

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT
PUBLIC HEARING

In the matter of:

APPLICATION OF FULTON BRYLAWSKI Case No. 16247

Hearing Room 220 South
441 4th Street, N.W.
Washington, D.C.

Wednesday
July 23, 1997

The above-entitled matter came on for hearing, pursuant to notice, at 9:30 a.m.

BEFORE:

SUSAN MORGAN HINTON, Chairperson
LAURA RICHARDS, Vice Chairperson
BETTY KING, Board Member
SHEILA CROSS REID, Board Member
MAYBELLE TAYLOR BENNETT, Zoning Commission

STAFF PRESENT:

TRACEY WITTEN ROSE
JOHN NYARKU
ALBERTO BASTIDA
REGINALD LYONS

ON BEHALF OF THE APPELLANT, FULTON BRYLAWSKI:

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I N D E X

<u>WITNESS:</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
Lyle Schauer	7	20		
David T. Pride	40			

OPENING STATEMENT

None

CLOSING STATEMENT

Mr. Risher -	43
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9:43 a.m.

CHAIRPERSON HINTON: Good morning, everybody.

The hearing will please come to order. This is the July 23 public hearing of the Board of Zoning Adjustment of the District of Columbia. I am Susan Morgan Hinton, your chairperson. Joining me today are Betty King, Sheila Cross Reid, and Maybelle Taylor Bennett representing the Zoning Commission.

Copies of today's hearing agenda are available to you. They are located to my left near the door. All persons planning to testify either in favor or opposition are to fill out two witness cards. These cards are located at the end of the table in front of us. Upon coming forward to speak to the Board, please give both cards to the reporter who is sitting to my right.

The order of procedure for special exception and variance cases will be as follows. One, statement of witnesses of the Applicant. Two, government reports including the Office of Planning and the Department of Public Works. Three, persons or parties in support. Four, persons or parties in opposition. And five, closing remarks by the Applicant. Cross examination of witnesses is permitted by persons with a direct interest in the case.

The record will be closed at the conclusion of each case except for any materials specifically requested by

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1 the Board. The staff will specify at the end of the hearing
2 exactly what is expected.

3 The decision of the Board in these contested
4 cases must be based exclusively on the public record. To
5 avoid any appearance to the contrary, the Board requests that
6 persons present not engage the Board members in any
7 conversation.

8 At this time, the Board will consider any
9 preliminary matters. Preliminary matters are those which
10 relate to whether a case will or should be heard today such as
11 request for postponement, continuance, or withdrawal, or
12 whether proper and adequate notice of the hearing has been
13 given. If you are not prepared to go forward or if you
14 believe the Board should not go forward, now is the time to
15 raise such a matter. Does the staff have any preliminary
16 matters?

17 MS. ROSE: No, we have none.

18 CHAIRPERSON HINTON: Does anyone in the audience
19 have a preliminary matter? Seeing none, we will proceed with
20 the continuation of the first case. Let me just note for the
21 record that Vice Chair Laura Richards has joined us.

22 MS. KING: I would like to say that I have read
23 the transcript of what transpired at the last meeting on this
24 case in toto. I have some questions if this would be the
25 appropriate time for me to address them to the Applicants or
26 whatever. But I have read the transcript and I understand

1 that I can sit in this case and vote in this case.

2 CHAIRPERSON HINTON: Yes, thank you. We will
3 have the staff call the case. We are at -- actually, the
4 party in opposition is getting ready to start. But the
5 Applicant will have closing remarks and at that point you will
6 have a chance to ask your questions.

7 MS. KING: Great. Thanks.

8 MS. ROSE: Case 16247, E. Fulton Brylawski,
9 pursuant to 11 DCMR 3108.1 and 3107.2, for a special exception
10 under Sections 217, 1201.3, and 1202 to establish the office
11 of a nonprofit organization and a variance from the minimum
12 gross floor area requirement paragraph 217.1(b); or in the
13 alternative, a special exception under Sections 2003 and 1202
14 to change a non-conforming use from lawyers and professional
15 offices to the offices of a nonprofit organization on the
16 first and third floors of a structure in a CAP/R-4 district at
17 premises 224 East Capitol Street, N.E., Square 759, Lot 804.
18 All persons who testified or who were present and took the
19 oath at the first hearing are still under oath. Is there
20 anyone in the audience who was not sworn who wishes to testify
21 in this application? Seeing none, I think we will start with
22 the parties in opposition. I think Mr. Schauer was going
23 first.

