

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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PUBLIC HEARING

+ + + + +

TUESDAY

MARCH 6, 2007

+ + + + +

The Public Hearing convened in Room 220 South, 441 4th Street, N.W., Washington, D.C., 20001, pursuant to notice at 1:34 p.m., Geoffrey H. Griffis, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

GEOFFREY H. GRIFFIS Chairperson
RUTHANNE G. MILLER Vice-Chairperson
CURTIS ETHERLY, JR. Board Member
JOHN A. MANN, II Board Member (NCPC)

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY Secretary
BEVERLEY BAILEY Sr. Zoning Specialist
ESTHER BUSHMAN General Counsel

OFFICE OF PLANNING STAFF PRESENT:

STEPHEN RICE
MATT JESICK
ARTHUR JACKSON

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

SHERRY GLAZER, ESQ.

The transcript constitutes the
minutes from the Public Hearing held on March
6, 2007.

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

2 CHAIRPERSON GRIFFIS: Good
3 afternoon, ladies and gentlemen. Let's call
4 to order the 6th of March 2007 afternoon
5 public hearing of the Board of Zoning
6 Adjustment in the District of Columbia. My
7 name is Geoff Griffis, chairperson. Joining
8 me today is the Vice-Chair, Ms. Miller, and
9 Mr. Etherly, our esteemed member of the board.

10 Representing National Capitol
11 Planning Commission is Mr. Mann, and
12 representing the Zoning Commission, with us
13 this afternoon, Mr. Jeffries.

14 Copies of today's hearing agenda
15 are available for you. They are located where
16 you entered into the hearing room. You can
17 pick one up and see where you are in the
18 chronology and all the cases that we will
19 accomplish prior to 6:00 o'clock this evening.

20 All the cases that we'll call
21 today, special exception and variances, will
22 go through the following order. First, we

1 will hear from the Applicant, a presentation
2 of their case.

3 Secondly, we will hear the
4 government agencies reporting on each of the
5 cases--Office of Planning, Department of
6 Transportation, we will hear from those
7 agencies.

8 Third, we will hear from the ANC,
9 the Advisory Neighborhood Commission where the
10 property is located.

11 Fourth, we will hear from persons
12 or parties in support of an application.
13 Fifth will be persons or parties in opposition
14 to the application. Of course party status
15 will be established in each particular case as
16 a preliminary matter. I'll get to that detail
17 as we go forward.

18 Sixth. Finally, we will hear from
19 the Applicant, any rebuttal witnesses,
20 testimony and/or closing remarks and
21 summations.

22 Cross examination of witnesses is

1 permitted by parties as they are established
2 in the case, and the Applicant and the ANC.
3 The ANC is automatically a party in each of
4 the proceedings. The ANC obviously is that
5 which the property is located within.

6 The record will be closed at the
7 conclusion of each case hearing. This is very
8 important to understand this.

9 We are creating an official record
10 today, in this hearing room, only in this
11 hearing room. So any information that you
12 want the board to base its decisions on must
13 be put into this record.

14 That can be today, orally, in
15 testimony or can be in written form, as it
16 would have come in already as part of the
17 record.

18 I will be very clear, before
19 anyone leaves today, whether the record is
20 left open or is officially closed. So you
21 will not leave after your hearing with an
22 understanding of perhaps you could put more

1 into the record or not. We will be very
2 specific if we request additional information
3 into the record and we'll give you a time at
4 which that is due, and specificity on what it
5 is to be put in.

6 The Sunshine Act does require that
7 all of our proceedings are conducted in the
8 open and before the public, and we do that in
9 our hearing sessions and also in our
10 deliberation. We do, at times, enter into
11 executive session. For instance, lunch today,
12 w were working through some facts on each of
13 the cases that are coming forward this
14 afternoon. That is in accordance with our
15 rules, regulations and procedure, and it is
16 also in accordance with the Sunshine Act.

17 As I have said, the decision of
18 this board in contested cases, of which
19 special exceptions and variances are contested
20 cases, must be placed exclusively on the
21 record that we are creating today.

22 So we do ask that people present

1 today not engage board members in
2 conversations this afternoon. If you see us
3 on a brief recess out in the hall, I would ask
4 that you obviously not engage us with
5 conversation, so that we don't give the
6 appearance of receiving information outside of
7 the public record.

8 Let me also ask that everyone here
9 present please turn off their cell phones,
10 beepers, and any other noise-making devices
11 that you might have because there are two very
12 important things--well, I'll add one. There
13 are three very important things that we're
14 about to embark on in our public hearing.

15 The first and most important is
16 the testimony that you're going to provide us.
17 You're going to come forward, have a seat at
18 the table, make yourself comfortable. You're
19 going to need to state your name and address
20 for the record. You'll only need to do this
21 once.

22 I would also ask that you fill out

1 two witness cards prior to coming forward.
2 Those witness cards go to the court reporter
3 to my right. And where am I on my list of
4 three things? I'll have that as number one.

5 The second would be that we are
6 creating an official transcript, and that is
7 by the court reporter. So all of what you'll
8 say today will be credited to you in our
9 official transcripts, and third, of course we
10 are being broadcast live on the Office of
11 Zoning's Web site. So attendant to all of
12 those things, if there's any confusion, I'll
13 answer questions of procedure--but be aware
14 that you just need to come forward and give
15 your testimony on the record before us, and
16 we'll make sure all the rest of it comes in
17 through full detail.

18 Let me say a very good afternoon
19 to Ms. Bailey, who sits on my very far left
20 with the Office of Zoning. Ms. Glazer's with
21 us from the Office of Attorney General, and
22 Mr. Moy with the Office of Zoning.

1 I'm going to ask everyone here
2 present if they would please stand and give
3 their attention to Ms. Bailey. She's going to
4 swear you in.

5 MS. BAILEY: Would you please
6 raise your right hand.

7 [All witnesses are duly sworn]

8 MS. BAILEY: Thank you.

9 CHAIRPERSON GRIFFIS: Excellent.
10 Thank you all very much.

11 Now with that done, then we can go
12 to preliminary matters. Preliminary matters
13 are those which relate to whether a case will
14 or should be heard today. Requests for
15 postponements, withdrawals, whether proper and
16 adequate notice has been provided, these are
17 all elements of preliminary matter, or
18 preliminary attention for the board.

19 If you have a preliminary matter,
20 if you believe there's a case on our record
21 today that should not proceed, or there is
22 some complication the board needs to conduct

1 and address before calling a case, I'd ask you
2 to come forward and have a seat at the table
3 in front of us as an indication of having a
4 preliminary matter.

5 I will ask Ms. Bailey if she's
6 aware of any preliminary matters for the
7 board's attention.

8 Ms. Bailey.

9 MS. BAILEY: Mr. Chairman, members
10 of the board, good afternoon.

11 Staff does not have any preliminary matters.

12 CHAIRPERSON GRIFFIS: Excellent.
13 Thank you, and a very good afternoon to you.

14 Not noting anybody coming
15 forward as a preliminary matters, why don't we
16 call the first case in the afternoon.

17 MS. BAILEY: And that is
18 Application No. 17576 of Richard Housler and
19 Den-Ny Hwang, pursuant to 11 DCMR 3104.1, for
20 a special exception to allow an addition to an
21 existing single-family dwelling under section
22 223, not meeting the lot occupancy

1 requirements and open court requirements.
2 Those are sections 403 and 406. The property
3 is zoned R-4. It's located at 706 East
4 Capitol Street, N.E., Square 897, Lot 804.
5 There is a request for party status, Mr.
6 Chairman, in this case.

7 CHAIRPERSON GRIFFIS: Excellent.
8 Thank you very much. Is the Applicant ready?
9 Why don't you come up; have a seat.

10 I note that Mr. Morris--is Mr.
11 Morris present? Stephen Morris?

12 Why don't I have you introduce
13 yourselves for the record. Just turn your
14 microphone on. There's a small button at the
15 base of the mike. If I talk too fast, you can
16 always ask me to repeat myself. Just state
17 your name and address.

18 MR. HOUSLER: Good morning. I'm
19 Richard Housler, 706 East Capitol Street.

20 CHAIRPERSON GRIFFIS: Excellent.
21 Are you aware of a request for party status in
22 the record?

1 MR. HOUSLER: Yes.

2 CHAIRPERSON GRIFFIS: Okay. I'm
3 sorry. And you are...?

4 MS. HWANG: Good afternoon. My
5 name is Den-Ny Hwang.

6 CHAIRPERSON GRIFFIS: Excellent.
7 Thank you.

8 MS. HWANG: Thank you.

9 CHAIRPERSON GRIFFIS: Okay. Mr.
10 Morris has put in a request for party status.
11 The unique distinct aspect statement is that
12 being the adjacent property or adjoining
13 property, would be most directly affected.
14 I'll hear comments from board members. I
15 don't disagree with that statement as
16 represented in the case, and noting the
17 address. There is some concern of mine, as
18 one board member--I'll hear from others,
19 obviously--of establishing a party status for
20 someone who is not present, because one of the
21 largest roles of a party status in a case of
22 course is the full participation in a case as

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1 opposed to a person who obviously is not
2 precluded at all from presenting evidence and
3 that can be in written form and not presented
4 in person today, the day of the hearing.

5 But let me open it up to others
6 for comments on the request for party status.

7 Mr. Etherly. Oh, I'm sorry. Mr.
8 Jeffries.

9 COMMISSIONER JEFFRIES: Well,
10 Chair, I see a letter from Mr. Morris, I think
11 it's Exhibit 22. It seems like he's
12 expressed--but it's not dated, so it's hard to
13 sort of tie it to when he filed for party
14 status. But in any event--

15 CHAIRPERSON GRIFFIS: Exhibit 22,
16 did you say?

17 COMMISSIONER JEFFRIES: Yes,
18 Exhibit 22, and then it says eight, page
19 number eight.

20 CHAIRPERSON GRIFFIS: Yes. That's
21 the Applicant's submission and as an
22 attachment to the Applicant's submission is a

1 letter.

2 COMMISSIONER JEFFRIES: A letter;
3 yes.

4 CHAIRPERSON GRIFFIS: I see; okay.

5 COMMISSIONER JEFFRIES: From
6 Stephen Morris.

7 CHAIRPERSON GRIFFIS: Gotcha.

8 COMMISSIONER JEFFRIES: And it
9 seems to indicate, that as long as the
10 proposed addition--that this building remains
11 a single story, that they're pretty much
12 supportive. There's no date on this letter.
13 But I guess, looking at this letter, and
14 coupling that with the fact that he's not
15 here, you know, I don't really, you know, see
16 the need at this point for, you know, party
17 status. But I am concerned that it doesn't
18 have a date on it. I missed it here.

19 CHAIRPERSON GRIFFIS: Do you have
20 further information about Mr. Morris's
21 position?

22 MR. HOUSLER: I spoke with him a

1 couple of days ago concerning it and I think
2 the most important thing he said was that he
3 wanted to get it in the record for the future.

4 Basically he was, as is stated,
5 okay with doing what we proposed, but he had
6 some--he just wanted it in the record for the
7 future.

8 CHAIRPERSON GRIFFIS: Okay.

9 MR. HOUSLER: I don't really
10 understand what "party status" means as a term
11 and so--

12 CHAIRPERSON GRIFFIS: Excellent.
13 And that's an excellent question. Of course
14 our regulations have two general
15 participations in every case, and that is as
16 a person, as I said, no one is prohibited,
17 this is a public hearing, any person can come
18 forward and provide testimony, and then
19 there's a higher level of participation and
20 that is of party status, and a party status,
21 simply put, is, if granted, puts them on an
22 equal footing with you, the Applicant.

1 They are just like you, would be
2 required to put on a case presentation, could
3 call witnesses. They will have equal time, as
4 your case presentation, equal time to you in
5 opposition to present their case. If we ask
6 or require additional information in filings,
7 legal analysis, or additional information, we
8 would also require that as a party.

9 Like I said, no one is ever
10 precluded or prohibited from participating in
11 all of our hearings, but there are different
12 ways to do that.

13 Our regulations, in order to
14 establish party status, lay out a test that
15 has to be met, and the critical one--we can go
16 through a lot of the regulatory requirements--
17 but the critical one, always for my analysis,
18 is how is this person uniquely or distinctly
19 impacted? And that's what we're trying to
20 assess. Based on location, it seems to be a
21 basic understanding. I think if Mr. Morris
22 was here, we would have additional questions

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1 of him, to elicit a little bit more
2 information of why the party status.

3 But then the second realm is it is
4 participatory. A party status affords a party
5 cross examination rights. Well, you have to
6 be here to cross examination.

7 I think Mr. Jeffries is absolutely
8 correct, and I think what he was saying was he
9 did not support the granting of party status
10 of Mr. Morris, but, rather, would like to have
11 taken the record as testimony, as you've
12 already attached to your application, the
13 letter, and I would also add to that the
14 application process. But I'll hear from
15 others, briefly, and then we'll move on. Or
16 not briefly. Take as long as you like.

17 VICE-CHAIRPERSON MILLER: And I
18 just would want to say that I agree with you,
19 totally, that he's not here to participate, so
20 he could not act as a party in this case. And
21 what's before us is the party status
22 application and the letter, and we'll consider

1 that fully in the evidence in this case.

2 CHAIRPERSON GRIFFIS: Excellent.
3 Any others? Any other positions? Very well.
4 I think we should move ahead then and I'll
5 take it as a consensus of the board, unless
6 there's other opinions to be expressed in
7 opposition to it, that we would deny the party
8 status of Mr. Morris and take into the record,
9 which we don't need to say for the record,
10 it's already in, but just to be clear, both of
11 these as a person's testimony and let's move
12 ahead then, and say again a very good
13 afternoon to you, and we'll turn the mike over
14 to you for presentation of your case.

15 MR. HOUSLER: I'll keep this
16 somewhat brief.

17 CHAIRPERSON GRIFFIS: Sure.

18 MR. HOUSLER: We purchased the
19 property, and over a period of time, have
20 decided that we would like to put this
21 addition on to the back. We have had many
22 plans of course, which have gone back and

1 forth. We consulted with primarily our
2 neighbors on either side of us, 704 and 708,
3 to come to some agreement of what would be a
4 reasonable addition to the back.

5 Over the course of that, we've
6 gone back and forth with many drawings, and
7 what you see before you is kind of the
8 agreement as it stands right now.

9 So I don't know what else to say
10 about that.

11 MS. HWANG: Further, I would like
12 to add our architect, who is our
13 representation today, was called away at 4:00
14 o'clock yesterday afternoon to be by his
15 mother's bedside. So we will do our utmost to
16 answer or satisfy any of the questions that
17 you may have, but please bear in mind that our
18 representation is not here, so we ask for your
19 latitude on that.

20 CHAIRPERSON GRIFFIS: Okay;
21 absolutely.

22 MS. HWANG: Thank you.

1 CHAIRPERSON GRIFFIS: We'll try
2 and go easy on you.

3 MS. HWANG: Okay.

4 CHAIRPERSON GRIFFIS: All right.

5 There is a couple of questions of
6 of this case. Actually, the architect had
7 asked us to establish whether any of the
8 overhead trellis constituted a building area
9 or was actually impacted. Are you--

10 MR. HOUSLER: Yeah; we were aware
11 of that. I think that we, in the design, more
12 of a beautification, we had discussed this,
13 the trellis option, and I think that there had
14 been some discussion about whether that would
15 be considered part of the lot or not, and so
16 we chose to go forward and ask you to make a
17 decision on that, of whether that's
18 permissible or not.

19 CHAIRPERSON GRIFFIS: Okay. I
20 have numerous problems with that, but let me
21 just say one of them.

22 First of all, we're not set up to

1 have people come in and ask us to interpret or
2 to decide what relief or not relief. I note
3 that this is self-certified meaning your
4 registered architect went through this and
5 said this is the relief that we need.

6 There are two avenues of which I
7 would assert that it would be better, in the
8 future, whether you have future or not--that
9 it would go--one, you'd just assert as a self-
10 certification and move ahead.

11 MR. HOUSLER: Okay.

12 CHAIRPERSON GRIFFIS: Now a little
13 bit of digression on that one element. The
14 board does at times say and establish, look,
15 there's additional relief that's required
16 here, that we see in our analysis. Or
17 conversely, there is not relief here that
18 you've asked for. Okay. So we can do that.
19 Jurisdictionally, we can do that.

20 The other, though, is if there's
21 confusion over what's been done, is to
22 actually go to the Zoning Administrator. The

1 Zoning Administrator does interpretations,
2 because he has to show how the regulations are
3 actually implemented.

4 So some here and to say, hey,
5 we're not really sure, what do you guys think?
6 is flattering, but I don't think it's the best
7 utilization of what we're set up to do.
8 However, we're going to address it today, I
9 believe; whether we're conclusive or not, I
10 don't know.

