 After the record is closed, no other information will
2 be accepted by the Board.

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

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

15 Please turn off all beepers and cell
16 phones at this time so as not to disrupt the
17 proceedings. The Board will make every effort to
18 conclude the public hearing as near as possible to
19 6:00 o'clock p.m. If the afternoon cases are not
20 completed at 6:00 o'clock p.m., the Board will assess
21 whether it can complete the pending case or cases
22 remaining on the agenda.

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

7 If you are not prepared to go forward with
8 a case today or if you believe that the Board should
9 not proceed, now is the time to raise such a matter.

10 Does the staff have any preliminary
11 matters?

12 MS. BAILEY: Madam Chair, members of the
13 Board, to everyone, good afternoon. There is a
14 preliminary matter associated with the appeal case,
15 but the staff is recommending that the Board take that
16 up at the time the companion application is called.

17 CHAIRPERSON MILLER: Thank you. Yes, I
18 would concur with that.

19 Therefore, at the time, then, would all
20 individuals who are planning to testify today rise to
21 take the oath? And Ms. Bailey will administer it.

22 MS. BAILEY: Would you please raise your

1 right hand?

2 (Whereupon, the witnesses were sworn.)

3 MS. BAILEY: Thank you.

4 CHAIRPERSON MILLER: We're ready for the
5 first case.

6 JOHN C. DOWD AND MARK D. ANDERSON

7 APPLICATION NO. 17695 - ANC-2F

8 MS. BAILEY: Madam Chair, that is
9 application number 17695. This is the application of
10 John C. Dowd and Mark D. Anderson pursuant to 11 DCMR
11 3103.2 for a variance from the floor area ratio
12 requirements under section 402, a variance from the
13 rear yard requirements under section 404, a variance
14 from the lot occupancy provisions under section 403,
15 and a variance from the nonconforming structure
16 provisions under subsection 2001.3 to allow a rear
17 addition to an existing one-family row dwelling. The
18 property is zoned R-5-B, and it is located at 1515
19 Vermont Avenue, Northwest, square 278, lot 26.

20 CHAIRPERSON MILLER: It's the one that has
21 the red light on it. You press the button there.
22 There you go.

1 MR. ANDERSON: All right. My name is Mark
2 Anderson. I live at 1515 Vermont Avenue. And we are
3 proposing to basically build a deck onto the rear of
4 our home that extends out toward, almost entirely to
5 the alleyway, under which we can park a vehicle and
6 have use of the space on the deck. So we --

7 CHAIRPERSON MILLER: Sorry. So it's a
8 garage with a deck on top. Is that correct or no?

9 MR. ANDERSON: No.

10 CHAIRPERSON MILLER: It's not?

11 MR. ANDERSON: It's just a deck.

12 CHAIRPERSON MILLER: It's just a deck.

13 MR. ANDERSON: It's just a deck.

14 CHAIRPERSON MILLER: On a platform?

15 MR. ANDERSON: Well, right now the
16 existing floor, if you will, or ground is bricked.
17 And we intend to not in any way disturb that. All we
18 want to do is build a deck on top of that that's high
19 enough such that we can park a vehicle underneath it.

20 CHAIRPERSON MILLER: Okay. Great.

21 MR. ANDERSON: It's been called a garage
22 because I think in the definitions, the fact that we

1 can park a vehicle underneath it makes it a garage.

2 We believe that our property is unique in
3 that, first off, our home is over 100 years old, which
4 obviously precedes the zoning laws, which is why it is
5 over the footprint size going into this.

6 We have a particular circumstance here in
7 that all of the homes on our side of the street,
8 including our neighboring properties, have structures
9 built out to the alleyway. On one side of us is a two
10 and a half-story addition to that home. On the other
11 side is an actual brick garage, which is one story
12 with a deck on top. That actually is a garage with a
13 deck on top of it.

14 CHAIRPERSON MILLER: Could you be real
15 specific about that? So on your side of the alley
16 you're saying all the other structures have what, a
17 second story?

18 MR. ANDERSON: No. Actually, with the
19 exception of our neighbor, which has a garage built
20 out to the alleyway, the rest of the homes are
21 actually built all the way out to the alleyway on our
22 side of the street.

1 We believe that this causes a unique
2 circumstance for our property and creates a practical
3 difficulty in us using the property for a number of
4 reasons.

5 First of all, because of the structures on
6 either side, we have got this narrow lot in which
7 there is really no light that penetrates into that
8 area. It, therefore, is very moldy. It's damp all of
9 the time.

10 And so although we moved into the property
11 about six years ago and intended to make use of it, it
12 really is difficult for us to do so. It is just
13 unpleasant back there.

14 In addition to that, we have had number of
15 break-ins since we have moved in into the rear of our
16 property. We have had bikes stolen. And we have
17 actually had people break down the fence while we were
18 in the property, I think partly because we are really
19 the only place, people that have things in our
20 backyard, really, in that neighborhood.

21 CHAIRPERSON MILLER: Are you the only ones
22 with a backyard?

1 MR. ANDERSON: No. The property right
2 behind us is an apartment building that does have a
3 backyard, but for the most part it's a very dense
4 neighborhood as it stands.

5 CHAIRPERSON MILLER: Well, along the alley
6 on your side of the alley, are you the only ones with
7 a yard there, --

8 MR. ANDERSON: Yes.

9 CHAIRPERSON MILLER: -- where the break-in
10 is occurring?

11 MR. ANDERSON: Yes.

12 CHAIRPERSON MILLER: Okay.

13 MR. ANDERSON: Another issue -- and this
14 is actually something we didn't put in the burden of
15 proof -- we also had added an entranceway from the
16 deck onto the second story. And the reason we were
17 doing that is because our house is -- it's an
18 extremely narrow house and the stairways are really
19 narrow. And from the first to the second floor, we
20 can't even fit a chair up through there.

21 So when we moved in, we actually removed
22 the windows in the back so that we could get the

1 furniture in. But unless we want to continue to
2 remove the windows of our house every time we buy a
3 new piece of furniture or have to remove furniture, we
4 are going to need some other way to get furniture up
5 into the second floor. Between the second and third
6 floor is not an issue because the ceiling is much
7 higher.

8 We believe that the plan that we have --
9 when we went into this, we actually consulted with our
10 neighbors first to make sure that they were
11 conceptually okay with it. Then we hired an architect
12 to put together the plan for the deck.

13 Our intention was to keep it as such that
14 it affected our neighbors as little as possible.
15 Obviously on one side of us our neighbor has an almost
16 three-story building. So she can't even see it. But
17 on the other side, there is a similar type structure.
18 And we tried to make ours such that it was completely
19 in line with his.

20 We do have letters in support from both of
21 those neighbors, who are really the only neighbors
22 that can really see our property from their property.

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1 We think that this causes a good solution
2 because we can, therefore, you know, use the parking
3 space as well as use the deck on top of it.

4 Our neighborhood, obviously it's a very
5 challenging neighborhood in which to park. So I think
6 it's an actual benefit to all of the neighborhood to
7 have one more parking space. Obviously we can park
8 there now, but we are trying to -- we also want to be
9 able to use the space.

10 So, again, we don't believe that it in any
11 way detracts our neighbors. I think it adds -- I
12 think it's a benefit, actually an overall benefit, to
13 the neighborhood. Many of our neighbors are trying to
14 improve their homes, improve their yards. And we
15 think that this is in line with that and doesn't
16 negatively impact anyone.

17 And that's it.

18 CHAIRPERSON MILLER: Okay. I think there
19 will probably be a few questions from the Board. I
20 just wanted to ask you again about how exceptional or
21 unique your property is compared to the other
22 properties along the alley, first of all on your side.

1 You said you were the only one with a backyard on the
2 alley, on your side of the alley?

3 MR. ANDERSON: Yes.

4 CHAIRPERSON MILLER: How many houses are
5 there along the alley there just so that we get the
6 context?

7 MR. ANDERSON: There's quite a number of
8 houses along this street, probably about 12 but only
9 6, actually, because it curves. Some of them don't
10 actually reach the alleyway in the back. There's,
11 say, six homes.

12 MR. DOWD: Yes, ten. And I'm Chris Dowd.

13 CHAIRPERSON MILLER: What's your address?

14 MR. DOWD: Same address, 1515 Vermont
15 Avenue. I'm a co-applicant. She had just pronounced
16 my last name differently. Madam Chairman, I don't
17 know if the Board has had an opportunity to review the
18 photos, which we can articulate, continue to
19 articulate, for you, but if you don't mind, I wouldn't
20 mind using these to kind of do that if everybody has
21 a copy. I'm not sure or is that appropriate?

22 CHAIRPERSON MILLER: No. We do. No.

1 That's quite appropriate because I actually was going
2 to ask you about this particular photograph.

3 MR. DOWD: Yes, ma'am.

4 CHAIRPERSON MILLER: And when you're
5 talking about is the deck going to be at the same
6 level as the one that we see in the photograph next
7 door?

8 MR. DOWD: Yes, ma'am.

9 CHAIRPERSON MILLER: And what kind of
10 privacy screen is there going to be between the two,
11 anything?

12 MR. DOWD: There is no plan. We have a
13 fantastic neighbor, so don't want to do that.

14 CHAIRPERSON MILLER: Oh, that's great.
15 And this neighbor supports the application?

16 MR. DOWD: Yes, ma'am. And he has written
17 to that as a --

18 CHAIRPERSON MILLER: Is that on the record
19 or no?

20 MR. DOWD: Yes, ma'am. It was one of the
21 supporting documents.

22 CHAIRPERSON MILLER: Okay.

1 MR. DOWD: But did you want me to continue
2 talking about that side of the alley? Because you had
3 asked about the number of residences. The one
4 photograph, in particular, we tried to take, we took
5 a couple just to articulate this on each one. It
6 shows the construction up to the alleyway, and it also
7 shows a number of garage doors.

8 And then there's one that's taken just a
9 little bit farther back that has a little bit better
10 snapshot of kind of what our side of the alley looks
11 like.

12 So the answer to your question is yes, we
13 are the only ones with a backyard on our side of the
14 alley.

15 CHAIRPERSON MILLER: Okay. And your
16 exceptional situation is you're almost like in a
17 canyon, it seems like, between the structures on
18 either side. And no other property on your side of
19 the alley here has the same situation, correct?

20 MR. ANDERSON: That is correct.

21 CHAIRPERSON MILLER: Okay. And, then,
22 that gives rise to practical difficulties, including

1 the moisture and the shadows, making it not pleasant
2 to be in that space. Is that correct?

3 MR. ANDERSON: Right. There's moisture
4 for a number of reasons. I mean, first of all, it
5 doesn't get any light. But, second, our neighbor,
6 he's a great neighbor, but there are those large
7 planter boxes that he has part of his deck that drip
8 down into our yard to make it a little bit worse. And
9 as a result, there's a lot of mosquitos back there.

10 It's just an unpleasant -- we tried to
11 make use of the property, but it's just an unpleasant
12 place to be because of that.

13 CHAIRPERSON MILLER: And you have more
14 mosquitos than others because of that, because of the
15 moisture in there?

16 MR. DOWD: I'm not sure if we have more
17 mosquitos or not, but I know it's not fun down there.
18 And we can spray like everybody else, but, then, that
19 spray has a tendency to sit there. So you're either
20 sitting in spray or mosquitos and other things because
21 there is just no wind back there; whereas, on the
22 upper deck or some of the other structures along the

1 alleyway, there is at least some type of an air flow.
2 And ours just doesn't lend itself to that.

3 And that's why if -- I'm sure the Board is
4 very familiar with the code. But one of the reasons
5 I'm even considering doing this, not to waste the
6 Board nor the District's time, is that in the code,
7 one of the things that led me to believe this might be
8 something we could do and receive a variance was the
9 fact that it does speak to this D.C. code.

10 I can't even pronounce some of the letters
11 or numbers here, but it's referenced in the Office of
12 Planning document. But it goes "or other
13 extraordinary or exceptional situation or condition of
14 a specific piece of property." Then it talks about
15 the strict application of the regulation.

16 So it isn't topography. It isn't some of
17 the other things mentioned in there, the angle of the
18 property. It really is. It's more one of these --
19 it's a condition. It's an exceptional situation that
20 is unique and is not supposed to contravene the intent
21 of the law or this Board or anything else the District
22 has because we fully understand the reasoning behind

1 it.

2 So that's why I think it was -- I just
3 thought it was important to mention that it's more of
4 a condition than a topography or an angle.

5 CHAIRPERSON MILLER: That's true. And
6 there also are Court of Appeals decisions that
7 actually address that, that it's not necessarily
8 limited to topography, that it may be conditions of
9 the property caused by other things that are unique to
10 that property.

11 But there is that three-pronged test. And
12 so it's goes forward that "Then those particular
13 unique traits give rise to specific practical
14 difficulties." And so I was trying to just make sure
15 I understood the practical difficulties.

16 And one is the moisture and the problems
17 from that. And then it sounded like the other was the
18 criminal activity as a result of the fact that it
19 seems like yours is the only accessible yard back
20 there and that's where they break into.

21 Do you want to just elaborate a little
22 more on that?

1 MR. ANDERSON: Sure. We've had two
2 break-ins back there until we decided to take our
3 bikes and leave them in the middle of our kitchen.
4 But one was right after we moved in, in which a bike
5 was stolen. The second time there was an attempt to
6 break in. A bike wasn't stolen.

7 But then there was another time that the
8 fence was actually -- someone actually broke into the
9 house while we were in the house. I don't know why
10 they did it because the lights were on and everything.
11 And they actually broke the fence down, presumably
12 because they knew we had bikes and other things back
13 there. So that's been an ongoing issue for us.

14 We also had a vehicle stolen from parking
15 on the street this past summer. And, again, it's one
16 of the reasons we wanted a secure parking space that
17 was also covered because we do know that it's just not
18 difficult to get into the back of our property, even
19 though we have a fence.

20 CHAIRPERSON MILLER: As a follow-up
21 question, also I want to ask you, is there an
22 alternative to address your practical difficulties

1 which wouldn't cause you to violate the zoning
2 regulations?

3 MR. DOWD: The most pointblank way of
4 saying it is no. In the burden of proof, I mean, we
5 definitely thought about this. I mean, it took some
6 time to think about.

7 You certainly talk with your neighbors
8 because we do get along with them and we don't want to
9 do something. We have a lot of neighbors who are very
10 much adhering to District law now. So any slight
11 deviation is not looked upon very kindly. So we don't
12 want to do anything that would disrupt that.

13 And in the burden of proof statement under
14 I think test number one, the final sentence of that
15 last paragraph says, "Finally, the practical
16 difficulty in the usage of the rear courtyard is
17 compounded by the lack of viable options." We simply
18 couldn't think of another way.

19 MR. ANDERSON: If I could add onto that?
20 In our decision on what we were going to try to do, we
21 tried to come up with a solution that was least
22 impactful on our neighbors and even on the property,

1 which is why we decided not to build a garage and dig
2 up and put a foundation and all of those kinds of
3 things.

4 You know, there aren't any other issues
5 back there other than the ones we mentioned. There's
6 no drainage issues. There's not anything like that.
7 So what we decided is to not impact the ground or
8 anything else around it and just do as minimal as
9 possible.

10 CHAIRPERSON MILLER: Okay. Are there
11 other questions from Board members?

12 (No response.)

13 CHAIRPERSON MILLER: I mean, this is
14 probably an obvious question, but I gather that you
15 don't believe there are any adverse impacts from
16 granting you the variance in this case?

17 MR. ANDERSON: No. In fact, we think
18 there is net positive for the neighborhood.

19 MR. DOWD: Which is the same input we have
20 had from other neighbors. We have had people ask,
21 "Should we go and report or talk on your behalf?"

22 And we thought it was a workday. That's

1 not necessary because if there was no negative input,
2 then the positive input, although it would have
3 helped, is what our neighbors have told us.

4 And I think in test number three, we
5 basically spoke to that a little bit about that
6 aspect.

7 CHAIRPERSON MILLER: Okay. Is there
8 anybody here from the ANC?

9 (No response.)

10 CHAIRPERSON MILLER: I do note that there
11 is a letter from the ANC in support of the application
12 that appears to meet the great weight requirements.
13 Okay. Any other questions at this time for the
14 applicant?

15 (No response.)

16 CHAIRPERSON MILLER: All right. Then
17 we'll turn to the Office of Planning. Good afternoon.

18 MR. GOLDSTEIN: Good afternoon, Madam
19 Chair. My name is Paul Goldstein. And I am a
20 development review specialist with the Office of
21 Planning.

22 The Office of Planning cannot recommend

1 approval of the applicant's request for area variances
2 related to an increase in nonconformity of lot
3 occupancy, maximum floor area ratio, and minimum rear
4 yard for the construction of a garage or deck perhaps
5 with a roof deck behind an existing single family row
6 dwelling at 1515 Vermont Avenue, Northwest. The
7 property is zoned R-5-B.

8 As more explicitly provided in our report,
9 OP believes that the proposal does not satisfy the
10 requirements of the three-part variance test. First,
11 the property based on our review is not unique in the
12 dimensions or topography.

13 The subject lot was created prior to the
14 1958 zoning regulations. However, the size and the
15 dimensions of the lots, which are about 15 feet by
16 about 82 and a half feet, are generally consistent
17 with adjacent lots and do not appear extraordinary.

18 The property is functioning as it's zoned
19 for with a three-story row dwelling that measures
20 about 2,415 square feet. And, in fact, existing
21 dwelling even currently exceeds the R-5-B zoning
22 restrictions in regard to lot occupancy and floor area

1 ratio. The applicant is able to make practicable use
2 of the property and rear space.

3 Second, since the property is not unique,
4 there is no resulting practical difficulty arising
5 from any uniqueness.

6 And, third, while granting relief in this
7 is unlikely to harm the public, OP believes that the
8 requested relief would substantially impair the intent
9 of the zoning regulations by further extending the
10 nonconformities and creating a new one.

11 The property already has an existing floor
12 area ratio which is excessive, which would increase to
13 2.4 in a zone that permits at most 1.8 FAR.

14 The property currently has a conforming
15 rear yard. But under the proposal, the rear yard will
16 become nonconforming and shrink to about two and a
17 half feet. And, most notably, the lot occupancy will
18 jump from its already nonconforming 66 percent to 97
19 percent lot coverage, which contravenes the specific
20 language of section 2001.3(a). The Office of Planning
21 would also submit that there aren't along that alley
22 any other properties that have such a high lot

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1 occupancy.

2 Finally, the Office of Planning does
3 recognize that the development on neighboring lots has
4 affected the comfort of the rear yard space. However,
5 based on our review of the three-part variance test,
6 we are not able to support the requested relief.

7 That concludes my presentation. And I am
8 now available for questions. Thank you.

9 COMMISSIONER TURNBULL: Mr. Goldstein,
10 welcome.

11 MR. GOLDSTEIN: Thank you.

12 COMMISSIONER TURNBULL: I guess your
13 statement about none of the other properties have the
14 same lot occupancy, what about the properties on
15 either side of this residence? One looks like it's
16 almost totally filled in except for a side area.

17 MR. GOLDSTEIN: Yes. Thank you. I would
18 suggest the one to the north does not look it does
19 quite reach that high level of lot occupancy. And if
20 you continue up, the next property above it also
21 doesn't. And I don't believe it even actually goes to
22 the rear lot line from the picture.

1 If you look at the other side of the
2 alley, it's relatively consistent in that the lot
3 occupancy does not reach anywhere close to 97 percent.

4 COMMISSIONER TURNBULL: The applicants
5 have said that the six units on their side of the
6 street on their side of the alley don't have rear
7 yards. But your drawing here sort of shows that they
8 do other than the ones on either side. Is that a
9 correct depiction of the situation or --

10 MR. GOLDSTEIN: That would be my
11 interpretation that the lot that is two to the north
12 does actually have a rear yard, as does the lot that
13 is two to the south.

14 COMMISSIONER TURNBULL: Okay. Getting
15 back to uniqueness, I guess I understand what you're
16 saying about obviously there is a uniqueness in a
17 sense that they're over the lot occupancy. I mean,
18 I'm sure that this was an existing preexisting
19 condition and it is what it is.

20 But would the lot not be unique because
21 created by the two properties on either side of it?
22 I'm just curious how you would look at that? That's

1 --

2 MR. GOLDSTEIN: Yes. No. I understand.
3 Thank you.

4 Conditions on neighboring properties can
5 under certain circumstances create some type of
6 uniqueness. It does not appear that there is such a
7 substantial reason in this case to say that the do.

8 These homes along this area, this home I
9 believe was created in 1900. The homes on either side
10 were created not that long after. The subdivision
11 actually dates to 1875 for these particular lots.

12 This has been a condition that has been
13 existing for quite a long time. And I don't believe
14 under these conditions that this is actually a unique
15 situation.

16 COMMISSIONER TURNBULL: Okay. Now, does
17 the lot occupancy change whether it's considered a
18 garage or a deck?

19 MR. GOLDSTEIN: I don't believe --

20 COMMISSIONER TURNBULL: Do you still look
21 at it the same way, regardless of how you calculate?

22 MR. GOLDSTEIN: Yes, we do. That's right.

1 COMMISSIONER TURNBULL: Okay. All right.
2 Thank you.

3 CHAIRPERSON MILLER: I think the
4 difference between the position the Office of Planning
5 is taking and the applicant is taking is that the
6 Office of Planning seems to be interpreting the
7 variance test very strictly as to applying to the
8 topography of the property itself.

9 Even though you have said that in some
10 cases you can look to how neighboring properties
11 affect a certain property, for some reason -- and I
12 don't understand the basis for this, though. You said
13 something like such a substantial reason to say that
14 this creates a unique situation doesn't exist. And I
15 don't know where that comes from.

16 I have looked to the Court of Appeals and
17 our decisions when trying to interpret uniqueness or
18 exceptional conditions. And I know that you're just
19 beginning here, and I don't know whether you have
20 looked at cases like De Azcarate or there are a lot of
21 them, in any event, which talk about changes around or
22 on the property being considered in the uniqueness

1 factor.

2 And from what I hear the applicant is
3 saying is that they are the only ones -- I wanted to
4 make sure I know if there is a factual disagreement or
5 a legal disagreement. But if they are the only ones
6 on this alley that don't have a backyard and there's
7 a practical difficulty from that because the
8 surrounding properties are creating this kind of
9 canyon effect, why doesn't that qualify as a
10 uniqueness giving rise to a practical difficulty?

11 MS. STEINGASSER: Well, Madam Chair,
12 perhaps I could jump in. The tests are there is a
13 nexus test. And what we are saying is that we don't
14 think that what is being claimed as uniqueness has a
15 direct nexus to the relief requested. Part of what we
16 rely on for that very much is section 2001.3, which
17 directly prohibits expansion of nonconforming
18 structures when they exceed lot occupancy.

19 And there is no way we, the Office of
20 Planning, can make that third test, that we can
21 conclude that this variance would not impair the
22 intent of that provision.

1 And I think you will see in the Office of
2 Planning reports that when it comes to a variance from
3 section 2001.3 we are pretty uniformly in the same
4 position of recommending denial because of the intent
5 of that very section.

6 CHAIRPERSON MILLER: But that is almost
7 saying, then, that variances don't apply to 2001.3.

8 MS. STEINGASSER: It has to be an extreme
9 case to get that in the Office of Planning's eyes,
10 especially when what is being used as the uniqueness
11 is that we already have more than we are entitled to;
12 therefore, we want more.

13 It's a very circular argument that would
14 lead to if you applied it to height, we would be up to
15 whatever the height limit would account for in terms
16 of height.

17 But the fact is the property is zoned for
18 residential. It's being used for residential. It's
19 historically been used for residential. As far as we
20 can tell, there has never been an interruption in its
21 use since it was built in 1900.

22 We can track the garage on the adjacent

1 property back to 1920. We can go back to 1957. We
2 haven't been able to track the building to the north.

3 So there has been no nexus for us to get
4 OP to conclude that a variance to 2001.3 is necessary
5 to the residential enjoyment of the property.

6 CHAIRPERSON MILLER: Well, let me ask you
7 this then. Wouldn't the nexus there be a connection
8 between granting the variance and some adverse impact?

9 MS. STEINGASSER: What would that adverse
10 impact be?

11 CHAIRPERSON MILLER: Well, it sounds to me
12 like it's Office of Planning's philosophy that only in
13 rare cases, if any, would you want to have a variance
14 granted pursuant to 2001.3 because you don't want to
15 encourage expansion of nonconforming structures, et
16 cetera.

17 I would think the reason you wouldn't want
18 to do that is because that would lead to an adverse
19 impact on the neighborhood, on the zone plan, you
20 know, for some reason like that, but that's what we
21 would be looking at.