24 CHAIRPERSON HINTON: Before we get started, the
25 Board members are having trouble turning on their microphones.
26 Mine is on but everyone else's seems not to be. Very good,

1 let's start with Mr. Schauer.

2 Whereupon,

3 LYLE SCHAUER

4 was called as a witness, and having been previously duly
5 sworn, was examined and testified as follows:

6 DIRECT EXAMINATION

7 MR. SCHAUER: Thank you, Madam Chairperson. I
8 must admit I rather gingerly sat down Title XI of the
9 regulations this morning because you remember three weeks ago
10 I had just approached the table and I had just set this volume
11 down when the fire alarm sounded and we had to postpone the
12 meeting for three weeks. So I was a little apprehensive, but
13 we have passed that point and I think all is well.

14 I submitted to the Board a response to the
15 Applicant's pre-hearing statement, and I did that because I
16 wanted to clarify at least in my own mind the legal
17 requirements that this Applicant faces. The application, of
18 course, is under Section 217 of the zoning regulations, and
19 specifically the problem is that the building in question does
20 not meet the requirement that it have 10,000 or more gross
21 square footage. This building, in fact, has considerably
22 less. It has less than half of the required amount.

23 I reviewed the two leading cases that the Board
24 has considered and that have been reviewed by the Court of
25 Appeals. The first is the case involving the Watterson House
26 application, BZA-13419 in 1981. In that case, the Board

1 concluded that the 10,000 square foot requirement was an
2 arbitrary figure. And by that I believe the Board meant that
3 it could be subject to a variance. That is, if an applicant
4 had a building with less than 10,000 square feet, a variance
5 might be granted to allow them a special exception under 217.

6 In addition, the Board in that case arrived at
7 the conclusion that the appropriate variance would be an area
8 variance as opposed to a use variance. So that is what we
9 have here today. This building being less than 10,000 square
10 feet must receive an area variance in order to proceed with
11 the special exception under Section 217.

12 The other case -- oh, and I should add, the
13 Watterson application was appealed to the Court of Appeals and
14 the Court upheld the Board's approval of the special exception
15 for the Watterson mansion. The case at the Court of Appeals
16 is known as Monaco v. Board of Zoning Adjustment, and it was
17 decided in 1983.

18 The other leading case, which plays less of a
19 role, and this, I believe, is the application of Cohen, BZA-
20 15555 in 1992. This case also was appealed to the Court of
21 Appeals and that Court approved the Board's granting of a
22 special exception and the case at the Court of Appeals is
23 known as French v. Board of Zoning Adjustment, decided in
24 1995.

25 The French case is interesting because the Court
26 there set out the three conditions, the three tests for an

1 area variance. They are first that the property must be
2 unique -- unique as to size or shape or topography -- some
3 exceptional condition that makes the property unique.
4 Secondly, the owner would encounter practical difficulties if
5 the zoning regulations were strictly applied to a property
6 having such exceptional conditions. And finally, the
7 variance, if granted, would not cause -- would not impair the
8 intent and integrity of the zoning regulations.

9 So I looked at the Board's orders in Watterson
10 and in Cohen with a view to seeing what kind of exceptional
11 conditions were found in those cases. In Watterson, the Board
12 found the existence of a very large lot, a lot that was three
13 and a half times the size of an ordinary lot in an R-4
14 district. A large open space, in other words, around the
15 building. The presence of a landmark building -- the
16 Watterson Mansion is one of the landmark buildings on Capitol
17 Hill. It is on Second Street, S.E., across from the Madison
18 Library. I believe it is the home of one of the early
19 librarians of Congress. It is a beautiful mansion. It has
20 remarkable historic interior features, which the Board noted
21 in its order. Things like archways, mantles, stairways, other
22 internal fittings. The Board also noted that the Watterson
23 Mansion is in a split zone square that is -- it is -- though
24 it is in a residential R-4 zone, it is adjacent to the
25 commercial zone along Pennsylvania Avenue. Nearby buildings
26 include large apartment buildings. And finally that the