11 The other element is the addition
12 and how it goes to a row dwelling. Are you
13 aware of that also?

14 MR. HOUSLER: Yes. Right now, we
15 have a nonconforming side yard and with the
16 addition, we would like to go from lot line to
17 lot line, which requires some kind of a
18 variance with this side yard, so--is that what
19 you're talking about?

20 CHAIRPERSON GRIFFIS: Yes;
21 absolutely. Okay. You currently have a semi-
22 detached dwelling with a nonconforming side

1 yard. You're in an R-4 district that allows
2 for row dwellings as a matter of right.

3 And so the question is whether you
4 can convert, by this addition, semi-detached,
5 into a row dwelling. Okay.

6 There it is then. Is there
7 anything else that you want to present at this
8 time?

9 MS. HWANG: Yes. May I submit two
10 more signature consent to the--

11 MR. HOUSLER: Signatures from
12 other neighbors.

13 CHAIRPERSON GRIFFIS: Oh, sure.

14 MS. HWANG: Yes, please.

15 CHAIRPERSON GRIFFIS: Sure.

16 MS. HWANG: If that's possible.

17 CHAIRPERSON GRIFFIS: You want to
18 put those in the record?

19 MS. HWANG: Yes, please.

20 CHAIRPERSON GRIFFIS: Excellent.
21 Ms. Bailey will take those into the record and
22 put an exhibit number on those, and those are

1 two more additional, I take it adjacent
2 property owners, that have reviewed and are in
3 support of the application; is that correct?

4 MR. HOUSLER: Correct.

5 CHAIRPERSON GRIFFIS: All right.

6 I think, based on the fact that
7 the architect isn't present, why don't we move
8 ahead and go to the government agencies.
9 Office of Planning of course is here. They
10 have analysis. Have you seen and reviewed the
11 Office of Planning's report?

12 MR. HOUSLER: I don't believe so.

13 MS. HWANG: I don't believe so.

14 CHAIRPERSON GRIFFIS: Okay.

15 Let's get another copy, then,
16 prior to them presenting this, so that you can
17 follow through. However, they do a full
18 presentation of it. Do we have another--okay.
19 Thanks very much. I'm sorry to keep you
20 moving here. We're going to wait two seconds
21 and you get you a report, before he starts in
22 on that.

1 [Pause]

2 CHAIRPERSON GRIFFIS: Okay. You
3 have a copy of that. Why don't we have them
4 present it and I'll obviously give you ample
5 time to finish reading this, if need be, and
6 then to ask questions of the Office of
7 Planning. But a very good afternoon, sir.

8 MR. RICE: Good afternoon, Mr.
9 Chair, board, my name is Stephen Rice with the
10 Office of Planning. OP does support the
11 application for the special exception. As
12 mentioned, the house is currently semi-
13 detached, with a four foot wide side yard,
14 which will be converted to rowhouse.

15 It is a one-story property and
16 it's situated between two larger two-story
17 properties. We don't see any problems with
18 the addition itself. The new created windows
19 will not face any of the abutting properties,
20 well, adjacent properties. The new windows
21 will front on to East Capitol Street and
22 toward the alley.

1 Again, the house itself is
2 significantly smaller, so it shouldn't be out
3 of character with the surrounding properties.
4 In fact, the addition will help to bring it
5 closer to the character as far as the square
6 footage is concerned.

7 We did not receive any letters
8 from the ANC 6C or comments from either of the
9 neighbors. But HPO staff did. The staff from
10 the Historic Preservation Office did support
11 the conceptual design of the project. We do
12 think the Applicant has met the burden of
13 proof as far as the request.

14 And regarding the trellis, I did
15 speak with the architect and he basically
16 stated that if the trellis space, the covered
17 space does count toward the lot coverage, he
18 would pull it away from the project, and I
19 basically told him that that's our position,
20 that if it is considered toward the coverage
21 space, he should take it away because it would
22 put it over the 70 percent. It would place it

1 right at 79 percent.

2 CHAIRPERSON GRIFFIS: Excellent.

3 MR. RICE: So that's pretty much
4 it. Thank you.

5 CHAIRPERSON GRIFFIS: Great;
6 excellent. I appreciate that. I noted in
7 your footnote that element of the trellis.

8 ANC 6C did put in a letter of
9 support. It's one day late, which is why the
10 Office of Planning would not have had it.
11 It's Exhibit No. 25 in our record. We'll get
12 to that, as we'll have to waive our rules and
13 regulations to take it into the record and
14 I'll put that to the board in a moment.

15 I appreciate it. It's an
16 excellent analysis, in fact all the way
17 through. And let me just make sure that I'm
18 clear in your statements today, and then also
19 in reading it, the fact that Office of
20 Planning is in support and recommending
21 approval of the special exception under 223,
22 that this addition falls into those

1 requirements, that it would not in fact, and
2 hasn't been evidence as impacting the light,
3 air, privacy, or use of the adjoining
4 properties. Proper documentation of course
5 has been provided, and you haven't heard from
6 any others, that have raised other elements
7 that would create a detrimental impact; is
8 that correct?

9 MR. RICE: That's correct.

10 CHAIRPERSON GRIFFIS: Excellent.

11 And then you note, however, if the
12 trellis is added to this project, that the lot
13 occupancy would exceed that which is the limit
14 under 223 special exception review, which
15 would move it to a variance.

16 In your analysis of the trellis,
17 was there any indication of the openness to
18 the sky, how open that trellis or lattice, or
19 whatever we're calling it, was?

20 MR. RICE: Well, that level of
21 detail wasn't included in the application, but
22 my understanding is that if it's over 50

1 percent covered, that it should be considered
2 toward the lot occupancy. But again, I don't
3 have that detail.

4 CHAIRPERSON GRIFFIS: Okay;
5 excellent. I appreciate that. And when you
6 talk about 50 percent open to the sky or not
7 open to the sky, that's basically a procedural
8 interpretation of the regulations; is that
9 your understanding?

10 MR. RICE: That's correct.

11 CHAIRPERSON GRIFFIS: Excellent.

12

13 Let me ask this directly, that
14 question. There's two points in terms of the
15 documentation that's shown. One is the
16 trellis.

17 Are you aware of what it's made of
18 and how open to the sky it is? And then let
19 me put in the other piece, just for
20 clarification. On the second it shows as a
21 fence behind the parking pad. However, in the
22 plan it shows like it's two huge barn doors

1 that are opening. However, in the section,
2 then, I see a roll-up door.

3 So just for clarification, what's
4 going on underneath that potential trellis, or
5 not trellis?

6 MR. HOUSLER: Okay. I don't think
7 that what the trellis will be made out of has
8 been yet determined, but my assumption would
9 be that it would be wood, some kind of wood,
10 and that if the requirement is that it be less
11 than 50 percent, then I think that that could
12 be easily accomplished.

13 So I'll put that forward first. So
14 wood.

15 CHAIRPERSON GRIFFIS: Okay.

16 MR. HOUSLER: The second thing is
17 from the back, the--I'm not sure what number
18 you have on your drawings, but our page ten,
19 on the back, there's--basically from the
20 alley, there is a door that--a roll-up door
21 that would come down, and from that roll-up
22 door in however many feet it is for the

1 parking space, then there is right now
2 described as a gate, and that's what looks
3 like these barn doors, is this gate that'd be
4 inside.

5 Basically, it's sectioning off our
6 back yard from the parking area.

7 CHAIRPERSON GRIFFIS: Okay. And
8 that gate--there's two gates, and they're
9 almost the entire width of the property;
10 right?

11 MR. HOUSLER: The concept would
12 be--and this again is not completely
13 determined yet. But the concept would be that
14 if we chose to, we could open them up all the
15 way, and we would have our whole back yard,
16 plus the parking area to have a party or
17 entertain, if we chose to do that.

18 CHAIRPERSON GRIFFIS: Gotcha.

19 MR. HOUSLER: So that's kind of
20 the flexibility in the design of it, is that
21 if we wanted to, we could open it totally up,
22 and if not, then we could close it.

1 CHAIRPERSON GRIFFIS: That's fine.

2 MR. HOUSLER: And we would have a
3 parallel parking spot.

4 CHAIRPERSON GRIFFIS: I think
5 that's great. Gorgeous doors; look expensive;
6 none of my business. However, you know, you
7 can't open those if your car's there.

8 MR. HOUSLER: That's true.

9 CHAIRPERSON GRIFFIS: Okay.

10 MS. HWANG: That's the architect's
11 concept of hiding the car, the view of the car
12 from the back yard.

13 CHAIRPERSON GRIFFIS: Gotcha.

14 MS. HWANG: We're not quite sure
15 what we're wanting to do with--

16 CHAIRPERSON GRIFFIS: That's a
17 problem with giving too much latitude with
18 architects, isn't it? They get all creative.
19 Okay. Not an issue; don't think it raises any
20 of the zoning elements. It's certainly not in
21 the special exception 223. Just for
22 clarification, I wasn't really sure how that

1 was going to function, cause you call that a
2 parking pad and have two doors there.

3 But the trellis is more of--why,
4 then, does it totally cover--this is an
5 important issue, and maybe it won't be
6 apparent, why we're spending so much time on
7 this, but based on the fact that you've asked
8 us to actually make an interpretation of this,
9 we have to get into a lot of detail because
10 there is a huge impact to this.

11 There's the impact that goes
12 beyond this application, that's twofold, that
13 I see. It's actually more than that. But I
14 won't bore you with all of them.

15 One is it could create a structure
16 or building that is a communication between
17 existing accessory structures and a principal
18 structure, and if you could tie these together
19 with that, or with any element, then that
20 makes one structure which changes the dynamic
21 of the requirements, be it the open space, the
22 setback, all of this.

1 And so when we look at this and
2 we're asked, well, does this count? and you're
3 asking us does this count towards lot
4 occupancy? You asked it as building area; but
5 lot occupancy. That's an important element,
6 that whatever we would say here isn't as
7 unique to this, it has to be consistent with
8 every other--frankly, what we've done before
9 and where we go.

10 That's why the Office of Planning
11 was an excellent statement, saying that
12 procedurally, they have found in past history
13 and procedure, and interpretation and
14 implementation of the regulations, that if
15 it's less than 50 percent open to the sky,
16 there's one, and if it's more than 50 percent,
17 then there's another.

18 Okay. Enough of my analysis. Is
19 there any reason why the trellis would
20 continue all the way across? I mean, it's a
21 great thing to have a trellis in the back and
22 it kind of, you know, you could have roses

1 growing up it, and all that kind of stuff.

2 COMMISSIONER JEFFRIES: Or trumpet
3 vines.

4 CHAIRPERSON GRIFFIS: Or what?

5 COMMISSIONER JEFFRIES: Trumpet
6 vines.

7 CHAIRPERSON GRIFFIS: Trumpet
8 vines on this side, wisteria down here. We're
9 great landscaping buffs. But the point is why
10 not have, you know, a four foot trellis on
11 each side, let's say, and just have the plants
12 up that way.

13 Just for my understanding, is
14 there any reason to cover the entire back?

15 MR. HOUSLER: I think it's purely
16 an aesthetic decision.

17 CHAIRPERSON GRIFFIS: Sure. Okay.

18 MR. HOUSLER: Architect's choice.

19 CHAIRPERSON GRIFFIS: We don't
20 like to get into redesigning things, we're not
21 a design review board. But there it is. I
22 think we've got a lot of information on this.

1 Very well. Let's take any questions of the
2 board of the Office of Planning and their
3 report.

4 VICE-CHAIRPERSON MILLER: Good
5 afternoon. I just have a question about the
6 side yard. In OP's report, on page two, in
7 the paragraph, it seems to be saying that the
8 side yard will be partially infilled, creating
9 a nonconforming open court, and then in the
10 chart it says that it's eliminated. And I'm
11 just wondering, am I not reading this
12 correctly, that you're describing the same
13 side yard?

14 MR. RICE: Yes, it is the same
15 side yard. It's just a typo. That shouldn't
16 be there. "Eliminated" shouldn't be there.

17 VICE-CHAIRPERSON MILLER: So it's
18 not eliminated; it's creating a court.

19 MR. RICE: Yes, because it's
20 currently a side yard, and when the addition
21 is added, it will box in a portion of it,
22 creating the four foot wide open court. So it

1 is being created--the open court.

2 CHAIRPERSON GRIFFIS: Let's just
3 be clear. Where you're saying a typo, the one
4 that should be "eliminated" is under the open
5 court, correct?

6 MR. RICE: Yes.

7 CHAIRPERSON GRIFFIS: Okay. Now
8 there's "eliminated" in the column provided
9 under Side Yard--this will be a great
10 transcript to read--that provided side yard,
11 eliminated is correct. You're saying that the
12 side yard is eliminated in--

13 MR. RICE: Yes, that's correct;
14 the side yard is, will be eliminated and where
15 it says "eliminated" under the open court
16 provided, that shouldn't be.

17 VICE-CHAIRPERSON MILLER: Okay.
18 So if the side yard is eliminated, shouldn't
19 we also be considering special exception
20 relief from 405.8? Do you want me to read it
21 to you?

22 MR. RICE: Yes. I don't have--

1 VICE-CHAIRPERSON MILLER: Okay.

2 405.8 says: "In the case of a building
3 existing on or before May 12, 1958--this is a
4 building existing on or before--

5 MR. RICE: Yes.

6 VICE-CHAIRPERSON MILLER: Okay.

7 --with a side yard less than 8
8 feet--which it is, it was four feet--an
9 extension or addition may be made to the
10 building, provided that the width of the
11 existing side yard shall not be decreased, and
12 provided further, that the width of the
13 existing side yard shall be a minimum of five
14 feet.

15 And in a recent case, this board
16 decided that the elimination of a side yard
17 fell within this regulation.

18 MR. RICE: Okay.

19 VICE-CHAIRPERSON MILLER: So you
20 would agree that we--

21 MR. RICE: I would agree; yes.

22 VICE-CHAIRPERSON MILLER: Okay;

1 thank you. The relief will really be the
2 same, and it's special exception relief, so
3 we're just adding this category to the relief
4 in this case.

5 BOARD MEMBER MANN: I guess one of
6 the things I don't understand, based on what
7 the Chairman just said then, is except that
8 the side yard went away. Now it's just an
9 open court; right?

10 MR. RICE: It is. It's not a
11 created open court, and it's a bit confusing,
12 because if it's being eliminated, I don't
13 know, based on the section you just read, if
14 relief is necessary. I don't know.

15 VICE-CHAIRPERSON MILLER: I don't
16 think it's a critical issue in this case since
17 we're granting special exception relief in any
18 event, it doesn't--this case, it doesn't turn
19 on this issue.

20 MR. RICE: No.

21 CHAIRPERSON GRIFFIS: Good. I
22 think we've got it covered, then, under the

1 special exception 223. However, I would make
2 note, and I agree with Office of Planning's
3 analysis on this section, and also Mr. Mann's
4 statement, and the fact of the matter is we're
5 not talking about a decrease in a side yard.
6 This is a poorly written section of our
7 r e g u l a t i o n s , 4 0 5 . 8 .

8 However, we're talking about the
9 elimination, which is an excellent word,
10 actually used by the Office of Planning. An
11 elimination. 405.8 does not talk to the
12 elimination of a side yard. It talks about
13 the decreasing of it.

14 But believe me, we've had a lot
15 on this, so we can move on with this, because
16 I think we need to move ahead with the rest of
17 the facts in this case.

18 Are there any other questions,
19 then, of the Office of Planning from the
20 board?

21 Does the Applicant have any cross
22 examination questions of the Office of

1 Planning? Any hard-hitting--How did you find
2 this? What's your analysis of--okay.

3 Do you understand their--it's an
4 excellent report, and it's great, the way they
5 put tables, and also using your graphic
6 evidence in the sections to show their
7 analysis and what they arrived at.

8 Are you understanding the footnote
9 in the Office of Planning's report, that
10 indicate if this trellis is included in the
11 lot occupancy, that you are outside of a
12 special exception? We have to change this
13 entire application.

14 MR. HOUSLER: Yes.

15 CHAIRPERSON GRIFFIS: Okay. And
16 it is your testimony today that you are within
17 the lot occupancy or outside of the lot
18 occupancy? I'll say it another way.

19 Does the trellis count--I guess
20 that's what you're asking us to decide, isn't
21 it? All right. I won't belabor the point.
22 Let's move ahead.

1 If there's nothing further then
2 for the Office of Planning, let's go to other
3 government reports, then, to this application,
4 of which I do not have any, unless there are
5 others that are aware.