22 MS. STEINGASSER: It's not that the Office

1 of Planning -- I mean, it's what the zoning
2 regulations say. They're very clear in their
3 prohibition when it comes to lot occupancy. Lot
4 occupancy is only applicable in certain zone
5 districts.

6 So the question would be, what is the
7 purpose of lot occupancy? And the purpose is to I
8 would dare say stop the over-building of lots in
9 residential zones so that there is circulation and air
10 movement. To use that, then, as a reason to exceed
11 the lot occupancy and basically create more of the
12 nonconformity we think is very much a circular
13 argument that very much gets to an adverse intent of
14 the zoning regulations.

15 So yes, we read the zoning regulations
16 very strictly when it comes to variances from very
17 specified prohibited activities. You know, it's where
18 we are.

19 CHAIRPERSON MILLER: Okay. We do have
20 this dialogue sometimes with the Office of Planning.
21 And I guess perhaps our role is that, you know, we
22 need to understand the rationale behind the reg and

1 certainly why that is so important.

2 But then we need to look at the specific
3 situation and then take that into account in looking
4 at the three prongs. And that's why I was asking
5 about the adverse impact prong because it doesn't
6 sound like that relates to the first two prongs.

7 MS. STEINGASSER: The adverse impact I
8 don't know is a prong adverse to the intent.
9 Integrity of the zone plan we think is tied directly.
10 We think the uniqueness has to create a practical
11 difficulty that has a direct nexus to the relief
12 requested.

13 When the property is already over-built
14 and the lot occupancy already exceeds that permitted
15 in the zone, it's a difficult test. When you combine
16 that with 2001, it's almost impossible for us to
17 conclude that there is not an adverse impact to the
18 intent of the zone plan.

19 CHAIRPERSON MILLER: Other questions?
20 Does the applicant, first of all, have a copy of the
21 Office of Planning's report? And do you have any
22 questions for the Office of Planning?

1 MR. ANDERSON: Yes. Actually, I have a
2 couple of questions. You mentioned that of the other
3 six homes on our side of the alleyway, all the others
4 were less than or had rear yards. I can't remember
5 exactly what you said initially.

6 But, I mean, I don't know exactly what is
7 on the plats that you have, but there are no rear
8 yards on our side of the alleyway. Everything is
9 entirely built out to the alleyway with the exception
10 of maybe a few feet to make the alleyway cars to be
11 able to maneuver back there. It's a very narrow
12 alleyway.

13 What was your information based on?

14 MR. GOLDSTEIN: Our information is
15 actually based on our GIS map of the properties along
16 the alley. It can be difficult. I have driven down
17 your alley to take a look at the conditions. And it
18 can certainly be difficult with all the fencing to
19 really know where a property begins and where a
20 property ends along that side.

21 What we are looking at is the map of it
22 from our GIS, geographic information system. And it

1 seems to indicate that the property, particularly two
2 to the north, actually does have a small rear yard.

3 MR. DOWD: When you say, "property to the
4 north," could you identify which property you're
5 talking about, the address?

6 MR. GOLDSTEIN: Sure. I definitely can.
7 That specific property is 1519 Vermont.

8 MR. ANDERSON: They have a tiny side yard,
9 but they have a porch built on it. There is a
10 structure on it.

11 MR. DOWD: Yes. It literally goes right
12 up to the alley.

13 MR. GOLDSTEIN: Yes.

14 MR. ANDERSON: And the home hits the
15 alleyway in the back.

16 MR. GOLDSTEIN: Sure.

17 MS. STEINGASSER: We found a building
18 permit history for that.

19 MR. ANDERSON: Right. And the other issue
20 that I had a question about is -- and I don't know.
21 Again, you guys have, you know, access to this
22 information. But I do know that at least our

1 neighboring properties, the structures that extend out
2 to the alleyway were not original to the homes. They
3 were additions. And I don't know in what year they
4 were actually placed on that.

5 MR. GOLDSTEIN: Yes. I don't have any
6 record of when those were done. I have seen a Sanborn
7 map from 1957 that seems to indicate that structures
8 were there.

9 To the extent of what those structures
10 looked like, they seemed to mirror what we see now,
11 but I can't tell you exactly what they looked like.

12 MR. ANDERSON: Right. And just one more
13 question on it in terms of adverse impact and how you
14 guys view that. You mentioned that part of the intent
15 of the zoning law was to allow light and create
16 circulation.

17 Do you ever take into account on a
18 particular circumstance the fact that if other
19 exceptions had been made, that it actually impacts a
20 property like ours?

21 And that actually is one of our major
22 concerns is we do not have circulation of air or light

1 or those kinds of things because of the way the houses
2 on the other side of us have been built out to the
3 alleyway.

4 MR. GOLDSTEIN: Yes. I understand your
5 position, and it does appear that you are affected,
6 your rear yard, as far as shade goes. And I'm sorry
7 to hear about the break-ins that you have sustained.

8 It just doesn't seem to us that in this
9 case, that this property is unique and that the three
10 parts of the variance test are met additionally
11 because of 2001.3(a), which we have already discussed,
12 and the 97 percent lot occupancy. I think it seems
13 from our point of view that this is against the intent
14 of the zoning regulations in this particular case.

15 MR. DOWD: If I could make just one final
16 comment, Madam Chairman?

17 CHAIRPERSON MILLER: You all will have an
18 opportunity. You are going to have a closing
19 argument. So you can. We're almost there probably.

20 Do you have any other questions for the
21 Office of Planning?

22 (No response.)

1 CHAIRPERSON MILLER: Any Board members
2 have any other questions?

3 (No response.)

4 CHAIRPERSON MILLER: I asked before if the
5 ANC was here, and nobody came forward. I'll ask it
6 again.

7 (No response.)

8 CHAIRPERSON MILLER: I don't see anybody.
9 Is there anybody here to testify in support or
10 opportunity to this application?

11 (No response.)

12 CHAIRPERSON MILLER: Okay. Then we are at
13 the point where you are welcome to make some closing
14 arguments. Wait. I have a question for you before
15 you do that. As to what this is going to look like
16 afterwards if you were to do this, you would put a
17 platform above, which would align with your neighbor's
18 deck. Would the fence still be here or would this be
19 open or how is it going to read below?

20 MR. ANDERSON: We would put a garage door
21 underneath it, which is why if you see in the plans
22 the plans that we have show that there is a garage

1 door that would be there. That way we could park
2 underneath.

3 The way our fence is currently constructed
4 is sort of swings open, which makes it impossible to
5 actually park because of the angle. So we actually
6 need a retractable door, like our neighbors have.

7 CHAIRPERSON MILLER: So if it's different
8 from a garage in that you have a retractable door and
9 not walls on either side?

10 MR. ANDERSON: Correct.

11 CHAIRPERSON MILLER: Is that going to be
12 open on the sides?

13 MR. ANDERSON: No, it won't be open on the
14 sides. We'll enclose it somehow on the sides,
15 probably with brick material so it's consistent with
16 our home. But we're going to have the door -- the
17 property is only 14 feet wide. So the door will take
18 almost the entirety of that.

19 And, again, you probably can't see this
20 from the pictures, but there is a very sharp angle in
21 that alleyway. So you actually need a really wide
22 door in order to park in it anyway.

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1 CHAIRPERSON MILLER: So I'm not an
2 architect. Can you tell me, how is this different
3 from a garage?

4 MR. ANDERSON: The only structure that
5 we're going to build is actually a deck. And then
6 we're going to place a garage door on the front of it.

7 MR. DOWD: Yes. I misunderstood. You may
8 have also. We're building literally a deck that's
9 higher and to be in level. We're not building brick
10 walls.

11 Our neighbors know that the existing brick
12 walls will be the walls. There will be no enclosure.
13 It literally is an open deck that just happens to have
14 two walls right next to it.

15 MR. ANDERSON: Right. It won't be
16 attached to their homes. It's going to be on support
17 beams like a deck. It's essentially a deck. The only
18 difference is we will have a garage door on the front
19 of it.

20 CHAIRPERSON MILLER: No. I meant below.
21 Below this deck, are there going to be walls or is it
22 just going to --

1 MR. ANDERSON: No.

2 CHAIRPERSON MILLER: It's open?

3 MR. ANDERSON: Open.

4 CHAIRPERSON MILLER: So that's why it's
5 not like a garage.

6 MR. ANDERSON: I apologize.

7 CHAIRPERSON MILLER: Okay.

8 MR. ANDERSON: I misunderstood you.

9 CHAIRPERSON MILLER: Okay.

10 MR. ANDERSON: It's entirely just a deck.

11 CHAIRPERSON MILLER: Okay. But there will
12 be a retractable door?

13 MR. ANDERSON: With a retractable door to
14 the alleyway.

15 CHAIRPERSON MILLER: Okay. Any other
16 questions?

17 MEMBER LOUD: Just on Madam Chair's line
18 of questioning. On the ground floor, is it open or is
19 it enclosed by the structures, your adjacent
20 neighbors' structures, in effect?

21 MR. DOWD: Yes. It's only by the
22 neighbors' structures. We'll provide no further

1 enclosing. It would almost be as if you were in a
2 field, it would look like a deck on stands. There
3 will be no walls. So what exists as our neighbors'
4 existing walls will be, in essence, the walls of that.

5 MEMBER LOUD: Enclosure.

6 MR. DOWD: Enclosure.

7 MEMBER LOUD: Okay.

8 MR. DOWD: So we're not adding anything to
9 that.

10 MEMBER LOUD: Okay.

11 CHAIRPERSON MILLER: I know you have
12 questions. Just to clear this point, though, the
13 retractable door, does that go lot line to lot line?
14 Does it go to the neighbors so it's totally continuous
15 with their walls? Does it align with their fronts?

16 MR. ANDERSON: Yes.

17 CHAIRPERSON MILLER: Okay.

18 MR. ANDERSON: Yes, yes. And, as you can
19 see, the angle of it is such that we are basing the
20 lining exactly as we have our fence right now.

21 MEMBER DETTMAN: So with this being an
22 open structure, it's basically an open structure. If

1 you were to walk out of the back of your house, you're
2 essentially looking at your vehicle, not the back of
3 a garage. You're looking at your vehicle. And then
4 you're looking at a staircase that goes up to your
5 deck, correct?

6 MR. ANDERSON: Yes. You won't be able to
7 see our vehicle in the way we have planned it out.
8 You basically will be looking at the stairs going up
9 to the deck.

10 MEMBER DETTMAN: Okay. But I'm not
11 looking at the back of a garage, right?

12 MR. ANDERSON: No.

13 MEMBER DETTMAN: Okay. And so essentially
14 with respect to crime or safety, it is going to make
15 it harder for someone to get in there, but it's not
16 going to actually completely prevent someone from
17 getting in there, correct?

18 MR. ANDERSON: No.

19 MEMBER DETTMAN: Okay.

20 MR. ANDERSON: No. I mean, it will keep
21 from happening what has been happening, which is
22 people either just breaking down our fence or climbing

1 over our fence.

2 MEMBER DETTMAN: And with regard to mold
3 and moisture, you had mentioned that the planters from
4 your neighboring property drain into your yard. With
5 the plan that you're proposing, the plans that I am
6 looking at here, have you addressed that? Does the
7 plan prevent the planters from draining down into your
8 yard or is it that you have just sort of removed
9 yourself from that?

10 MR. ANDERSON: We have just removed
11 ourselves from that situation?

12 MEMBER DETTMAN: I ask that because it
13 seems to me that basically all you have done is
14 removed yourself from the mold and moisture that's
15 building up, but you have also sort of capped over
16 that area and significantly decreased the movement of
17 air in that area.

18 MR. ANDERSON: Except that it will be a
19 deck with air flow in between it. So it's not going
20 to be sort of a floor with a tiled structure or
21 anything like that.

22 MEMBER DETTMAN: But I think you had

1 mentioned mosquitoes that sort of prevented you from
2 enjoying the space and that it's not going to decrease
3 the amount of standing water or mold or moisture,
4 where mosquitos tend to be attracted to, and that if
5 there's air flow between the deck, that's the great
6 thing about mosquitos. They fly. They could just
7 come up and visit you a little bit higher up.

8 MR. DOWD: Well, one of the things that
9 our neighbor wasn't aware of is that he was watering
10 our backyard. So when he had the planters, he had
11 like a hose with holes in it so it would be squirting
12 over. So it's going to be obvious to him I think once
13 we're at that level that that's literally a hose
14 squirting over.

15 So the moisture will be significantly
16 decreased once we build this deck. Does that make
17 sense?

18 MEMBER DETTMAN: It'll be obvious to your
19 neighbor that because you're higher up, that the hose
20 is probably not the best way to water?

21 MR. DOWD: Like when you water a lawn,
22 sometimes if you have those big fan types of

1 mechanisms, it will often go into your neighbors'
2 property. Well, it's obvious you could see that
3 occurring.

4 Right now what was not obvious to him was
5 the fact that because it was so high up, it was a hose
6 with the holes in it. So they kind of came on
7 automatically and sprayed.

8 So it would be when you're at that same
9 level, it's going to be obvious if the water is
10 spaying on somebody else's deck. I mean, he's already
11 recognized that.

12 MEMBER DETTMAN: I want to make sure we
13 are concentrating on the things that are going to
14 create this sort of extraordinary circumstance. To me
15 that sounds like a condition that could easily be
16 rectified if you just addressed it with your neighbor.

17 MR. ANDERSON: It isn't, which is why I
18 didn't really raise it as the -- I mean, our primary
19 concern is that there is no light down there, which
20 makes it an unpleasant place to be because it's moist
21 and damp.

22 I brought up the planter in just an

1 example of one of the things that happens that makes
2 it unenjoyable. It is certainly not the primary
3 thing.

4 CHAIRPERSON MILLER: Okay. Any other
5 questions?

6 (No response.)

7 CHAIRPERSON MILLER: All right. Then
8 we're ready for any closing arguments you want to
9 make.

10 MR. DOWD: Just first we appreciate your
11 time. We appreciate the time of the ANC -- they did
12 stop by also -- and the Office of Planning, the work
13 they did.

14 We do recognize the fact that there are
15 laws out there and they're supposed to be for the
16 better good of the entire community. So when we set
17 about to do this and write that burden of proof to
18 seek a variance, we looked over the totality of the
19 situation. Was ours a unique condition? Is this
20 something we should try for? Do our neighbors agree?
21 So I think we addressed that.

22 So when we wrote the burden of proof, it

1 truly was from a unique condition standpoint as a
2 homeowner. We live there. We kind of know what is
3 going on. And our ability to articulate to you what
4 is going on is only as good as we can write.

5 So I believe it is a building block
6 approach here on the test. And that's what we tried
7 to do. This situation truly is what it is: the
8 uniqueness, the conditions, the three-story building
9 on one side, the garage in the other, all the other
10 structures built right up to the alleyway. That's an
11 existing condition.

12 So how does it affect us? And that's what
13 we have to build the test to. So we do think it's
14 unique. And, as we live there and we try to address
15 these different parts of the code and the practical
16 difficulty and the usage and the crime, it was just
17 the totality of the circumstances that led us to
18 believe a variance may be something that would be
19 acceptable to this Board. And so it is from a
20 homeowner's perspective.

21 And so I know that the Office of Planning,
22 in particular, looks at the strict application of the

1 code. I think that's their job to do that. But,
2 then, I don't agree with some of their comments within
3 their document.

4 It almost appears as if, instead of trying
5 to aid the homeowner, it aids the law and the fact
6 that no variance is acceptable. And that's
7 unacceptable as a homeowner.

8 So that's all.

9 CHAIRPERSON MILLER: Okay. I'm just going
10 to confer with my colleagues for a minute and see if
11 we're ready to deliberate today or set it off for our
12 meeting.

13 (Whereupon, the foregoing matter went off
14 the record at 3:18 p.m. and went back on
15 the record at 3:28 p.m.)

16 CHAIRPERSON MILLER: We have decided to
17 deliberate on this today. I will start. We have the
18 authority to grant variances. That's based not only
19 in our regulations but in the D.C. code. And the
20 variance tests have been interpreted by the Court of
21 Appeals. And so that's what we use in making our
22 decisions.

1 So starting with that, though, the test is
2 basically the three-pronged test: an exceptional
3 condition, one that gives rise to practical
4 difficulties upon the owner in strictly complying with
5 the regulations, and that granting the relief would
6 not have adverse impacts upon the neighboring
7 properties. And then we could look at the zone plan
8 as well.

9 So in looking at the first prong of the
10 test, whether there are exceptional conditions in this
11 case, I believe that the applicant has made the case
12 that there are exceptional conditions on this property
13 that give rise to practical difficulties upon the
14 owner, that while this property may not be unique in
15 topography, that the Court of Appeals has interpreted
16 this prong of a test to apply to conditions upon the
17 property that can be caused by outside factors.

18 And in this case, the evidence I have
19 heard is that this property is the only one along one
20 side of the alley that has a backyard and that it is
21 encumbered by two structures on either side that
22 create a shadow or darkness over the backyard, making

1 it a very unpleasant place to use.

2 There was a question about moisture, et
3 cetera, which may or may not be able to be dealt with
4 without variance relief. However, there is also the
5 question of criminal activity, that this property is
6 more subject than others to that because it is the
7 only one that is open like this, even though it has a
8 fence on the block as well. So I believe that the
9 applicant has made the test of exceptional condition
10 giving rise to practical difficulties.

11 And while I heard the Office of Planning's
12 concern about variances to 2001.3, I think we have to
13 look at the specific situation and be convinced that
14 there is some kind of an adverse impact from granting
15 the relief in this case that might be related to that.
16 And I don't see that in this case in my evaluation.

17 It seems like there is no adverse impact
18 upon neighbors, that, in fact, it would improve, it
19 seems, the appearance of and perhaps the safety of the
20 block, that putting the deck on top would make this a
21 more livable property and that other policies that the
22 District government has as well as the Office of

1 Planning is to keep families within the city and to
2 make properties livable within the city.

3 I think that this appears to me as being
4 almost like a jagged tooth. That this can't be filled
5 in just because you need a variance from 2001.3 just
6 doesn't make a lot of sense to me.

7 We do have the support of the ANC and
8 support of neighbors as well. So I think it meets the
9 test. Do others have comments that they want to make
10 on this before we proceed to motion?

11 MEMBER LOUD: Madam Chair, I just want to
12 go on record supporting the application for many of
13 the reasons that you just stated. I won't repeat all
14 of them, but I will just lift up a few.

15 First of all, as you indicated, the
16 property on this particular side of the alley is
17 surrounded by properties that are already built out to
18 the alley. And particular structures on the immediate
19 I guess right and left of this property are built out
20 to the alley as well, which deprives this particular
21 rear yard of light and air and allegedly creates
22 harborage for crime.

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1 I think that given the case law that you
2 cited earlier and the ability of the BZA to find
3 uniqueness in conditions other than the topography,
4 those are sufficiently unique considerations in terms
5 of practical difficulty.

6 The applicants cannot enjoyably use their
7 rear yard for social activity. There was testimony
8 that they live in a very dense urban block. And it's
9 important for folks who live in such density to have
10 the opportunity to re-create particularly the same
11 opportunities that their neighbors have. I don't
12 think we should take it lightly if they lose that
13 opportunity. And so I looked at that in terms of
14 practical difficulty.

15 It's also important to me that the ANC
16 supports it. Their report should be given great
17 weight by our organization. Their immediate neighbors
18 support it. So it's really sort of incumbent upon us
19 to reflect deeply if we are not going to support it
20 and really find a reason not to.

21 And, having looked deeply and reflected on
22 what the law allows us to do, sort of the boundaries

1 of the law, the testimony here, I am in support of the
2 application.

3 CHAIRPERSON MILLER: I just want to add
4 something that occurred to me while Mr. Loud was
5 speaking before others also address this question.
6 But, you know, I was looking at what is the purpose of
7 the zoning regulations.

8 And section 101.1(a) is "to further
9 provide adequate light and air." And (c) talks about
10 "tending to create conditions that are favorable to
11 transportation; protection of property; civic
12 activity; and recreational, educational, and cultural
13 opportunities," et cetera.

14 But I think that, you know, when you
15 mentioned light and air, I thought yes, they have made
16 the case, at least, that they are somewhat deprived of
17 light and air in the space that they have now and that
18 by building the deck, they would be able to enjoy, you
19 know, their property, get light and air, have
20 recreation. So I think it's also in furtherance of
21 those policies.

22 MEMBER DETTMAN: Madam Chair, I will go on

1 record and say that I also am in support of this
2 application, however very cautiously. In terms of the
3 first prong of the variance test and looking at the
4 physical characteristics of the property as well as
5 the existing improvements on the property, I would
6 tend to agree with DC OP that there is not really a
7 specific uniqueness there.

8 But, looking at the map that is included
9 in DCOP's report, on page 2, with respect to the
10 conditions on the neighboring properties, there does
11 appear to be a unique situation there. They do seem
12 to be the only property there, you know, shown on this
13 map that seemed to be hemmed in on both sides.

14 Now, sort of the conditions on the
15 neighboring properties, you know, as stated by the
16 applicant, this has led to mold and moisture, sort of
17 an unpleasant recreation space back there. And then
18 there's also this issue with crime.

19 You know, the crime I guess could be
20 handled by just simply putting up a retractable garage
21 door, and then you could put your car back there. But
22 that essentially eliminates your recreation space out

1 there and sort of detracts from the enjoyment of the
2 property as residents of the District of Columbia.

3 And so this particular solution that they
4 have chosen seems to sort of benefit the greater good.
5 It outweighs the bad effects. It takes a car off the
6 streets, which applies to 101.1(a) or (c) that you had
7 mentioned that is favorable to transportation.

8 It retains recreation space in the
9 backyard of a District resident. And yes, it
10 increases lot occupancy and yes, it increases FAR.
11 However, it doesn't appear to have any impact
12 whatsoever to light and air on neighboring properties
13 since the neighboring properties are built out almost
14 to the alley line.

15 And so, again, my caution comes from this
16 particular case resulting in sort of a snowballing
17 effect and people using this in this neighborhood or
18 other neighborhoods to say, "Well, you know, my
19 neighboring properties got theirs. So I want mine."

20 And so if we could just basically put on
21 the record that, you know, this is a very unique
22 situation with this block and grant the relief, I

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1 would be very much in support.

2 CHAIRPERSON MILLER: Before you go, Mr.
3 Turnbull, -- I know you want to speak -- I would just
4 say that in every variance case we need to find
5 uniqueness or exceptional condition. So that is what
6 we are doing here. So that just because in this
7 situation we found it doesn't mean that everyone who
8 wants to put a deck over their yard can come running
9 in.

10 COMMISSIONER TURNBULL: Thank you, Madam
11 Chair.

12 This is a conundrum of sorts when you look
13 at it. There's probably of any property on this
14 block, this is the only one I think that I would allow
15 this. There are probably one or two that maybe as a
16 matter of right could put a garage on because of their
17 depth could get away with it. Most of the others
18 could not.

19 And this is probably -- in looking at
20 their one picture of the back alley, where you see
21 this, oh, six-foot-high wooden fence and gate that
22 they have got, looking at what the new impact is of

1 having the wall go up just another three feet or so,
2 I think, really, from the standpoint of air movement
3 down that alley or anything, you are not doing
4 anything. There is no major change physically.

5 And I value the Office of Planning's input
6 on all of these matters very much. And I think they
7 spent a lot of time analyzing this. And I do very
8 much respect their input and very much on the Zoning
9 Commission hate to go against their comments, but I
10 think in this particular case, you can make a case
11 that this particular house -- and, again, as I'm
12 clarifying, just like Mr. Dettman said, that if I
13 looked at the uniqueness, this is the only place on
14 this block that I could see offering a variance on
15 this. I don't think any of the other -- again, I
16 started to look at the homes on the other side of the
17 alley and any kind of a domino effect here, but there
18 is no other lot that I think that I would allow this.

19 But in this particular case, I think
20 they're already nonconforming, but, I mean, that's an
21 existing. And I see OP's whole line of thinking and
22 reasoning on this. But I think from the standpoint of

1 the health and the general good of dealing with this
2 situation, I could make a case to support this.

3 But, as I say kind of cautiously, this is
4 a reluctant acceptance in one way. I really do feel
5 that I hate to extend nonconformities. But in this
6 case, I do think it clears up, it gets a car off the
7 street, it still allows some recreation space for the
8 applicants. And I think from the appearance on the
9 alley side, it's minimal from what it is right now.

10 And, as Mr. Dettman said, they simply
11 could have put in an overhead garage door across the
12 whole thing, but, again, that just becomes a parking
13 spot which is really not from the physical good and
14 well-being of the applicants or the rest of the
15 neighborhood.