1 Watterson Mansion faces the driveway entrance of the Madison
2 Library, immediately across Second Street from it.

3 Based on these exceptional conditions, the Board
4 found that there were practical difficulties that made it
5 unsuitable for use as a single family residence and also
6 unsuitable as a multi-family building. The multi-family
7 building, the Board noted, would require extensive changes to
8 the interior of the building which would damage the historic
9 features.

10 The Cohen case, the more recent one, the Board
11 noted that the variance sought was really quite a small one
12 because the building is at 9,500 square feet gross floor area.
13 So it is very close to the 10,000 minimum. They noted that
14 the variance was rather minor. But they did mention
15 exceptional conditions affecting the property. The unusual
16 triangular shape of the lot. Also the triangular shape of the
17 building led to unusual physical configurations of the
18 interior. That the lot was steeply sloping and they noted the
19 previous history of long use as a chancery which had resulted
20 in considerable interior changes. Therefore, the Board said
21 that there was a practical difficulty of the owner because
22 they could not reasonably be expected to use the structure.
23 Mind you, this is a structure of 9,500 square feet. They
24 could not reasonably expect to use this structure for a single
25 family residence, which was all that was permitted in the R-3
26 zone in which this building is located.

1 Now let's compare that with the Brylawski
2 building, which is the subject of this application. The
3 suggested exceptional conditions as I would understand them
4 from the pre-hearing statement and from the testimony is that
5 the building is large. The building is 4,500 square feet
6 roughly. Nowhere is there any testimony that I am aware of
7 that indicates that this is unusual for buildings on East
8 Capitol Street. I think there must be some showing that this
9 building is unusually large. And I would submit that that
10 probably cannot be shown. That there are other buildings
11 nearby, especially along East Capitol Street, as large and
12 larger than this and presently in residential use.

13 Second, it is suggested that this building is
14 located in a block that has a considerable amount of non-
15 residential use and that is pointed out in the exhibit of the
16 applicant. Thirdly, it is said that the
17 building is located across East Capitol Street from the Folger
18 Library. It is unclear what practical difficulty arises from
19 either of these conditions. The Folger Library is, as far as
20 I can see, an innocuous neighbor. It is a handsome building
21 across a wide ceremonial street from the subject premises. I
22 see no practical difficulty arising in the use of these
23 premises. I see no practical difficulty arising from the non-
24 residential use in other buildings in the block. Much of that
25 non-residential use is because a good deal of the 200 block of
26 East Capitol Street on the north side is occupied by a church,

1 the Church of the Reformation, which not only has a large
2 church building there but several other adjacent buildings.

3 So I would submit that there has been no showing
4 here of a practical difficulty. In fact, the pre-hearing
5 statement does not mention this phrase practical difficulty,
6 nor did I hear it mentioned in testimony. The only place that
7 practical difficulty was mentioned was in the report of the
8 Office of Zoning. And there the report, and I will quote,
9 says "The practical difficulty in this case is the result of
10 the subject properties existing gross floor area in that it is
11 only approximately 50 percent of the size required by zoning
12 regulations. The applicant cannot comply with a 10,000 foot
13 minimum requirement and would suffer a practical difficulty if
14 the requested variance is not granted."

15 But I will submit that I don't seen an
16 explanation of a practical difficulty here. I mean, the mere
17 fact that the building is smaller than 10,000 square feet is
18 not in itself a practical difficulty. And in fact, if we took
19 this reasoning to its logical conclusion, it would eliminate
20 the 10,000 square foot requirement entirely. Because if an
21 applicant had a building of more than 10,000 square feet, he
22 would have no trouble in complying. If he had less than
23 10,000 square feet, then he would say I have a practical
24 difficulty because my building is smaller than 10,000 square
25 feet. And therefore, you should grant me a variance.