6 This is located in the Capitol
7 Hill Historic District?

8 MS. HWANG: Yes.

9 MR. HOUSLER: Yes.

10 CHAIRPERSON GRIFFIS: Right. And
11 you've already been through a conceptual
12 review with HPRB and staff; is that correct?

13 MR. HOUSLER: Yes.

14 CHAIRPERSON GRIFFIS: Okay. Very
15 well. We'll move to the ANC, Exhibit 25. Is
16 the ANC present? Any representative of the
17 ANC 6C present today?

18 [No response]

19 CHAIRPERSON GRIFFIS: Very well.
20 Not noting any, board members, I'd like to
21 hear your opinions on waiving our regulations
22 and accepting into the record the ANC report.

1 Is there any opposition to doing
2 that? It's filed one day late. I take it the
3 consensus of the board, then, as they're not
4 being very vocal at this time, that we would
5 waive our rules and regulations and take in
6 the report of the ANC which is recommending
7 approval and their support. Obviously, you
8 presented to the ANC and they hit you with a
9 hard-hitting questions; but you survived.
10 Okay.

11 Anything else then? Questions?
12 Comments? Clarifications?

13 Good. Is there any direction,
14 then, from board members on how they would
15 like to proceed with the elements before us?

16 One, the trellis in the back. The
17 second piece in terms of it constituting a
18 row dwelling, I think it's been said numerous
19 times in past applications, and actually in
20 decisions of the Zoning Administrator that--
21 and our regulations are direct in the fact
22 that an R-4 row dwelling is a matter-of-right

1 structure, and use therefore. It is not an
2 element that I think we need to delve into.

3 I think the Office of Planning is
4 absolutely correct, that it meets the test and
5 is appropriately before us as a special
6 exception under 223. That's not taking into
7 account or addressing the lattice or trellis
8 structure at the rear.

9 So we really have one element that
10 I'm asking board members to address at this
11 time and that is how you would like to
12 approach the trellis structure in the rear.

13 Yes, Mr. Mann?

14 BOARD MEMBER MANN: Well, I think
15 the way that I would like to approach the
16 trellis structure in the rear is to take the
17 Applicant at what I believe was their
18 statement, that it would be less than 50
19 percent coverage to the sky, in which case
20 it's something that we all need to consider.

21 CHAIRPERSON GRIFFIS: Or from my
22 understanding, you mean their statement that

1 it was open more than 50 percent to the sky?

2 BOARD MEMBER MANN: Yes. That's
3 what I meant to say. I didn't articulate that
4 very well.

5 CHAIRPERSON GRIFFIS: Right.
6 Indeed. I think you said it. I just got
7 confused. Okay. That's one assertion that we
8 would take. Is there any objection to
9 proceeding in that fashion, that we put this
10 as an ornamental structure at the rear for the
11 appropriate vine hanging at the discretion of
12 the Applicant? But would not count towards,
13 in all seriousness, directed towards the lot
14 occupancy or any element that would be a
15 changing of that which is presented under the
16 special exception. Not noting any opposition
17 or differing positions on that, is there any
18 other questions, clarifications, requirement
19 of the board?

20 [No response]

21 CHAIRPERSON GRIFFIS: I'll turn it
22 over to you, if you have any closing remarks

1 that you would like to add.

2 MR. HOUSLER: No.

3 CHAIRPERSON GRIFFIS: Anything
4 else? I don't see any reason why--the record
5 is entirely full on this and I think it's
6 appropriate to move directly into our brief
7 deliberation.

8 I would move approval of
9 Application 17576 and that is under special
10 exception which would allow the addition to
11 the existing single family dwelling under 223,
12 as this property does not meet the lot
13 occupancy requirements under Section 403, and
14 the open court, and as Ms. Miller has
15 indicated, we will add in the side yard under
16 405, requirements of premises, 706 East
17 Capitol Street, N.E., and I would ask for a
18 second.

19 BOARD MEMBER ETHERLY: Second, Mr.
20 Chair.

21 CHAIRPERSON GRIFFIS: Excellent.
22 Thank you very much. I think the record is

1 entirely full and especially with the address
2 of the Office of Planning's excellent report.
3 The Applicant has met the special exception
4 requirements under 223. I would note that the
5 representative, their architect, was not
6 available, but the Applicant themselves did an
7 excellent job in the presentation of their
8 case, and how there was not any evidence, or
9 I could say positively, there is evidence
10 showing that this does not impact light, air,
11 to the adjacent properties, or the privacy,
12 use and enjoyment.

13 A lot of it went into the record,
14 that we didn't fully pull out, orally, today,
15 but the window placements, the massing of the
16 structure, and the number of storage in the
17 rear--all that lent to the fact that there was
18 not any undue impact.

19 We looked at whether the addition
20 and the original building were compatible with
21 the surrounding character, as this is a rear
22 addition. It's a little diminished test, or

1 requirements for that, as the visual impact is
2 not as intrusive as one might be on the front
3 of the building and that is demonstrably
4 addressed in the Applicant's submission, but
5 also in the Office of Planning's analysis.

6 Graphic representation was
7 provided, with questions, of course, of detail
8 added to during our hearing today.

9 I would note that I would
10 obviously, as the maker of the motion, support
11 this application, but I'll open up to others
12 for their comment.

13 Yes, Ms. Miller.

14 VICE-CHAIRPERSON MILLER: Mr.
15 Chairman, I just would like to cite the order
16 I was referring to, so that the Applicant, and
17 others, can--you know, it may not have been
18 issued yet but you could look at the
19 transcript, or see when it's issued, like
20 where was I coming from.

21 And it's Appeal No. 17519 of ANC
22 2E, and in that, the majority of the board

1 determined that an elimination of the side
2 yard, a total elimination, which would have
3 converted a semidetached house into a
4 rowhouse, fell under 405.A, which says that
5 you need relief in order to decrease the side
6 yard.

7 And what I was saying earlier is
8 that it's really not a big problem in this
9 case, and that you're here for special
10 exception relief, and we're looking at it
11 under the same standards.

12 CHAIRPERSON GRIFFIS: Okay.
13 Anything else? I'd also note that we had
14 waived our rules, regulations, in taking into
15 the record ANC 6C's submission, which was
16 supportive of the application. Very well. If
17 there's nothing else--any other further
18 comments, deliberation? We do have a motion
19 before us. It has been seconded.

20 I'd ask for all those in favor to
21 signify by saying aye.

22 [Chorus of ayes]

1 CHAIRPERSON GRIFFIS: And opposed?
2 Abstaining.

3 [No response]

4 CHAIRPERSON GRIFFIS: The recorder
5 will record the vote.

6 MS. BAILEY: Mr. Chairman, the
7 vote is recorded as five, zero, zero, to grant
8 the application, as amended, adding relief
9 from the side yard requirement under Section
10 405.8. Mr. Griffis made the motion, Mr.
11 Etherly second, Mr. Mann, Mrs. Miller and Mr.
12 Jeffries support the motion.

13 CHAIRPERSON GRIFFIS: Excellent.
14 I don't see any reason why we wouldn't waive
15 rules and regulations and issue a summary
16 order on this, unless there's any objection
17 from the board members or the Applicant. Not
18 noting any objection on that, let's do so.
19 Thank you very much. Thank you both very
20 much. Good luck with this.

21 MR. HOUSLER: Thank you.

22 MS. HWANG: Thank you very much.

1 CHAIRPERSON GRIFFIS: Make sure
2 those cable suspensions for those barn doors
3 are really taut, and enjoy that back yard.

4 COMMISSIONER JEFFRIES: Trumpet
5 vine.

6 CHAIRPERSON GRIFFIS: Trumpet
7 vine. Okay.

8 Let's move ahead, then, and call
9 the next case.

10 MS. BAILEY: Application of
11 Frederick D. Dorsey, No. 17573, pursuant to 11
12 DCMR 3103.2, for a variance from the rear yard
13 accessory building occupancy limitation under
14 subsection 2500.3, a variance from the alley
15 setback requirements under subsection 2300.4,
16 and pursuant to 11 DCMR 3104.1, a special
17 exception to allow the construction of a free-
18 standing garage serving a single-family
19 detached dwelling under section 223, not
20 meeting the lot occupancy requirements of
21 section 403. The property is zoned R-1-B and
22 is located at 7708 12th Street, N.W., Square

1 2958, Lot 45.

2 CHAIRPERSON GRIFFIS: Excellent.
3 thank you. Good afternoon.

4 MS. GEREHENIES: Good afternoon.

5 CHAIRPERSON GRIFFIS: There's a
6 button on the base of that microphone. The
7 light will turn on. Perfect. I'll just have
8 you state your name and address for the
9 record.

10 MS. GEREHENIES: My name is Gail
11 Gerehenies. I live at 7708 12th Street, N.W.
12 I've lived there for 30 years, this year.

13 CHAIRPERSON GRIFFIS: Excellent.

14 MR. DORSEY: Frederick Dorsey,
15 same address, same length of time.

16 CHAIRPERSON GRIFFIS: Welcome.
17 I'll turn it over to you.

18 MS. GEREHENIES: Do you want me to
19 start? I can start.

20 CHAIRPERSON GRIFFIS: Sure.

21 MS. GEREHENIES: I just wanted a
22 little background, if I could. Like I just

1 said, we've lived in our home for 30 years.
2 We moved there, it's a very stable street, a
3 very stable neighborhood. There are seven
4 houses on our street and four of us have been
5 there since the seventies.

6 CHAIRPERSON GRIFFIS: Wow.

7 MS. GEREHENIES: Very stable.
8 Twenty years ago--my husband will elaborate on
9 this--we needed to provide for his mother, we
10 have three elderly parents between us, and his
11 mother, who was 76 at the time, needed a
12 handicap-accessible place to live, and we did
13 search all over Northwest Washington. I did,
14 with a realtor, looking for something, and we
15 were unable to find anything that wasn't in a
16 basement or didn't involve stairs.

17 So we consulted with an architect
18 and ended up building an addition to our home.
19 In order to do that, in order to fit it into
20 the lot, and allow the building to go forward,
21 the construction, we tore down our garage that
22 was built with the house in 1930. It was a

1 two-car garage. We intended, at the time, to,
2 at some point, replace the garage. It never
3 occurred to me there were zoning ramifications
4 to any of our decisions.

5 Anyway, now we have realized that
6 there are, and until we started this process,
7 we also didn't realize that that very garage
8 may not even have accommodated our cars.
9 Today, we don't drive anything exceptional,
10 not SUVs, but today's cars just aren't fitting
11 in the Shepherd Park garages that were built
12 in 1930. So we have consulted with a builder
13 and we have submitted our plans, and,
14 unfortunately, they do impact, I think, the
15 total lot occupancy, the rear lot occupancy,
16 and the alley setback by two feet. The alley
17 setback issue deals exclusively with the
18 length of today's cars versus the cars from
19 1930.

20 In this process, we did contact
21 all of our neighbors. We got a list from the
22 Office of--I forget which office--23

1 neighbors, and two of whom are--two of the
2 houses are owned by out-of-town banks in
3 Florida and Richmond. So of the 21 people
4 that we contacted, we initially sent a letter
5 telling them of our plans and asking people to
6 contact us if they had any problems.

7 Subsequent to that, we sent around
8 an actual survey and said, could you please
9 indicate your opposition or your support of
10 this project. We received letters from twelve
11 of our neighbors, all of whom were in support.
12 We received no letters of opposition.

13 We are the only house in the
14 immediate vicinity, and actually, as far as
15 Shepherd Park, that I can think of, without a
16 garage. When you look down our alley, it's
17 obvious there's all garages and then us, and
18 we do have the off-street parking that is
19 required in the District.

20 But at this point, there are
21 serious parking issues in our neighborhood.
22 There are safety issues in our neighborhood.

1 We had 15 cars either vandalized or stolen in
2 the month of January alone in Shepherd Park.
3 We're anxious to get our cars off the street.
4 We live in the vicinity of four churches.
5 They're within two to three blocks of our
6 home. They all have weekday and weekend
7 activities, and sometimes we come home with
8 our groceries and two blocks is as close as we
9 can get to our house. We are very anxious to
10 garage our cars again, and that's why we are
11 here today, and my husband would like to
12 briefly speak about the addition.

13 MR. DORSEY: Before I do that, it
14 occurred to me today, unfortunately, that one
15 of the things we submitted to the ANC, we
16 didn't submit to you, and that was the letters
17 that we did receive from neighbors.

18 CHAIRPERSON GRIFFIS: Oh.

19 MR. DORSEY: So with your
20 permission, I'd like to give copies of that to
21 the board.

22 CHAIRPERSON GRIFFIS: Absolutely.

1 Yes; that's fine. While you do that, Ms.
2 Bailey will take those into evidence, and
3 we'll put that in the record the board will
4 review. Let me just address that. I mean, of
5 course it's very important to have your
6 neighbors in support of what you're doing.
7 This board has a lot of analysis, if you saw
8 the past case, the agencies, and what we
9 really are looking for in terms of the
10 adjacent neighbors, either support or in
11 opposition, is substantive fact base. What is
12 the objection or what is the support for?

13 Because then we have to take all
14 of that information and put it dryly into the
15 variance or special exception test. So that
16 has given me enough time to get this out to
17 each of the board members and I can turn it
18 back over to you.

19 MS. GEREHENIES: I can't speak for
20 all our neighbors but I can tell you that
21 parking is an issue for all of us.

22 CHAIRPERSON GRIFFIS: Sure.

1 MS. GEREHENIES: Where everyone
2 started out with one or two cars, there are a
3 number of people, now, who have three, and as
4 children, again, a lot of us have lived there
5 for 30 years--as children return home, we even
6 have one neighbor with four cars, and that
7 doesn't even begin to explain all the people
8 who park there because of the church activity,
9 the other activity.

10 So I believe they have the same
11 parking issues that we do.

12 CHAIRPERSON GRIFFIS: I'm sure.

13 MS. GEREHENIES: And it turns out
14 that many of them, and we didn't know this,
15 can't use their garages because of the length
16 of today's cars, or sometimes if they're SUVs,
17 the height of today's cars or the width.

18 CHAIRPERSON GRIFFIS: Right.

19 MS. GEREHENIES: But it is a
20 problem in our neighborhood.

21 CHAIRPERSON GRIFFIS: I totally
22 agree, and if it was just on common sense

1 demand for what is being proposed, we'd be out
2 of here already. Just to be clear, because I
3 think sometimes it's misinterpreted or
4 misunderstood by people that are before us--
5 common sense would say you want a garage?
6 there's a parking problem? Well, why don't we
7 let you build a garage.

8 Our difficulty is, in our position
9 and jurisdiction, we need to have you show us
10 that your property is somehow unique, and from
11 that unique aspect, whether it be the size or
12 the history, or special circumstance, it is
13 practically difficulty, or it becomes
14 burdensome to comply fully with our
15 regulations, and that regulation goes to
16 exactly why you're here, the lot occupancy.
17 You're not here for alley setback; but we'll
18 get into that later. But you're here for a
19 variance.

20 And then out of that practical
21 difficulty, if we were to approve this, it
22 wouldn't be detrimental to the zone district

1 which you're located in, meaning it wouldn't
2 be so totally outside of the scope of the R-1-
3 B district, and lastly, it wouldn't be against
4 the public good. But that's just the test for
5 the variance and we'll get you through all
6 that here in short order. So we are with you.

7 You were going to talk about the
8 addition, and that's the previous addition.

9 MR. DORSEY: Yes.

10 CHAIRPERSON GRIFFIS: The previous
11 addition that required you to remove the
12 garage.

13 MR. DORSEY: Yes.

14 CHAIRPERSON GRIFFIS: Excellent.

15 MR. DORSEY: In order simply to
16 get the equipment in and to do the foundation
17 for that, it required taking the garage out.
18 I guess the thing, the only thing, really,
19 that makes the circumstance unique, is the re-
20 -requirement--was what it meant to put in
21 handicap-accessible space.

22 CHAIRPERSON GRIFFIS: Sure.

1 MR. DORSEY: In doing that, I'm
2 sure, because you do zoning all the time, that
3 you know that the hallways have to be a
4 certain width, the bathroom has to have a
5 certain depth.

6 CHAIRPERSON GRIFFIS: Right.

7 MR. DORSEY: The doorways have to
8 be a certain width.

9 CHAIRPERSON GRIFFIS: Right.

10 MR. DORSEY: And all of that takes
11 space. And in doing that, what we didn't
12 realize at the time, but we do now, is that
13 the structure and the lot occupancy reduced
14 with respect to the garage.

15 CHAIRPERSON GRIFFIS: Okay.

16 MR. DORSEY: So in point of fact,
17 there is the same spot in which the garage
18 existed.

19 CHAIRPERSON GRIFFIS: Yes.

20 MR. DORSEY: That's not taken by
21 the addition. But if you put that garage
22 back, the rear yard occupancy, and the overall

1 occupancy, is below the requirement.