16 So I would vote in favor of this. Again,
17 there is a reluctance on my part to do this, but I
18 think, in looking at this block, this is about the
19 only -- this is the only lot that I would do this on.

20 MEMBER LOUD: Before we formally vote, I
21 just wanted to amplify something Mr. Turnbull stated
22 briefly. And that is that I thought that Mr.

1 Goldstein did a great job today.

2 And the result that he reached is a little
3 bit different from what I reached, but it doesn't in
4 any way take away from what I thought was a very good
5 report and sound report.

6 COMMISSIONER TURNBULL: This is the kind
7 of report you would expect that OP would do. They're
8 very conscientious on their hitting the high points of
9 the regulations.

10 MEMBER DETTMAN: Well, I might as well go
11 on record as well and welcome Mr. Goldstein. I
12 thought his report was very insightful -- and also
13 echo Mr. Turnbull's comments about sort of the value
14 of DCOP's reports when reviewing these applications.

15 CHAIRPERSON MILLER: Okay. Any other
16 comments?

17 (No response.)

18 CHAIRPERSON MILLER: I guess I should
19 thank Office of Planning as well. They always do a
20 great job, and we usually listen to them. Okay. Then
21 are we ready to take a vote on this application?

22 (No response.)

1 MOTION TO APPROVE APPLICATION NO. 19695

2 CHAIRPERSON MILLER: All right. Okay.

3 Then I would move to approve application number 17695
4 of John C. Dowd and Mark D. Anderson pursuant to 11
5 DCMR section 3103.2 for a variance from the floor area
6 ratio requirements under section 402, a variance from
7 the rear yard requirements under section 404, a
8 variance from the lot occupancy provisions under
9 section 403, and a variance from the nonconforming
10 structure provisions under subsection 2001.3 to allow
11 a rear addition to an existing one-family row dwelling
12 at premises 1515 Vermont Avenue, Northwest. Do I have
13 a second?

14 MEMBER LOUD: Second.

15 CHAIRPERSON MILLER: Further deliberation?

16 VOTE TO APPROVE APPLICATION NO. 17695

17 CHAIRPERSON MILLER: All of those in
18 favor, say aye.

19 (Whereupon, there was a chorus of
20 "Ayes.")

21 CHAIRPERSON MILLER: All of those opposed?

22 (No response.)

1 CHAIRPERSON MILLER: All of those
2 abstaining?

3 (No response.)

4 CHAIRPERSON MILLER: Would you call the
5 vote, please?

6 MS. BAILEY: Madam Chair, the vote is
7 recorded as 4:0:1 to grant the application. Mrs.
8 Miller made the motion. Mr. Loud seconded. Mr.
9 Dettman and Mr. Turnbull supported the motion. And
10 Mrs. Walker is not present at this time.

11 CHAIRPERSON MILLER: Okay. I believe that
12 this can be a summary order as the ANC is in support
13 and there are no parties in opposition.

14 MS. BAILEY: Thank you.

15 CHAIRPERSON MILLER: Thank you. Thank
16 you. Good luck.

17 PRELIMINARY MATTER:

18 FIFTH STREET LLC

19 APPLICATION NO. 17757 AND

20 APPEAL NO. 17698 - ANC-2C

21 CHAIRPERSON MILLER: We're ready for the
22 next case whenever you are, Ms. Bailey. And I believe

1 I heard that there is a preliminary matter that is
2 related to the next two cases if I am correct.

3 MS. BAILEY: That's right.

4 CHAIRPERSON MILLER: Okay.

5 MS. BAILEY: That's right, Madam Chair.
6 It is an appeal and an application. They both concern
7 the same address, the same property, I should say.

8 The applicant is proposing that the Board
9 substitute the application for the appeal. Stated
10 differently, the applicant is asking that the Board
11 hear the application today and delay hearing the
12 appeal for some later time.

13 But Mr. Brown is seated at the table. I'm
14 sure he can explain it much better than I if that is
15 what the board wishes at this time.

16 CHAIRPERSON MILLER: That would be fine.
17 Good afternoon, Mr. Brown.

18 REQUEST FOR STAY OF APPEAL NO. 17698

19 MR. BROWN: Good afternoon, Madam Chairman
20 and members of the Board. Good to see you again.

21 To put it briefly, the application today
22 as well as the request to stay are part of a larger

1 picture, a negotiated global settlement with the
2 District government. So they go hand in hand as a
3 problem-solving, resolution-reaching method.

4 So I think it makes sense certainly from
5 the Board's perspective, to defer action on the
6 appeal, which would be mooted by application on the
7 BZA application, which I think the case can be
8 strongly made that a variance is appropriate under
9 these very unique circumstance.

10 And certainly I don't think the Board has
11 any desire to rush into another appeal case when that
12 can be avoided. And I think it can successfully be
13 avoided. And it serves the interests not only of this
14 body but my clients as well as the District
15 government, who came together in this global
16 settlement.

17 CHAIRPERSON MILLER: Okay. I mean, these
18 are both your cases. There is no objection by the
19 District government. Is that correct?

20 MS. PARKER-WOOLRIDGE: Madam Chair, Board
21 members, there is no objection.

22 CHAIRPERSON MILLER: Okay. And would you

1 want us to reschedule the appeal at this time or --

2 MR. BROWN: Why don't we wait until the
3 conclusion of the BZA application? My fondest wish is
4 that that would moot out everything and we can
5 voluntarily dismiss the appeal.

6 CHAIRPERSON MILLER: That would be if
7 there were a decision today, right? Oh, you would
8 wait until there was a decision?

9 MR. BROWN: When it comes.

10 CHAIRPERSON MILLER: Okay.

11 MR. BROWN: I mean, the Board was willing
12 to act on a bench decision in the previous case. And
13 I think perhaps they will be so inclined today in this
14 matter. But we'll wait and see.

15 But certainly I wouldn't want to make any
16 movement on scheduling an appeal, talking about the
17 appeal until the application is resolved.

18 CHAIRPERSON MILLER: Okay. Will DCRA be
19 here later if we were to be scheduling an appeal or
20 are you just here right now to see which case we are
21 going to be hearing right now?

22 MS. PARKER-WOOLRIDGE: No. The settlement

1 agreement indicated that we would issue a requested
2 joint stay from the board pending the decision order
3 from this Board.

4 So the agreement is, as Pat indicated,
5 that whatever outcome from this Board, then we will
6 move forward from there. But this matter, we're
7 asking that it be stayed.

8 MR. BROWN: There's no desire to go
9 forward on the appeal today.

10 CHAIRPERSON MILLER: Okay. I got that.
11 But you're not asking us to continue it either to
12 another date. You're just saying let's just stay it.
13 And then depending on which way the variance case
14 goes, then if we need to schedule a date, we'll
15 schedule a date. Okay.

16 That's agreeable or not?

17 MS. PARKER-WOOLRIDGE: Let me just refer
18 to our settlement agreement. I don't believe that's
19 the terms of our agreement.

20 MR. BROWN: The BZA appeal is subject to
21 the resolution of the application case. And then
22 certain things happen. So we not only want. We need

1 to resolve the application matter before us and stay
2 or defer any action, voluntarily or otherwise, in the
3 appeal.

4 MS. PARKER-WOOLRIDGE: Madam Chair, the
5 agreement indicates that within five business days of
6 the written BZA order, Fifth Street will dismiss the
7 BZA appeal as to the zoning determination letter.

8 CHAIRPERSON MILLER: Regardless of how the
9 application goes?

10 MS. PARKER-WOOLRIDGE: Yes.

11 MR. BROWN: Subject to appeal rights?

12 MS. PARKER-WOOLRIDGE: Appeal to the Court
13 of Appeals, yes.

14 CHAIRPERSON MILLER: So from what I hear,
15 we don't need to reschedule the appeal. We're just
16 going to stay it, hold it in abeyance. Okay. Thank
17 you.

18 MS. PARKER-WOOLRIDGE: Thank you, Madam
19 Chair.

20 CHAIRPERSON MILLER: Okay. So today we
21 are going to be hearing the application.

22 MR. BROWN: That's correct.

FIFTH STREET LLC

APPLICATION NO. 17757 - ANC-2C

MS. BAILEY: Madam Chair, do you want me to read the application? This is an application. The number is 17757. And it is on Fifth Street LLC pursuant to 11 DCMR 3103.2 for a variance of the floor area ratio requirements under section 402, a variance from the lot occupancy requirements under section 403, and a variance from the open court requirements under section 406, to allow an 8-unit apartment building in the DD/R-5-B district at premises at 1130 through 1132 Fifth Street, Northwest. The property is also known as square 482, lot 93, formerly lots 76 and 77.

CHAIRPERSON MILLER: Okay. Would the parties introduce themselves for the record, please?

MR. BROWN: Patrick Brown, Greenstein, DeLorme, and Luchs, for the applicants, Fifth Street LLC.

MS. HUMPHREYS: Vanessa Humphreys, managing partner for Fifth Street LLC.

MR. BANKS: Andrei Banks. I'm an architect with McDonald Williams Banks here in support

1 of the application.

2 CHAIRPERSON MILLER: Okay.

3 MR. BROWN: And when the time comes or if
4 it's the Board's preference, I would like to have Mr.
5 Banks recognized as an expert witness as an architect
6 here in the District of Columbia. I have his CV I can
7 pass up to the Board. Perhaps we will do that now.

8 CHAIRPERSON MILLER: Sure. Let's do it
9 now. I just want to inquire also, is there anybody
10 here from the ANC in this case?

11 (No response.)

12 CHAIRPERSON MILLER: Okay. I'm not seeing
13 anybody.

14 Okay. Do Board members have any questions
15 for Mr. Banks or any concerns?

16 (No response.)

17 CHAIRPERSON MILLER: Okay. Then I would
18 suggest that we recognize him as an expert witness in
19 the field of architecture.

20 MR. BROWN: Thank you.

21 And I will clarify because I think it is
22 an important distinction. Mr. Banks has agreed to

1 become involved in this project after the fact at this
2 juncture so that he was not involved previously. And
3 if you read the filings, there's quite a bit of
4 dispute about some of the design and other issues
5 involved. Clearly he was not involved and has been
6 brave enough to step in and help out at this late
7 date.

8 Members of the Board, I tried to without
9 getting into a who shot who lay out in some detail
10 through the chronology a rather lengthy and almost
11 tortured kind of path that this project took from the
12 original acquisition of the property through the
13 permitting stage into where we are now.

14 The fact of the matter is, having been
15 made aware of the appeal, there are quite a few
16 disputed issues. We are not here to resolve those in
17 this application, but we have to take account of the
18 fact that what is here on this property exists now.
19 It is the reality.

20 And the zoning relief that is being
21 requested from open court, lot occupancy, and FAR is
22 what is required to bring this property into

1 compliance, regardless of how it got to the state it
2 is in. And that is one of the significant, unique,
3 and exceptional conditions of the property. There are
4 others that we will go into.

5 This is a difficult situation. But we are
6 where we are. And you will see that the condition of
7 the property, how it was built, again in every case
8 whether everybody agrees with what those permits
9 authorized, there were permits issued, quite a few
10 permits, but three in particular, for each stage of
11 the work.

12 The work was done. There is a dispute.
13 No work has occurred on this property since the first
14 stop work order in September 2006. So it's where it
15 was the moment it was stopped. And that's what we're
16 faced with here in looking at the variances.

17 I will point out that, one, it's in an
18 historic district, which by and itself is not all that
19 exceptional. But how you deal with this property in
20 the context of what is there now, what can remain,
21 what was approved, the additions and the
22 reconstruction, which we will go into of the sleeping

1 porch, all were approved by Historic Preservation.
2 Also, a significant factor in this property is the
3 open court. You will see along the side of the
4 property along the border here an open court. And
5 these plans should be in your folder, your file.

6 But that is a significant factor in just
7 about every aspect of this variance case because
8 significantly the open court for lot occupancy
9 purposes because it's less than five feet in depth
10 must be included in lot occupancy. So it skews the
11 lot occupancy calculations rather significantly.

12 Also as a practical matter from an
13 historic preservation standpoint, you're stuck with
14 that open court; whereas, absent historic
15 preservation, you could have achieved construction by
16 filling that in that would have met many of the zoning
17 tests, including, most importantly, lot occupancy.

18 And, finally, Mr. Banks -- and we have
19 some other exhibits. The situation here that we are
20 left with is absent the variance approval, a
21 significant portion of these improvements will have to
22 be demolished. And it's not just taking down bricks

1 and mortar, but it has a domino effect on the internal
2 design and operations of the building so that you're
3 losing more than just space. You're losing where your
4 mechanical and plumbing risers are. You're losing
5 where your staircases are and on down the road.
6 Perhaps others are better left to talk to about that.

7 With that, I would also like to supplement
8 the record this case has occurred rather quickly. I
9 put into the record either yesterday and also today
10 there should be letters of support from three of the
11 four ANC commissioners.

12 CHAIRPERSON MILLER: To this moment, but
13 I don't think we have that.

14 MR. BROWN: Okay.

15 CHAIRPERSON MILLER: Letters of support
16 from three out of four?

17 MR. BROWN: Yes. The ANC, this ANC,
18 sometimes has trouble reaching a quorum. There are
19 four members. And there is a letter from -- give me
20 a second -- Doris Brooks, who is the chair. These are
21 all written in their SMD capacities because they were
22 not able to reach a quorum. Her letter is dated

1 January 2nd, 2008 from Doris Brooks.

2 CHAIRPERSON MILLER: We did receive a
3 stack of letters this afternoon before we came out
4 that I don't think most of us have had a chance to go
5 through, but I see some from ANC commissioners Kevin
6 Chapple or --

7 MR. BROWN: Yes. He's another SMD.

8 CHAIRPERSON MILLER: Doris Brooks, yes.

9 MR. BROWN: Alexander Padro is the third
10 of four SMDs. I just gave his letter to Ms. Bailey
11 this afternoon. So that will allow you the
12 opportunity to read them, but they are all in support.

13 There is a letter from the Mount Vernon
14 Square Neighborhood Association. There's a letter
15 from the President of the Convention and Tourism
16 Corporation, Mr. Hanbury, who also happens to be a
17 neighbor. And then I believe there are 20 additional
18 letters of support that should have made it into the
19 record within the last 24 hours, just to give you a
20 landscape.

21 (Pause.)

22 CHAIRPERSON MILLER: I was waiting for

1 you. I'm sorry.

2 MR. BROWN: Oh, I was waiting for you.
3 I'm sorry. If there aren't any questions for me
4 directly at this point, what I would like to do is
5 introduce Ms. Humphreys, the managing member of Fifth
6 Street.

7 Mr. Moy, are you signaling me? Okay.

8 MS. HUMPHREYS: Madam Chairwoman Miller
9 and members of the Board, this has been a tough road.
10 I am the manager partner for the partnership, Fifth
11 Street LLC.

12 Obviously I am not a professional
13 developer. I moved to the neighborhood, Mount Vernon
14 Square, in 2003. I bought a rowhouse in the
15 neighborhood. I lived there for about a year.

16 I met a lot of my neighbors in Mount
17 Vernon Square. And in 2004, I formed a partnership
18 with another neighbor in the community. We bought two
19 rowhouses on Fifth Street from a neighbor on Fifth
20 Street.

21 My house was on M. And the project, or
22 Fifth Street, is just right around the corner. And so

1 we share an alley, and I actually could see the
2 properties from the back bedrooms. So the project was
3 directly behind my house.

4 The owners of 1132 are my neighbors, like
5 I said before. And they basically sold it to us.
6 They were basically living on two floors of the
7 four-level rowhouse because the Victorian was in such
8 disrepair.

9 They had warned us about the sleeping
10 porch. It was a safety concern for them. And the bay
11 windows or the alley or the bay over the alley was
12 another safety concern for them. And the other
13 property, 1130, was vacant. So obviously both of them
14 were in severe need of repair and renovation.

15 Shortly after we purchased the rowhouses,
16 we began the development or the plan to renovate both
17 buildings. We hired a licensed professional engineer,
18 an architect, and a whole slew of other licensed
19 professionals to prepare and get the required permits
20 and approvals. We trusted them. We relied on them.
21 We're not experts. So we relied on professionals.

22 The first set of permits that we pulled

1 were obviously to repair the sleeping porch and the
2 bay over the alley because those were a big safety
3 concern.

4 In 2006, we got our building permits.
5 DCRA approved the building permits. And our plans
6 were all approved. They had the red stamp "DCRA"
7 stamped all over the plans. And we began
8 construction.

9 And we went through that whole year there,
10 through the summer. No problems. We had inspectors
11 come by. We never had any issues. We had full
12 support from the neighborhood. We shared dumpsters
13 with our neighbors. We tried to do the best we could
14 to minimize dust and noise. And everything was
15 progressing smoothly that Summer of 2006.

16 Then in mid-September, we were pretty much
17 done with the project. We had our model unit done.
18 And we had scheduled an open house for September
19 16th-17th, 2006.

20 The Thursday before that open house, we
21 received a visit from an inspector. And basically,
22 you know, I met with him and tried to figure out what

1 was wrong. And I couldn't get anywhere with him. I
2 tried to ask for written reports. I couldn't get a
3 written report from him. He wouldn't meet with my
4 engineer.

5 I called the secretary and said, "Could I
6 get a written report about why the stop work order was
7 placed on the property?" And she said they don't
8 write written reports, that I would have to file a
9 FOIA request.

10 That didn't stop me. I kept pushing to
11 try to get a written report or something. I mean, I'm
12 not an engineer. I'm not a professional. And I
13 tried.

14 And to this day, I've never received
15 anything in writing about why the first stop work
16 order was placed on our property. I never even knew
17 I had appeal rights to the stop work order.

18 And I didn't get anything in writing from
19 that meeting on September 20th, 2006. The following
20 month, on October 19th, I met with the inspector's
21 boss. I was able to get a meeting with him. I didn't
22 get anything in writing from him. And I didn't get

1 anything in writing from the Zoning Administrator at
2 the time, who was Bill Crews, who was also present at
3 that meeting.

4 And it wasn't until I hired lawyers at
5 Greenstein, DeLorme, and Luchs that I finally was able
6 to get something from DCRA. And it wasn't until the
7 second stop work order that we finally got something
8 in writing. They pulled the first stop work order,
9 gave us a second stop work order, listed some codes
10 that we were in violation of. And finally I was made
11 aware that I have appeal rights to these stop work
12 orders.

13 Seven months it took to get something in
14 writing from DCRA. And it took me, our partnership,
15 to hire a lawyer to get something in writing from
16 DCRA.

17 I had tried to pin down the
18 inspector's boss in the hallways at DCRA. I tried to
19 call. I tried to call Bill Crews. I e-mailed him.
20 I phoned him. I, you know, would stop him in the
21 hallways. I would go to his secretary and ask "Can I
22 meet with him?" I mean, I tried. And for those seven

1 months, I was just in this horrible state of just not
2 knowing what was going on.

3 And finally we hired some lawyers. And
4 all I ever wanted to do for DCRA was just to get a
5 straight answer so we could fix the project, get back
6 to work. I had valid permits. I had plans. And it
7 was only until I hired a lawyer that I was able to get
8 some progress, some movement.

9 Like I said before, I'm not a
10 professional. These were two rowhouses that were in
11 my neighborhood. I just wanted to renovate these two
12 rowhouses that were in my backyard. I'm just tired of
13 having vacant properties in the neighborhood. I was
14 tired of having to call the cops about the crack heads
15 in the alley. And, you know, I just wanted to help
16 the neighborhood develop.

17 And I just want to -- I'm going to be very
18 brief here, but these last 15 months have just been
19 just a total nightmare. And I can't tell you how
20 awful it has been. And every time I thought it would
21 get better it just seemed to get worse.

22 And I can't tell you the effect it has had

1 on me and my family and the partnership, my two kids,
2 my neighbors that every time we needed something, we
3 had to ask them for support, go to them for letters of
4 support, ask them to take off from work to come here
5 to speak on our behalf.

6 I mean, I just want to tell you that the
7 last 15 months have just been awful. And it's been
8 unbelievable. And I can't believe that I am sitting
9 here before you, that I had to hire a lawyer. I had
10 to go through three stop work orders to get something
11 in writing. And, I mean, it's just been 15 months of
12 just total nightmare.

13 So I am here before you today just to ask
14 for your approval for these variances just so I can go
15 forward and finish the project. And I'm just in a
16 terrible, terrible situation. And the only thing I
17 can do is just ask you for your approval of these
18 variances.

19 Thank you.

20 CHAIRPERSON MILLER: Thank you. I'm
21 really sorry for what you have had to go through and
22 that this is difficult for you.

1 I mean, I have a question. And if you can
2 answer it, fine. And otherwise, Mr. Brown can answer
3 it as to what is this about. Is this about DCRA
4 granting you permits and you doing your work and then
5 changing their mind --

6 MS. HUMPHREYS: Yes, yes.

7 CHAIRPERSON MILLER: -- after they issued
8 the permit?

9 MS. HUMPHREYS: Yes. Ten months later
10 they changed their mind and tried to revoke the
11 building permits.

12 CHAIRPERSON MILLER: After you had done a
13 lot of work already.

14 MS. HUMPHREYS: We spent -- at the stop
15 work order, we had spent about, what, \$1.5 million.
16 I mean, we got building permits that were approved.
17 I mean, the plans had the red stamps. That's what
18 everybody looked for, red stamped everywhere.

19 And that's why I couldn't figure. I
20 couldn't get an answer from anybody, what was wrong.
21 I couldn't get anything right. I didn't even know I
22 was supposed to get things in writing, you know, a

1 report. I knew that was wrong when the secretary told
2 me you had to file FOIA requests because that just
3 seemed insane to me.

4 But I went to the inspector's boss. I
5 went to the inspector's boss and had a meeting with
6 them. And I still didn't get anything in writing.
7 And I still didn't -- I wasn't even made aware of my
8 appeal rights at that time. I had no clue.

9 So for seven months, I had nothing from
10 DCRA until I hired a law firm that knew better than
11 me, you know.

12 CHAIRPERSON MILLER: And so since then
13 it's just been sitting idle basically?

14 MS. HUMPHREYS: Yes.

15 CHAIRPERSON MILLER: And you're losing
16 money on that?

17 MS. HUMPHREYS: It's been vacant, vacant.
18 And every day we have been losing money. And the
19 neighbors have had to put up with two more vacant
20 properties in the neighborhood, in Mount Vernon
21 Square. And, you know, it's just been sitting there
22 vacant.

1 MR. BROWN: Vanessa, can you -- if I
2 could, the first thing you did is you got a building
3 permit for the reconstruction of the sleeping porch.
4 And you got that permit because it was structurally
5 unsound.

6 MS. HUMPHREYS: Right.

7 MR. BROWN: And then you went ahead with
8 that permit, which was issued in October of 2005. And
9 you went ahead and completed that work, correct?

10 MS. HUMPHREYS: Yes.

11 MR. BROWN: And then you also got permits,
12 and you got permits -- and, Madam Chair, if you could
13 let me walk her through?

14 CHAIRPERSON MILLER: Yes, well, if there
15 is no one here objecting. I mean, I wouldn't put
16 words in her mouth.

17 But I think, you know, what he wants you
18 to do is maybe explain a little bit more, like the
19 different permits, right?

20 I mean, if you could kind of just ask her
21 to --

22 MR. BROWN: Right.

1 CHAIRPERSON MILLER: -- address those
2 issues, it would probably be better.

3 MR. BROWN: Okay. In addition to the
4 sleeping porch permit, you obtained how many other
5 permits?

6 MS. HUMPHREYS: I think we -- I mean, in
7 total, we got about 20 permits and --

8 MR. BROWN: And, drawing your attention
9 for 1132, we have a little bit of a confusion here
10 because we have applied for both properties together.
11 But when they were permitted, they were permitted
12 individually. And you permitted the properties
13 individually based on --

14 MS. HUMPHREYS: We had an engineering
15 consult when we first started the project. And we
16 went to them with the lots combined. And one of the
17 DCRA lawyers said, "No. Don't do that. Do it as
18 separate properties." So that's what we did,
19 1130-1132.

20 CHAIRPERSON MILLER: So you relied on
21 their advice to do it combined? Is that what you
22 said?

1 MS. HUMPHREYS: Separately.

2 CHAIRPERSON MILLER: Separately?

3 MS. HUMPHREYS: We originally went to them
4 combined --

5 CHAIRPERSON MILLER: Originally? Okay.

6 MS. HUMPHREYS: -- as one property because
7 we were planning to make them condos. And you have to
8 do that anyway to subdivide, to get the condo
9 documents. And they said --

10 COMMISSIONER TURNBULL: I'm sorry? Who
11 said to combine them?

12 MS. HUMPHREYS: DCRA.

13 COMMISSIONER TURNBULL: DCRA?

14 MS. HUMPHREYS: Right.

15 COMMISSIONER TURNBULL: Okay. Thank you.

16 MS. HUMPHREYS: And that wasn't uncommon
17 throughout this whole process. We'd go ask them for
18 something. And they'd tell us something. And then
19 later they'd change their mind or they'd say something
20 else.