26 Well, there has to be something other than that.

1 And that is why I went into the practical difficulties and the
2 unusual circumstances that the Board found in Watterson and
3 Cohen. Because there the Board was finding other things
4 besides the limitation on the building.

5 Now the Office of Zoning mentioned one other
6 thing that -- they went on to say that it is impossible to
7 increase the size of the building, both from a practical and
8 historical perspective. The building is in the historic
9 district and it is constrained by the size of the lot. The
10 regulations do not anticipate increasing the size of
11 buildings. this comes -- this notion comes from the Board's
12 order in the Watterson case in which the Board makes this
13 statement. "The Board concludes that the requested variance
14 from the 10,000 square feet of gross floor area requirement is
15 an area variance, the granting of which requires a showing of
16 a practical difficulty inherent in the property itself." And
17 then they make this statement. "The Board concludes the
18 existence of a structure on the site creates such a practical
19 difficulty." I think this led the Office of Zoning to
20 conclude that the mere existence of a building is a practical
21 difficulty. And that is what the Board said in its order.
22 But if you read the rest of the order, you see that a lot of
23 attention was paid to exceptional circumstances that resulted
24 in practical difficulty other than the size of the building.
25 And I think all that the draftsman was trying to say here was
26 that this particular building, namely the Watterson Building,

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1 which is a landmark building with historic features inside as
2 well as out, that building itself is a practical difficulty,
3 not because of its size but because of its historic character,
4 both exterior and interior.

5 In both Watterson and Cohen, the owner of those
6 properties had only two choices, either residential or a non-
7 profit office use under Section 217. But Brylawski's building
8 is different because the choice there isn't simply between
9 residential and non-profit office use. The building already
10 is a non-conforming -- authorized, non-conforming use as a
11 lawyer and professional offices. In fact, in the pre-hearing
12 statement the applicant says that "the property may be used
13 perpetually for its current non-conforming use." And there is
14 further indication in this statement that this non-conforming
15 use will go on in perpetuity unless changed. So practical
16 difficulty in terms of this building has to consider that
17 there is an existing non-conforming authorized use.

18 So the choice isn't between whether this
19 building can be made residential or if it should be made non-
20 profit office use. The third choice here is whether it can
21 continue as it is, and it certainly can.

22 Finally, I want to turn to one thing that
23 bothered me a bit in the statement made in the pre-hearing
24 statement. On page 9, there are two references to the Monaco
25 case. The statement is made that the 10,000 square foot
26 provision is arbitrary and not an essential part of the

1 pertinent zoning regulations, and that is a direct quote from
2 the Court of Appeals decision in the Monaco case. The Court,
3 and I will give you the complete quote -- the Court said, "The
4 BZA concluded that the 10,000 square foot minimum building
5 size contained in the regulations was arbitrary and not an
6 essential part of the statute." Now I will submit the Board
7 in the Watterson case, which this is attempting to summarize,
8 did say that the 10,000 square foot rule was arbitrary and
9 therefore could be subject to a variance if the applicant had
10 a building of less than 10,000 square feet. But I have read
11 the Board's order most carefully, and I find nowhere any
12 indication that the Board felt that this was not an essential
13 part of the statute. In fact, in the Watterson order, the
14 Board spent a lot of time discussing the 10,000 square foot
15 rule, whether it should be subject to a variance and if so,
16 what kind of a variance. Certainly it was not being
17 considered a non-essential part of the statute. I have no
18 idea where the Court of Appeals got this opinion, but this is
19 not what the Board said. They never said that it was not an
20 essential part of the statute.

21 I believe that the Board should deny this
22 application because I do not believe that this applicant has
23 shown a practical difficulty which will allow this Board to
24 grant the area variance. Without that area variance, the
25 special exception itself must fall. It is essential that that
26 area variance be granted before the Board will grant a special

1 exception. I do not feel that this should be granted in this
2 case. And on this poor showing of practical difficulty, if
3 the Board grants this case, then it seems to me that any
4 applicant can come in and say I have a building that is not
5 10,000 square feet, but the fact that it isn't that big is
6 itself a practical difficulty and therefore I should be
7 granted a variance and a special exception because I can meet
8 all of the other requirements. You will have a great deal of
9 difficulty in rejecting other applicants who come in if you
10 grant this one on this poor showing of practical difficulty.
11 Thank you very much.