2 Why is it unique? Well, because
3 if we were going to have a handicap-accessible
4 space, it was going to take that decision, and
5 the question, though, is, having done that,
6 did you then sacrifice the garage for the
7 handicap space? And while that might have
8 been a decision, if we'd understood it at the
9 time, it wasn't. So the only uniqueness is
10 that in order to now have a garage, when you
11 have the handicap space, which incidentally,
12 sort of makes sense, because if we--we didn't
13 have to have it with my mother, although she
14 lived there, and did what she actually wanted
15 to do, namely, die at home.

16 The fact of the matter is you
17 can't do a handicap vehicle, you know, with
18 the ability to take up, a wheelchair in, and
19 that sort of thing. Now we've done one of the
20 three parents. We have two more.

21 And they are, right now,
22 independent, not with us, and that sort of

1 thing. But that is the long and the short of
2 it. It is is it possible to have a garage,
3 under these circumstances, given the variance
4 requirements?

5 Now in terms of facts, that
6 neighborhood is an old one, and as a result,
7 it probably grandfathers a lot of things that
8 are now in effect. For example, as you saw in
9 the planning report, the side width on one
10 side is even instead of eight. That wasn't
11 changed by the addition; but it is below the
12 current standard of eight.

13 I don't think that requires one,
14 since it didn't change from the original
15 structure. The only reason I raise it is
16 because I think in the report, in the block,
17 it says "required" in terms of its conformity.
18 I'm sure the office will deal with it when
19 they get to it.

20 On part four of the report, it
21 talks about project description.

22 CHAIRPERSON GRIFFIS: I'm sorry.

1 Which report?

2 MR. DORSEY: The planning report.

3 CHAIRPERSON GRIFFIS: Oh, Office
4 of Planning's report? Okay.

5 MR. DORSEY: Right. You'll note
6 that it talks about the side yard, second from
7 the bottom, and the seven feet. It is seven
8 feet, and as it now exists, and the project is
9 to keep the same line on the side, which would
10 continue the seven feet.

11 And so I only raise it cause I
12 wasn't sure if that required a variance or
13 exception, if it's consistent with the
14 preexisting building. I'm not sure about
15 that.

16 CHAIRPERSON GRIFFIS: Okay.

17 MR. DORSEY: But I just bring that
18 up.

19 CHAIRPERSON GRIFFIS: It's a good
20 question.

21 MR. DORSEY: So that is the only
22 thing that even remotely addresses the

1 uniqueness issue, that is, the handicap status
2 of the addition.

3 CHAIRPERSON GRIFFIS: Sure; okay.

4 I think that's excellently put.
5 Anything else, then, at this time?

6 MS. GERE BENIES: No.

7 CHAIRPERSON GRIFFIS: Good. Let's
8 go to board questions. Questions? Ms.
9 Miller.

10 VICE-CHAIRPERSON MILLER: Good
11 afternoon

12 MS. GERE BENIES: Good afternoon.

13 VICE-CHAIRPERSON MILLER: I can
14 hear some uniquenesses, and, you know, you're
15 the only one without a garage in your whole
16 area. And the improvement that you've done,
17 etcetera.

18 My question is, if you were to do
19 a parking pad instead of a garage, you might
20 not need this zoning relief, and I'm wondering
21 why is it you need to do the garage?

22 MS. GERE BENIES: We have the

1 parking pad.

2 VICE-CHAIRPERSON MILLER: You had
3 a pad. Okay. And there are problems with it?

4 MS. GEREKENIES: Yes. We have
5 serious crime issues in the neighborhood. We
6 have involved the 4th District. We've had
7 community meetings with Mayor Fenty, when he
8 was our Council member. We've had, I would
9 say it's been three and a half years, of some
10 very serious issues. We had to actually
11 police tape off our parking, our off-street
12 parking area, to keep the kids from partying
13 back there, because behind the addition, in
14 order to give privacy to my mother in law, we
15 have a--the window is very high up, because
16 she didn't want people to be able to see in
17 from the alley, which is a legitimate concern,
18 for any age, but especially her age.
19 Consequently, we can't see out there.

20 So the kids figured that out and
21 they were--so we would go out and find "crack
22 bags," and all sorts of things in the alley

1 all the time. So we actually put up police
2 tape to try to keep them out of that area.
3 It's been moderately successful but there's
4 still a lot of activity in that alley.

5 I certainly would not park there
6 at night, under any circumstances, and I go to
7 work at 6:15 in the morning, and I would not
8 walk out there in the dark either. It's just
9 not safe in our alley.

10 VICE-CHAIRPERSON MILLER: So you
11 park on the street.

12 MS. GEREHENIES: On the street in
13 front of the house.

14 VICE-CHAIRPERSON MILLER: Okay.
15 And it's difficult to find a space on the
16 street, often.

17 MS. GEREHENIES: Very often; very
18 often. The churches are very active during
19 the day. One of them has an adoption agency.
20 They host the AARP. They host boy scout
21 meetings. At one point, I had a list, it was
22 for something else, there's at least ten

1 organizations that use the church, off and on,
2 and it's seven days a week there, and then we
3 have three other churches that host dance
4 classes, and all sorts of things.

5 And parking is just at a premium.
6 We are also right at the Silver
7 Spring/District line. We're only three blocks
8 from Walter Reed. So there's Metro issues.
9 There's bus issues. People want to park
10 there.

11 We do have residential parking but
12 I will say that the enforcement is incredibly
13 spotty.

14 VICE-CHAIRPERSON MILLER: Thank
15 you.

16 CHAIRPERSON GRIFFIS: Anything
17 else? Anything else from board members?

18 I think I may have misspoken when
19 I said you're not here for the alley setback.
20 What I meant to say--and we're going to get
21 this with Office of Planning, I believe--but
22 the section you cited was not the correct one.

1 But it should be 2300.2.

2 And then you asked the question
3 of, well, what about the side yard? We're
4 just lining it up with the existing building.
5 And I think we can get to that. I'd like to
6 get through Office of Planning's analysis.
7 But 2300.2, which regulates private garages
8 and car ports, states a private garage, an
9 accessory building in a resident district, can
10 be located in the rear yard--and I'll skip
11 down a little bit because it says: It shall be
12 removed from the side lot line a distance
13 equal to the required side yard, and from all
14 buildings, a distance of not less than ten
15 feet.

16 So what we would have to do is
17 look at what the required side yard is, and
18 that is eight feet, not seven feet, even
19 though it's lining up with your building,
20 which is an existing structure.

21 So let's, with that statement--

22 MR. DORSEY: Could I just--

1 CHAIRPERSON GRIFFIS: Yes, please.

2 MR. DORSEY: I didn't mean to
3 interrupt--

4 CHAIRPERSON GRIFFIS: No. Go
5 ahead.

6 MR. DORSEY: If it's the side--
7 because of the lot, and the width of it, the
8 simple matter was that setback, the garage
9 could go to the side, to allow that setback.
10 It is drawn now simply to go with the existing
11 structure.

12 CHAIRPERSON GRIFFIS: Gotcha.

13 MR. DORSEY: But there's no
14 reason--

15 CHAIRPERSON GRIFFIS: Right. I
16 totally understand. You're saying you could
17 move it over another foot and comply with the
18 eight foot side yard.

19 MR. DORSEY: Right.

20 CHAIRPERSON GRIFFIS: Okay. Well,
21 that's good to know, actually. And then the
22 last piece is 2300.2(b) says: Where abutting

1 an alley. So you're abutting an alley.
2 You're not an alley lot. Where you're
3 abutting an alley, it should be set back at
4 least 12 feet from the center line of the
5 alley upon which it opens, which is the same
6 thing, dimensionally, with the other section.
7 Okay; there it is. Let's go to the Office of
8 Planning then.

9 MR. JESICK: Thank you, Mr.
10 Chairman, members of the board, my name is
11 Matt Jesick, and as we've discussed, the
12 Applicant is here today to request zoning
13 relief in order to construct a detached
14 garage.

15 The Applicant, pursuant to the
16 referral from the Zoning Administrator,
17 originally applied for three variances, that
18 is, lot occupancy, setback from the center
19 line of an alley, and rear yard occupancy, and
20 the Office of Planning reviewed this
21 application as a variance case, rather than a
22 special exception under 223, and although the

1 Office of Planning supports the construction
2 of a garage on the subject site, based on the
3 three-part test for a variance, Office of
4 Planning cannot recommend approval of the
5 application.

6 A detached garage would be in
7 conformance with the Comprehensive Plan
8 designation for this site, which is low-
9 density residential. That's not an issue. A
10 detached garage would be in conformance with
11 the intent of the R-1-B Zone. So that is not
12 an issue.

13 When we look at the specific
14 variance relief, however, and the requirements
15 for granting a variance, that's where we run
16 into some difficulties.

17 Now, again, the relief was lot
18 occupancy, section 401, setback from the
19 center line of the alley, and I believe the
20 board has explained that well. The required
21 section would actually be 2300.2(b). Rear
22 yard occupancy is Section 2500.3, and as the

1 Applicant noted, we feel that side yard relief
2 would also be required with the currently-
3 submitted design, and that's Section 405.

4 The first part of the variance
5 test, as you know, is: Does the property
6 exhibit any uniqueness, or any other
7 extraordinary or exceptional situation? This
8 property is the same size as others on the
9 square. It's rectangular in shape. It
10 doesn't have any unusual topography. It's not
11 exceptionally narrow.

12 So the Office of Planning felt
13 that this application does not meet the first
14 part of the test, and because of the second
15 part of the variance test follows on the first
16 part, it states, Does that uniqueness cause a
17 practical difficulty for the Applicant?

18 The second part of the test also
19 cannot be met.

20 Now the third part of the test is,
21 Can relief be granted without detriment to the
22 public good, without impairment of the intent

1 of the zoning regulations? and I think
2 clearly, the answer to that question is yes.

3 The relief could be granted and a garage
4 could be constructed without impairing the
5 intent of the zoning regulations or causing
6 detriment to neighbors.

7 It is in keeping with the
8 neighborhood character. All the other
9 properties have a garage, either one car or
10 two car, in this case it would be a two-car
11 garage. The materials would be similar; the
12 size would be similar. The garage would not
13 impact the use or enjoyment of neighboring
14 properties. It would not obstruct light or
15 air to adjacent properties.

16 So the third part of the test
17 could be met, but the application does not
18 meet all three of the required parts of the
19 test. The community is in support of the
20 application. ANC 4A voted on December 5th,
21 2006, to recommend approval, and Office of
22 Planning has not received any letters or calls

1 of support or opposition to the project.

2 So although the garage would have
3 no negative impacts on nearby properties, the
4 Office of Planning cannot recommend approval
5 of the application because it does not meet
6 the three part variance test.

7 CHAIRPERSON GRIFFIS: Excellent.
8 Thank you very much. A couple quick
9 questions. You have in your paragraph, the
10 address of additions as qualifying under 223,
11 special exception, because obviously the lot
12 occupancy, with this added in, would comply
13 with the requisite requirements for special
14 exception. But it's Office of Planning's
15 position that accessory structures don't
16 qualify as additions, and you've noted that
17 there's a concern that that might be able to
18 allow accessory uses?

19 Am I to understand, then--if I
20 understand that logic, what you're saying is
21 if we were to look at this as an addition,
22 take this under special exception, then

1 someone could say, well, that accessory garage
2 is actually an addition to my primary
3 residence, and make that an apartment or a
4 habitable space; is that correct?

5 MR. JESICK: Yes. You've stated
6 it exactly as our concern is.

7 CHAIRPERSON GRIFFIS: Okay.

8 MR. JESICK: We just didn't want
9 to see that sort of "creep" in the use of the
10 regulations to somehow allow additional
11 residential space.

12 CHAIRPERSON GRIFFIS: Yes. I
13 mean, I think that's an interesting--it seems
14 like such a stretch, but having gone through
15 thousands, hundreds of cases, I can see where
16 that stretch will be made.

17 The other piece of it--I'm not
18 sure--were you aware of the existence of a
19 garage prior, and then the demolition of that,
20 and if so, or even having heard it today, does
21 that rise to a level of a unique circumstance,
22 that this property is under?

1 MR. JESICK: I was aware that
2 there was a previous garage on the site. I
3 talked with the Applicant on a few different
4 occasions, and they discussed that with me.

5 We did not feel that contributed
6 to the uniqueness of the property. It
7 certainly can be said that the new addition
8 makes this house closer to the rear property
9 line than other homes in the neighborhood.
10 However, because of that, it was a choice by
11 the Applicant in the past, we felt that that
12 cannot be used as an argument for uniqueness,
13 because they have already increased the lot
14 occupancy on their site, and decreased the
15 potential for rear yard occupancy.

16 CHAIRPERSON GRIFFIS: Okay.
17 Others?

18 VICE-CHAIRPERSON MILLER: Mr.
19 Jesick, when you're considering the uniqueness
20 standard, am I correct? it sounded as if
21 you're only considering the characteristics of
22 the property, such as the topography or the

1 width, physical qualities of the land itself;
2 is that correct?

3 MR. JESICK: Well, we looked at
4 those, the physical characteristics, the
5 dimensional characteristics of the property,
6 but we also did consider the house itself and
7 whether the structure could somehow be
8 considered unique.

9 Because it was an addition to the
10 home, I think that kind of tilted us in the
11 direction that that was a choice that was made
12 in the past, and like I said, while we don't
13 feel that the garage would have any
14 detrimental effect on the neighbors, just
15 based on the three-part test that we have to
16 follow, we don't feel that met the uniqueness
17 requirement.

18 VICE-CHAIRPERSON MILLER: Okay. I
19 want to make one comment and then ask you
20 another question. My understanding of the
21 Court of Appeals decisions on variances, with
22 respect to self-imposed hardship, which this

1 could fall under, that that would be a
2 disqualifier for a use variance. But in this
3 case, we're talking about an area variance.
4 So I wouldn't disqualify the fact that they
5 did that addition.

6 I guess my last question is, cause
7 this is something that strikes me as a unique
8 factor--did you consider the fact that they
9 are the only, as presented to us, they're the
10 only one without a garage in this area?

11 MR. JESICK: Certainly, we're
12 aware of that. There are other options. I
13 guess, you know, the Applicant has discussed
14 why they cannot park in the back, and those
15 are, you know, legitimate concerns, but we
16 again felt that the uniqueness or lack thereof
17 did not meet the first part of the variance
18 test.

19 VICE-CHAIRPERSON MILLER: Thank
20 you.

21 CHAIRPERSON GRIFFIS: Good.
22 Anything else from the board?

1 [No response]

2 CHAIRPERSON GRIFFIS: Does the
3 Applicant have any questions of the Office of
4 Planning? Did you have the report?

5 MS. GEREHENIES: Yes, we did.

6 CHAIRPERSON GRIFFIS: Okay. So
7 you're aware of all their issues.

8 Very well, if there's nothing else
9 for the Office of Planning, thank you very
10 much, excellent report, we'll take it under
11 advisement, obviously.

12 Let's move ahead, then. Is the
13 ANC 4A present? Is ANC 4A with us?

14 [No response]

15 CHAIRPERSON GRIFFIS: Not noting
16 any representative of the ANC, we will note
17 Exhibit 16, in which the ANC was recommending
18 approval of the application.

19 At this time, I think it would be
20 appropriate to ask all those persons present
21 to provide testimony in this application to
22 come forward. Those persons in Application

1 17573, in support; in opposition. Plenty of
2 chairs. Don't be shy. I'm not noting anybody
3 present to provide additional testimony, and
4 this application will move forward, then, and
5 I turn it over to you for any final remarks,
6 conclusions that you might have.

7 MR. DORSEY: I don't think
8 there's--

9 CHAIRPERSON GRIFFIS: Okay; that's
10 fine. Board members, last questions,
11 comments, considerations?

12 [Pause]

13 VICE-CHAIRPERSON MILLER: Mr.
14 Chairman, I just would like to ask Office of
15 Planning one more question, and that is, if we
16 were inclined to grant variance relief in this
17 case, do you have an opinion with respect to
18 whether or not the garage should be moved in
19 order to comply with the side yard
20 requirements? Or whether there's a good
21 reason to grant variance relief from that
22 provision?

1 MR. JESICK: The Office of
2 Planning would not object to keeping the
3 garage in its present location. As I stated,
4 the garage would not impede, in any way, the
5 light on adjacent properties, or air. It
6 wouldn't cast shadow on adjacent properties.
7 We would have no objection to its present
8 location.

9 VICE-CHAIRPERSON MILLER: Would it
10 be more in character with the house or
11 surrounding properties in its present
12 location?