21 COMMISSIONER TURNBULL: Thank you.

22 MR. BROWN: Madam Chair, I have given it

1 to Ms. Bailey, individual versions of this, which just
2 shows our application is for the entire property
3 because that is its current state.

4 When the permits were originally obtained,
5 it was two separate lots: lot 76, or 1132 Fifth
6 Street, lot 77, or 1130 Fifth Street. And essentially
7 the property line -- not essentially. It goes right
8 down the middle. There are 2 18-foot lots.

9 You will see here this is the sleeping
10 porch. And this is the rear addition that was made to
11 1130. Again, the permits were permits and the permit
12 for the renovation of that, interior renovation.

13 And the permits are in dispute. And we're
14 not here to discuss that. That's an appeal issue.
15 But the permits were issued. My client, Ms.
16 Humphreys, and the people took those permits and used
17 them, understanding them to give permission to build
18 exactly what's here now.

19 And the stop work order was issued on
20 September 20th, 2006. And other than boarding the
21 building up, they had done no work on this. So it's
22 exactly as it was the day the first stop work order

1 was issued.

2 CHAIRPERSON MILLER: Okay. And I know
3 this is not the appeal. But it seems to me if I'm
4 reading your application correctly that zoning
5 history, which has been held in our cases and I think
6 the Court of Appeals, can be your unique situation.
7 So we're trying to understand that zoning history a
8 little bit as to the uniqueness here.

9 I mean, it sounds like you're saying you
10 certainly always acted in good faith and you listened
11 to DCRA and that they originally issued you permits
12 for the properties separately. And then when they
13 were combined, did DCRA then say, "Oh, they're
14 combined. Now there's a problem"? I mean, is that
15 the bottom line or not?

16 MR. BROWN: Two separate events.

17 CHAIRPERSON MILLER: Okay.

18 MR. BROWN: In July of 2006, the
19 properties were combined by subdivision into what is
20 now lot 93 because the right hand of DCRA, the
21 Condominium and Conversion Act, required that for
22 their purposes, which is to create eight separate

1 condominium units. Again, being after the permits
2 were issued and in contrast to what DCRA was saying
3 from a building permit code enforcement, the zoning
4 standpoint, they're not necessarily inconsistent, but
5 they're different.

6 We're now where we are now. We're one
7 lot. And we have submitted our variance application
8 based on one lot. Now, I have done comparisons based
9 on two separate lots here, which I can provide to the
10 Board, but I am not so sure how relevant it is other
11 than historically to it.

12 CHAIRPERSON MILLER: Okay. So basically
13 since they were combined, consolidated, they take on
14 a little different configuration. I mean, they're
15 looked at differently. And now variances are
16 required; whereas, if they were separate, variances
17 wouldn't be required?

18 MR. BROWN: No, no.

19 CHAIRPERSON MILLER: No?

20 MR. BROWN: I'm not saying that.

21 CHAIRPERSON MILLER: Okay.

22 MR. BROWN: Well, we start with the

1 reality. The work has been done. Physically the
2 improvements are there.

3 CHAIRPERSON MILLER: The work was done
4 pursuant to approved permits, right?

5 MR. BROWN: That's correct.

6 CHAIRPERSON MILLER: Okay. Go ahead.

7 MR. BROWN: But the calculations are
8 somewhat different looking at them separately, as
9 opposed to jointly. I think we need to move beyond
10 that at this point to looking at them the way they are
11 now: one lot. And that is what is necessary to get
12 my clients from where they are now, which is one lot
13 standing still in jeopardy of losing, you know, their
14 investment, to where they need to be, which is,
15 arguably, in compliance with the zoning regulations.

16 The calculations you have in the
17 application are essentially the same as here. And you
18 always had a court problem in this case. The court
19 has always been -- whether you are talking about one
20 lot or two, you have always had a substandard court,
21 open court.

22 CHAIRPERSON MILLER: Okay. Why don't you,

1 then, go through the tests with us, though? You have
2 this substandard court, which you say is a unique
3 situation or exceptional situation?

4 MR. BROWN: Well, it's unique,
5 exceptional. One, we're stuck with it from an
6 historic preservation standpoint because you couldn't
7 fill that in. The court --

8 CHAIRPERSON MILLER: Okay. And what
9 practical difficulty does that give rise to?

10 MR. BROWN: Well, for lot occupancy
11 purposes, it creates lot occupancy, what I'll call
12 phantom lot occupancy because the regulations require
13 you to count the entire area of the open court as
14 toward your lot occupancy.

15 As it stands now, it's 207 square feet,
16 which is counted toward lot occupancy, which is almost
17 50 percent of the non-conformance for lot occupancy of
18 the property as it exists now.

19 CHAIRPERSON MILLER: How does the court
20 affect complying with the regulations if you're
21 renovating this property or how is that related to --

22 MR. BROWN: Well --

1 CHAIRPERSON MILLER: Do you know what I'm
2 saying?

3 MR. BROWN: I'm not --

4 CHAIRPERSON MILLER: Well, you know, it's
5 this three-pronged test. You're saying the court is
6 an exceptional situation and for historic preservation
7 reasons, you have to leave it there or whatever.
8 Okay. Then that gives rise to a practical difficulty
9 in doing what for complying with the regulations?

10 MR. BROWN: Well, in complying with lot
11 occupancy, almost 50 percent of the lot occupancy
12 issues that exist now are related to the existence of
13 the court.

14 The court in itself because if you look at
15 the zoning certification, the court is required to be
16 4 inches for every inch of height of the building, 47
17 feet here. So that court should by code be 15.66 feet
18 wide. A 15.66-foot-wide open court of a lot, the
19 original lot was 18 feet wide. The current lot is 36
20 feet wide.

21 So you have got a court that extends --
22 again, this is to comply with the regulation. It

1 extends almost out to here. It would comply with the
2 zoning regulation for an open court.

3 So you can't, then, comply -- you can't
4 make the court any bigger for historic preservation.
5 You can't change that. You can't do away with the
6 court to eliminate the phantom lot occupancy.

7 And in the context of here, you add on top
8 of that the fact that you had historic preservation
9 approve both the rear addition here, historic
10 preservation rework through this, and they signed off
11 on the permit basis this.

12 So, again, you have got all of these
13 forces coming together. And, most importantly of all
14 I will admit is that these things are here. They were
15 built. And people in good faith believed that they
16 were authorized to do that and did that.

17 So all of those coming together, you've
18 got the -- I heard this last night, a perfect storm in
19 a political context, but you have a perfect storm
20 here, all of these coming together.

21 And the bottom line is -- and I'll submit
22 these to the record -- if you see that red line to

1 bring these properties into compliance, everything to
2 this side of the red line has to go. It's not to
3 scale, but essentially this is everything back there
4 to bring this property into compliance with lot
5 occupancy and FAR has to come off -- and, most
6 importantly, lot occupancy has to come off the bat and
7 not just the structure but also the mechanical and all
8 the insides of the building, the staircases. And Mr.
9 Banks can take you through that.

10 But that's a significant part of the
11 exceptional condition here. You know, it's not just
12 bricks and mortar. It's what those bricks and mortar
13 achieve from a design and function standpoint of each
14 of these units. And I'll --

15 CHAIRPERSON MILLER: Well, can it be
16 simply stated that you relied in good faith on DCRA,
17 they issued you permits, you did the work, that's your
18 unique situation, and that your practical difficulty
19 is now that you would have to demolish part of your
20 building to comply with the regulations?

21 (No response.)

22 CHAIRPERSON MILLER: Okay.

1 MS. PARKER-WOOLRIDGE: Madam Chair, may I
2 please comment on your statement?

3 CHAIRPERSON MILLER: Is there objection,
4 Mr. Brown?

5 MR. BROWN: Under the terms of our
6 settlement agreement, they were not to take a position
7 in the case. But I don't know what Ms. Woolridge is
8 going to say.

9 MS. PARKER-WOOLRIDGE: We are not opposing
10 the variance. And that is part of the settlement
11 agreement. But as for clarification --

12 CHAIRPERSON MILLER: Excuse me. I think
13 you had better introduce yourself for the record
14 first.

15 MS. PARKER-WOOLRIDGE: Oh, I'm sorry.
16 Thank you. My name is Doris A. Parker-Woolridge.
17 We're agency counsel for DCRA. And only for
18 clarification in reference to the statement made by
19 Ms. Humphreys, again, we are not opposing the request
20 for the application for the variance.

21 But in reference to one of the statements
22 that Ms. Humphreys said she relied on DCRA, the only

1 comment that I would like to make -- and it does not
2 violate our settlement agreement -- is that the
3 documents that were submitted to DCRA, such as the
4 application and the permit, were inconsistent with
5 what has happened when the inspectors went out to the
6 premises and observed something completely different.

7 And that was DCRA's concern as to why we
8 are here today. The application indicated one thing.
9 The permit also indicated something similar. However,
10 the inspection revealed something completely
11 different. And that's the basis for those stop work
12 orders.

13 MR. BROWN: The last thing I want to have
14 is a dispute. We're not having the appeal here. And
15 Ms. Woolridge and I have been doing this for quite
16 some time.

17 Those issues are disputed. The one thing
18 that I don't think is disputed is that what is there
19 is there.

20 MS. PARKER-WOOLRIDGE: That's correct.

21 MR. BROWN: And my client has testified,
22 you know, how she proceeded and what her understanding

1 was. And I will leave it at that.

2 If I could -- and I think I have stolen
3 some of your thunder, but, Vanessa, do you have
4 anything you want to add?

5 MS. HUMPHREYS: No.

6 MR. BROWN: If I could, Mr. Banks, if you
7 could just -- and do we have the -- do you need that
8 or can you just --

9 MR. BANKS: Yes. Just to again --

10 CHAIRPERSON MILLER: Microphone in order
11 to get on the record.

12 MR. BROWN: This one's not going to make
13 it.

14 CHAIRPERSON MILLER: Do we have the Board
15 one? Okay.

16 MR. BANKS: Thank you. All right. Okay.
17 Thank you. Just to give you an idea again of the
18 overall concept of what is happening here, 1130 Fifth
19 Street is the property that is located right here. In
20 that particular case, we do have the interior court
21 that is adjacent to another existing rowhouse that's
22 immediately adjacent to 1130.

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1 At that particular property, there was a
2 rear addition that was built of the existing property
3 and the approximate right here. And there was a rear
4 addition that had the footprint of about 213 square
5 feet that was built at this location. And then we had
6 a balcony that is proposed. Actually, I think the
7 balconies are built at this point in 1130, at this
8 position.

9 On 1132, all of this construction was
10 originally there. The existing rear porches that were
11 dilapidated were just rebuilt in this location. So
12 the footprint as you see it here was originally there
13 in the original construction.

14 There have been or there are proposed
15 balconies which have not been built at this point but
16 are proposed at the rear of that. There is an
17 existing spiral stair that was to provide access from
18 the units up to the roof, where the mechanical systems
19 are located.

20 So right now the proposed balconies, of
21 course, the additions and the reconstructed rear
22 porches and the open court are all counted in the lot

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1 occupancy, which, you know, are what is generating the
2 overage of the lot occupancy and, again, the floor
3 area ratio.

4 So the difficulties that the owner will
5 encounter in trying to meet the lot occupancy and the
6 floor area ratio will require the demolition of
7 approximately -- well, all of the addition that you
8 see here, which, again, is 213 feet at 3 levels, so
9 this is a 3-story portion of the building and a major
10 portion of the rebuilt rear porches that were actually
11 rebuilt to get the lot occupancy into compliance,
12 which is the 60 percent.

13 At the first level, that would require the
14 -- first of all, in order to do that, they will be
15 demolishing three stories of completed construction.
16 This construction is substantial construction. It's
17 exterior masonry and wood siding on the additions. It
18 will require extensive shoring, not only for the
19 existing structure but also in some cases the adjacent
20 property.

21 In order to rebuild a new rear wall if, in
22 fact, the construction was torn down, there will be

1 significant underpinning with the existing
2 construction and with the adjacent property that will
3 have to be created to just create new footings to
4 build a new rear wall.

5 MEMBER LOUD: May I ask a quick question?

6 MR. BANKS: Yes.

7 MEMBER LOUD: When you reference adjacent
8 property, are you talking about the property subject
9 to the application right now or properties that are
10 not part of the application?

11 MR. BANKS: Properties that are not part
12 of the application, --

13 MEMBER LOUD: Okay.

14 MR. BANKS: -- which would be on this
15 south side, this area right here. This side is
16 bounded by an alley on the north side. And, of
17 course, what it would require is the removal of
18 approximately 250 plus or minus square feet in each of
19 the 8 units.

20 In the floor plans, which are the small
21 handouts that Mr. Brown passed out, you will see that
22 at the lower levels, they will lose master bedrooms

1 and parts of plumbing.

2 In all of these cases, if the property is
3 removed, it will be extensive plumbing modifications
4 that will have to happen as well as, you know, total
5 reconfiguration of the interior portions of the
6 building to accomplish comprehensive floor plans
7 because they will be losing bedrooms at the first two
8 levels and then living/dining spaces at the upper
9 levels.

10 So there will be significant
11 reconfiguration to be able to make the properties work
12 effectively in addition to vertical circulation at the
13 upper third level because that would entail removal of
14 the one accessway that gets to the third level.

15 So that's kind of an overall summary of
16 the impact of actually removing the structures.

17 CHAIRPERSON MILLER: Well, I have a
18 question. It's probably for Mr. Brown. And, Ms.
19 Humphreys, I have to say I am very sympathetic, and I
20 feel bad for what you went through. And as I ask
21 these questions, they are because we have to do a
22 particular analysis to have our decisions hold up.

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1 Okay?

2 So I can see clearly in this variance test
3 the practical difficulty of complying in that you
4 would have to demolish the whole area that Mr. Banks
5 was talking about. And I don't believe that there is
6 probably a case in here that there is an adverse
7 impact if relief is granted since all of your
8 neighbors support.

9 So I just wanted to understand better the
10 exceptional conditions of this property, how it
11 relates, how we should be factoring it in our variance
12 test, which we have to do.

13 So I understand that there have been cases
14 about applicants relying on zoning officials and
15 proceeding. And that can be an exceptional condition.

16 Then I am also hearing, "Well, what if?"
17 I guess it's probably for you, Mr. Brown, but what if,
18 say, the engineer that she relied on didn't follow the
19 permit and created this situation?

20 I don't know if that's the case. I just
21 hear, oh, there's a dispute over what caused that.
22 How should we factor this exceptional condition with

1 respect to the zoning history?

2 MR. BROWN: Well, one, and I don't think
3 -- we're not asking you to make an assessment on that
4 issue. It is the way it is and we --

5 CHAIRPERSON MILLER: It is the way it is
6 goes to the practical difficulty, doesn't it?

7 MR. BROWN: Well, no. It is the way it is
8 is part of the unique condition or extraordinary
9 circumstance. And then application, strict
10 application, of the zoning regulations creates the
11 practical difficulty, in this case extreme hardship
12 but the practical difficulty.

13 I mean, we faced -- and there are plenty
14 of cases, putting aside the unique context here where
15 you come in for a variance and there is something
16 unique about the existing building.

17 And, Ms. Miller, last year up on 16th
18 Street, that building on the corner up on the 16th
19 Street, where it was an odd building with an odd
20 outcropping that was one level and then had been a
21 bootleg addition on it, and the fact that one level
22 had been outcropped had violated lot occupancy and I

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1 think one other zoning requirement. But it was there.
2 And it was an integral part of that building,
3 structurally and otherwise.

4 CHAIRPERSON MILLER: Okay. Let me
5 interrupt you for a second, then. You're saying
6 forget the zoning history, then. We would look at it
7 as, you know, there are all of these cases that go to
8 considering improvements on the property that exist as
9 part of the exceptional condition.

10 So are you saying that we look at that as
11 built and that that creates a practical difficulty in
12 complying with the regulations because it's already
13 built that way?

14 MR. BROWN: Well, that is certainly true.
15 But you have to take it -- I think what I would like
16 to avoid is putting it into nice little boxes.
17 There's a series of circumstances here.

18 CHAIRPERSON MILLER: We could call it a
19 confluence of factors, then. We have to address that
20 first prong, though.

21 MR. BROWN: Yes.

22 CHAIRPERSON MILLER: We do have to do

1 that.

2 MR. BROWN: And I think what I have tried
3 to point out -- and perhaps I am being less effective
4 than I should be, but there is a confluence of
5 factors. There is the historic preservation aspect to
6 it, which very much controls, one, what was built
7 there because everything that was built there was
8 subject to historic preservation review scrutiny.

9 So, putting aside the zoning issues,
10 that's a factor and also what you can do to the
11 property. You know, one, you can't start all over.
12 You can't tear this building down. It's a
13 contributing structure in an historic district. So
14 you can't tear it down. You can't modify the court.

15 CHAIRPERSON MILLER: You can't? You're
16 saying you can't take away what was built, the new
17 part?

18 MR. BROWN: Well, that raises a question
19 that I haven't wanted to get to, but demolition of a
20 contributing building in an historic district is not
21 permitted, you know, without Historic Preservation
22 Review Board approval. That's a dilemma that perhaps

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1 is beyond the scope of your concern, maybe not.

2 But, just like you can't build without a
3 building permit, you can't demolish without a permit.
4 And you have a contributing building in an historic
5 district.

6 But certainly if you had to, what this
7 building would look like would be significantly
8 influenced by historic preservation. And just as the
9 court is there and couldn't be absorbed, the court
10 probably couldn't be expanded to comply with the
11 zoning regulations.

12 So you've got that factor in the context
13 of the zoning issues. And you have got this structure
14 there that, you know, hasn't or has, in fact, complied
15 with historic preservation to date that now may be in
16 violation of the zoning regulations.

17 There is a dispute about that, but we are
18 agreeing to disagree and seek the variances. And
19 that's very much a unique and extraordinary
20 circumstance of this property. It all comes together.

21 Perhaps work from a different direction.
22 If it wasn't historic property and the improvements

1 weren't there, would the applicant be in a better
2 position to comply with the zoning regulations? And
3 the answer is yes.

4 One, you could use the court space. Two,
5 you would build in accordance with the restrictions or
6 seek a variance in advance. We don't have that luxury
7 now. We're stuck with what we have.

8 COMMISSIONER TURNBULL: Madam Chairwoman,
9 I wonder if I might ask a question. On the 1130
10 property, the shaded portion, was that originally --
11 you said it was a sleeping porch, a sleeping deck, the
12 back part?

13 MR. BROWN: Right. This is 1132.

14 COMMISSIONER TURNBULL: Okay. Eleven
15 thirty-two. Was that originally a sleeping porch or
16 a sleeping deck? I mean, same thing.

17 MR. BROWN: Yes.

18 COMMISSIONER TURNBULL: So the addition
19 basically mirrored the footprint that was there?

20 MR. BROWN: That's correct.

21 COMMISSIONER TURNBULL: On the other
22 building with the side yard, you had mentioned that if

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1 you were to strictly meet code, you would have to go
2 back. You would cut off almost half the building at
3 the side. Am I understanding correctly?

4 MR. BROWN: To meet code?

5 COMMISSIONER TURNBULL: Yes. I thought
6 you were saying you would have to come in further on
7 the side.

8 MR. BROWN: Well, the court.

9 COMMISSIONER TURNBULL: The court?

10 MR. BROWN: Here.

11 COMMISSIONER TURNBULL: Yes.

12 MR. BROWN: The court is a minimum. The
13 requirement would be 15 and two-thirds feet.

14 COMMISSIONER TURNBULL: But it was
15 existing, part of it was existing, already.

16 MR. BROWN: Yes.

17 COMMISSIONER TURNBULL: So it was already
18 nonconforming, but if you had to change it, you would
19 be ripping apart an historic building --

20 MR. BROWN: Yes.

21 COMMISSIONER TURNBULL: -- to make it
22 compliant. So the addition was basically sympathetic

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1 with the historic character of the building going
2 back.

3 MR. BROWN: And that's very much what the
4 historic preservation people were interested in.

5 COMMISSIONER TURNBULL: Okay. Thank you.

6 MEMBER DETTMAN: Mr. Brown, I need a
7 little help understanding what you're sort of saying
8 are the unique or the extraordinary situations on this
9 property.

10 You know, in your words, you had said that
11 what we are trying to do here is we are trying to get
12 this property into compliance. And so I am trying to
13 envision this property without the additions and sort
14 of, you know, that the property was purchased and
15 we're about to convert this thing to condominiums.

16 And so the property procedure would be to
17 take the plans to DCRA. And you'd have to get your
18 zoning relief. And that's what we're trying to figure
19 out here.

20 Would you agree to that? We're trying to
21 bring this thing into zoning --

22 MR. BROWN: Yes.

1 MEMBER DETTMAN: -- into zoning compliance
2 granting the relief that should have been granted, you
3 know, at some point previous to this date.

4 And so one unique situation, it looks
5 like, is that prior to the additions being made, you
6 had a nonconforming court.

7 MR. BROWN: Yes.

8 MEMBER DETTMAN: That's correct? And the
9 nonconforming court contributes to lot occupancy. And
10 what it looks like here is that you have basically
11 extended that nonconformity by putting on this new
12 addition.

13 Another situation or another thing I heard
14 you say is that, you know, it is what it is, you know,
15 it is built already, it's here. But what I hear when
16 you say that is that you have basically created this
17 unique situation yourself.

18 We have built these additions. They are
19 here. So we have to deal with them. And so possibly
20 another way to look at it is that, well, yes, they're
21 built. They're not necessarily the unique situation,
22 but the unique situation really is how we have gotten

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1 there. Is that correct? Is that what you're saying?

2 MR. BROWN: That's a little bit of both.
3 And Mrs. Miller has talked about the zoning history
4 concept. But it is there, and you can't deny it.

5 I think your concern is kind of -- are you
6 uncomfortable because somehow we're there and that we
7 shouldn't be accepting something that is already
8 there?

9 MEMBER DETTMAN: I am wondering if you are
10 sort of presenting the new additions in and of
11 themselves as a unique circumstance.

12 MR. BROWN: Absolutely. I can't -- and
13 Mrs. Humphreys described. And, you know, was it a
14 perfect operation on anybody's part? Perhaps not on
15 DCRA or on my client's, but she went out, at great
16 expense and time, and got these permits and did this
17 work.

18 And where we are here, it's there. And as
19 part of an overall picture, that is part of the
20 exceptional, unique conditions of this property, just
21 as if it was an oddly shaped lot or steep topography
22 or some of the other more garden variety unique

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1 conditions or if you had a lot that was uniquely
2 narrow.

3 The current conditions and improvements of
4 this is something that's unique. I don't think --
5 nobody would voluntarily do this. I think certainly
6 --

7 CHAIRPERSON MILLER: Let me just jump in
8 here because I think Mr. Dettman has some of the same
9 concerns I have. And I want to be able to distinguish
10 this case. You know, what if somebody, you know, just
11 went ahead and built something illegally or, you know,
12 they did it not in compliance with permits, which may
13 be at issue -- we don't know -- and then came in and
14 said, "Okay. Well, it's here. And, you know, it's
15 going to provide a practical difficulty for us to
16 demolish it. So, you know, the" --

17 MR. BROWN: Well, the Court of Appeals has
18 helped you on that.

19 CHAIRPERSON MILLER: Okay. Why did it
20 help me on that?

21 MR. BROWN: And there is a line of cases
22 that basically you can't be rewarded for self-created

1 hardship, that if the claim in this case is you built
2 something without a permit and then after the fact you
3 get caught and you come back in and say, "I want a
4 variance because the unique condition is it's here"
5 and this Board in a case I was involved in and then
6 the Court of Appeals has said that if your hardship is
7 self-created, you can't hide behind that, you can't
8 take advantage of that, I don't think there's any
9 indication here -- and certainly there are plenty of
10 contentious issues, but you're not seeing here any
11 kind of self-created hardship that the Court of
12 Appeals or this Board has previously recognized.

13 We have an unfortunate situation. And
14 clearly there was not a meeting of the minds across
15 the permitting process, but that's not uncommon
16 sometimes. But I don't think there's any inkling of
17 anything that's self-created here. In fact, Ms.
18 Humphreys made it very clear that this is absolutely
19 not what she intended, what she strove for.