12 CHAIRPERSON HINTON: Are there any questions
13 from the Board members?

14 MS. RICE: I have one. Although you have
15 directed most of your remarks to the second part of the test,
16 your argument as I understand it seems to be aimed primarily
17 at the third intent and integrity of the zoning regulations.

18 MR. SCHAUER: Well, I think the integrity of the
19 regulations will be adversely affected by granting this
20 variance and the special exception. However, I feel this
21 applicant has failed all three parts of the test. There is
22 nothing unique that is in the record of this building. It may
23 be possible to show there is something unique about it, but it
24 is not in the record. And there is no showing of practical
25 difficulty. So it fails the other two tests as well as
26 impairment of the zoning regulation.

1 CHAIRPERSON HINTON: I do have a question for
2 you. The proposal was in front of us under two alternatives,
3 the first being the variance, which you addressed quite
4 thoroughly. The second is in the alternative as a special
5 exception. Did you have
6 any --

7 MR. SCHAUER: I did not address that because it
8 is not addressed in the pre-hearing statement. It is not
9 addressed in the application that was filed in this case. And
10 the applicant did not address it in his remarks when they
11 presented their case. So I assume this has dropped out. I
12 don't know where it came from. I assume it has dropped out.
13 I would be opposed to that special exception, but I don't know
14 that this is the place to go into it.

15 CHAIRPERSON HINTON: Mr. Risher, do you have any
16 cross examination?

17 MR. RISHER: Yes, I do, Madam Chairperson.

18 CROSS EXAMINATION

19 MR. RISHER: Mr. Schauer, throughout your
20 testimony, you said I in expressing a point of view. Were you
21 expressing a personal point of view or is the I a reference to
22 your point of view as a member of the Capitol Hill Restoration
23 Society?

24 MR. SCHAUER: The reference was in my position
25 as the chair of the zoning committee of the Capitol Hill
26 Restoration Society.

1 MR. RISHER: Very well, sir. And Ms. Ambrose
2 was called as a witness on behalf of the Restoration Society,
3 is that the case here?

4 MR. SCHAUER: That is correct.

5 MR. RISHER: And in her testimony there appears
6 the reference, does it not, to the prior decision by this
7 Board denying an application by Mr. Brylawski that would have
8 permitted the American Cancer Society to occupy the property,
9 is that not correct, sir?

10 MR. SCHAUER: I don't know whether that was part
11 of her testimony or not. I can't address that.

12 MR. RISHER: The statement which I was just
13 referring to is the one that begins at the bottom of page one
14 of her statement and carries over to page 2.

15 CHAIRPERSON HINTON: Mr. Risher?

16 MR. RISHER: Yes.

17 CHAIRPERSON HINTON: I think maybe it is
18 improper for you to ask questions of Mr. Schauer regarding Ms.
19 Ambrose's testimony.

20 MR. RISHER: The reason I am asking, Madam
21 Chairperson, is that the witness has testified that testimony
22 was presented on behalf of the Capitol Hill Restoration
23 Society.

24 MS. BENNETT: Then you need to question her
25 about her statement as opposed to questioning him about her
26 statement.

1 CHAIRPERSON HINTON: Exactly. And I think you
2 had the opportunity to do that at the time.

3 MR. RISHER: Very well. I will accept to the
4 ruling. Let me say this with reference to the testimony. It
5 refers to --

6 CHAIRPERSON HINTON: If you are going to make a
7 statement, you need to do it in your closing remarks. Your
8 opportunity here is to ask questions to clarify Mr. Schauer's
9 testimony.

10 MR. RISHER: Well, I am trying to clarify his
11 testimony. And the testimony, if I understand it correctly,
12 relies in part on the evidence offered by Ms. Ambrose. If the
13 Board is ruling that the testimony for the Restoration Society
14 does not rely upon that, I would accept that ruling.