13 MR. JESICK: It would be more in
14 keeping with the present side yard of the
15 existing home.

16 VICE-CHAIRPERSON MILLER: Thank
17 you.

18 Mr. Chairman, at this time I would
19 like to move approval of Application No. 17573
20 of Frederick D. Dorsey for a variance from the
21 rear yard, accessory building occupancy
22 limitations, variance from the--we're doing

1 alley setback?

2 CHAIRPERSON GRIFFIS: Yes.

3 VICE-CHAIRPERSON MILLER: Alley
4 setback requirements and special exception
5 relief to allow the construction of a free-
6 standing garage serving a single-family
7 detached dwelling under Section 223, not
8 meeting lot occupancy requirements.

9 CHAIRPERSON GRIFFIS: Excellent.
10 Is there a second? Is there a second?

11 BOARD MEMBER MANN: Second.

12 CHAIRPERSON GRIFFIS: Thank you
13 very much, Mr. Mann.

14 Yes?

15 VICE-CHAIRPERSON MILLER: I'd like
16 to start with the variance relief. I think
17 that the Applicant does meet the three-prong
18 test in this case. I find that the
19 Applicant's situation is unique, in that it is
20 the only property that does not have a garage
21 within its facility, and that there is a
22 practical difficulty in this case because of

1 the addition that was done.

2 And I explored with the Applicant
3 the issue of providing parking with the
4 parking pad, and that is in fact the situation
5 that exists, and that the practical difficulty
6 that the Applicant has in this case is related
7 to crime, that, in fact, that they cannot put
8 the cars there because it's dangerous to go to
9 the cars, and they documented that, and
10 therefore they're parking on the street, which
11 is a practical difficulty for them because of
12 the churches in the area which generate a lot
13 of parking, and Metro, and other factors.

14 And that there is no detriment to
15 the public by granting the relief. In this
16 case, the Office of Planning did not find any
17 detriment, and all the neighbors support, and
18 there's no evidence of detriment that's been
19 presented in the record in this case.

20 CHAIRPERSON GRIFFIS: Excellent.
21 Others? I think that's well said, and,
22 actually, when we looked at the variance test

1 under 3103.2, there's specific elements that
2 go to what creates or constitutes uniqueness,
3 not to mention the fact that we have court
4 cases, which you didn't cite, but we could get
5 through all that. I don't think the board
6 understands exactly what the courts have told
7 us in terms of what the tests for the
8 variances are. But the important section of
9 3103.2 in this particular case goes to not
10 exceptional topographical conditions, but,
11 rather, to extraordinary or exceptional
12 situation, and I think you've outlaid that
13 fairly well.

14 There's testimony today, and in
15 the record, pertaining to the fact that there
16 was an existing building prior to the zoning
17 regulations, a garage structure. It was
18 removed, unbeknownst to the current and then
19 owners, that that would have major impacts
20 with the zoning regulations at their future
21 time.

22 And so it does put a unique

1 situation to this.

2 You've also indicated that this is
3 one of--or the only, without a garage
4 structure, which I think lends itself not only
5 to the uniqueness, but also the practical
6 difficulty, that environmental aspect. If all
7 the other properties on that alley have
8 protection, or garage structures, therefore
9 all of the alley activity is being congregated
10 into this one area.

11 We have, not very often,
12 established the only unique or practical
13 difficulty on environmental conditions, a
14 crime, or anything of that--but we have taken
15 into a confluence of the factors of uniqueness
16 and practical difficulty and I think that's
17 where this rises to, and, in addition, as Ms.
18 Miller has said, the other demand for other
19 uses, and parking demand on the street.

20 And one thing we haven't really
21 connected to but as you're looking at--
22 obviously, you made an addition to accommodate

1 accessibility to your structure. It's fairly
2 apparent on the front photographs, we have a
3 whole long ramp that wasn't talked about.

4 That addition--that looks to be
5 the direct entrance into the addition in the
6 back. Well, as we look at the reverse of
7 access through the alley, or for that parking
8 pad, and that structure, certainly safety
9 would go to that issue.

10 You talked a little bit about it.
11 But just the timing. And also the cover, you
12 know, in order to get into a cover structure.
13 All of these, to me, lead up to the confluence
14 of the elements of uniqueness and practical
15 difficulty, and I think Office of Planning did
16 an excellent job.

17 And the third prong, which the
18 Office of Planning couldn't reach, really, the
19 third prong for you, because you have to meet
20 the first test, the second test, and then the
21 third. But they addressed it anyway.

22 Because I read it, and maybe it's

1 just my reading between the lines, but they
2 had some difficulty in saying we can't support
3 this cause it doesn't meet it. But I
4 appreciated their forthrightness in their
5 analysis, and also in how they clearly laid
6 out the fact that this wouldn't go against the
7 public good, or wouldn't be detrimental to the
8 zone plan or map.

9 We see that all the surrounding
10 area, especially on this square, has been
11 built with detached garage structures.

12 So I do support the motion. I
13 think it's excellently established by Ms.
14 Miller. I open up to others in support, or in
15 opposition to the motion.

16 Yes?

17 COMMISSIONER JEFFRIES: Yes, thank
18 you, Chair. I'm going to vote in opposition,
19 and begrudgingly so, because I do believe that
20 the Applicants, while this is somewhat self-
21 imposed as it relates to the sort of
22 exceptional situation here, and I believe that

1 obviously, they did not mean to do that, I do
2 find if you just look really at the site,
3 there's really nothing really unique or
4 exceptional about the site and the situation,
5 other than what was self-imposed.

6 And that leads to the second. I
7 mean the first and the second prong of the
8 variance tests are somewhat connected.

9 But I do feel that number three of
10 the variance tests, and I think what was set
11 forth by the Office of Planning, you know,
12 it's absolutely right, that allows me to,
13 while I'm going to vote in opposition, it's a
14 rather soft opposition, I do think that what
15 will be intended here in terms of the actual
16 garage is clearly within the plan and does not
17 at all impair the intent or purpose or
18 integrity of the zoning regs.

19 And I think that's about it. Yes;
20 that's it on my part. Thank you.

21 CHAIRPERSON GRIFFIS: Thank you
22 very much. Others?

1 I guess I'm not clear in terms of-
2 -well, maybe I am. You're saying that they
3 have a self-imposed practical difficulty.

4 COMMISSIONER JEFFRIES: Yes. I
5 think that they, in terms of building the
6 addition, they have created a lot that has
7 distinguished it from the other lots in this
8 area. So I think if they had not put the
9 addition in place, I don't think there would
10 be anything really exceptional about--I think
11 this site would be, you know, very similar to
12 every other site, or lot. I'm sorry.

13 CHAIRPERSON GRIFFIS: Okay.

14 VICE-CHAIRPERSON MILLER: I said
15 this earlier and I didn't say it when I made
16 my motion. But I would like to say it again
17 with respect to the fact that there is
18 somewhat of a self-imposed hardship in this
19 case and that they created the situation which
20 now requires them to seek variance relief for
21 the garage.

22 It is my certain understanding but

1 I haven't put my fingers on the case yet, that
2 that creation of hardship will defeat a use
3 variance but will not defeat an area variance.
4 So I don't think that that should be--well, in
5 my view, that's not the reason to defeat it in
6 this case because we're talking about an area
7 variance.

8 And also, I believe the Court of
9 Appeals cases have really evolved to the point
10 where we don't look so strictly at just the
11 specific properties of the land but we look to
12 the circumstances that may be constraining a
13 property in a way that's different from other
14 properties, and one case that comes to my mind
15 is Gilmartin, in which there were certain
16 easements on the property that created a
17 specific hardship in it.

18 So that really didn't go to the
19 topography of the land or anything as specific
20 as that.

21 COMMISSIONER JEFFRIES: But I
22 just--and I don't know whether this is part of

1 your whole determination, but the whole notion
2 of, you know, parking, the parking situation
3 with area churches, I mean, you know, I just
4 don't feel that follows with the actual site
5 or property. I mean, that's just a condition
6 of the general neighborhood, you know, and if
7 that was part of your discussion around why
8 you think that there's a unique situation, I
9 just didn't find that testimony compelling.

10 VICE-CHAIRPERSON MILLER: That
11 really went to the practical difficulties that
12 the Applicant was dealing with, and with
13 respect to the uniqueness, it was that this is
14 the only one.

15 And that's important, because if
16 you have a situation where they're not the
17 only one, and the reason is parking is
18 difficult, then everybody could get a
19 variance, and then therefore you defeat the
20 variance and you've made a zoning change or
21 whatever. And so therefore in this case, it's
22 that they are the only one that doesn't have

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1 the garage and that has that additional
2 problem therefore.

3 COMMISSIONER JEFFRIES: And that
4 goes to my whole notion of, you know, self-
5 imposing, so--but again, I mean, I really
6 don't want to spend a lot of time up here,
7 back and forth. I mean, we're not in
8 testimony here, amongst the board members. I
9 agree with the Office of Planning's findings
10 and so I will be voting for denial.

11 CHAIRPERSON GRIFFIS: Okay.
12 Anyone else? Comments? Deliberation?

13 VICE-CHAIRPERSON MILLER: We also
14 have a special exception aspect to this; is
15 that correct? That's the way the application
16 is advertised. For not meeting the lot
17 occupancy requirements.

18 CHAIRPERSON GRIFFIS: No; that
19 would be a variance. Am I mistaken?

20 VICE-CHAIRPERSON MILLER: Well, I
21 mean, I think if they meet the variance, it's
22 a higher standard.

1 CHAIRPERSON GRIFFIS: Correct.

2 VICE-CHAIRPERSON MILLER: But the
3 second part of the application, as advertised,
4 says a special exception to allow the
5 construction of a free-standing garage serving
6 a single-family detached dwelling under
7 section 223, not meeting the lot occupancy
8 requirements.

9 CHAIRPERSON GRIFFIS: It was my
10 understanding that we were doing a variance
11 under the lot occupancy because of, actually,
12 the Office of Planning's discussion on the 223
13 as having an accessory structure, count as an
14 addition. If this was an addition to, it
15 would fit under the lot occupancy allowable
16 for a special exception under 223 for the R-1-
17 B Zone.

18 But this addition is not--sorry--
19 that this accessory garage, I believe is
20 looked at--and in fact the Zoning
21 Administrator referred this to us as three
22 variances. Although the sections are a little

1 precarious, I think they were direct in 403.1
2 in the lot occupancy as a variance. I think
3 that's the way we should continue, and you're
4 absolutely right, in terms of our
5 deliberation, it's obviously a higher test of
6 variance and therefore, if it meets the
7 variance, one would assume that the lesser
8 burden of special exception would also have
9 been met.

10 But I think it's clear to go
11 straight with the variances as we outlined in
12 the beginning of the application.

13 VICE-CHAIRPERSON MILLER: No, I
14 agree, and now I realize what that's referring
15 to. So I would think that we would find that
16 223 wasn't appropriate or wasn't necessary.
17 It's in the--it's been advertised as that, I
18 believe.

19 CHAIRPERSON GRIFFIS: Right. So
20 to be clear, we'd be doing lot occupancy under
21 403, the alley setback under 2300.2(b). I've
22 got to open this up. We also had the side

1 which was 7 feet, not 8 feet, under 405, and
2 I believe we're still on the 2500.3, but I'm
3 not--yes. Okay. There it is. Very well.
4 Anything else? Any other comments,
5 deliberation on that? We do have a motion
6 before us.

7 If there's no further deliberation
8 by the board, with the motion before us, I'd
9 ask for all those in favor to signify by
10 saying aye.

11 [Chorus of ayes]

12 CHAIRPERSON GRIFFIS: And opposed?
13 Abstaining?

14 Very well. Why don't we record
15 the vote.

16 MS. BAILEY: Mr. Chairman, the
17 board has voted four, one, zero to grant the
18 application, as amended. Mrs. Miller made the
19 motion, Mr. Mann second, Mr. Griffis, Mr.
20 Etherly support the motion, and Mr. Jeffries
21 is opposed to granting the motion.

22 CHAIRPERSON GRIFFIS: Excellent.

1 Thank you very much. I don't see any reason
2 why we wouldn't waive our rules and
3 regulations and issue a summary order on this,
4 unless anyone on the board has an objection to
5 that or the Applicant has any objection. Any
6 objection to that?

7 [No response]

8 CHAIRPERSON GRIFFIS: Very well.
9 Let's do that and issue a summary order on
10 this, and I thank you both very much.

11 MS. GEREKENIES: Thank you very
12 much.

13 MR. DORSEY: Thank you.

14 CHAIRPERSON GRIFFIS: Yes, sir?

15 MR. DORSEY: I know this is
16 unusual but--

17 CHAIRPERSON GRIFFIS: Nothing's
18 unusual here.

19 MR. DORSEY: That's probably true.
20 But I did want to say, Mr. Jesick was very
21 helpful, and I know he recommended against it,
22 but he was very helpful and positive

1 throughout the process, and I just couldn't
2 leave without saying that.

3 CHAIRPERSON GRIFFIS: That's very
4 well, and I appreciate your taking the time to
5 do that, cause I think it's important to do.
6 I think you share the board's opinion of the
7 Office of Planning, this specific planner, but
8 also all of them in their analysis and the
9 importance of what they do, and the whole
10 picture of the land use approval process. So
11 I appreciate your saying that.

12 Let me also just return a quick
13 compliment in terms of the letters that you
14 sent out to your neighbors. You submitted
15 them into the record. They're obviously an
16 official part. I read them through as we were
17 going through this and I think they were
18 excellently crafted in terms of not moving a
19 person in one direction or the other, but
20 being very open and subjective and allowing a
21 distinct opinion to come in.

22 I won't obviously read these as

1 our record's full on this, but I think you
2 should be commended on how you crafted it and
3 put it out there to the community.

4 There it is. Good luck to you
5 both and thank you.

6 Let me us move ahead, then, to the
7 next case.

8 MS. BAILEY: Mr. Chairman, if I'm
9 not mistaken, the Applicant for the next case
10 has not arrived as yet.

11 CHAIRPERSON GRIFFIS: Is that
12 correct? Is the Applicant from the Taylor
13 Real Estate trust LLC case No. 17572 present?
14 Can't tell with the 350 people in the room,
15 Ms. Bailey. Perhaps we should begin voir
16 dire-ing everybody. Well, there it is. It's
17 3:06. Why don't we take a 15 minute break,
18 and we'll resume then, and see if the
19 Applicant comes in in that time.

20 [Break from 3:06 p.m. until 3:33
21 p.m.]

22 CHAIRPERSON GRIFFIS: Very well.

1 Let's resume.

2 MS. BAILEY: Mr. Chairman, the
3 last case of the day is Application No. 17572
4 of Taylor Real Estate Trust LLC, pursuant to
5 11 DCMR 3104.1, for a special exception from
6 the roof structure provisions under subsection
7 411, that's 770.6, and pursuant to 11 DCMR
8 3103.2, a variance from the building height
9 provisions under subsection 530.3, to raise
10 the height of an existing elevator penthouse
11 serving an office building in the SP-2
12 District at premises 1128 16th Street, N.W.,
13 Square 183, Lot 91.

14 CHAIRPERSON GRIFFIS: Thank you
15 very much, Ms. Bailey. As you have just
16 joined us and you are standing, if you would
17 give your attention and keep standing, to Ms.
18 Bailey, she's going to swear you in.

19 [Witnesses duly sworn]

20 CHAIRPERSON GRIFFIS: Excellent.
21 Thank you both, very much. As I've noted that
22 you're just joining us this afternoon, please

1 be seated, make yourself comfortable.

2 Let me ask you a quick question
3 before you introduce yourself for the record.
4 Have you presented before this board before?

5 MR. ROSENBLUM: Not for a number
6 of years.

7 CHAIRPERSON GRIFFIS: Turn your
8 microphone on. Perfect.

9 MR. ROSENBLUM: I presented, years
10 ago.

11 CHAIRPERSON GRIFFIS: Okay.

12 MR. ROSENBLUM: But I have
13 presented before.

14 CHAIRPERSON GRIFFIS: Fabulous.
15 I'm going to have you introduce yourself for
16 the record, name and address.

17 MR. ROSENBLUM: I am Martin
18 Rosenblum. I am the architect for this
19 project. My local address is 3003 Van Ness
20 Street, N.W. and my office is based in
21 Philadelphia, Pennsylvania, 346 South 15th
22 Street, Philadelphia, Pa. 19102.

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1 CHAIRPERSON GRIFFIS: Excellent.
2 And with you today?

3 MR. ROSENBLUM: This is Christine
4 Heiland. She is the building and property
5 manager for the Taylor Company.

6 CHAIRPERSON GRIFFIS: Excellent.
7 Okay. I was going to repeat some of my
8 opening remarks and give you some instruction
9 but I will dispense with that and we'll just
10 move ahead as I believe you might be familiar.
11 If not, we'll give you direction as we go
12 forward.