20 CHAIRPERSON MILLER: Well, let me just ask
21 Ms. Humphreys because, you know, your direct
22 testimony, your direct evidence, basically if I

1 understood you correctly, you as the owner hired
2 professionals and they got approved permits, at least
3 20 or so, and performed the work. And that's what you
4 relied on, which is a reasonable thing for a
5 nonprofessional to do to hire professionals in that
6 area and rely on them.

7 Is it correct that you -- I still don't
8 even know if there -- you know, I guess there are
9 disputes as to whether that was legal or not legal,
10 but, as far as you knew, your professionals were
11 acting in accordance with the permits and the law?

12 MS. HUMPHREYS: As far as I knew, yes.

13 CHAIRPERSON MILLER: And let me ask you
14 this. As far as when you got notice that there might
15 be a problem of compliance with the law, when was
16 that? How far along were you with construction, for
17 instance, when that occurred?

18 MS. HUMPHREYS: When the inspector stopped
19 by right before the open house, the Thursday before
20 the open house. I just thought, "Why is he coming?
21 What's wrong?"

22 I mean, I had all of my -- I remember

1 going into his office with my folder of all my permits
2 and my plans just ready -- you know, just to go in
3 there and say, you know, "There's some mistake here."

4 We even have a board out in front of the
5 property with a beautiful like rain protection guard
6 and to show all of our permits. I mean --

7 CHAIRPERSON MILLER: Right. So --

8 MS. HUMPHREYS: I have tried to get
9 permits. I even fought with DCRA to get permits for
10 a tree, to cut a tree down. You know, it was a new
11 national park code or something like that that if you
12 cut down a tree, you have to go and get a permit, even
13 if it's on your own property.

14 I did that. I mean, I did that with DCRA,
15 I mean, every permit.

16 MR. BROWN: But I think the point she also
17 wants to make is September 20th, 2006, when the first
18 stop work order was issued, --

19 MS. HUMPHREYS: Right.

20 MR. BROWN: -- what's there now is exactly
21 what was there on that date absent the boards on the
22 windows to secure the site.

1 MS. HUMPHREYS: Right.

2 MR. BROWN: I mean, up until Inspector
3 Juan Scott issued that stop work order, she was acting
4 under her permits, had no understanding or knowledge
5 that anything was amiss.

6 CHAIRPERSON MILLER: So, Ms. Humphreys,
7 what did the stop work order stop if it was already
8 built: interior work or what?

9 MS. HUMPHREYS: He put a stop to the
10 entire project. We couldn't work on it at all.

11 CHAIRPERSON MILLER: But Mr. Brown was
12 saying that what we see is what was there when the
13 stop work order was issued. So is it totally built?
14 What can't you do because of the stop work order?

15 MS. HUMPHREYS: We couldn't finish the
16 building. We couldn't work on it at all.

17 CHAIRPERSON MILLER: Finishing touches,
18 like painting?

19 MS. HUMPHREYS: Oh, no, no, no, no, no.
20 We had only done the model unit. Only the model unit
21 was basically done. We still had a little finishing
22 touches on it, but we were ready. We were having the

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1 open house that weekend. So we were ready to have
2 people come in and take a look at it. We had some
3 appliances in. We had the tile up.

4 And that was only one unit, on the model
5 unit. The other seven units were scheduled for
6 completion within two to three months. So we were --
7 I mean, we were like 90 percent there, 95 percent
8 there, pretty much done with the project.

9 MR. BROWN: And that's --

10 CHAIRPERSON MILLER: What do you mean the
11 other seven weren't?

12 MS. HUMPHREYS: Well, they weren't closed
13 in or they weren't --

14 CHAIRPERSON MILLER: Oh, they weren't
15 finished?

16 MS. HUMPHREYS: Oh, no, no, no. No, no,
17 no.

18 CHAIRPERSON MILLER: They were in process,
19 though?

20 MS. HUMPHREYS: We were in process, right?

21 CHAIRPERSON MILLER: Okay.

22 MR. BROWN: Most of your mechanical was

1 in?

2 MS. HUMPHREYS: Right.

3 MR. BROWN: And your electrical was in?
4 Your plumbing, most of it?

5 MS. HUMPHREYS: Most of it, right. I
6 mean, we were two to three months just basically done.

7 MR. BROWN: And the exterior work, what
8 was left to do on the exterior work?

9 MS. HUMPHREYS: I guess the fencing. Oh,
10 the front stairs, just as it is now, the front stairs,
11 you know, the finishing touches, really, on the
12 outside, the bars and the parking, the stairs in the
13 back.

14 MR. BROWN: But all of the windows were in
15 and --

16 MS. HUMPHREYS: Yes, all of the windows
17 were in. And the doors weren't. We still hadn't put
18 the doors up yet, though.

19 MS. MONROE: Madam Chair, can I ask a
20 question? This is kind of strange, but I just want to
21 understand myself, too. And this is for anybody,
22 really.

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1 CHAIRPERSON MILLER: Okay.

2 MS. MONROE: It's just when you initially
3 bought these two buildings, were those two additions
4 on the back there in any way?

5 MS. HUMPHREYS: The sleeping porch?

6 MS. MONROE: On 1132.

7 MS. HUMPHREYS: On 1132.

8 MS. MONROE: Existed?

9 MS. HUMPHREYS: Yes.

10 MS. MONROE: And you repaired it or if you
11 don't want to answer it, don't get into it? I just
12 want to -- so something was there? The footprint was
13 there?

14 MS. HUMPHREYS: Yes.

15 MS. MONROE: And the other addition on
16 1130 was not there when you bought it? I realize it's
17 there now.

18 MS. HUMPHREYS: Right.

19 MS. MONROE: Okay. So you got permits
20 with that work? Okay. I just wanted to understand.
21 Thank you.

22 MEMBER LOUD: I just want to ask a

1 question about I guess the line of exchange between
2 Chairman Miller and Mr. Dettman regarding the zoning
3 history. Is there some form of constraint in the
4 settlement agreement that does not allow the witness
5 or the issues, some of the issues, regarding zoning
6 history to be brought up in this proceeding?

7 MR. BROWN: Well, certainly the spirit of
8 the agreement was to move beyond that discussion
9 because, I mean, you have seen the appeal. It's that
10 thick. It's a very contentious matter that has been
11 going on.

12 We don't really want to have that
13 discussion because, you know, DCRA has their view, we
14 have our view. And I think a part of the settlement
15 agreement was to move beyond that into bringing this
16 into compliance through this application.

17 So we have to talk about it, but I don't
18 really want to have a dispute. And, you know, Ms.
19 Woolridge is here. And, you know, she doesn't want to
20 get into a controversy of back and forth.

21 I think we have tried to lay it out from
22 our view without a lot of finger pointing and what my

1 client believed, just to the point you need to know
2 without getting into a dispute. We will be here until
3 9:00 o'clock if we do that. And I don't think --

4 MS. MONROE: Madam Chair, I do want to say
5 something on that.

6 If this zoning history is necessary for
7 you to make your case as to uniqueness or exceptional
8 circumstances, you know, the whole three-pronged
9 thing, if it's necessary, it should be addressed to
10 whatever extent you think it's necessary to address it
11 because that's part I think of the first prong from
12 what I'm hearing everybody is saying is we rely
13 somewhat on that and maybe whatever with the court you
14 know you want to talk about.

15 The other thing I was going to say is
16 don't forget the third prong because it was brought
17 up. And you might want to just mention it with
18 everything.

19 MR. BROWN: Well, and I think, members of
20 the Board, in my prehearing statement as well as to a
21 lesser extent in the application itself, I laid out a
22 chronology. And I tried to lay out that chronology

1 from a factual standpoint.

2 These events happen without, as I have
3 done in my appeal, perhaps some of the finger
4 pointing. And it shows that, you know, a series of
5 events occurred, purchase of the property, permits
6 were obtained, work was done, and then the stop work
7 orders and everything that happened after that.

8 I think that's sufficient, again, without
9 finger pointing or blame finding, to lay out the
10 zoning history. And I've tried to do that without,
11 you know, being controversial, too controversial,
12 about it.

13 As far as the third prong, I think -- and
14 there are people here in the audience who live in the
15 neighborhood who can attest to, one, that this is in
16 keeping with the neighborhood. And, in fact, the
17 letters will go through the benefit of this project,
18 both the project itself and the contribution to the
19 neighborhood.

20 But also I think there are live witnesses
21 here who live in the neighborhood and will tell you
22 that, you know, this is in keeping with the context of

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1 the neighborhood and the fact these are
2 100-plus-year-old buildings. And not every one of
3 them are exactly 60 percent lot occupancy or exactly
4 perfect according to a later version of the zoning
5 regulations.

6 So that what is there now is not offensive
7 to the -- certainly from an historical preservation
8 standpoint wasn't offensive on that level.

9 And this is not out of keeping with the
10 neighborhood from a zoning perspective, particularly
11 if you take into context of unique the courts and the
12 balconies, which count -- even though they're rather
13 minus, they don't count toward FAR, but they do count
14 toward lot occupancy, which I think gives you a skewed
15 version of, again, lot occupancy, which is a
16 significant issue here.

17 MEMBER LOUD: Your pleadings raise the
18 implication -- stop me if I go too far -- that there
19 was a possibility that somebody was holding out for a
20 bribe to remove the stop work order.

21 Now, that is something that is in your
22 pleadings. It's not something that I'm introducing

1 outside of what is already a part of the record. But
2 does that move in the direction of some of the zoning
3 history in this particular matter?

4 I see counsel coming to the table. So I
5 don't want to open that whole -- I really don't. I
6 don't want to open it up. I'm just trying to --

7 MR. BROWN: There are facts that occurred
8 that are a matter of public record that I don't think
9 that we need to get into.

10 MEMBER LOUD: Okay. Let me move into a
11 different direction, then. Almost as a stipulation,
12 you're asking the BZA to accept that there was no
13 self-created hardship. And that's almost to be
14 stipulated, as if we were in real court. That's a
15 stipulation that everyone should agree to that allows
16 us to move forward on all of the other issues. Is
17 that a fair characterization?

18 MR. BROWN: Well, I am not so sure it's
19 stipulated. I think there's testimony from Ms.
20 Humphreys to that effect. And I think that's
21 sufficient for you to reach that conclusion without
22 getting into interrogation or contrary witnesses or

1 whatnot. I think --

2 MS. MONROE: Mr. Brown, self-created
3 hardship is usually in use variances. And there's a
4 big question in the cases of whether it applies in
5 area variances at all. So that's all I'm going to
6 say.

7 MR. BROWN: But it has been raised in area
8 variance cases --

9 MS. MONROE: And it's questionable.

10 MR. BROWN: -- as something --

11 COMMISSIONER TURNBULL: Madam Chairwoman?
12 Mr. Brown, I wonder if I might ask a question.

13 MR. BROWN: Sure.

14 COMMISSIONER TURNBULL: You had mentioned
15 about the HPO and the courtyard, existing courtyard.
16 I'm just looking at the Office of Planning report.
17 And I don't know. Have you read that? I guess what
18 I am looking at is on page 3. At the bottom, it says,
19 "Additionally, neither the Historic Preservation
20 Office nor the Historic Preservation Review Board put
21 any additional specific restrictions on the renovation
22 and conversion of these two rowhouses. In fact, HPO

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1 declined to comment on this application."

2 I am getting a little bit different flavor
3 from what you are saying. It sounds like HPO did have
4 input into this.

5 MR. BROWN: Well, they had to go through
6 the approval process.

7 COMMISSIONER TURNBULL: Right.

8 MR. BROWN: But they didn't put any -- I
9 think what Mr. Mordfin is writing is that they didn't
10 put any specific, you know, restrictions other than
11 that they approved it.

12 COMMISSIONER TURNBULL: Okay. So they
13 looked at the plans and basically said, "They're
14 fine"?

15 MR. BROWN: Well, when the addition went
16 through the historic preservation process, there was
17 an addition, a fourth floor, as part of that, --

18 COMMISSIONER TURNBULL: Okay.

19 MR. BROWN: -- which the Historic
20 Preservation Review Board and the staff nixed.

21 COMMISSIONER TURNBULL: Okay.

22 MR. BROWN: All right? But for what is

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1 there, my understanding is from what is there, that
2 the Historic Preservation Review Board approved it.

3 COMMISSIONER TURNBULL: Okay. Thank you
4 for clarifying that.

5 MEMBER DETTMAN: Mr. Brown, somewhere in
6 the record, I saw a copy of a building permit that I
7 believe pertained to the -- I think right on the
8 building permit it said, "Repair of the sun room,
9 repair/replacement of new beams," et cetera. I can't
10 exactly find that in the record right now.

11 However, in your testimony, you said that
12 the sleeping porch was actually demolished and
13 reconstructed. I noticed in the DCOHP report it made
14 mention that the existing sleeping porch, prior to any
15 improvements, was actually a nonconforming structure
16 that if demolished could not be reconstructed. So I
17 wondered if you could just sort of say a few things
18 about that.

19 MR. BROWN: Well, one, the regulations
20 that -- I forget the cite -- provides for the repair
21 structurally of a nonconforming element. The sleeping
22 porch rendered it nonconforming for lot occupancy.

1 And the permit, which I have here and I
2 think October 5th, 2005, it says, "Repair wood
3 structure which is deteriorated. New support beams.
4 Replace non-fire-rated walls with masonry work and
5 period brick veneer. Replace leaning roof and
6 structure beams."

7 So it wasn't a Band-Aid. I mean, this was
8 a structurally unsound element. And it was being
9 clearly -- the wood was being replaced with masonry.
10 So, I mean, it's in the record, I believe, in the
11 appeal case. It may be in the record here.

12 COMMISSIONER TURNBULL: Those repairs, the
13 wood, the beams, were those, then, incorporated as
14 part of the new structure?

15 MR. ZIRKLE: Yes.

16 COMMISSIONER TURNBULL: They were?

17 MR. ZIRKLE: Yes.

18 COMMISSIONER TURNBULL: So the existing
19 beams, piers, whatever, were all in -- once you
20 replaced them, you basically had restored the "deck."
21 You brought it back. You made it structurally sound.
22 And basically that, then, was incorporated into the

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1 addition?

2 MR. ZIRKLE: For the record, my name is
3 Todd Zirkle. I am a partner of Fifth Street.

4 Yes, exactly. In other words, the parts
5 of the structure that were dilapidated and
6 structurally unsound we basically redid the exterior
7 wall, which has been termite-eaten and other problems.
8 And we created a much stronger structure.

9 COMMISSIONER TURNBULL: So, in theory, you
10 didn't really tear down the existing structure. You
11 repaired the existing structure and then enhanced it?

12 MR. ZIRKLE: Correct, exactly as the
13 permit described.

14 COMMISSIONER TURNBULL: Okay. All right.
15 Thank you.

16 CHAIRPERSON MILLER: Mr. Brown, I think
17 while the court has said that we can consider zoning
18 history, you know, that only gets us part of the way
19 there. It's then, well, you know, how are we going to
20 consider the zoning history?

21 And I want to ask you in this case. And
22 I don't want to put words in your mouth. I just want

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1 to ask you if it's your opinion that it doesn't matter
2 whether DCRA was right or wrong, if by the time they
3 issued the stop work order the buildings were
4 substantially completed at that point.

5 MR. BROWN: Yes, I think that. And I've
6 mentioned it. And, again, we're not in an appeal
7 setting, but I referenced as one of the unique
8 situations that you do have a latches and estoppel
9 case here.

10 We went through that this morning in a
11 different context, but you have a case where somebody
12 got a permit, relied on that permit in good faith,
13 made expensive, over a million dollars worth of,
14 improvements. And the equities would tend to favor
15 the fact that they acted in good faith and this
16 occurred and spent the money.

17 So that's a part of it. And that's the
18 context.

19 CHAIRPERSON MILLER: Because, I mean, we
20 are in a situation where we are not hearing about that
21 whole dispute, understandably so, but we just have to
22 make sure that we have sufficient information to make

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1 a judgment to meet that test under the first prong.

2 So that's why I'm saying if it doesn't
3 matter who is right and who is wrong, we don't have to
4 hear necessarily about that dispute.

5 MR. BROWN: And this application is about
6 not who was right and wrong. It's really about we
7 agreed to disagree on the appeal. We put that and
8 some other things aside. And we're trying to just
9 create a situation where everybody agrees that we have
10 reached compliance.

11 CHAIRPERSON MILLER: Right. And there
12 have been different arguments presented, but if we're
13 going to be using zoning history as the exceptional
14 conditions, we have to know, you know, how it relates
15 to the exceptional condition. We have to have enough
16 information that we can draw conclusions that this is
17 appropriate, you know.

18 MR. BROWN: I mean, I hope you have enough
19 information through the written filing and that and
20 what you have heard today on the zoning history. I
21 think you have got more than the executive summary and
22 less than an appeal case. And I believe it's

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1 sufficient to factually support the zoning history
2 element of where you are trying to go.

3 CHAIRPERSON MILLER: Well, we can come
4 back to this later, but I, for one, might be
5 interested if there is more case law on zoning
6 history, like what's enough or what's appropriate to
7 look at. I mean, I am sure -- and I have cited this
8 several times today -- that our court of appeals has
9 said, "You can look to zoning history."

10 But then we get to the next step. Well,
11 you know, how much information do you need or what
12 information do you need? We have talked about, you
13 know, permits issued. We have talked about good faith
14 reliance on professionals and permits. I would be
15 interested, you know, if there are cases that talk
16 about that.

17 MS. MONROE: Well, I don't know if I
18 should weigh in at all if you want me to, but this is
19 application number 17218, which is a BZA case from
20 2004 and has a large -- I mean, this is public record.
21 It's an order out there available on the Web site and
22 has a long discussion of various cases dealing with

1 zoning history and other things that the BZA may look
2 at. And I was just reading it when you asked this
3 question.

4 And it says in the case "The Court of
5 Appeals has opined that the Board must be able to
6 consider such events, meaning events extraneous that
7 lands itself, including zoning history, in order to
8 'weigh more fully the equities in an individual
9 case.'"

10 Then there's a list of cites after that.
11 The immediate cite after that is the National Black
12 Development. Actually, it's the National Black Child
13 Development Institute versus BZA. It's a 194 D.C.
14 Court of Appeals case.

15 I don't know whether that helps or not,
16 but I think that some of all of this background goes
17 to the equities in the case. And part of what the BZA
18 should be looking at is the equities in the case. And
19 that is one way you can think about that if that is
20 helpful.

21 And it's here. You know, if you want the
22 cites, I can give it to you.

1 MR. BROWN: And, I mean, National Black
2 Child, among other things, was considering the
3 monetary issues as well as the benefits from
4 charitable nonprofit organization. So I think it was
5 broadening the scope of factors that could be
6 considered.

7 CHAIRPERSON MILLER: And you know, I have
8 that case. I mean, I noticed that, you know, one of
9 the things that the Board wrote in that was that in
10 considering zoning history, we can take into account
11 the past actions of government officials, that those
12 are critical factors.

13 Okay. So the past actions that we have
14 here to consider the evidence in the record I believe
15 is just that permits were issued and then a stop work
16 order was issued later when the project was almost
17 completed. We don't have a lot of evidence in this
18 case. Just maybe we have enough. I don't know.

19 MR. BROWN: Well, I think -- and you're
20 the trier of fact and concluder of law, but from a
21 standpoint of you have the permits that occurred. And
22 I don't think they're being disputed that the permits

1 were issued. And the work was done because it is
2 there. And, again, that's not disputed. And then you
3 have Ms. Humphreys' testimony about her belief that
4 she was acting in accordance with her permits and in
5 good faith.

6 So I think without having a lengthy
7 factual finding or hearing or disputed hearing, I
8 think you have got the four corners of what you need
9 to make that conclusion.

10 I mean, if you look, there is the permit,
11 which we just went through on the sleeping porch. You
12 have the permit that included all the work for 1130,
13 including the addition. And then you had a separate
14 interior permit for this 1132 as well as I've attached
15 to the record all of the other miscellaneous,
16 including the tree permits.

17 So you have got in the record all of the
18 permits that are relevant to where we are now. And it
19 really comes down to a question of the sleeping porch
20 and the rear addition and the impact on the open
21 court, lot occupancy, and FAR as a result of those.

22 CHAIRPERSON MILLER: Okay. I mean, not to

1 beat a dead horse, but I think I just want to pull
2 those questions that we would be thinking about in
3 evaluating this.

4 And one for me is, well, okay. Does it
5 matter if someone who worked for the applicant or the
6 applicant made a mistake and built not in compliance
7 with the permit?

8 I think we don't even know. I think we
9 know whether it was built in compliance with the
10 permit. Do we know that it was built in compliance
11 with the permit even? Do we need to know that?

12 I mean, is that you know, those are
13 normal facts that we would see, I think. And we're
14 not seeing them. Does it matter that we don't have
15 that information?

16 MR. BROWN: Can we take a five-minute
17 break?

18 CHAIRPERSON MILLER: Sure. That would
19 be great. We can take a ten-minute break.

20 (Whereupon, the foregoing matter went off
21 the record at 5:17 p.m. and went back on
22 the record at 5:56 p.m.)

1 CHAIRPERSON MILLER: Okay. We're back on
2 the record after a ten-minute break. Okay. Mr.
3 Brown?

4 MR. BROWN: If I could, we've got a number
5 of witnesses here. And they have been waiting. If we
6 could kind of juggle the order and let them each have
7 their brief three minutes, I think that might be an
8 efficient use of their time at least.

9 CHAIRPERSON MILLER: Right. Yes. I was
10 just thinking we are getting to the hour sometimes
11 where people have child care concerns and things like
12 that.

13 So I don't see any problem. There is no
14 party in opposition here to object or anything. So
15 why don't we go ahead and do that.

16 MR. BROWN: Okay. That would be great.
17 Thank you.

18 CHAIRPERSON MILLER: Okay.

19 MR. GOGUEN: I filled out the little form.
20 My name is --

21 CHAIRPERSON MILLER: Yes. Put the
22 microphone on.

1 MR. GOGUEN: My name is Steve Goguen. And
2 I live on the same block, on the same side of the
3 block. My house is attached five houses down from the
4 subject here. And I have lived on the block since
5 1986.

6 When I first moved there, I would say 70
7 percent of the buildings were vacant and boarded up
8 and were -- it was a very much different neighborhood
9 than it is.

10 Since I moved there, the project that
11 they're working on, those two houses, were
12 dilapidated. They were in a very bad state of repair.
13 I don't think any major work had been done to them
14 since they were built in 1890. Maybe some bubble gum
15 and Band-Aid work had been done to them. The stairs
16 were falling off the house, just complete disorder.

17 The project began there. And I was
18 skeptical to think that anybody could raise enough
19 funds to really do a good job on those places, but the
20 work that they have done on that house is stellar.

21 I mean, the front stairs, one set of
22 stairs is in. The other one was being built when the

1 stop work order came in. And they spent an enormous
2 amount of money with the exact detail and the iron
3 stairs.

4 In the back, I guess there's a back
5 addition that is in question or something. I view it
6 from my deck. It's beautiful. It's really
7 good-looking. It's nice.

8 We're trying to get vacant buildings lived
9 in in our neighborhood. It would be great for the
10 District to have eight more taxpayers. I know you've
11 got certain issues, that you have to cover your
12 three-legged stool that you have to get to make it
13 work so you don't open up some precedent for a bunch
14 of other stuff to come flying through here, but I just
15 hope you can get this project, help us get this
16 project, back on line, get it done, get some people
17 moved in there and get this whole thing put away.

18 Thank you.

19 CHAIRPERSON MILLER: Thank you.

20 MR. BROWN: Do you have any questions for
21 him?

22 CHAIRPERSON MILLER: I don't think so. Do

1 the Board members have questions?

2 (No response.)

3 CHAIRPERSON MILLER: No.

4 MR. REGIGNANO: My name is Michel
5 Regignano. I am owner and developer of a program at
6 1123 Fifth Street. And I was there prior to Vanessa
7 and company coming there.

8 I fully support what they have done. They
9 have done an excellent job in the neighborhood. But,
10 more importantly, I think that having gone through
11 some of the same issues that they have gone through,
12 I understand the literal hell that they have gone
13 through with DCRA. And I have gone through it, and I
14 am still going through it as a result of it.

15 I feel that there may be three points of
16 criteria that you are looking at. But there is one
17 great moral question here. And I don't think that you
18 need to make a decision on moral issues, but the
19 reality is, if they do not get this extension, they
20 will be mortally wounded financially. It will serve
21 no one, not D.C., not them, not anyone in the
22 neighborhood, to watch them fall.

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1 E-V-E-N-I-N-G S-E-S-S-I-O-N

2 (6:00 p.m.)