15 CHAIRPERSON HINTON: I did not hear Mr. Schauer
16 make any reference to Ms. Ambrose's testimony.

17 MR. RISHER: Thank you. Does the Society rely
18 on Ms. Ambrose's testimony, Mr. Schauer?

19 MR. SCHAUER: No, I wouldn't say so. I prepared
20 the response to the pre-hearing statement without knowledge of
21 her testimony. In fact, I wasn't aware until three weeks ago,
22 that very morning of the hearing, that she was going to
23 testify. I had no advance knowledge of her testimony at all.

24 MR. RISHER: Thank you. Madam Chairperson, Ms.
25 Ambrose did make reference to the prior ruling. I would ask
26 the Board to take judicial notice -- official notice perhaps

1 is the most precise term -- of that ruling, and I would like
2 that the ruling be made a part of the record. It is in
3 application number 14829.

4 CHAIRPERSON HINTON: That is BZA application
5 14829?

6 MR. RISHER: That is correct.

7 CHAIRPERSON HINTON: And you want the BZA order
8 to be part of the record?

9 MR. RISHER: Yes. I have -- for ease of
10 reference, I have a copy of the order that I am prepared to
11 submit right now so that it can be marked and to facilitate
12 matters.

13 CHAIRPERSON HINTON: Thank you.

14 MR. RISHER: Mr. Schauer, is it the position of
15 the Capitol Hill Restoration Society that the subject property
16 should be continued to be used for office use?

17 MR. SCHAUER: I don't think we have any
18 particular position one way or the other on that.

19 MR. RISHER: Well, that is the effect of the
20 position which you are taking today, is it not? That is that
21 the subject property would be continued to be used for a non-
22 conforming office use?

23 MR. SCHAUER: It could be continued or
24 presumably it could be converted to a residence.

25 MR. RISHER: Well, there is no evidence in the
26 record that indicates it will be converted to a residence, is

1 there?

2 MR. SCHAUER: Your appraiser's statement gives
3 evaluation of the building as a single family dwelling and a
4 plat conversion. That gives the estimated cost to convert the
5 building resulting in a value as is, that is the estimated
6 sale price of the building for conversion to a single family
7 or to a plat. So, yes, I think there is evidence that this
8 building could be converted.

9 MR. RISHER: Have you finished, sir?

10 MR. SCHAUER: Yes, sir.

11 MR. RISHER: And you don't dispute the
12 appraiser's expert opinion that the conversion of the building
13 to a residence would result in a diminution of its fair market
14 value by the magnitude of at least 33 percent? You don't
15 dispute that, do you sir?

16 MR. SCHAUER: No, I don't.

17 MR. RISHER: I am sorry, Mr. Schauer, your
18 answer?

19 MR. SCHAUER: No, I do not.

20 MR. RISHER: So it is the case, is it not, Mr.
21 Schauer, then that the practical effect of the Restoration
22 Society's position is that the property would continue to be
23 used for a non-conforming office use?

24 MR. SCHAUER: I would say that is a good
25 possibility.

26 MR. RISHER: You told the community earlier this

1 year -- when I say community, I mean the Stanton Park
2 Community -- that you were confident that the Restoration
3 Society would not oppose a grant of a use variance to permit
4 the Supreme Court Historical Society to occupy the subject
5 property, is that not correct, sir?

6 MR. SCHAUER: I did make that statement, yes.

7 MR. RISHER: And you also told the community
8 that in your opinion as chairman of the zoning committee of
9 the Restoration Society that you were not necessarily opposed
10 to the Society's occupancy of this building, is that not
11 correct, sir?

12 MR. SCHAUER: That is correct.

13 MR. RISHER: And you also at that time said that
14 the Society -- that is a reference to the Supreme Court
15 Historical Society -- could demonstrate two of the three tests
16 for a use variance, namely undue hardship and no substantial
17 detriment to the public good, is that not correct, sir?

18 MR. SCHAUER: That is correct.

19 MR. RISHER: And you have not today or at any
20 other time argued that the Society's use of the building would
21 be a detriment to the public good, have you, sir?