13 Obviously, I am turning it now
14 over to you for the presentation of your case
15 and we will take questions from the board
16 after that.

17 MR. ROSENBLUM: The Taylor Company
18 moved into this building in 2003 as a private
19 office, they are a private banking firm, and
20 shortly thereafter, their elevator failed.
21 The building itself is a historic house. It's
22 quite well-recognized. It is now going to be

1 in the new district there, and what is most
2 unusual about this house is that it was never
3 chopped apart.

4 So it is an original historic
5 building. In reality, the interior of the
6 house is more unusual, its survival, than the
7 exterior of the house, because many buildings,
8 the exterior survives but the insides have
9 been chopped and diced. So the Taylors went
10 and they restored the inside of this building
11 and in the meantime, the elevator failed.
12 Because it was built as a house originally, it
13 was quite a small cab. So we went about
14 replacing the cab.

15 The key exception was that Mr.
16 Taylor wished--when they bought the building,
17 there was a rooftop deck garden, which many of
18 the other buildings in the neighborhood have,
19 and he wished for the elevator to access that,
20 so any employee might be able to make it up to
21 the deck, and that he, in the future, could do
22 that as well. It's sort of their recreational

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1 outdoor space.

2 And not that the work is
3 recreational but the people do go up there for
4 break. So we went to Kone, who was one of the
5 few companies who was willing to supply us
6 with an elevator for the unusual constraints
7 of our shaft, so that we wouldn't have to
8 alter the building.

9 What we found, when we went to
10 apply for our building permit, we were denied
11 on the basis of two items. The first item,
12 which is we have two penthouses, they said, on
13 the roof, one was for the existing stairwell
14 and one was for the existing elevator. They
15 are, in fact, physically connected with a
16 lattice fence that actually has steel running
17 behind it for all of our air conditioning
18 equipment.

19 But nonetheless, it was described
20 as two. Now it seemed that the greater
21 difficulty was the height of our elevator
22 penthouse. It exceeds what is the normal

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1 limit, in two fashions. First of all, it is
2 higher than the required amount, and second of
3 all, it is higher--by code--and second of all,
4 it is determined by the setback from the
5 parapet, and we are exceeding that as well.

6 So we went back to Kone, when we
7 were flagged on this, and who was the only
8 person who was willing to deal with us, and
9 they took us back to the elevator and
10 escalator code, which is the only way that
11 they can install this thing.

12 And what they did is they
13 explained that because our elevator is
14 unusually small, and there is a stirrup on
15 top, as we do not have a place on top of the
16 elevator for what they call a place of refuge,
17 which is if inadvertently the elevator kicks
18 in while someone is on top servicing it, that
19 we don't have someone fatally injured.

20 When we took the place of the
21 space of refuge, as they call it, above the
22 stirrup--and I have the actual numbers, by the

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1 way, if anyone is interested in them, I don't
2 want to bore you with them, but I do have them
3 in front of me. By the time we took the place
4 of refuge, we took the required machine room
5 above, we took the height of the structural
6 slab, we added it up.

7 When we realized we were over, we
8 went back to our structural engineer, we
9 reduced the slab thickness by three inches.
10 We got Kone to reduce the height of the
11 elevator equipment room by six inches.

12 And nonetheless, we are
13 approximately, I believe, seven, I think it's
14 seven feet over what was allowed, and, quite
15 frankly, whether it's seven feet or an inch,
16 is really not an issue. We're over.

17 And so we are looking for relief
18 from this height as well as the penthouse
19 issue. It should allow us to use the building
20 for many years. It is the only company that
21 would work with us and they said they will
22 only install the elevator under their terms,

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1 in terms of safety, because of liability.

2 We do not feel it has any negative
3 effect on the adjacent buildings. The ANC has
4 taken a neutral position on it. We have
5 supplied Mr. Jackson, who's been extremely
6 helpful, with all of the shop drawings that
7 show that this has been engineered literally
8 to the inch.

9 The penthouse stands against an
10 adjacent building which exceeds the height of
11 our penthouse. We don't block anyone's views.
12 In fact, we're the lowest density use in the
13 immediate surrounding, and obviously--I don't
14 know how old Mr. Taylor is and I probably
15 shouldn't say publicly, but I imagine he's,
16 from the age of his kids in his early sixties.
17 His office is on the fourth floor. I really
18 do have to get a working elevator in there or
19 I'm going to be in trouble, and I have been in
20 the existing elevator more than once when it
21 stopped between floors.

22 So we're sort of "between a rock

1 and a hard place." We don't want to destroy
2 the interior of this absolutely beautiful
3 structure, and we're hoping that we will get
4 relief on the basis of life safety to extend
5 this cab up to the required height, or this
6 penthouse.

7 And I'm open for any questions
8 that you might have.

9 CHAIRPERSON GRIFFIS: What type of
10 g is this?

11 MR. ROSENBLUM: You mean in terms
12 of--

13 CHAIRPERSON GRIFFIS: Is it
14 hydraulic?

15 MR. ROSENBLUM: It is hy--no; it's
16 actually a cable lift, and that's why we need
17 this penthouse.

18 CHAIRPERSON GRIFFIS: How many
19 levels does it service?

20 MR. ROSENBLUM: It services the
21 basement through the roof, which is a total of
22 six levels.

1 CHAIRPERSON GRIFFIS: And six
2 levels is not possible for a hydraulic? Or
3 did you look at a hydraulic elevator?

4 MR. ROSENBLUM: We can't
5 physically get--what we did is we called
6 several people in when we were looking to
7 replace our existing elevator. Most companies
8 would not even work within that space. They
9 flat out said we will not deal with this
10 space. Our shaft, our present cab is only 42
11 by 42. Okay. So we don't fall within the
12 normal means. We really didn't feel that it
13 was appropriate, in a building of this nature,
14 to put in a residential elevator such as an
15 Inclinet.

16 CHAIRPERSON GRIFFIS: But you're
17 expanding it to a 54 by 80.

18 MR. ROSENBLUM: I would like to
19 correct that. Is that that did come up on the
20 drawings. It was one of our notes. Is that
21 the detail plan, 1-A-1, has something on it
22 which is incorrect. That the proposed cab's

1 54 by 80 with a two-nine doorway, and it's not
2 ADA compliant. In fact, the existing cab,
3 right now, is 42 inch square by 42 inch
4 square, and they have told us there's no way
5 to enlarge the shaft.

6 CHAIRPERSON GRIFFIS: So you're
7 just doing 42 by 42?

8 MR. ROSENBLUM: That's correct.

9 CHAIRPERSON GRIFFIS: So the
10 drawings we have right now are not what's
11 actually being proposed?

12 MR. ROSENBLUM: They really are,
13 because what--if I may say, and I would stand
14 corrected on that--

15 CHAIRPERSON GRIFFIS: Well, it'll
16 be interesting, how you make 42 by 42 equal 54
17 by 80. But go ahead.

18 MR. ROSENBLUM: Yes; yes. No. I
19 understand that, totally. The heights on it,
20 which is the issue that's in question, not the
21 footprint, is totally correct. It has been
22 engineered down to the inch. When I got my

1 review notes on this, which I have with me, in
2 front of me, that a member of my staff
3 prepared, who has been working with Mr.
4 Jackson, he brought to my attention that we're
5 not going to be able to make that 54 by 80.
6 But as I said, it doesn't affect the relief
7 for the--

8 CHAIRPERSON GRIFFIS: So you're
9 proposing to maintain the existing--

10 MR. ROSENBLUM: Existing cab.

11 CHAIRPERSON GRIFFIS: --opening,
12 42 by 42.

13 MR. ROSENBLUM: That's correct.

14 CHAIRPERSON GRIFFIS: So help me
15 understand why a hydraulic--it's just the cab
16 size?

17 MR. ROSENBLUM: It's the cab size.
18 It's the cab size. It's the area alongside
19 the cab. It's the size of the hoistway. We
20 just don't simply have any--it's a fully
21 built-out building, unfortunately, and so
22 we're really trying to replace the equipment,

1 in place, in kind, which is it had a machine
2 room over the existing elevator, which allowed
3 it to operate.

4 The minute we go and we change
5 that, at all, we're going to have to start
6 changing the scope of the shaft going down on
7 the floors below, which we're trying to avoid.

8 CHAIRPERSON GRIFFIS: Well, two
9 questions, then.

10 MR. ROSENBLUM: Yes?

11 CHAIRPERSON GRIFFIS: If you had
12 an existing and you're not changing the cab
13 size, 42 by 42, conceivably you had an overrun
14 in a machine room on the existing, what's
15 mandating the--

16 MR. ROSENBLUM: Two things, sir.
17 We, first of all, did not meet code. It was
18 preexisting code.

19 CHAIRPERSON GRIFFIS: Okay.

20 MR. ROSENBLUM: The equipment is
21 shot. So, unfortunately--

22 CHAIRPERSON GRIFFIS: Right. I

1 understand that. Let's scrap what's existing
2 then. Help me understand 24 feet. In six
3 years on this board, we've done a couple of
4 elevator penthouses. I have not extensive
5 knowledge on this. But help me understand
6 where 24 feet goes. If I have a nine foot,
7 let's say the nine foot clear that I need for
8 the elevator to come up to service the roof,
9 I have an overrun of how much?

10 MR. ROSENBLUM: I am, instead of
11 my walking through this, if you will bear with
12 me a moment. I'm going to dig out the shop
13 drawing to walk you through.

14 CHAIRPERSON GRIFFIS: Excellent.
15 Let's say it's a four foot overrun, while you
16 get that. I'll do my own calculations while
17 we do this. The other question is, did you
18 look at a side mount, or a side-mounted
19 machine room?

20 MR. ROSENBLUM: Yes. We have been
21 through--the previous building manager had
22 literally called in any and every person who

1 would inspect this piece of equipment. Okay.
2 Well, let met add one other thing.

3 In terms of a side-mounted machine
4 room, I will say that to the right of the
5 existing elevator shaft is a massive skylight
6 that has historically lit the stairwell, all
7 the way down through this historic structure.

8 To the right of the penthouse is
9 the steel that supports our building
10 generator, all of our air conditioning
11 equipment. So we're pretty much locked in,
12 front to rear on that. But I'm still--forgive
13 me for the fumbling, I do want to pull out the
14 shop drawing, because I know I've brought it
15 for you.

16 MR. JACKSON: Mr. Chairman.

17 CHAIRPERSON GRIFFIS: Yes, sir.

18 MR. JACKSON: This is Arthur
19 Jackson, D.C. Office of Planning. I believe
20 the shop drawing you're looking for is the one
21 that I attached to their report, that shows
22 the section.

1 MR. ROSENBLUM: That is correct,
2 sir.

3 MR. JACKSON: So you can reference
4 the addendum.

5 CHAIRPERSON GRIFFIS: Oh. For
6 your recent submission?

7 MR. JACKSON: Right.

8 CHAIRPERSON GRIFFIS: Oh, good.
9 Okay.

10 MR. ROSENBLUM: Thank you, sir.

11 MR. JACKSON: Certainly.

12 CHAIRPERSON GRIFFIS: So we're
13 looking at three six clear overrun?

14 MR. ROSENBLUM: Yes. And then
15 you're looking of course at your floor slab,
16 and then you're looking at your elevator
17 machine room above that, your equipment room,
18 for a minimum height of seven feet.

19 And then, on top of that, you are
20 looking at a roof and parapet, and that is how
21 we come up with the 24 feet. Hold on a
22 second. I'm actually looking for--I should

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1 never bring so many papers; it complicates
2 things.

3 Walking you through on the
4 vertical heights here, referenced on the Kone
5 sheet N4 elevator detail, we need 13 foot
6 eleven from the cab floor to the hoistway
7 ceiling. We need 14 inches for the machine
8 room floor assembly and then seven foot four
9 for the machine room ceiling height.

10 We have been able to reduce these
11 numbers further by integrating the floor
12 assembly into a 10 inch overall, which is
13 moving the structure to support the elevator
14 into the floor slab, and we've gotten
15 permission from Kone to reduce the machine
16 room from the seven four they requested to a
17 height and the code minimum of seven feet, a
18 total reduction of eight inches.

19 CHAIRPERSON GRIFFIS: Okay.
20 Anything else?

21 MR. ROSENBLUM: I'm just trying to
22 scan my notes. We've dealt with the code

1 issues, the effect on the building, on the
2 historic building, and the cost, and those are
3 most certainly our three issues in looking for
4 relief. We are very anxious to get a decent
5 operating elevator in this building again and
6 allow the Taylors full use of the property.

7 CHAIRPERSON GRIFFIS: Sure; sure.
8 What other manufacturers did you look at for
9 elevators?

10 MR. ROSENBLUM: The manufacturers
11 never had the elevator going all the way up to
12 the top, but we don't--

13 CHAIRPERSON GRIFFIS: Which ones
14 didn't have it going up to the top?

15 MR. ROSENBLUM: Yeah. And yet on
16 the other hand, that was done in a very
17 different era, and since the entire staff uses
18 this space now, is Mr. Taylor wanted it
19 accessible to everyone, including himself.

20 CHAIRPERSON GRIFFIS: You said
21 that Kone is the only one that could do this
22 job. What are the other ones that could not

1 do this job?

2 MR. ROSENBLUM: Unfortunately--and
3 I'm in a rough position--I've changed building
4 administrators. What was Shawn's last name?
5 Shawn Stevens left about a month and a half
6 ago. She had garnered the various firms who
7 were willing to make a custom cab this size,
8 this run, and had come to me and put Kone and
9 myself together. So she did the spadework on
10 it. I just met with the firm that was willing
11 to deal with us.

12 CHAIRPERSON GRIFFIS: I see. So
13 you have records, though, of the past
14 conversations--

15 MR. ROSENBLUM: I would have
16 those, if I had to go back to the office. I'm
17 sure that Christine could pull them out of the
18 Taylor Company records.

19 CHAIRPERSON GRIFFIS: Sure. Okay.
20 Other questions?

21 VICE-CHAIRPERSON MILLER: I just
22 have a couple questions.

1 MR. ROSENBLUM: Sure.

2 VICE-CHAIRPERSON MILLER: Could
3 you elaborate a little more on how otherwise
4 you would have had to destroy the interior of
5 your building.

6 MR. ROSENBLUM: Oh, very much so.
7 If we are looking at--I wish I had a
8 blackboard here. But let's see. No
9 blackboard. What I will describe--I'm so
10 sorry. Our building is very narrow, as you
11 realize, we're about 27 by about 80, if I'm
12 not mistaken, and the center of the building
13 is a major stairwell from the first floor up
14 to the fourth floor, with a major skylight
15 above it.

16 To the right of the stair, when
17 one is facing the building, is a major
18 historic salon, that this stairwell landing
19 opened into on each floor. The Taylors went
20 to very, very great extent, and actually
21 satisfied the code, by fully sprinklering this
22 building and putting in very advanced fire

1 warning equipment, so that we would be able to
2 keep the stairwell and the salon open instead
3 of having to close the entire thing up.

4 The elevator, which was an
5 original residential elevator, was wedged in
6 a corner behind the run of the stair, which
7 really established that 42 inch width. It was
8 a one or two person elevator.

9 So in order to make that shaft
10 larger, we would either have to come forward,
11 intruding on the four foot stair, and the
12 skylight, or we would have to move to the rear
13 and the rear behind the elevator, moving
14 toward the rear of the building, is a major
15 masonry bearing partition from basement to
16 roof.

17 So it was either broach that,
18 which means restructuring the building, or
19 destroying the staircase.

20 Unfortunately, neither of these
21 were taken into account when the building was
22 rehabilitated, which I was not involved in.

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1 I came to wok for the Taylors afterward,
2 because something might have been able to be
3 accomplished earlier, but was almost
4 impossible to accomplish now.

5 CHAIRPERSON GRIFFIS: So bottom
6 line is you're going to stay at the 42 by 42,
7 which you've indicated is a residential size.
8 Currently, it's a residential--

9 MR. ROSENBLUM: Well, it's not a
10 standard commercial size elevator.

11 CHAIRPERSON GRIFFIS: Right. So
12 have you looked at residential elevators to
13 fit, now that you're not expanding the cab?

14 MR. ROSENBLUM: The nature of a
15 residential elevator, and I have worked with
16 many of them, in terms of weight restriction,
17 ease of travel, speed of travel, they're
18 largely drawn on tracks such as the Elevette,
19 and we really didn't feel that they were
20 suitable for a building of this type. I mean,
21 they truly--you know the type they are. They
22 have a scissor gate on them, and we do have an

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1 automatic door on this elevator. It does
2 establish--it works as a commercial elevator.