3 MR. REGIGNANO: I think one of the issues,
4 especially with DCRA, I know they're going through a
5 series of transitions. Inspectors are not sure which
6 way they're going. They're being scrutinized. So I
7 think there is a huge hesitancy on their part.

8 The object of this is, like her, we rely
9 on DCRA and other government officials to do the
10 inspection process. If that process is corrupt or
11 it's not efficient or whatever the case may be -- and
12 all laws are subject to interpretation -- we as
13 citizens have to be able to rely on someone, whether
14 it's consultants, lawyers.

15 I mean, when I look around us right now
16 and I see this lawyer beside her, the expense that
17 they have gone through, all of the things that have
18 happened to her, it's beyond belief.

19 I went through it. I've seen it in my
20 property that I had before. And I have gone through
21 this same board. I came out \$3.5 million down. My
22 property was downsized very quickly, very fast, very

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1 efficiently. And that's about the most efficient I've
2 ever seen D.C. work.

3 However, in this case, there is a moral
4 question. And I would say when you make a decision
5 today, however that decision may be, I think there's
6 always a need to see what happens afterwards. And I
7 think it's important to view it, not to see whatever.
8 Whether she builds it or doesn't build it, I think you
9 need -- from a perspective of the zoning commission,
10 that human element has to come into play.

11 And, quite frankly, I hope that they
12 succeed in their endeavor. My heart goes out to them.
13 And I wish them well.

14 CHAIRPERSON MILLER: Thank you. Let me
15 ask you a question and also just make a statement.
16 And that is that this Board can't just do what it
17 wants to do. Okay?

18 If we hear a compelling case, we can't
19 just grant an application. You know, we do this
20 three-legged stool thing, but it does encompass human
21 elements, too. It's not that necessarily a narrow and
22 stringent analysis, but we need information in order

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1 to make findings. And part of what is difficult about
2 this case so far is it seems to have these constraints
3 on information.

4 So when we left off, there was an issue.
5 And, you know, we will probably have to go think about
6 this. Do we have enough information to make certain
7 findings?

8 And the biggest area of concern is what is
9 exceptional about this particular case? And you kind
10 of have spoken to this with some, you know, passion or
11 knowledge about what has been going on. So if there
12 is something that you can identify further about, you
13 know, what is particularly exceptional about this
14 case, I would welcome it.

15 MR. REGIGNANO: I think -- and to be
16 brutally honest, I think that with the reality of
17 their situation, it's not only to them. I think there
18 is a real -- if you are a developer or even a small
19 developer and you're coming into the city, you have to
20 make choices, like she had to make a choice to find
21 people that you rely on to go to DCRA to pull a
22 permit.

1 Just let's talk about the simplest of
2 things, just pulling that permit. You pulled a
3 permit. People say to you, "I've got this guy and
4 this guy and this guy that can pull a permit, just
5 like that." Okay?

6 So you have to deal with all of the
7 expediters. So you deal with the expediters. You may
8 or may not find out that some of the expediters have
9 connections within. Those connections within may or
10 may not be legal. Okay?

11 They may get permits on certain things.
12 Why is it one project can get approved, just like
13 that, and why other projects -- what I'm trying to say
14 is -- and I've talked with DCRA. I've talked with
15 their advocate people. They're having issues.

16 I mean, this is not something unknown, but
17 the problem is when you have people like Vanessa, who
18 operate, I think they were the object of a shakedown.
19 That's really what the bottom line is.

20 They were stopped. Somebody tried to say
21 something to them. There's a procedure. It's known
22 in the streets. You don't have to go far. You can

1 find out. And it could be done.

2 You know, somebody is going to try to come
3 out and see if there is a way to shake you down down
4 the road. And the way to do it is very simply this.
5 We have X number of persons that you should go
6 through.

7 It's not going to be an automatic
8 confrontation where someone comes up and asks for a
9 bribe. That's not what the issue is. The issue is
10 it's indirect. It's done in such a way that you are
11 pressured to do certain things.

12 And you have to understand stop work
13 orders are deadly weapons, deadly weapons, used
14 against citizens. Once you get one, try to get it
15 off. I've been arguing on one for five months. I
16 finally got it off. I had through DCRA, by the way,
17 through DCRA and their advocate -- a particular
18 advocate lawyer there helped me get it through and
19 understood what was happening.

20 You know, they're aware of the situation.
21 It's not like it was operating in a vacuum. And I
22 think that's what happened to them. They are innocent

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1 bystanders trying to get through, wade through, a
2 system that is not exactly kosher. Okay?

3 And I've dealt in Miami. And Miami was
4 absolutely corrupt. And, you know, they went through
5 a whole series of people. With \$250, you could have
6 a fine removed within seconds. Okay?

7 So I am a realist in the real world. I
8 understand certain things. I have been a subject of
9 a variety of things. I have had shakedowns. I have
10 had people appear on site work. I don't know who they
11 are, you know. And my workers are trained
12 specifically to say, "I want to see your name, your
13 badge, you know, all the preliminary things you are
14 supposed to do." And some people say they don't talk
15 to you. So you don't know it. So you have somebody
16 "Who showed up? Who did what? Who did what?"; like
17 this.

18 I think that's relevant information going
19 back to the human element. And I think you were
20 trying to find zoning history. It's beyond your scope
21 I understand, but at the same time the victims of such
22 an action, whether knowledgeable or not knowledgeable,

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1 somehow some way, I mean, I don't see. No one will be
2 a winner in this case. And I think even DCRA
3 understands the plight of this individual.

4 So I really think that I could make a
5 class argument because my building is nonconforming.
6 I could make an argument right immediately and say,
7 "This is absolutely illegal, can't be done, should be
8 chocked up, end of story." Okay? We can go on that
9 premise.

10 But in this particular case, had they not
11 gotten permits, had they not done certain things, then
12 I would say, "Don't approve it." But, again, I think
13 that's the realistic conditions of what occurs.

14 This is a great board to talk about it.
15 I think you need to when you are doing certain things
16 and people are trying to get permits and everything
17 else.

18 Just getting a permit is an ordeal. I
19 mean, trying to be within the law is an ordeal. So if
20 you do the right thing, you know, the road to hell is
21 paved by good deeds.

22 So that's my last commentary that I have

1 to make. And I appreciate this.

2 CHAIRPERSON MILLER: Thank you very much.

3 MS. KAILIAN: My name is Arsine Kailian.
4 And I reside at 1108 Fifth Street, Northwest. I have
5 owned my home and lived in this location since 2005
6 and have resided in the immediate neighborhood since
7 2002. I am the current Vice President of the Mount
8 Vernon Square Neighborhood Association and have served
9 multiple terms.

10 I want to convey my personal support for
11 the project at 1130 to 1132 Fifth Street, Northwest.
12 As an active member of my community and an ardent
13 activist where a vacant property is concerned, I was
14 overjoyed that my neighbors even considered investing
15 in our neighborhood, providing quality housing and
16 restoring two dilapidated rowhouses on our beautiful
17 historic block.

18 I joined with my neighbors in approving
19 this project in 2005 and watched its progress with
20 enthusiasm. The work completed thus far was
21 impressive and thorough in my opinion.

22 During the cessation of work imposed by

1 D.C. government, I, unfortunately, had to add these
2 properties to a list I maintained for the community
3 and the government of vacant houses and lots in the
4 Mount Vernon Square Historic District. I hope that
5 they may soon be taken off and we can welcome new
6 residents to the block as our neighborhood is plagued
7 by vacant property.

8 With regard to the variances that Fifth
9 Street LLC is seeking today, I am familiar with the
10 property, and I have seen the plans. I have
11 absolutely no objections to the configuration as the
12 project is very attractive and not obstructive. I
13 hope the Board will grant the request without delay.

14 I also want to add that I have also gone
15 through a basement renovation over a period of about
16 three years. And I can definitely personally attest
17 to the difficulties in the permitting process. I have
18 had to pay thousands of dollars for an expediter to
19 get a permit because I was unable to do so personally.
20 And I think that the system is just absolutely
21 horrible, and I am still not through it.

22 And that is that.

1 CHAIRPERSON MILLER: Let me ask you this.
2 When you hired an expediter, did you know what kind of
3 expediter you were getting, whether this was an
4 honest, reliable expediter or how did you go about
5 finding them?

6 MS. KAILIAN: I actually went through two
7 expediters. The first one was recommended by my
8 contractor. And he did some initial work to my
9 satisfaction, but when it came time to do the actual
10 complicated building permit, he basically tried to ask
11 me for a lot more money and wouldn't tell me exactly
12 what it was for.

13 So I hired -- I first -- then I tried to
14 get the permit myself and spent six months going back
15 and forth to DCRA and sitting there all day only to
16 have people tell me, "You are in the wrong room," that
17 kind of stuff and basically gave up and found the most
18 expensive expediter out of the Yellow Pages. And he
19 got me my permit in two weeks.

20 MEMBER LOUD: I just wanted to encourage
21 the witnesses that are providing testimony regarding
22 the permit expedite process we do have a three-legged

1 stool that we have to meet but just encourage these
2 witnesses -- every year each agency of the District
3 government comes before the council before its
4 appropriation -- and just to encourage you to provide
5 testimony, as I know that you probably do, at that
6 hearing.

7 No agency director wants to hear any
8 witness at its appropriation hearing talking about the
9 kinds of things that you're talking about. And that's
10 the very time to raise it because it allows the
11 council to look at that agency's operations. And if
12 they need additional staff, provide additional staff
13 in the budget.

14 It's well off of what we do here, but
15 since it's a consistent theme, some of your concerns,
16 I just wanted to make sure that you were aware of that
17 opportunity.

18 I wanted to ask the witness now, do you
19 have any direct information regarding the zoning
20 history in this case?

21 MS. KAILIAN: I mean, I've certainly been
22 hearing about it through the process. As a community

1 leader, I've been getting regular status updates as to
2 the actual like specific details. It was involved in
3 a legal case. And certain information that was
4 privileged I wasn't privy to.

5 But I did get -- as things were going on,
6 you know, I knew when the stop work order was issued.
7 I knew that there was no explanation at the time. I
8 was in intermittent contact with Vanessa and Kevin and
9 Todd.

10 MEMBER LOUD: Are you specifically aware
11 of any circumstances relevant to the applicant's
12 reliance on DCRA in this case by way of specifics?

13 MS. KAILIAN: They did apply for and
14 receive permits. And all I know is that they followed
15 whatever advice DCRA gave them with regard to
16 obtaining those permits. And then they tried to
17 negotiate after the stop work order was issued. And
18 I believe they followed whatever advice was given to
19 them after that. I don't know the specifics. I mean,
20 most of what I know is actually what I have read in
21 the paper.

22 MR. GOGUEN: I already gave prior

1 testimony. Can I add one thing?

2 CHAIRPERSON MILLER: Sure.

3 MR. GOGUEN: I think my understanding from
4 what I've seen and is evidenced here is that -- and
5 I've renovated a house that I live in, and I went
6 through some real turmoil. That was long enough ago
7 that I have almost forgotten about it. But it comes
8 back to memory in hearing some of these things. It's
9 haunting.

10 But the bottom line, as I see it, is they
11 submitted their drawings, submitted their plans. And
12 at DCRA level prior to anything coming to you guys for
13 review, they have a zoning group that looks at the
14 plans. And they say, "Are these in compliance with
15 zoning?"

16 And if they snap that thing and pass it to
17 the next person, who looks at structural, the next one
18 looks at fire, the next one goes through the whole
19 thing, and you get your permits back and you are good
20 to go and you start building, why ten months later,
21 hey, you are out of compliance with zoning. That is
22 the thing that jumps up at me that says something is

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1 not right here.

2 And the fact is -- you know, I am going to
3 add this in there, that the individual that was
4 involved in the inspection actually came and got
5 involved with me on some matters, too. And so there
6 were some other people in this room with the same
7 exact inspector.

8 And I'll tell you that there's a
9 preponderance of people that are out there that will
10 tell you that shakedowns, as was indicated here, are
11 common play, common, commonplace among small
12 developers, anybody who wants to do anything on a
13 small scale level. It's pretty much own you've got to
14 dip in your pocket at some point and throw out 10-15
15 thousand dollars of cash all over the place to get
16 things done.

17 And stuff is given in an ambiguous way.
18 Permits are issued. And then right at the point you
19 are about to have your open house, somebody comes in
20 and says, "Guess what. Party is over. And then you
21 are approached later on for a shakedown."

22 I've talked to many people about this.

1 And people who develop. And I actually got asked for
2 money when I did my own house back in 1987. And, you
3 know, it's there. It's part of the system. And
4 hopefully it's being corrected, but it's part of the
5 system. And they got caught up in the middle of it.

6 MR. BROWN: Before you leave, can I ask
7 all of these people one thing that would be helpful
8 for one of the legs of the stool because you all live
9 in the neighborhood and work in the neighborhood? As
10 it exists now, is that in keeping with the zoning
11 character of the neighborhood? And is that not going
12 to adversely affect you?

13 MR. GOGUEN: Yes. And I live on the same
14 side of the street as that. I live five houses down.
15 My house is connected. So is yours. And you can
16 stand at the end of the alley. And you can look down
17 the alley. And houses that were built in 1890s --
18 that's the original structures -- come out further
19 that that house does and occupy more of the lot than
20 that house does.

21 I can tell you that because I still deal
22 with Kevin, who was there one day. I said, "What's"

1 -- again, if there's a precedence thing going here,
2 stand at the end of the alley. Take a line of sight
3 down the alley. And the other buildings come back
4 further than that does. You know, there's at least
5 four or five other houses that come back further than
6 that.

7 CHAIRPERSON MILLER: I want to ask a
8 question. A few of you have talked about the
9 shakedown that occurred. I guess, Mr. Brown, is that
10 something that your witness cannot talk about under
11 this global settlement?

12 And I ask that because this seems to go to
13 our first prong that there was an exceptional
14 situation here in the zoning history, that we're
15 getting comments about.

16 And I just am -- on the one hand, it seems
17 like the most direct person to ask would be Ms.
18 Humphreys, but, on the other hand, I don't know what
19 constraints you all have agreed to.

20 And if I can't ask Ms. Humphreys because
21 of your other constraints, can I ask these witnesses?
22 Because this is the first unusual -- maybe it's not

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1 all that unusual, but it seems exceptional with
2 respect to our analysis.

3 MR. BROWN: Well, I mean, as a matter of
4 public record -- and it's in the appeal. It's an
5 exhibit. There's a newspaper article. Ms. Humphreys
6 and Mr. Zirkle, who are here, were approached by a
7 former DCRA employee.

8 CHAIRPERSON MILLER: Let me ask you this.
9 It's usually better to get the testimony from the
10 witness than the lawyer. Is that an issue here that
11 she cannot testify?

12 MR. BROWN: No, I don't think. I mean,
13 what we don't want to do is we don't want to -- we're
14 not looking for a resolution of that issue. It's,
15 quite frankly, a matter of public record. And Ms.
16 Humphreys can talk about it. I mean, somebody went to
17 jail, quite frankly, involved in this.

18 There are other allegations, but -- go
19 ahead.

20 CHAIRPERSON MILLER: Ms. Humphreys, do you
21 know what I'm getting at? I mean that your particular
22 situation in this zoning history terminology, there

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1 was something exceptional about it, not just sounds
2 like not just you were issued a permit and you relied
3 on that permit, that there is something else going on
4 with a shakedown or something.

5 MS. HUMPHREYS: Well, I mean, I'm not sure
6 what I can talk about and what I can't. I'll do the
7 best.

8 CHAIRPERSON MILLER: Yes.

9 MS. HUMPHREYS: I mean, I don't really
10 understand all that is going on, but basically, like
11 I said, we were pretty much done with the project. We
12 were scheduled an open house for September 16th and
13 17th, 2006. The Thursday before that open house, we
14 were visited by a D.C. inspector.

15 I met with him. You know, the following
16 week September 20th, I tried to talk to him to find
17 out what was wrong, why he stopped the project. I
18 couldn't get any answers from him. And, in fact, I
19 think he was trying to intimidate me. You know, there
20 were pictures of people behind.

21 I mean, I am going to talk honestly
22 because, I mean, this is truly what I felt. I really

1 think he was trying to intimidate me. He had pictures
2 of people in handcuffs strategically placed by his
3 computer, behind his head, when he would consult the
4 computer and off to the side, next to his desk, where
5 I am sitting here.

6 And, you know, the first words he said to
7 me is, "Ms. Humphreys, I hope I don't have to arrest
8 you." He didn't even introduce himself to me or
9 anything. Those are the first words he said to me.

10 MS. PARKER-WOOLRIDGE: Your Honor?

11 MS. HUMPHREYS: And I just --

12 MS. PARKER-WOOLRIDGE: Madam Chair and
13 Board members, I don't see the relevancy of this. We
14 have a settlement agreement. This goes beyond the
15 exceptional circumstances you are asking for or as far
16 as when the inspector came to Ms. Humphreys back in
17 September, I believe, in 2006, the issue that we are
18 speaking of before this Board is, if I'm right or
19 correct, a zoning-related issue as far as a variance
20 or special exception.

21 The stop work order issue comes under the
22 building code issue. I'm a little perplexed as to

1 where the Board is trying to get as far as
2 establishing whether someone has alleged bribery or
3 alleged whatever may have caused --

4 COMMISSIONER TURNBULL: Well, here's the
5 question that I think Madam Chair was getting at.
6 We're looking for a special exception. We're trying
7 to meet the three-pronged stool here to give the
8 variance.

9 The problem is that you had said before on
10 the stop work order, that the inspector went out and
11 said there were things wrong with the building that
12 didn't match the plans.

13 MS. PARKER-WOOLRIDGE: Correct.

14 COMMISSIONER TURNBULL: Is that true or is
15 that not true?

16 MS. PARKER-WOOLRIDGE: That is absolutely
17 correct.

18 COMMISSIONER TURNBULL: I mean, was this
19 a shakedown or was it not? We need to know that.

20 MS. PARKER-WOOLRIDGE: Well, there are
21 different things --

22 COMMISSIONER TURNBULL: We are being

1 handcuffed here to make a decision. We are being
2 used.

3 MS. PARKER-WOOLRIDGE: I understand what
4 you are saying.

5 COMMISSIONER TURNBULL: And I don't like
6 it.

7 MS. PARKER-WOOLRIDGE: Again, the
8 inspector went out there. The application and the
9 plans, that's one thing. The permit was issued, but
10 what was on the plans and the application --

11 COMMISSIONER TURNBULL: Can we have that
12 information?

13 MS. PARKER-WOOLRIDGE: Was that submitted?

14 MR. BROWN: Now, Mr. Turnbull, I mean --

15 COMMISSIONER TURNBULL: We've got to make
16 a decision here.

17 MR. BROWN: Yes, I understand that. But
18 the settlement agreement, we have very different --

19 COMMISSIONER TURNBULL: Why don't you two
20 settle before you come to this Board and try to get us
21 to decide something when we don't -- we've got one arm
22 tied behind our back without the information.

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1 MS. HUMPHREYS: Mr. Turnbull, I understand
2 that completely. A part of our settlement agreement
3 is that the DCRA would not take a position at this
4 Zoning hearing. So I am very upset that she is here,
5 in fact.

6 MS. PARKER-WOOLRIDGE: DCRA is not taking
7 a position. You made a comment, and I wanted to clear
8 up your comment that you put out on DCRA.

9 MS. HUMPHREYS: The problem is I feel like
10 I can't talk here because she is here. And she is
11 definitely a threat to me.

12 COMMISSIONER TURNBULL: We can't decide --

13 MS. HUMPHREYS: And I understand.

14 COMMISSIONER TURNBULL: -- without the
15 information.

16 MS. HUMPHREYS: Right, right.

17 COMMISSIONER TURNBULL: What do you want
18 us to do if we can't find out the facts in this
19 matter?

20 MS. HUMPHREYS: Right.

21 MR. BROWN: Well, Mr. Turnbull, in the
22 context of the settlement, it was a settlement of

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1 civil litigation in a global going beyond. And as
2 part of that agreement, we agreed to disagree on these
3 issues related to whether the permit agreed with the
4 plans. And we put those issues behind us. And we
5 agreed to disagree without finding fault with each
6 other. That's one of the elements of any settlement.

7 And in doing that, we're moving forward
8 without any finger-pointing about who did what to whom
9 or attempting to do that. But the end result is the
10 same that the building is here.

11 And my clients obtained permits. They
12 firmly and to their dying breath believe that those
13 permits authorized them to do the work that was done.
14 That's not a uniformly held position, but we agreed to
15 disagree with DCRA on that and go forward on this
16 process.

17 So I think you kind of have to start from
18 that position that we don't have a dispute. At least
19 in the context of what we are doing here, we don't
20 have a dispute about the issue you are talking about,
21 whether --

22 COMMISSIONER TURNBULL: Then let's go back

1 through the three-pronged test for the variance. How
2 are you going to prove that to us? That's why we're
3 back here.

4 If we can't get into anything else, you
5 have got to go back and say, "Here is how we are
6 meeting the variance. Here are the three factors.
7 And here is each one" and make this Board convinced
8 that you are right, regardless of what is going on
9 over there.

10 CHAIRPERSON MILLER: Let me ask you two to
11 shut your microphones off because they're interfering.
12 Only one microphone can be one at a time.

13 I think that the one prong that the Board
14 is most interested in is the first prong, the
15 exceptional circumstances. And I don't think it's
16 really appropriate, Ms. Parker, for you to be
17 challenging the Board on what questions we're asking
18 of the applicant since you're not really supposed to
19 be participating in this case to begin with.

20 You know, you can answer a question only
21 so far, you know, with respect to whatever constraints
22 you're under, but I think what Mr. Turnbull is

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1 expressing some frustration with and the rest of the
2 Board to a certain extent is we're beginning to hear
3 that this case may have some kind of exceptional
4 nature to it.

5 And we want to hear it to the extent that
6 we need a certain amount of information to make that
7 finding for you because if we don't get enough
8 information, we can't make it. No matter how
9 sympathetic it may sound, no matter how great a
10 project it may be, no matter how expensive and
11 unrealistic or whatever demolition would be, we're
12 still back to what is exceptional about this case.
13 And we want you to give us whatever information you
14 can given your constraints that will just fill it in
15 a little more.

16 So we have heard some witnesses talk about
17 a shakedown. We have heard that, oh, that's public
18 information. It's in the newspaper or something. We
19 don't know that. We haven't followed it in the
20 newspaper.

21 So what I'm asking -- and I really was
22 turning to Ms. Humphreys because you are the best

1 evidence. You know, Mr. Brown is a lawyer. You are
2 the applicant.

3 If you can, you know, just whatever is
4 public information, whatever, you know, you are
5 comfortable saying, what was exceptional in this case?
6 And it does sound like, you know, shakedowns do sound
7 like an exceptional circumstance perhaps.

8 If you can give us a little bit more
9 information, that's what we're asking for.

10 MR. BROWN: Well --

11 CHAIRPERSON MILLER: Let me say this. I
12 understand, Ms. Parker, that you need to represent
13 DCRA's interests and that is why you are here. And
14 you need to listen.

15 But, on the other hand, I don't think that
16 your presence here should intimidate the applicant.
17 So perhaps you should, you know, not be at the table
18 right now if that --

19 MS. PARKER-WOOLRIDGE: I will go back.

20 CHAIRPERSON MILLER: Okay.

21 MS. PARKER-WOOLRIDGE: But, again, my
22 presence is only to make sure that DCRA is not

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1 misrepresented as far as misstatements. Other than
2 that, again, we do not oppose the variance request
3 application.

4 CHAIRPERSON MILLER: Okay. Thank you.

5 MS. PARKER-WOOLRIDGE: Okay?

6 MR. BROWN: Madam Chair, I gave to Ms.
7 Bailey -- it came out of exhibits. I believe it's
8 exhibit F to the appeal, a whole series of newspaper
9 articles so they could make their way to you. I don't
10 know if you've gotten them.

11 CHAIRPERSON MILLER: We have them right
12 now. And the fact also that the appeal was filed
13 doesn't mean that it's in the record, this record, for
14 the Board to consider. So the fact that you have now
15 put it in this record, we'll look at that.

16 MR. BROWN: And Ms. Humphreys can testify,
17 but I want us to be cautious. I'm not constrained
18 necessarily by the settlement agreement, but I am
19 constrained by, one, trying to be productive and
20 without getting into a dispute.

21 I am not looking to have a dispute with
22 DCRA about who shot whom. And I think we can achieve

1 to the Board's, I hope to the Board's, comfort -- and,
2 Mr. Turnbull, I understand your concerns -- to the
3 comfort level you need that my clients acted in good
4 faith without a whole lot of who shot whom.

5 Now, Ms. Humphreys can give you a brief
6 summary about what happened, but I don't want this to
7 become a debate about that. What it should be a
8 debate about is that the record sets forth a timetable
9 of permits and actions. Nobody has challenged her
10 good faith and her testimony. DCRA is not challenging
11 that, not taking a position. And we are here now with
12 these improvements. And I think that is an important
13 thing.

14 But the articles hopefully you have. And
15 then, Ms. Humphreys, very quickly, just very factually
16 --

17 CHAIRPERSON MILLER: Let me just say also,
18 Ms. Humphreys, just because, you know, I ask you a
19 question or something, if you are not comfortable
20 answering it, it's your case. You don't have to
21 answer it.

22 Maybe there's enough in the newspaper. I

1 don't know. I just want to give you the opportunity
2 to give us whatever information you feel comfortable
3 with that we will use in our analysis. Okay?

4 MS. HUMPHREYS: Okay. I don't know where
5 to begin. Basically the inspector placed a stop work
6 order on the property September 20th, 2006.

7 And I tried several times to find out what
8 was wrong. I had a very vague notion of what was
9 wrong. I didn't understand. I asked if my engineer
10 could be present, you know, for him to explain to me
11 what was wrong.

12 Like I said, I asked the secretary if I
13 could get a written report, something in writing that
14 I could show my engineer. And I just got stopped at
15 every turn that I tried to get, you know, an
16 explanation.

17 I was finally able to get a meeting with
18 the inspector's boss, you know. And I thought that
19 was a good thing. And, again, same thing. At that
20 meeting, I didn't get anything in writing.

21 I didn't understand why I got stopped, why
22 I was being fined \$12,000. And, yet, I couldn't --

1 you know, I couldn't have one of my engineers present
2 or something in writing.

3 Bill Crews was at that meeting, too, the
4 Zoning Administrator, at the request of Robert
5 Hubbard, who was the head of inspections at the time.

6 Same thing. I didn't get anything in
7 writing. I wasn't made aware of my appeal rights on
8 the stop work order. I didn't know why my project was
9 stopped. I had gotten these vague notions, you know,
10 working outside the scope or, you know, but, I mean,
11 that didn't mean anything to me.

12 And Bill Crews had told me to resubmit all
13 of my plans and permits for the building as is. I
14 didn't know what that meant. And I asked him. And he
15 said, "No. For the building as it is right now
16 because now you have subdivided. You know, the lots
17 are combined."

18 And, you know, between the partners and I,
19 we had already submitted our permits and our plans.
20 We had stamped approvals for everything. Why do we
21 have to resubmit?

22 And so we went through it. And we finally

1 ended up, you know, deciding, "Okay. Well, we can't
2 sit here not knowing what else to do. We have
3 complied with, you know, the Zoning Administrator's
4 request. And we have resubmitted plans and permits
5 for the building as is."

6 Again, I didn't know what that meant. I
7 had asked Bill Crews for help numerous times. I
8 called him. He even gave me his personal office
9 number or secretary's number, you know, if he wasn't
10 available, get a secretary to come get him.

11 At that meeting on October 19th, he was
12 very personable. He said, you know, "Call me with any
13 questions you might have." And I took that to heart,
14 and I did. I called him, never returned my phone
15 calls, my e-mails. I went to his secretary. He was
16 always in a meeting.

17 And so I just sort of started stalking him
18 basically. I stood outside DCRA's halls, outside his
19 office, waited for him to come back to his office.
20 Same thing. He would sit down with me in his office
21 and then get a call to another meeting.

22 Same thing with the Robert Hubbard. I

1 couldn't get a straight answer. And it just went from
2 there. I finally -- like I said, we resubmitted the
3 plans and permits for the building as is. I didn't
4 know what else to do.

5 He wouldn't help me. Bill Crews wouldn't
6 help me fill out the permit, the new permit
7 application. So I did what I had done before. I went
8 to one of the engineering consults.

9 And I actually spoke to two different
10 engineers. And I asked them, "What does it mean to
11 submit an application for a building as is?" Neither
12 one of them knew. And I said, "Well, Bill Crews told
13 me to submit it as is, for the building as is."

14 And they said, "Well, if Bill Crews said
15 to submit it as is, I guess he's the only person that
16 knows what 'as is' means, and you will have to go to
17 him."

18 And I told them, "I can't get him to tell
19 me what it means."

20 So we did the best we could. I met with
21 the one design engineer. He helped me as best he
22 could. And then when I went in and actually, you

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1 know, took my ticket, my number, and I sat down with
2 that engineering consult, he said, "No. You did this
3 wrong."

4 I said, "Well, the other engineer told me
5 to fill it in this way."

6 He said, "No. You rewrote things. We
7 scratch things out. We put down what this engineer
8 said."

9 And so then I submitted it. And I called
10 Bill Crews. I sent him an e-mail. I said, "Here is
11 the ticket number. You said you were going to
12 personally review it and help me get it through and
13 expedite it and let me know if you had any questions."
14 He never did.

15 And it wasn't until -- and then, you know,
16 the holidays hit. And then it wasn't until, you know,
17 a month or two later I still, you know, no response.
18 And by then, you know, I knew we were in -- you know,
19 I didn't know where else to turn. And so we finally
20 hired an attorney.

21 By that time, I had started to get wind
22 that I had appeal rights. My architect, my new

1 architect, had told me I had appeal rights. The FBI
2 agents that I had worked with -- I'm sorry. There's
3 so much. Yeah. So, anyway, the FBI agents actually
4 that I worked with had told me that I had appeal
5 rights.

6 And so, you know, after that, I definitely
7 knew that I had to hire an attorney. And we went from
8 there. So --

9 MR. BROWN: If you could go back to --

10 MS. HUMPHREYS: Sorry.

11 MR. BROWN: Go back to when you hired Mr.
12 Agipong and right after the stop work order was
13 issued.

14 MS. HUMPHREYS: Okay. You know, we got in
15 trouble from this inspector. I didn't know what was
16 wrong. I mean, obviously my phone calls weren't
17 working. I couldn't get anything out of him.

18 I hired an engineer to help me on the
19 recommendation of, you know, one of -- my condo lawyer
20 had recommended an engineer, who told -- his name is
21 Yaw Agipong. And she told me he was the former DCRA
22 chief engineer, "And he could definitely help you with

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1 any problems that you might have."

2 And I thought, you know, "Oh, great." So
3 I called him up to help me.

4 And he said, "Oh, yeah. No. I know this
5 inspector. I know Juan Scott. No problem. I'll call
6 him and see what's wrong. And we'll go from there."

7 And Agipong assured me he was going to go
8 over, you know, the plans and permits and, you know,
9 fix whatever he could on the engineering plans.

10 And the following Friday I met with him.
11 And I said, "Well, you know, they keep -- Scott keeps
12 telling me I'm going to have to redo everything and
13 this is terrible" and that, you know -- I said, "So
14 what do we do?" to Agipong.

15 And basically at that meeting, you know,
16 he said he had been talking to Scott and things
17 weren't going well. And so I said, "Okay. Well,
18 let's sit down. And let's go through the plans and
19 drawings. What do we need to do to fix this
20 situation?"

21 And that's basically when he solicited me
22 for a bribe, but my partner and I were there. And he

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1 basically had asked \$26,000 to get the stop work order
2 removed. And I think it was 6,000 to pay the fine to
3 doctor up, I guess, the paperwork to get he stop work
4 order removed. So I had to write a check, you know,
5 for \$6,000 to pay to D.C. Treasurer.

6 We never got to that point because I
7 called the FBI right away. And I made several
8 consensual phone calls with the FBI as well as my
9 partner. And they took over the case.

10 And I got -- I mean, you know, I made
11 phone -- consensual phone calls. And I talked to
12 Agipong, you know, with the FBI monitoring. You know,
13 I'm making mac and cheese for the kids one minute and
14 talking with the FBI agents in a car.

15 And, you know, they basically -- the bribe
16 got negotiated down. We still had to write a check to
17 the D.C. Treasurer to cover the fines. And I guess
18 the rest was to go to Agipong and the inspector. I
19 never doubted who the inspector was. Agipong never
20 revealed who it was.

21 But all the -- I mean, my phone records
22 show that I was talking to Agipong. And the guy said

1 he would call Scott and he knew this guy and he was
2 going to, you know, do -- you know, and I kept telling
3 Agipong, "Well, don't we need to correct the plans?
4 Do you want to work over the weekend? I'll pay you
5 extra, you know, time and a half, whatever you need.
6 Just correct the plans. And let's get it -- you know,
7 get it resubmitted."

8 And he was never interested in that. All
9 he wanted was money, you know, for the bribe. And I'm
10 sorry I'm going all over the place, but basically my
11 partner met Agipong at a warehouse, an off-site
12 location, to, you know, hand him over the money.

13 And the FBI was there monitoring the whole
14 thing. And they arrested Agipong. And he got
15 sentenced. He got convicted. And he went to jail.
16 And he served time in a federal prison.

17 But meanwhile I still had a stop work
18 order. And, you know, I mean for seven months I
19 didn't know what was going on. I had nothing in
20 writing. I thought the FBI was going to, you know,
21 come save the day, we're going to arrest everybody,
22 and then this would all be -- you know, I did the

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1 right thing. And I thought, you now, whatever
2 problems there were, we'd get it fix and we'd get it
3 taken care of.

4 But it never happened that way. It just
5 kept getting worse and worse. And, you know, then
6 come to find out, Bill Crews got fired. Robert
7 Hubbard got fired. Lisa Morgan, the Acting Director
8 we were negotiating with, resigned.

9 I mean, it just seemed like something --
10 you know, this was deeper than -- I mean, this was
11 more than I could have handled. And we finally turned
12 it over to the lawyers. And I thought that would
13 solve everything. And it just got worse. I mean, we
14 just got -- well, not with Pat. Sorry.

15 (Laughter.)

16 MS. HUMPHREYS: But, I mean, when you --
17 but no. And on top of that, I have lawyer bills. But
18 we ended up with three stop work orders, not just one.
19 But we got to three. We had to go to, you know, to
20 try to get a temporary restraining order. We had to
21 try to go to Office of Administrative Hearing.

22 I mean, we tried. You know, we had a

1 lawsuit against them to try to get them to help me,
2 you know, to finish the project. And it just seemed
3 to get worse and worse and worse. And now, you know,
4 I am here before you today.

5 And meanwhile the project has been vacant.
6 We have lost a ton of money. We have suffered, I
7 mean, financially, emotionally. And, you know, the
8 whole time I thought I was doing the right thing. You
9 know, I just couldn't pay a bribe.

10 And, you know, I mean, I don't regret what
11 I did, but I definitely learned a lesson. So that,
12 you know, I definitely will --

13 MR. BROWN: But that all of that --

14 CHAIRPERSON MILLER: We got that part, Mr.
15 Brown.

16 MR. BROWN: I know, but --

17 CHAIRPERSON MILLER: I mean, I know that
18 this was really traumatic for Ms. Humphreys. And I
19 just want to say that, I mean, I think it was very
20 compelling. And I think that, you know, it makes a
21 difference that you explained all that you have gone
22 through.

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1 MS. HUMPHREYS: I'm sorry I had to.

2 CHAIRPERSON MILLER: I'm sorry you had to,
3 yes. Thank you.

4 Now, I'm sorry. I hope you didn't have to
5 run. No. Okay. That's where we began this after the
6 break but yes?

7 MR. LIMEHOUSE: My name is Maggie
8 Limehouse. This month will be 30 years that I have
9 lived on this block of Fifth Street. I live at 1117,
10 which is a few doors down and across the street.

11 And I have raised two daughters there and
12 have twice been President of the Mount Vernon Square
13 Neighborhood Association and have lost neighbors to
14 gunfire, one just injured, two just injured, one
15 killed, faced down drug dealers.

16 I am also familiar with the fact that some
17 projects seem to get monitored very closely and
18 others, even though you called DCRA, you know, and
19 there's something illegal being done with no permit,
20 doesn't get a response.

21 However, looking at this project -- and I
22 didn't know Vanessa or any of the folks involved --

1 had their permits because you get kind of used to
2 looking at new projects to see if they do have
3 permits. Lots of green inspection stickers as the
4 project went on.

5 I went out of town in 2006 unexpectedly
6 for about three weeks. When I came back, the work had
7 stopped. After a while, I said, "You know, nobody has
8 been there. What is going on?" and was told that they
9 had received a stop work order and that shortly after
10 that they had received an offer of extortion.

11 What I do know is that the buildings, the
12 exterior, were almost completely finished, including
13 the back addition that seems to be at issue.

14 I do know that the backyards because I
15 walk my dogs down that alley every day are comparable
16 to lots of backyards in the neighborhood. In fact,
17 they are much bigger, of course, than a lot of the
18 land-locked houses in the neighborhood. Right across
19 the street, almost that whole stretch, is -- does not
20 have even an alley access. And the backyards are
21 from, you know, this big to somewhat bigger. So it's
22 certainly consistent with other structures in the

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1 neighborhood that were built over 100 years ago.

2 It has more back. It uses less of the
3 property than many of the structures in the
4 neighborhood. Certainly the additions are sympathetic
5 to the house. They weren't done in a cheesy manner.
6 They integrated the bricks, which so often is not
7 done. You know, there's just a stop and a line.

8 It seemed to me looking from the outside
9 that they had done everything right. Certainly the
10 quality of the work was clearly superior to a lot of
11 what you see and inexplicably were stopped.

12 What I will say also is that certainly
13 there is no damage but good to the neighborhood if you
14 approve this variance. It is nice to have vacant
15 houses made liveable again.

16 One of the things that I think no one has
17 mentioned is that these houses have been the subject
18 of vandalism. So the double pane glass now is broken
19 out in the front. And, of course, that just breeds
20 more. More of that is going to happen. So that is
21 not good for the neighborhood.

22 Everything good would come from approving

1 the variance. And I think nothing good would come
2 from not approving it. That's it.

3 CHAIRPERSON MILLER: Thank you.

4 Anybody have any questions?

5 (No response.)

6 CHAIRPERSON MILLER: Okay. Thank you very
7 much.

8 And you probably do know this already, but
9 I would say, you know, Mr. Loud did mention bringing
10 your stories perhaps to the council when they have
11 their oversight and appropriation hearings. I mean,
12 they're very disturbing. We can't do anything about
13 it as the BZA except consider it in this particular
14 application, but the council has authority to do
15 something.

16 Okay. Thank you very much.

17 I think we're now at Office of Planning.

18 OFFICE OF PLANNING

19 MR. MORDFIN: Yes. Good evening. I'm
20 Stephen Mordfin with the Office of Planning.

21 The subject application is not in
22 conformance with section 3103.2 of the zoning

1 regulations because it is not unique. The subject
2 property is similar to surrounding properties in that
3 it is located in the R-5-B zone district and the Mount
4 Vernon Historic District. However, the application
5 fails to identify anything unique about this
6 particular piece of property.

7 As the property is not unique, there can
8 be no peculiar exceptional difficulties as a result of
9 uniqueness. And the granting of the requested
10 variances, then, would impair the intent, purpose, and
11 integrity of the zone plan because there is nothing
12 unique about the subject property.

13 Therefore, the Office of Planning
14 recommends the request to permit an increase in FAR,
15 an increase in lot occupancy, and a decrease in the
16 minimum required open court width.

17 Thank you.

18 I'm sorry. The Office of Planning
19 recommends denial of the requests.

20 COMMISSIONER TURNBULL: Mr. Mordfin, you
21 don't think after what you have heard today that there
22 is anything unique about this property? Is it one lot

1 or two lots?

2 MR. MORDFIN: It's one lot. It's been
3 consolidated. It had been two lots. My understanding
4 is that lot 77 and lot 76 have been consolidated into
5 lot --

6 COMMISSIONER TURNBULL: And you don't
7 think there's anything unique about the way this
8 project has gone on and the way it got built and --

9 MR. MORDFIN: I mean, you could say there
10 is uniqueness about what has happened with DCRA. And
11 whether or not all of that happened, I don't know.
12 But that would then be the subject of the appeal that
13 had been filed.

14 As to whether or not DCRA erred, that
15 would be something unique. But at the same time, that
16 would also be the -- you know, it goes around in a
17 circle. If DCRA did not err, than that does not prove
18 anything unique.

19 So I don't see how I can use that to
20 create uniqueness.

21 CHAIRPERSON MILLER: So, Mr. Mordfin, were
22 you here earlier when we had the previous case and we

1 were talking about exceptional circumstances or
2 uniqueness not going just to the topography of a
3 property but going to circumstances that affect the
4 property, creating practical difficulties?

5 MR. MORDFIN: The circumstances -- in the
6 previous case, I think the circumstances had to do
7 with maybe it was the only lot that didn't -- wasn't
8 built out in the back or something like that that made
9 it the only one. So that made that one different. Is
10 that what you are referring to?

11 CHAIRPERSON MILLER: Except that it seemed
12 like Office of Planning started out in that case also
13 looking at the shape of the lot or the topography.
14 And then we got on to the discussion of it being the
15 only one that had that back open yard. And then it
16 was impacted by the surrounding properties because
17 they had walls that created like a canyon kind of
18 effect and shadows, et cetera.

19 I guess my point here is that can you look
20 at this, as Mr. Turnbull was saying, as exceptional
21 circumstances having created of which there are now
22 practical difficulties arising from; for instance,

1 these exceptional circumstances here where, from what
2 I have heard, of reliance on permits and then an
3 attempt at extortion here in order to be able to
4 continue to build -- I'm paraphrasing --

5 MR. MORDFIN: Okay.

6 CHAIRPERSON MILLER: -- and then practical
7 difficulties now of complying with the regulations
8 because they were allowed to build this far based on
9 the reliance on the permits?

10 MR. MORDFIN: Right. I guess there are
11 some exceptional circumstances because some of it did
12 go to court. People were sentenced. So that doesn't
13 need the appeal to determine whether or not that
14 happened or not, as opposed to some of the other
15 things that have been said. I am not a part of DCRA,
16 and I don't know.

17 So that is something unusual with this
18 property where you end up with the building inspector
19 going to jail. I'm not aware of that happening, you
20 know, to the other surrounding properties.

21 In that case, I do accept that argument
22 that that is something unique about this property that

1 something went on with the building inspector with the
2 stop work order where he ended up in jail.

3 So because it went to court and he was
4 sentenced, I mean, I would expect and believe that
5 those things were true. That would make something
6 unique that this person ended up going through.

7 Whether or not -- you know, it's usually
8 related to the property, you know, the shape of the
9 property, the topography of the property, the
10 something.

11 CHAIRPERSON MILLER: Well, let me just say
12 this, that that is not always true.

13 MR. MORDFIN: Right. I know.

14 CHAIRPERSON MILLER: And that is why we
15 have these Court of Appeals cases that talk about, you
16 know, changing conditions around the property that
17 affect the property, you know, if there's nothing
18 unusual about the topography, for instance.

19 MR. MORDFIN: Right.

20 CHAIRPERSON MILLER: Okay.

21 MR. MORDFIN: I mean, it's relatively
22 level, but it is something unique to have your

1 building inspector trailed by the FBI and then end up
2 being arrested and sentenced. So that is something
3 unique, and that did impact this property because they
4 were building based on permits that they had that this
5 building inspector, in my understanding, sought to
6 revoke. So in that case, there is some uniqueness to
7 that.

8 And if there is uniqueness, then you can
9 deem it the practical difficulty. If those permits
10 were issued appropriately, then -- well, if they were
11 issued appropriately, then they wouldn't -- they also
12 shouldn't, then, need the variances because if they
13 were appropriately issued because then after you went
14 back and looked at it and you said, "Well, there's
15 nothing here that needs a variance."

16 But there's also the building addition
17 that's on this building that -- one is I guess the
18 enclosed sleeping porch at 1132. And someone
19 testified that they didn't actually rip off the entire
20 sleeping porch, that they did save, I guess, some of
21 the main structural elements, and rebuilt the walls
22 and -- I don't know -- put back in windows or

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1 something like that.

2 But then we still have the building
3 addition at 1130. And I'm not sure how to get around
4 it because I think that my understanding is that is
5 new, that that wasn't there before, that that is a
6 completely new structure.

7 So that, then, would need a variance. And
8 then we would have to prove what is unique about this
9 property that at the back of 1130, you should be able
10 to build that building addition onto the back. And
11 sometimes we look at the building.

12 Is there something unusual or are they
13 putting in an elevator shaft that you're not going to
14 be able to just run right through the middle of a
15 rowhouse and you're trying to make it
16 handicapped-accessible or something like that?

17 So that's where I'm left right now is how
18 do I create the uniqueness, even though the building
19 inspector -- maybe they were issued permits. Perhaps
20 the uniqueness could come from if they were issued
21 permits that were mistakenly issued by DCRA, maybe
22 they should never have issued them to begin with and

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1 the applicant or the building owner in good faith went
2 ahead to build with those because maybe he should have
3 been told at the time, "Well, if you want this, you're
4 going to have to go to BZA first and get your
5 variance," in which case we probably would not still
6 be able to -- at that point would not be able to
7 recommend in favor of the variance because there's
8 nothing unique. And then they would have probably
9 gone ahead without that.

10 So there is something that they were given
11 a building permit to build something. Maybe they
12 shouldn't have been given that building permit, but
13 they were.

14 MS. PARKER-WOOLRIDGE: Madam Chair, may I
15 please correct one statement that Mr. Mordfin said
16 that was incorrect in reference to the building
17 inspector, the one who went to jail? It was not the
18 building inspector who went to jail, as Ms. Humphreys
19 indicated earlier. It was Mr. Agipong, who was not
20 employed with DCRA.

21 Thank you.

22 CHAIRPERSON MILLER: Sure.

1 So, Mr. Mordfin, I guess that is another
2 piece of information we don't know, though, right, is
3 that you're seeing an addition that does require a
4 variance if they were issued permits to construct?

5 So am I correct? Either the permits may
6 have been issued in error by DCRA or the application
7 might not have reflected the work? Are those the two
8 possibilities?

9 MR. MORDFIN: Those are the two
10 possibilities that I can think of. Either they were
11 issued in error or the applicant misidentified
12 specifically what the work was.

13 CHAIRPERSON MILLER: Okay. Other
14 questions?

15 MEMBER LOUD: I'm not certain if I
16 understand fully the distinction you're making between
17 the exceptional condition applying to part of the
18 project but not the other part of the project, the
19 building addition I think. And if you could just walk
20 me through that again?

21 MR. MORDFIN: Okay. Well, there are two
22 former rowhouses: 1132, which is the one adjacent to

1 the alley or adjacent to the two alleys. So on the
2 back there, it says, "Reconstructed area on the plans
3 that were given out." And that apparently was a
4 sleeping porch that was rebuilt.

5 And I think it was the owner's partner who
6 identified that as having that ripped off, the entire
7 sleeping porch, because once you have taken something
8 down completely, you have lost your nonconforming
9 status.

10 But he says he didn't do that. They took
11 off the rotted parts and the parts that could not be
12 used anymore but he kept the main structural element
13 and then rebuilt the walls and the windows and
14 whatever else goes with that.

15 So in that case, that's more or less
16 maintenance, you know, repairing it. But on 1130,
17 which is former lot 77, one rowhouse in, we have a new
18 addition on there that apparently was not there
19 before.

20 So it's all entirely new construction.
21 And it doesn't conform with the requirements of the
22 zoning regulations because we have issues with lot

1 occupancy and the width of the court and FAR.

2 So, then, in order to be able to do that
3 to exceed those minimum bulk requirements, you would
4 have to obtain a variance from the BZA, which was not
5 done prior to the issuance of that building permit.

6 MEMBER LOUD: Well, her arguments
7 regarding the misrepresentation sort of being pulled
8 in further and further by DCRA as this setup for this
9 eleventh hour, the \$26,000 bribe, why wouldn't those
10 same arguments apply to both scenarios, to both
11 permits? I guess that is the part I am not picking
12 up.

13 MR. MORDFIN: Well, I'm not sure I
14 understand. The area that is marked "Area of
15 addition," by right you can't do that. You can't just
16 pull a building permit and do that because it doesn't
17 conform to the zoning requirements.

18 MEMBER LOUD: But her testimony was that
19 once she was approached, I guess by Agipong, with the
20 shakedown, they didn't care what the drawings were
21 going to look like. In fact, she kept asking him, "Do
22 you have enough time to redo the drawings? Are you

1 going to redo the drawings?"; the implication being
2 they felt like she could get the permit, regardless of
3 what the drawings had on them.

4 So, in fact, if that had been sort of the
5 pattern in the case from the initial, I guess it was
6 October '05, permits, what makes her argument valid
7 for part of the permitting process but not for that
8 part?