3 Having worked with many of the
4 residential elevators, which my background
5 happens to be in historic buildings and I do
6 a lot of retrofitting--they're not very
7 comfortable for the public to come in and use.
8 If you don't close the gate a 100 percent, the
9 elevator stops between floors. I mean,
10 they're very, very ticklish things, the
11 residential elevators, and I think unsuitable
12 for this building. The Kone building--the
13 Kone--excuse me. The existing elevator that
14 was in there, which the Kone most closely
15 resembles, was the elevator that had been in
16 this building when it was in private use,
17 which seemed eminently suitable, and that's
18 what we were trying to duplicate, but we were
19 trying to give full access to our building,
20 the way it's used.

21 I mean, one of the things, for
22 instance, is people don't smoke in buildings

1 anymore, for understandable reasons. We're
2 all happy about that. But, on the other hand,
3 you have to have a place for people to go, if
4 they're going to do that, or they're going to
5 stand right in front of your front door and do
6 it, which is not an acceptable way of doing
7 it.

8 So this area upstairs serves as a
9 place where members of the staff go, they take
10 their lunch on a nice day, if someone wants to
11 smoke, they go up there and smoke.

12 CHAIRPERSON GRIFFIS: We're not
13 going to get into what the use of the roof
14 terrace is.

15 MR. ROSENBLUM: Yeah; yeah.

16 CHAIRPERSON GRIFFIS: Okay. I
17 still don't completely understand all this.
18 However--well, let me ask. What's the
19 existing brand, or manufacturer of the
20 elevator?

21 MR. ROSENBLUM: I believe it was
22 an Otis, sir.

1 CHAIRPERSON GRIFFIS: Okay.

2 MR. ROSENBLUM: Many of these
3 companies have been sold out and are no longer
4 even in existence. They've been eaten up.

5 CHAIRPERSON GRIFFIS: By Otis.
6 Okay. Anything else then? Anything else at
7 this time? Any other questions?

8 Let's move ahead and go to the
9 Office of Planning, which we'd just briefly
10 noted, but officially, for the record, we had
11 a supplemental report or memo from Office of
12 Planning which had the attached shop drawings,
13 which was critical, obviously.

14 Let's turn it over to Mr. Jackson.
15 A very good afternoon to you.

16 MR. JACKSON: Thank you, Mr.
17 Chairman. Again, my name is Arthur Jackson.
18 I'm a development use specialist with the
19 District of Columbia Office of Planning.
20 Before you, you have two reports. One was
21 dated February 21st and the other was March
22 5th. The March 5th report is a supplement

1 wherein we have concluded that we would
2 support the necessary relief in terms of
3 special exception and variance in order to
4 achieve the ends that they seek, and if you'd
5 like to review the supplemental report and I
6 answer questions, that's one way to proceed,
7 or I could go through and highlight the
8 points. What is your preference?

9 CHAIRPERSON GRIFFIS: I think we
10 can highlight the supplemental. I think
11 that'd be good.

12 MR. JACKSON: All right. Well, in
13 essence, the--overall, we visited the site,
14 the architect was kind enough to take us
15 through the development and the proposal, and
16 we noted there were a number of differences
17 between what exists and what they're
18 proposing.

19 This is an issue with elevators,
20 that we were not experienced with, so we did
21 refer the plans to our DCRA and the elevator
22 section there, to ask their comments. I would

1 note that their comments were that they, based
2 on the information they had, which was not a
3 full set of plans, obviously, it was the
4 original submittal, they thought that the
5 Applicant was proposing the minimum that would
6 be required under the current code.

7 The Applicant made reference to a
8 2000 engineering code. The District uses a
9 1996. However, they were consistent with
10 those minimum requirements.

11 We felt that, based on our
12 analysis, that some of the relief that they
13 were requesting was subject to special
14 exception approval. However, the height was
15 a variance because it exceeded the maximum--
16 there was no special exception provision
17 allowed, provided for exceeding the height
18 from the roof.

19 So essentially we, based on our
20 analysis, we determined that there were
21 operating difficulties in that the existing
22 elevator was a certain size, expanding the

1 elevator would affect the stairwell and
2 existing building, that replacing the existing
3 elevator in the current location was obviously
4 the most cost-effective way of providing
5 service to the roof.

6 We made several suggestions. One
7 of them was that possibly putting an elevator
8 in the back, replacing the current lift.
9 However, the result of that would be to reduce
10 the amount of usable floor space that was
11 currently in the building as well as possibly
12 sealing off the rear of the rear yard from the
13 alley. There's a minimal setback there now,
14 rear yard setback now, and that that would
15 make a significant difference in the character
16 of that space.

17 We also looked at the impacts of
18 the, visually, on the property, and referred
19 this application to our Historic Preservation
20 office. Historic Preservation looked at it
21 and did not think that in itself, this would
22 have a significant impact on the potential

1 historic character of the property. Noting
2 that the--I guess in a couple weeks, this will
3 be part of the extended 16th Street Historic
4 District. However, there are some other issues
5 that they will be dealing with the Applicant
6 directly, when they go to HPR, to the Historic
7 Preservation Review Board for this proposal.

8 But those issues are not directly
9 related to the height of this elevator. Then
10 we looked at the impact on air and light. We
11 didn't see that there would be impact on air
12 and light of adjacent properties, particularly
13 since the other buildings around there are
14 taller. The adjacent building to the north is
15 across an alley. So they wouldn't impact
16 that.

17 And at the time we wrote the first
18 report, we had received some response from the
19 Applicant with regard to--what we'd asked the
20 Applicant for was some documentation from the
21 elevator engineer, that they were applying the
22 minimum standards that would be applicable.

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1 What we received was the shop
2 drawings, and at first glance did not appear
3 to address the issues that we were most
4 concerned about. But after being prodded by
5 the Applicant, we examined them further, and
6 went through and just added up the dimensions.

7 If you look at, on the submitted
8 plans, it appeared that there'll be a nine
9 inch difference between the rooftop and the
10 top of the deck, right at the elevator, based
11 on the submitted plans.

12 If you add the other dimensions to
13 it, it comes to about 23 feet six inches.

14 And that appeared to be the
15 minimum. But even taking into account the
16 eight inch reduction that the Applicant had
17 indicated they could provide.

18 Based on our limited knowledge of
19 this field, and the information we were able
20 to garner from the experienced staff at DCRA,
21 this does appear to be the minimum they could
22 do, given the circumstances they presented.

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1 We did not push them about what
2 other elevator companies they contacted, or
3 other options, because none were really
4 obvious to us, and the one issue that we were
5 not able to resolve was really what the true
6 difference is between the cost of this
7 installation and doing the elevator tower.

8 But I think overall, we're talking
9 about an order of magnitude. And so if this
10 was \$100,000, then surely taking out an
11 existing masonry shaft and putting in even a
12 poured concrete foundation would be an order
13 of magnitude much--would be much more. To
14 some degree, there'll be a significant
15 difference in cost, regardless of what that
16 was.

17 So based on those factors, we
18 determined, on further review, that we could
19 support the variances as requested, because we
20 think this is a truly unique situation,
21 circumstance, that's unlikely to be repeated,
22 because there are very few existing, previous

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1 historic residences that are functioning
2 offices, that have not had significant
3 renovations or changes.

4 That concludes the summary of
5 Office of Planning report and we're available
6 to answer any questions you may have.

7 CHAIRPERSON GRIFFIS: Excellent.
8 Thank you very much, Mr. Jackson. I
9 appreciate that. Questions from the board.

10 Yes?

11 VICE-CHAIRPERSON MILLER: Mr.
12 Jackson, with respect to the height of the
13 penthouse, is it visible from the street, or
14 it is hidden by surrounding buildings or what?

15 MR. JACKSON: The Applicant has a
16 section that indicates that it would not be
17 available from the immediate front. However,
18 HPRB thinks it will be somewhat visible. Now
19 part of that, though, is because of the fact
20 that this building is adjacent to an alley, so
21 as such, there is no building next to it to
22 prevent you from viewing it from an angle.

1 But again, we defer to the
2 Historic Preservation office with regards to
3 the potential impact of this singular
4 structure on top of a historic building, on
5 the overall character of the historic
6 district, in its extended fashion, and they
7 did not see that it, in itself, it would be a
8 significant impact.

9 VICE-CHAIRPERSON MILLER: Okay,
10 because I thought that you had said that with
11 respect to HPRB, that HPRB wasn't going to be
12 considering the height per se, and so will
13 they be considering the impact of the height
14 in the context of--

15 MR. JACKSON: No.

16 VICE-CHAIRPERSON MILLER: No.

17 MR. JACKSON: There's some issues,
18 frankly, with the deck that currently exists--

19 CHAIRPERSON GRIFFIS: We're going
20 to need you on a mike. You can take it right
21 back there. We'll be able to see it from
22 there.

1 MR. JACKSON: And so there's going
2 to be some negotiations with regard to the
3 existing character of the roof, irrespective
4 to the tower itself, and then in fact the fact
5 that they're building this larger, taller
6 tower, gives them the opportunity to address
7 some things they'd like to see redressed on
8 that roof.

9 VICE-CHAIRPERSON MILLER: Okay.
10 But Office of Planning didn't find that there
11 was an adverse impact that would be created
12 from the height with respect to the character
13 of the surrounding properties, or--

14 MR. JACKSON: Well, with regard to
15 character existing, and buildings,
16 particularly with regard to a situation where
17 it's going to be on a historic corridor, we
18 would defer to our Historic Preservation
19 office to make that call, and based on their
20 call, we would concur that it would not be a
21 significant impact.

22 MR. ROSENBLUM: If I can elaborate

1 on that, if I may, we have 14 inches of the
2 shaft, will be visible above the parapet, from
3 across the street. It will not be visible, at
4 all, on our side of 16th Street, but when you
5 stand across 16th Street, you'll see 14 inches
6 of the addition.

7 CHAIRPERSON GRIFFIS: Okay. Any
8 other questions? Questions for the Office of
9 Planning? Very well. Let's move ahead.

10 I don't have any other government
11 reports attendant to this application, unless
12 others are aware of any.

13 Do we have a representative from
14 ANC 2B present today? Did you present to the
15 ANC?

16 MR. ROSENBLUM: No, actually, the
17 ANC had called our hearing off because of
18 snow, and then rescheduled but called us the
19 day they rescheduled, and I was not in my
20 office when they called. We have spoken to
21 them. They took no position on this.

22 CHAIRPERSON GRIFFIS: Okay; good.

1 At this time we could take persons present to
2 provide testimony in support or in opposition.
3 They can come forward at this time. Not
4 noting any persons present to provide
5 additional testimony in this application, we
6 will return to you for any final closing
7 remarks that you might have.

8 MR. ROSENBLUM: I appreciate
9 everyone's time. I hope that you understand--
10 I'm sure you understand the historic nature of
11 the building. The Taylors did painstakingly
12 restore this building, which had fallen into
13 disrepair, and it really has fallen into the
14 best of all circumstances I'll add, when we
15 started this process, it was not in a historic
16 district, and yet the Taylors, on their own,
17 chose to do it in the most careful way, and we
18 always deferred, even when we weren't in a
19 district, I was calling down to DC Historic
20 Preservation, when we did anything.

21 And so we feel that we've always
22 gone the extra mile. We feel that the loss in

1 altering the building would be great in terms
2 of historic preservation and existing building
3 fabric in the city.

4 We hope that we will not be
5 penalized due to the extraordinary
6 circumstances and the dedication to
7 preservation and that you will assist us in
8 this addition, so that we can give all of our
9 staff and employees full access to all levels
10 of the building for the Taylor Company. If we
11 can have a bench decision, I would appreciate
12 it. Thank you, Arthur.

13 CHAIRPERSON GRIFFIS: Indeed. So
14 for our understanding, we're looking at 21
15 feet, six inches, now being proposed for the
16 shaft; is that correct?

17 MR. ROSENBLUM: I am going to go
18 back to my sheet; if you will forgive me. I'm
19 not doing very well on shuffling paper today.
20 We need a total of 24 feet for an overall
21 penthouse height above--from the top of the
22 roof, sir.

1 CHAIRPERSON GRIFFIS: Okay. So
2 the roof elevation, the 21 six is above the
3 parapet?

4 MR. ROSENBLUM: That's correct.

5 CHAIRPERSON GRIFFIS: And so 24--

6 MR. ROSENBLUM: Is from the roof
7 itself.

8 CHAIRPERSON GRIFFIS: So five
9 feet, six inches--

10 MR. ROSENBLUM: The code would
11 allow 18, six, so that's correct. We are
12 going five foot, six inches.

13 CHAIRPERSON GRIFFIS: Okay. Mr.
14 Jackson, just for clarification, in your
15 analysis, you've indicated that actually a
16 variance from the provision in the SP Zone,
17 chapter five, which is--yes, 530.4--which
18 indicates the 18, six, is the allowable
19 height. Your position is that that's a
20 variance, that four eleven doesn't allow for
21 special exception on the height because it is
22 in actual--actually, in every zone district,

1 it says the height that is prescribed.

2 MR. JACKSON: Correct.

3 CHAIRPERSON GRIFFIS: Okay. So we
4 have the special exception. And just for
5 another clarification, the special exception
6 under 411 actually goes to the differing
7 height, cause there's testimony that there's
8 one enclosure.

9 MR. JACKSON: Right. When I
10 visited the site, it did appear that the
11 current elevator/penthouse, the stair
12 enclosure and the surrounding fences were
13 approximately the same height, not the same
14 materials, not the same--they're not the many
15 similarities. But now this tower will be much
16 taller than the enclosure. So then you have
17 uneven buildings, uneven structures.

18 So that's why we added that
19 additional relief.

20 CHAIRPERSON GRIFFIS: Okay. But
21 it would only be one provision in 411,
22 actually; just the differing heights?

1 MR. JACKSON: Well, going back to
2 my original report, I think what we were
3 looking at was--

4 CHAIRPERSON GRIFFIS: 407--

5 MR. JACKSON: That it would--

6 CHAIRPERSON GRIFFIS: 411.3.

7 MR. JACKSON: It would not be--
8 well, just to be on the safe side, we were
9 saying if it's not one enclosure.

10 CHAIRPERSON GRIFFIS: Okay.

11 MR. JACKSON: Because now they
12 have--there is not one building enclosing it
13 all, they're connected by these screens.
14 There'd be difference in height. Then you'll
15 have the setback from the northern wall,
16 because right now, the nine foot building, the
17 building is 27 feet wide, so it's more than--
18 the height, the distance from the northern
19 wall is greater than the height. Once you go
20 to 24 feet, that's out. And then finally, you
21 have the maximum allowable height of 18 foot,
22 five inches, which would exceed also.

1 CHAIRPERSON GRIFFIS: Okay.

2 MR. JACKSON: So the first three,
3 just for the sake of covering everything,
4 would take care of the items that were subject
5 to special exception approval. However, the
6 actual height from the roof appears to be the
7 subject of a variance. Because in 411, it
8 doesn't really list the height as something
9 that you can get a variance. That's a special
10 exception from.

11 CHAIRPERSON GRIFFIS: Right, under
12 530, we'd find that. Okay. So you're saying-
13 -good enough. The enclosure, the differing
14 heights, the height, and also the setback.

15 MR. JACKSON: Yes. Now just a
16 thought. Even though you're giving a
17 variance, that you're giving relief from the
18 multiple enclosures, it would be good if the
19 screens were maintained on the site so that
20 they don't all of a sudden disappear, because
21 I think visually, from adjacent buildings,
22 those screens probably should remain.

1 However, for the sake of consistency of the
2 regulations, the individual buildings
3 themselves could exist--sorry--individual
4 structures themselves, that is, the enclosure
5 at the top of the emergency stair, and the
6 tower, themselves, could still exist
7 independently. It's just we would like to see
8 those screens maintained, and if the Applicant
9 would just agree to that, that--

10 CHAIRPERSON GRIFFIS: Absolutely.

11 MR. JACKSON: That would
12 essentially keep the current--well, the
13 current status of the visual image of that
14 rooftop, except for the tower, would remain
15 the same.

16 CHAIRPERSON GRIFFIS: Okay.

17 BOARD MEMBER MANN: Is any of that
18 likely to, or could it possibly change,
19 depending on what HPRB might tell them they
20 have to do on the roof deck, though?

21 MR. JACKSON: HPRB is most
22 concerned from the image of the building from

1 the ground. Now correct me if I'm wrong but
2 I think their discussions had to do with the
3 railing along the edge and the fact that the
4 deck itself varies from 16 inches to a foot
5 above the--

6 MR. ROSENBLUM: That's correct.

7 MR. JACKSON: --roof, cause the
8 roof undulates, and then you've got a railing
9 that comes up four feet, which you can see
10 over the parapet. So they're more interested
11 in the--that's my general understanding of
12 what they're concerned about, and as such, I'm
13 sure that those negotiations would not extend
14 back to the screening, because the screening
15 itself really isn't visible from the ground.

16 MR. ROSENBLUM: That's correct.

17 CHAIRPERSON GRIFFIS: Okay. Any
18 other clarifications? Questions?

19 Is there action proposed by the
20 board? I think the record's fairly full on
21 this. I had some hesitation, actually, and
22 had pondered the possibility of sending the

1 Applicant out to find other manufacturers and
2 potential possibilities, in that it strikes me
3 as going five feet, six inches above the
4 required height of 18, six. I've noted some
5 difficulty in 18, six, in terms of
6 retrofitting elevators and other applications.
7 I've never seen anything to the extent that
8 we're looking at here.

9 But, frankly, Mr. Jackson's
10 submission, and, actually, his particular
11 conversations with the building engineers, and
12 noting the '96 and 2000 building codes, which
13 obviously this board wouldn't be familiar
14 with, I'm fairly persuaded that that may well
15 have been exhausted, and if not exhausted,
16 would quite possibly result in the fact of
17 some relief from the 18, six height, and I
18 think actually Mr. Jackson's phrase, the di
19 minimis nature of this, may well be
20 appropriate, that we move forward today.

21 So let me ask if members are
22 interested in moving forward today or whether

1 we set this for a decision?

2 Yes, Mr. Mann?

3 BOARD MEMBER MANN: I think I
4 would be interested in moving forward. Let me
5 ask this, though. Without putting any
6 particular board members on the spot, because
7 they weren't necessarily serving on this board
8 because of any particular expertise, do you
9 think that there is additional architectural
10 information that we should seek, that would
11 help us make the appropriate decision?

12 CHAIRPERSON GRIFFIS: It's a good
13 question. Anyone want to take that?

14 When you say "architectural
15 information," you're saying--

16 BOARD MEMBER MANN: Well, I'm
17 using that term somewhat generically, to
18 include engineering specifications or other
19 structural things that would help somebody
20 who's not familiar with elevator overruns, to
21 get a better understanding than we might have
22 gotten today, although I felt satisfied from

1 what I heard today.

2 CHAIRPERSON GRIFFIS: Okay. Yes.
3 I mean, I think the shop drawings do somewhat,
4 a world of information on it, and I think
5 that's where Mr. Jackson was also. Look, I
6 think in the board's limited experience, we've
7 seen the potential of more what might be
8 referred to as European model elevators that
9 have side-mounted machine rooms and hoistways,
10 or hydraulics, that wouldn't have a machine
11 room but would have a pit.

12 Or perhaps a machine room on the
13 lowest level, on the side. I mean, in many
14 respects, that's been addressed today, in
15 regarding the other possibilities, or moving
16 the machine room on the side, obviously, was
17 one question that was raised.

18 So is there additional
19 information--I guess that's where I was going.
20 I don't see what we might have, additionally,
21 put in, that wouldn't potentially have some
22 sort of relief required.

1 We do have the issue, and I'm
2 wondering--you're potentially revising the
3 drawings; is that correct?

4 MR. ROSENBLUM: I will have to
5 revise the drawing, first of all, in terms of
6 that error on that detail with the cab size.

7 CHAIRPERSON GRIFFIS: Right.

8 MR. ROSENBLUM: In addition to
9 that, I will be making any revisions necessary
10 in our discussions with Steve Calcott in terms
11 of the front rail, that they wish to see, and
12 I have had some fairly extensive conversations
13 with him, and they were all about the front
14 rail and not actually about the elevator
15 itself.

16 CHAIRPERSON GRIFFIS: Right. The
17 front rail is not going to have any zoning
18 information.

19 MR. ROSENBLUM: Right; right.

20 CHAIRPERSON GRIFFIS: So I'm not
21 that concerned with that piece.

22 MR. ROSENBLUM: Right.

1 CHAIRPERSON GRIFFIS: But I am
2 somewhat concerned with--first of all,
3 hypothetically, if we were to move forward and
4 approve this today, this is what you would
5 build. When the Zoning Administrator reviewed
6 your permit documents, he would look to this
7 exact copy. So anything that changed on the
8 roof level, on the penthouse structure, would
9 have to come before us for a modification.
10 Otherwise, he'd have to approve it.

11 MR. ROSENBLUM: i have had someone
12 in my office who actually uncovered, in my
13 memorandum, this discrepancy on the cab, go
14 through these drawings inch per inch in terms
15 of what we require on the top and this is most
16 definitely it.

17 It's gone back and forth to Kone
18 because, quite frankly, we fought with them
19 for a long period of time, hoping they could
20 compress this, and--

21 CHAIRPERSON GRIFFIS: So the
22 footprint of the penthouse structure is not

1 going to change?

2 MR. ROSENBLUM: No; it is not.
3 It's actually going up on top of the existing
4 penthouse.

5 CHAIRPERSON GRIFFIS: So what's
6 going to be taken up in the extra room, that
7 isn't going to be the cab space of 54, eight,
8 but 42 by 42?

9 MR. ROSENBLUM: Well, the cab
10 space goes all--the penthouse space goes all
11 the way back to the party wall of the
12 building, and the cab, on the other hand, is
13 to the front, all the safety apparatus,
14 etcetera, is on the rear of the cab, because
15 we have sully operable and retracting doors on
16 the front. And if I might be able to clarify,
17 because it might make what's particularly
18 unique in this sense, is normally, you would
19 have a larger elevator cab and that would--

20 CHAIRPERSON GRIFFIS: Sorry. I
21 don't know that you understand the question
22 but it's a very direct question. What's the

1 footprint of the mechanical penthouse? Is it
2 going to be nine feet eight inches by six feet
3 eight inches?

4 MR. ROSENBLUM: I will pull that
5 drawing out. It is nine foot eight by six
6 foot eight, is the principal portion of the
7 penthouse, and then next to that in our
8 submission--

9 CHAIRPERSON GRIFFIS: So that's
10 not changing, even though the cab side is
11 changing?

12 MR. ROSENBLUM: Yes, that's not
13 changing, sir. That's correct. That will
14 stay as is.

15 CHAIRPERSON GRIFFIS: Okay. So
16 the entire footprint that you're showing in A-
17 1, in terms of the roof structure, won't
18 change?

19 MR. ROSENBLUM: That is correct.

20 CHAIRPERSON GRIFFIS: Okay. I
21 mean, it's not materially going to matter,
22 what the cab side is going to be. It fits

1 within the shaft that's there. All right.
2 There it is, then. Anything else? Anybody
3 have any last minute questions?

4 [No response]

5 CHAIRPERSON GRIFFIS: Okay. I
6 think it's fairly appropriate to move forward
7 today. One, I don't think we have additional
8 need for information in this case, and we do
9 have in fact a brief time left this afternoon
10 to move ahead with this, if everyone is
11 amicably attuned to doing this.

12 I think it'd be appropriate to
13 move approval of 17572, the Taylor Real Estate
14 Trust, that is for a special exception under
15 411, it's also for the variance under section
16 530, particularly 530.4, I believe--yes--which
17 is a special exception of course under 411 and
18 a variance under 530. I would make specific
19 note of what Mr. Jackson from the Office of
20 Planning indicated, as having a finding of--
21 and the drawings are in fact that it is an
22 enclosed area. Whether it meets the letter of

1 411 as a single enclosure is what was at
2 question, but it was clear that that enclosure
3 is to be maintained as it is by the testimony
4 of the Applicant.

5 However, under great concern, or
6 undue caution, we would review it and actually
7 take that under the special exception of 411,
8 along with of course the varying heights. The
9 height variance from the penthouse structure.

10 It's an interesting piece to this,
11 and I'll step back a little bit and talk about
12 the variance case. In terms of the
13 uniqueness. I mean, I think we have a
14 confluence of uniquenesses and we've gone
15 through a lot of them. The existing
16 structure, the potential of the historic
17 overlay and review, and the impact of the
18 floor plate, and the utilization. I had one
19 other one that we hadn't talked about and it's
20 now left me; but it may return at some point.
21 Indeed. Totally gone there.

22 The practical difficulty of course

1 in meeting the requirements has been shown in
2 terms of the manufacturer, the potential for
3 retrofitting an elevator--oh. I guess that's
4 really what it was.

5 There's an interesting complexity
6 of aspects. That this doesn't--and viewed as
7 a mechanical penthouse, it goes, it defies
8 allowable 18 foot six inch height
9 requirements.

10 But if you put this in the actual
11 building height, it's still within the
12 building height. So you could conceivable add
13 a level or a floor. I mean, in one sense, you
14 could get around a variance by calling this an
15 additional story on the building, which is
16 probably not the correct configuration, but
17 what it does, frankly, it lends, I think, in
18 terms of a unique situation as part of the
19 confluence of uniquenesses in looking at this,
20 of how it all puts together.

21 So that being said, I don't think-
22 -and that actually goes more to the third

1 prong in terms of whether it would impair to
2 take it as a zone plan or map. I mean,
3 obviously, it's fitting within the overall
4 building height, even though it may not be
5 within the mechanical penthouse height.

6 But, you know, mechanical
7 penthouses can actually extend beyond the
8 building height. So it supports itself in
9 that last realm.

10 The special exception frankly is a
11 very understandable one, under 411, and that
12 is it gives the board full discretion in terms
13 of design, and also in terms of relief
14 allowed, based on the difficulty in locating
15 it, and I think it's been shown here, the
16 difficulty under the special exception, also
17 the variance, the practical difficulty of
18 replacing.

19 I thought it was excellent that
20 the Office of Planning looked at alternative
21 locations for how they might be able to
22 accommodate a more commercially oriented, and

1 therefore an easier elevator in terms of
2 complying with the height restrictions, but
3 that became cumbersome, certainly in terms of
4 the existing structure, and then the existing
5 floor plan and the utilization of it.

6 I think that's all I need to say
7 at this point and open up to others for any
8 comments they might have.

9 Mr. Mann.

10 BOARD MEMBER MANN: Well, I just
11 wanted to note that you haven't received a
12 second yet on this.

13 CHAIRPERSON GRIFFIS: Oh, I'm
14 terribly sorry. I'm running on with it.
15 True. Is there a second to that motion?

16 BOARD MEMBER MANN: I'll second
17 it.

18 CHAIRPERSON GRIFFIS: Thank you
19 very much, Mr. Mann. I appreciate that.

20 Any other comments, then?

21 BOARD MEMBER MANN: I have just a
22 brief comment, and that is when you were

1 talking about, well, why not just call this
2 another story, which is an interesting thing
3 that we could do, because it is within the
4 height, but of course as you know, the
5 definition in the zoning regulations wouldn't
6 allow us to do that because excludes elevator
7 penthouses.

8 CHAIRPERSON GRIFFIS: Right;
9 excellent point. Anything else, then? Any
10 others? Yes.

11 VICE-CHAIRPERSON MILLER: I think
12 you touched all aspects of this but I wasn't
13 sure whether you pinpointed specifically
14 practical difficulties, so I just want to
15 highlight, cause sometimes they overlap
16 anyway.

17 I think the case was made, and
18 Office of Planning found it also, that other
19 options to comply with the zoning regulations
20 either would result in destruction of the
21 interior of this historic building or would
22 cost millions of dollars, or have some other

1 difficulty.

2 So I think they did address that
3 prong well, and I wasn't sure, when we talked
4 about the screens being important, and I think
5 that they are reflected on the roof plan so we
6 don't need a condition for that, but I just
7 wanted to highlight I guess, and confirm that
8 they be considered part of the roof plan and
9 they'd have to comply with that as well;
10 correct?

11 CHAIRPERSON GRIFFIS: I'm sorry.
12 Excuse me. Absolutely.

13 VICE-CHAIRPERSON MILLER: Okay.

14 CHAIRPERSON GRIFFIS: I think
15 they're not a condition. Actually, I saw it
16 as an existing, to remain condition, and
17 that's shown on the plans, and specifically
18 it's on CS Sheet. I believe it's on--indeed,
19 it's on A-1 also. Okay. Very well. Anything
20 else, then? Any other comments?
21 Deliberation?

22 [No response]

1 CHAIRPERSON GRIFFIS: Excellent.
2 In which case we do have a motion before us.
3 It has been seconded. I ask for all those in
4 favor to signify by saying aye.

5 [Chorus of ayes]

6 CHAIRPERSON GRIFFIS: And opposed?
7 Abstaining?

8 Very well.

9 MS. BAILEY: Mr. Chairman, prior
10 to calling the vote, I would appreciate
11 clarification and I draw your attention to the
12 supplemental report of the Office of Planning
13 and at the last paragraph, the recommendation.
14 Is that the way the application is being
15 approved, based on what is written by the
16 Office of Planning? That is special exception
17 under section 411.11, 400.7(b), 411.3,
18 530.4(a) and (b) and 537, and a variance
19 relief from section 530.4(c).

20 CHAIRPERSON GRIFFIS: No. We had
21 the variance from 530.4; right. Got that.
22 530--it was 411.11, and 411--was it three? I

1 didn't get to it again. Right. 411.3.

2 Is that your understanding, Mr.
3 Jackson?

4 MR. JACKSON: Well, I initially
5 listed 411.3, which all penthouses and
6 mechanical rooms are placed in one enclosure,
7 again because they're separate buildings. I
8 listed 434.4(a) because it says it shall meet
9 all requirements of 411. And I listed (a) and
10 (b) because it said it would be set back from
11 the exterior walls a density equal to its
12 height.

13 CHAIRPERSON GRIFFIS: Well, the
14 setback is what I didn't get.

15 MR. JACKSON: Right.

16 CHAIRPERSON GRIFFIS: Right.

17 MR. JACKSON: And then 537--

18 CHAIRPERSON GRIFFIS: But that's
19 under 530; isn't it? 530.4.

20 VICE-CHAIRPERSON MILLER: I see it
21 under 400.7(b).

22 MR. JACKSON: Well I just took it

1 from the 530.4 because it's in the SP.

2 CHAIRPERSON GRIFFIS: Right.
3 530.4 goes to the SP Zone in which this is
4 located, which frankly could all fall under
5 this, because it should meet the requirements
6 of 411. But we go to 411 which allows for
7 special exception of each of those elements
8 which we talked about.

9 MR. JACKSON: Right.

10 CHAIRPERSON GRIFFIS: The setback
11 and the height, however, are under 530.4(b)
12 and (c), which would require the variances.
13 So its' 530.4(b),(c), and 411.3 and 411.11.

14 MR. JACKSON: And I just included
15 437, 537, because it just refers back to--
16 537.1 refers back to 411. So if you do 411,
17 I guess you've actually--you've covered all of
18 it.

19 CHAIRPERSON GRIFFIS: Yes. It's
20 interesting, and I understand exactly what you
21 were doing; but it becomes redundant and
22 actually, we'd go specifically to the element

1 of the relief required. Okay; excellent
2 question, Ms. Bailey. Did you get that all?

3 MS. BAILEY: That is 411.11,
4 411.3, 530.4(a) and (b), and 530.4(c).

5 MR. JACKSON: Yes, ma'am.

6 CHAIRPERSON GRIFFIS: Right.

7 MS. BAILEY: Okay.

8 CHAIRPERSON GRIFFIS: Was (a) in
9 there, 530? I'm sorry. I just moved away
10 from it. There is it. We'll write it out.
11 That's fine.

12 MS. BAILEY: Okay.

13 CHAIRPERSON GRIFFIS: 530.4 (b)
14 and (c) is the variance. Okay. Any other
15 questions, comments, on that? I don't see any
16 reason why we wouldn't waive our rules and
17 regulations and issue a summary order on that,
18 unless there's any objection to it with the
19 board of the Applicant.

20 Not noting any objection, Ms.
21 Bailey.

22 MS. BAILEY: A summary order Mr.

1 Chairman.

2 CHAIRPERSON GRIFFIS: Summary
3 order it is. Thank you very much. Thank you
4 very much, we appreciate it and good luck with
5 that. My advice would be don't give up on a
6 little bit further investigation and reduce
7 that penthouse as much as possible. After
8 all, there's costs and savings in the
9 material, the lower that goes.

10 MR. ROSENBLUM: Thank you, sir.

11 CHAIRPERSON GRIFFIS: Certainly.

12 MR. ROSENBLUM: Thank you,
13 everyone.

14 CHAIRPERSON GRIFFIS: Have a good
15 afternoon. Is there any other business for
16 the board, Ms. Bailey? Mr. Moy?

17 Very well. Let's adjourn.

18 [Whereupon, at 4:36 p.m., the
19 meeting was adjourned]

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