9 MR. MORDFIN: I mean, I don't see how they
10 could have told you that she could have gotten permits
11 for that area that's marked "Area of Addition" without
12 going to the BZA first. They should not have told her
13 that if they did.

14 COMMISSIONER TURNBULL: But yes. I was
15 just saying, didn't they go through someone who looks
16 out there and says, "You don't need to do that," they
17 stamped it, went on, and she got her stamp for the
18 whole permit? So somebody looked at it.

19 MR. MORDFIN: Apparently somebody must
20 have looked at it and said, "Oh, that's fine" and
21 approved it, for whatever reason. I don't know.

22 COMMISSIONER TURNBULL: Yes because then

1 it goes on to HPO. And HPO says, I mean, they're not
2 going to allow you to increase the court because
3 you're turning it into an historic structure.

4 MR. MORDFIN: That was to widen the width
5 of that court.

6 COMMISSIONER TURNBULL: Right, to widen
7 the width.

8 MR. MORDFIN: Right.

9 COMMISSIONER TURNBULL: So in one way
10 they're following exactly what everybody has been
11 telling them, "This is an historic building. You've
12 got to keep the same site court. And you've got to"
13 --

14 MR. MORDFIN: Right.

15 COMMISSIONER TURNBULL: They're relying on
16 other people to tell them what to do.

17 MR. MORDFIN: Right. And what you might
18 get from the Historic Preservation Review Board might
19 not necessarily conform with Zoning. And they will
20 tell you that, that sometimes there's a --

21 COMMISSIONER TURNBULL: I agree.

22 MR. MORDFIN: Sometimes there's a

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1 disconnect between the two.

2 COMMISSIONER TURNBULL: Right.

3 CHAIRPERSON MILLER: I just want to just
4 veer off to Mr. Brown and to ask if you have a comment
5 about, you know, whether the application for the
6 building permits reflected what was built, if you want
7 to address that or not, because I think, as I was
8 having my conversation with Mr. Mordfin, there seemed
9 to be two possibilities.

10 MR. BROWN: And Ms. Humphreys can testify
11 to it, but I think the particular question is the
12 addition to 1130. But our position has always been
13 that the permit application that was submitted we felt
14 was accurate of what was being done there and based on
15 that got the permit. Whether that was done correctly
16 or not is a different issue, but a permit was issued
17 that reflects that addition.

18 Ms. Humphreys?

19 MS. HUMPHREYS: I mean, we got building
20 permits. The additions are on all of the plans. They
21 have DCRA's stamped red. I mean, they're all over all
22 of our plans. They're everywhere. And the additions

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1 were clearly marked. So --

2 CHAIRPERSON MILLER: My question was,
3 though, yet, as long as -- Mr. Mordfin was saying that
4 this type of addition would have had to come before
5 the BZA for a variance, like you are doing now.

6 So if your plans showed it and they
7 stamped it, you know, then they made an error or
8 whatever. It's nothing wrong that you did. I don't
9 really want to cast it in that way. We're just
10 figuring out the facts.

11 The other alternative would be if the
12 permit application didn't show this and that's why
13 they stamped it. Do you know what I'm saying?
14 Because you wouldn't have needed a variance if it
15 didn't show this addition on the application.

16 MS. HUMPHREYS: The additions were on the
17 plans.

18 CHAIRPERSON MILLER: Okay. That's fine.
19 That's fine. That's fine. Since we were discussing
20 this, I just wanted to get your answer in the record.

21 MEMBER DETTMAN: Madam Chair, I think this
22 is really the missing piece for me. And if it's

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1 appropriate and if it's possible, Mr. Brown -- and I'm
2 also interested in because there were two building
3 permit applications. And I'm assuming one is for the
4 addition at 1130, one is for the repair to the sun
5 porch at 1132. And I could be wrong.

6 But there are two building permits that I
7 am particularly interested in, 87210 as well as 90350.
8 And, actually, it's for the renovation of the existing
9 structure.

10 And on that application, you're saying
11 that the addition was clearly marked on those plans.
12 And on the other application, it was clearly marked
13 that you only intended to restore or repair the
14 existing sun porch or sleeping porch, whatever it is.

15 MR. ZIRKLE: That's correct.

16 MS. MONROE: If he's asking you questions
17 and you want to be on the record, you can't just shake
18 your head.

19 MR. ZIRKLE: Okay. I want to be on the
20 record.

21 MS. MONROE: I mean, I don't mean to be
22 rude, but, I mean, at this point --

1 MR. ZIRKLE: That's fine.

2 MS. MONROE: -- they need the answer. So
3 say "Yes" or "No."

4 MR. ZIRKLE: Okay. Just again for the
5 record, my --

6 MEMBER DETTMAN: Well, real quick.

7 MR. ZIRKLE: -- my name is Todd Zirkle.
8 I'm a partner.

9 The answer to your question is yes.

10 MEMBER DETTMAN: Okay. Well, I just
11 wanted to repeat it so we have your answers on the
12 record.

13 MR. ZIRKLE: Also I would note
14 parenthetically --

15 MEMBER DETTMAN: I am looking at a letter,
16 exhibit number 9, which is the zoning denial
17 determination letter. And it has an allegation of
18 misrepresentation on plans --

19 MR. ZIRKLE: Right.

20 MEMBER DETTMAN: -- for two building
21 permits: 87210 and 90250.

22 MR. ZIRKLE: Correct.

1 MEMBER DETTMAN: And what you are saying
2 is that the application for the renovation of existing
3 structure and the addition at 1130 was represented on
4 the plans that accompanied that application.

5 MR. ZIRKLE: Absolutely.

6 MEMBER DETTMAN: And the application for
7 the renovation of existing structure at 1132 clearly
8 marked that you only intended to repair the sleeping
9 porch and not demolish it and rebuild it.

10 MR. ZIRKLE: Correct.

11 MEMBER DETTMAN: Okay. Is it possible
12 that we can have the applications and the accompanying
13 plans submitted into the record?

14 MR. ZIRKLE: Are they in the record on the
15 appeal?

16 MR. BROWN: The may be in the appeal.
17 Some of the plans --

18 MS. MONROE: The applications --

19 MEMBER DETTMAN: I don't think they are in
20 the appeal.

21 MS. MONROE: The applications are in the
22 appeal file but not the plans.

1 MEMBER DETTMAN: But not the plans.

2 MS. MONROE: The actual --

3 MR. BROWN: Yes. I mean, well, with the
4 caveat being that I am not so sure all of the -- we
5 have the plans that go with the rebuilding of this sun
6 room.

7 MR. ZIRKLE: I think I have them.

8 MR. BROWN: Okay. I just --

9 MR. ZIRKLE: Yes. And just -- DCRA did an
10 inspection under supervision of the attorney, et
11 cetera, in May with a big to-do with all kinds of
12 witnesses. And they took a tape measure. And I think
13 the gist of that was that we were off by something
14 less than a quarter of an inch on a 62-foot building.
15 So -- and we were shy, actually.

16 So just to give you an idea, in other
17 words, the conformity of the construction to the plans
18 is exceptionally precise. And that's -- I know it's
19 confusing in all of this testimony as to whether or
20 not the plans were matched by the construction. They
21 were. And that's not a disputed point.

22 MEMBER DETTMAN: Okay. But, just to

1 clarify, what I am really interested in is getting a
2 copy of the plans that accompanied that application.
3 The plans get the DCRA stamp, too.

4 MR. ZIRKLE: Yes, they do.

5 MEMBER DETTMAN: Because I think it's
6 important that the Board determines that DCRA saw
7 these plans, the addition was clearly marked on there,
8 the addition that clearly shows that you need relief,
9 but they granted you the building permit and didn't
10 tell you that you needed relief. We need that plan
11 with the stamp on it.

12 MR. ZIRKLE: Okay.

13 MEMBER DETTMAN: So if you have a copy of
14 that, great.

15 MR. ZIRKLE: Can do it.

16 MEMBER LOUD: Just for my purposes, did
17 Agipong and the other gentleman also -- did they work
18 on both permits for you?

19 MS. HUMPHREYS: Agipong really didn't work
20 for us.

21 MEMBER LOUD: But, I mean, was he the
22 expeditor on --

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1 MR. ZIRKLE: No.

2 MEMBER LOUD: No?

3 MR. ZIRKLE: Agipong was hired to write a
4 letter for the condominium package subdivision or the
5 -- he wrote one architect's letter for the condominium
6 subdivision submission, like a \$300 job in July, which
7 we hired him to do. That was all the work that he had
8 ever done for us.

9 We had a very limited relationship with
10 him, but he had said he had close connections. And I
11 think that's why Vanessa called him. And he claimed
12 he knew the inspector and could help us out.

13 MEMBER LOUD: Okay.

14 COMMISSIONER TURNBULL: I'm still confused
15 about why you needed this as-built set of drawings.
16 Are they different than --

17 MR. ZIRKLE: Well, we're confused, too, on
18 that point. We didn't understand the purpose for the
19 submission and --

20 MS. HUMPHREYS: It was actually a point of
21 contention between the partners.

22 COMMISSIONER TURNBULL: Okay.

1 MR. ZIRKLE: I mean, it didn't seem to --
2 I mean, part of our thinking was that it was -- we
3 shouldn't even comply with the request because it was
4 basically a request to give them another opportunity
5 to say no.

6 And we already had approved plans. We had
7 already built the buildings. Why do they want a
8 resubmission? Well, if it comes across the desk
9 again, they can say, "No."

10 So we eventually tried to cooperate. And
11 we were not -- we didn't get any corollary
12 cooperation.

13 COMMISSIONER TURNBULL: So did you ever
14 submit an as-built --

15 MR. ZIRKLE: We did, yes.

16 COMMISSIONER TURNBULL: Oh, you did?

17 MR. ZIRKLE: On December 11th, the whole
18 thing was submitted and approved.

19 MS. HUMPHREYS: Twice.

20 MR. ZIRKLE: At significant expense. I
21 would point out that we hired an architect originally
22 to draw the whole project as one project. And we were

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1 required by DCRA to separate it into two. We
2 separated it to two as per their request.

3 And then we were required to combine the
4 lot in order for a condo subdivision. And then they
5 requested us to recombine them. So we have paid the
6 architect three times.

7 MS. HUMPHREYS: And printed out the
8 drawings.

9 MR. ZIRKLE: At \$5 a page printed out, you
10 know, 15 copies, you know, it probably cost us an
11 extra 5,000 bucks just for this --

12 COMMISSIONER TURNBULL: For printing?

13 MR. ZIRKLE: Right. Combined, separate,
14 combined, separate, you know, in, out.

15 CHAIRPERSON MILLER: So when you submitted
16 the combined plans, were they approved?

17 MR. ZIRKLE: We. They gave us no
18 response. They wouldn't respond to it. They told us
19 at first, I think, at the time Vanessa was speaking to
20 Mr. Crews. He had our original plans on his desk.
21 And he said, "Don't submit the originals I have."

22 And then we were told in January they were

1 summarily rejected for not having the original plans.
2 It was like -- it was pretty obvious to us that
3 something not kosher was going on with the zoning
4 question.

5 CHAIRPERSON MILLER: Mr. Brown, this is
6 self-certified, but I would like to just ask you a
7 question --

8 MR. BROWN: Sure.

9 CHAIRPERSON MILLER: -- about whether or
10 not it's more than one principal building on a single
11 lot, whether that's an issue.

12 MR. BROWN: I don't believe so because
13 certainly while they begin like in the 1890s as 2
14 separate buildings, where they are now, they are a
15 single building, where you can walk, you know. And
16 the whole plan was not two separate four-unit
17 buildings but one eight-unit. And that's what exists
18 now is a single building.

19 CHAIRPERSON MILLER: So it's connected?
20 So it's one building? Is that what you are saying?

21 MR. BROWN: Yes.

22 CHAIRPERSON MILLER: Okay. Good. Do you

1 have any questions for Office of Planning?

2 MR. BROWN: No, I do not.

3 CHAIRPERSON MILLER: Okay. Any other
4 Board questions?

5 (No response.)

6 CHAIRPERSON MILLER: I don't believe the
7 ANC is here. Is there anybody else here to testify in
8 support or opposition to the application?

9 MEMBER DETTMAN: I have a quick --

10 CHAIRPERSON MILLER: Do you have some
11 questions?

12 MEMBER DETTMAN: -- question related to
13 one building versus two. I can't recall the exact
14 wording in the regs or where it is in the regs, but
15 it's something like in order for a building to be
16 considered one building for zoning purposes or
17 something like that, there has to be communication
18 between the buildings.

19 MR. BROWN: Above-grade communication.

20 MEMBER DETTMAN: Above-grade
21 communication. Where does that exist?

22 MR. BROWN: Walk-through.

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1 MS. MONROE: It doesn't say that. That
2 seems the gloss put on by the Board. Well, the
3 definition of building basically says -- this is why
4 the question came up, because the definition says,
5 "When separated from the ground up or from the lowest
6 floor up, each portion shall be deemed a separate
7 building. Except as provided elsewhere, the existence
8 of communication between separate portions of a
9 structure below the main floor shall not be
10 constructed as making it one building."

11 So the reason it came up was because these
12 two buildings appeared to be -- and I made the wrong
13 -- appeared to be separated from the ground floor up.
14 We wanted to know if it was two buildings.

15 But you say you can walk from one building
16 to the other. The stairs are in the middle. I looked
17 at the plan.

18 MR. BROWN: Yes.

19 MS. MONROE: So that obviates that, but we
20 just wanted to be sure that no other relief was
21 needed.

22 CHAIRPERSON MILLER: Any other questions?

1 (No response.)

2 CHAIRPERSON MILLER: Okay. Mr. Brown, do
3 you have any closing?

4 MR. BROWN: Well, I think we've laid it
5 out. The Board has probably heard more than they
6 expected to hear and anticipated. The one thing that
7 I think is important is to look at not as a series of
8 kind of isolated items whether the historic
9 preservation, which is significant by itself but also
10 in the context of the court and context of the work
11 that was done and approved, sort of look at it as a
12 package and the fact that the building permits were
13 approved and work done. And, just like the case
14 before us, I think this is a case where, for a variety
15 of reasons, I think it would be in the best interest
16 of certainly my client and perhaps even DCRA and
17 hopefully the Board, that if we could reach a bench
18 decision on this matter tonight, I think there is a
19 certain important finality that would be achieved for
20 everybody involved and allow us to move forward. And
21 I would put my closing remarks in that context.

22 CHAIRPERSON MILLER: Mr. Dettman, didn't

1 you ask for some information that we are waiting to
2 review?

3 MEMBER DETTMAN: Yes. I was interested in
4 the applications and accompanying plans for the two
5 building permits that I had referenced.

6 CHAIRPERSON MILLER: I think that this
7 case is a little bit more complex than the case before
8 us. It is certainly compelling, and it is certainly
9 -- I mean, we can certainly understands why you would
10 want a decision as soon as possible to put finality on
11 it, but it's also late. And we are waiting for that
12 information.

13 So I don't think it's really ripe for a
14 bench decision unless my fellow board members feel
15 differently. Do you? I don't see how we can if we've
16 asked for information that we deem important.

17 MEMBER LOUD: Yes. I was inclined to
18 think we might be ready tonight before Mr. Dettman
19 asked for that information. Do you think that there
20 is a way that we are able to make that decision
21 without the information that he has asked for? Let me
22 open it up to you to respond.

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1 MR. BROWN: Well, but the problem with
2 that is then we start going into almost the appeal
3 scenario and where you're making an independent
4 determination of was it a good permit application, was
5 it properly reviewed, was it properly issued.

6 I mean, one of the things we hope to avoid
7 in this proceeding is to move beyond that and deal
8 with where we are now. I mean, I think certainly it's
9 clear from my client's testimony that they submitted
10 these applications with the help of professionals and
11 showing what they plan to do and acted upon those
12 permits. And kind of a second guess at this late
13 stage kind of adds a level of complication that may
14 not help the process.

15 MEMBER DETTMAN: Mr. Brown, it sounds like
16 from your client that the plans showed what they were
17 supposed to show. They showed what was constructed.

18 And, you know, based on what we have heard
19 so far on the bribery and extortion and FBI, that
20 certainly is a unique circumstance. But the Board
21 when they rule on this they are going to decide
22 whether or not to grant relief or not grant relief.

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1 And if we get the permits, applications,
2 and the accompanying plans, and find out that those
3 plans don't show the addition at 1130, which is why
4 DCRA didn't feel the need to tell you that you needed
5 relief, then the building was not constructed
6 according to the approved plans. And I wouldn't be
7 comfortable granting relief for an addition that DCRA
8 never saw.

9 But it sounds like your plans show exactly
10 what was constructed. So it should work out in the
11 end.

12 CHAIRPERSON MILLER: Okay. First of all,
13 I mean, I do think that something as basic as that, if
14 at least one board member feels that more information
15 should be in the record, I think that's reason enough
16 to have a decision-making at a later date.

17 And I also think that you can't separate
18 totally information that's relevant to the appeal,
19 which raises issues of estoppel and latches and things
20 like that from zoning history consideration in the
21 variance case.

22 I understand that, you know, we won't be

1 considering it to as great an extent and with the same
2 standard, but some of the same information I think
3 should and would be considered. And that's why the
4 Board got into the line of questioning that it did.

5 I also think that it's somewhat
6 significant territory for the Board to consider
7 extortion and issues like that in the uniqueness test.
8 And so I would like to be able to read the newspaper
9 article and digest what was said today and don't
10 believe that there is prejudice to delaying this so we
11 could have a very thorough, thoughtful decision.

12 Normally we have our decision meetings at
13 the first of the month. Is there an exigency other
14 than a wish for finality that would give us a reason
15 to add it to our schedule earlier?

16 MS. HUMPHREYS: We have a wonderful bank.
17 BB&T has been working with us. But their patience has
18 been tried. And we really, I mean, for financial
19 reasons -- you know, they have basically stopped any
20 funding for us since the stop work order. And we have
21 been carrying the costs personally.

22 CHAIRPERSON MILLER: Okay. That's a

1 compelling reason. I assume that you can get us the
2 information that Mr. Dettman requested soon since
3 you're anxious about this. When would that come in?

4 MS. HUMPHREYS: We have to make copies.

5 MR. BROWN: Yes. How many do you need,
6 original and 20 copies?

7 CHAIRPERSON MILLER: That question goes to
8 the staff. Ms. Bailey?

9 MS. BAILEY: Yes, Madam Chair. Would 20
10 copies, Mr. --

11 MS. HUMPHREYS: They're huge.

12 MS. BAILEY: Yes. Does that --

13 MS. HUMPHREYS: They're huge, and they're
14 long.

15 MS. BAILEY: Yes, yes.

16 MS. HUMPHREYS: And they're expensive.

17 MS. BAILEY: Is there any way that --

18 CHAIRPERSON MILLER: Oh, not those.

19 MS. BAILEY: -- could be reduced to 11 by
20 17?

21 MR. BROWN: I'll see. I mean --

22 MEMBER DETTMAN: Isn't it a requirement of

1 DCRA in their application process to not accept
2 anything larger than 11 by 17 or --

3 MR. BROWN: That's OZ.

4 MEMBER DETTMAN: Is that just --

5 MR. BROWN: DCRA wants --

6 MEMBER DETTMAN: I thought --

7 MR. BROWN: -- full size.

8 MEMBER DETTMAN: Okay. Okay.

9 MS. HUMPHREYS: It's huge.

10 MEMBER DETTMAN: I didn't know if it was
11 just OZ.

12 CHAIRPERSON MILLER: You would have to
13 reduce it now? And that's a big expense? Is that
14 what you're saying --

15 MR. BROWN: Well, it's --

16 CHAIRPERSON MILLER: -- or do you have
17 copies of the large size? Is that it?

18 MR. BROWN: Yes. They are larger than 11
19 by 17.

20 MS. HUMPHREYS: Well, do we need to show
21 you the mechanicals and all of that or do you want
22 just, I mean --

1 CHAIRPERSON MILLER: Mr. Dettman, what is
2 it? Do you want all of the plans or --

3 MS. HUMPHREYS: Do you want the full set
4 --

5 CHAIRPERSON MILLER: -- just certain
6 parts?

7 MS. HUMPHREYS: -- or do you want --
8 because there's mechanicals. There's electrical.
9 There's plumbing. Do you want just the --

10 MEMBER DETTMAN: I'm looking for a plan,
11 something, --

12 MS. HUMPHREYS: That shows the approval.

13 MEMBER DETTMAN: -- a drawing that was
14 submitted to DCRA --

15 MS. HUMPHREYS: Okay. Stamps.

16 MEMBER DETTMAN: -- that shows the
17 addition with the stamp.

18 MS. HUMPHREYS: Okay.

19 MEMBER DETTMAN: I don't necessarily need
20 the electrical or the mechanical or HVAC plans.

21 MS. HUMPHREYS: Okay.

22 MEMBER LOUD: Just the architectural, just

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1 for the addition to 1132.

2 MR. BROWN: You want the sun room plans?

3 MEMBER DETTMAN: If it wouldn't be too
4 much trouble.

5 MR. BROWN: Never any trouble.

6 MS. BAILEY: Madam Chair, if it's
7 possible, could we have like one large plans with the
8 architectural drawings and then copies that are
9 reduced? Does that make sense? Just one large just
10 to make --

11 MS. HUMPHREYS: Normal size?

12 MS. BAILEY: -- sure that it's readable --

13 MS. HUMPHREYS: Normal size.

14 MS. BAILEY: -- because sometimes when you
15 reduce it, you lose some of the readability, and then
16 reduced copies, maybe ten reduced copies.

17 CHAIRPERSON MILLER: You know, I can't
18 really answer this question. I'm not sure what our
19 office needs. Mr. Moy, did you have an opinion on
20 this?

21 MR. MOY: No. I was just going to -- we
22 haven't, for lack of a better word, kind of bifurcated

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1 some sheets small and some large. I understand Ms.
2 Bailey's question. I would assume that anything you
3 file with the size that is required will be legible.
4 If not, then it should be a size that would be legible
5 and to address -- and as to which sheets to show, the
6 sheets that should be forwarded should be the sheets
7 that answer Mr. Dettman's question.

8 I am not looking for 100 sheets of
9 drawings. I am guessing that is probably in one or
10 two sheets.

11 MR. BROWN: When would you like this?
12 When would you like to decide the case?

13 CHAIRPERSON MILLER: I mean, I would say,
14 oh, at our next meeting, but I am saying no. We will
15 try to hear it earlier. I'm not sure if there's an
16 ideal date. But I think I am saying we would try to
17 accommodate you all and hear it at an earlier date
18 soon after you get the plans in.

19 MR. BROWN: If we filed the plans by 3:00
20 o'clock on this Friday, would you be willing to decide
21 the case on the following Tuesday?

22 CHAIRPERSON MILLER: Okay. If you get it

1 in by 3:00 o'clock, when will the Board get it? By
2 Monday? Oh, you could fax it Friday to the Board?

3 MR. MOY: Sure. No. The staff will take
4 care of --

5 MS. BAILEY: Madam Chair, that's 11 by 17.
6 You can't fax 11 by 17 pages.

7 MR. MOY: No. The staff can deliver it to
8 the Board. We have done that before, I mean. The
9 staff can have the materials delivered to the Board.
10 We will do a special run delivery.

11 CHAIRPERSON MILLER: So what we're saying
12 is okay. We will set this for a decision-making,
13 then, for January 15th.

14 MR. BROWN: And I'll have everything here
15 for you by 3:00 o'clock Friday.

16 CHAIRPERSON MILLER: Right. If you get it
17 here earlier, our packages are usually sent out to us
18 on Thursday. But if you cannot do it until Friday,
19 the staff has indicated, Mr. Moy has indicated,
20 certainly that they will make arrangements to get it
21 to us on Friday.

22 MR. BROWN: When do you get the packages

1 out?

2 MR. MOY: They usually go out between 2:00
3 and 3:00 o'clock, 3:00 o'clock at the latest, on
4 Thursday.

5 CHAIRPERSON MILLER: Is there anything
6 else?

7 MR. BROWN: Decision on the 15th?

8 CHAIRPERSON MILLER: We have scheduled a
9 special public meeting now to decide one other case.
10 So we will add it to that meeting. Okay.

11 Okay. I think that concludes this case.
12 Thank you very much. And I don't believe we have
13 anything else on the agenda for this afternoon, do we,
14 Ms. Bailey?

15 MS. BAILEY: No, Madam Chair.

16 CHAIRPERSON MILLER: This evening. What
17 did I say? This morning? Is it already in the
18 morning? Okay. This meeting is adjourned. This
19 hearing is adjourned.

20 (Whereupon, the foregoing matter was
21 concluded at 7:28 p.m.)

22