22 MR. SCHAUER: I have not.

23 MR. RISHER: And you have not argued -- well,
24 let's put the question differently. At no subsequent time to
25 this statement that you made to the community did you, on
26 behalf of the restoration society, inform the community of a

1 different point of view, did you, sir?

2 MR. SCHAUER: I did not.

3 MR. RISHER: And so, as of the second of March,
4 do I not have it correctly, you had informed the community and
5 informed the Supreme Court Historical Society that the
6 Restoration Society would not oppose the Historical Society's
7 occupancy of the property and did not contend that that
8 occupancy would be a detriment, is that not accurate, sir?

9 MR. SCHAUER: That is accurate.

10 MR. RISHER: You also told the community and the
11 Society back in March, did you not, that the Historical
12 Restoration Society was of the view that the third test for a
13 use variance, uniqueness of the property, would not be
14 impossible for the Society to show, did you not, sir?

15 MR. SCHAUER: I did.

16 MR. RISHER: Now it is the case, is it not, Mr.
17 Schauer, that you are aware of the other Monaco case that is
18 cited in the Society's pre-hearing statement, namely the
19 Monaco case that appears in Vol. 407, Atlantic 2nd? That is
20 the case that involves the Republican National Committee.

21 MR. SCHAUER: I am aware of that, yes.

22 MR. RISHER: And you are aware in that case, are
23 you not, sir, that this Board in looking at an application by
24 the Republican National Committee to locate across from the
25 Capitol found that the Republican National Committee's
26 relationship to the Congress of the United States made the

1 site, because of its proximity to the Capitol, unique in the
2 same sense that the word unique is used in the area variance
3 test -- you are aware of that, are you not, Mr. Schauer?

4 MR. SCHAUER: The Republican Committee involved
5 the peculiar fact situation that the Republican Club
6 previously was located at the site of what is now the Madison
7 Library. It was condemned by process to clear the ground for
8 the Madison Library. And at the time the Republican Club
9 entered into some kind of an agreement with the architect of
10 the Capitol which is reflected in the court cases. The
11 architect of the Capitol has some control over that,
12 particularly the new properties that they bought which are
13 about a block south of their old location. The architect of
14 the Capitol has right of first refusal on that property if the
15 Republican Club is to sell it and also they had certain
16 requirements imposed on the property as a result, I believe,
17 of a covenant that restricted the height of the buildings
18 below that which would have been permitted had the Republican
19 Club sought successfully to get an SP zone, which they were
20 attempting to do. And they agreed with the architect not to
21 proceed with an SP zone, which would have allowed much higher
22 buildings. They agreed instead to accept a variance under the
23 existing regulations in an R-4 zone. This was part of an
24 agreement with the architect of the Capitol. I think this is
25 a very unusual kind of case and not one that is going to give
26 us much guidance in the application of a Section 217 in the

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1 200 block of East Capitol Street.

2 MR. RISHER: Is the answer to my question yes,
3 Mr. Schauer?

4 MR. SCHAUER: I must admit, I forgot the
5 question.

6 MR. RISHER: So you don't purport to have
7 answered the question either, do you sir? My question, Mr.
8 Schauer, was this. Is it not the case that in that Monaco
9 ruling, 407 Atlantic 2nd 1091, at page 1095, as you say in
10 your pre-hearing statement, that the Court of Appeals held, in
11 view of the relationship between the Republican National
12 Committee and the Congress of the United States, the proximity
13 of the site to the Capitol was a permissible criteria for the
14 Board's determination that the property was unique?

15 MR. SCHAUER: Well, I think the property was
16 unique because of the contractual arrangements between the
17 architect of the Capitol and the Republican National
18 Committee.

19 MR. RISHER: So your response to my question is
20 I did not, in your way of thinking, correctly summarize what
21 the Court said?

22 MR. SCHAUER: That is correct.

23 MR. RISHER: All right, sir. The cite, Madam
24 Chair, is at page 1095.

25 CHAIRPERSON HINTON: 1095 of what?

26 MR. RISHER: 407 Atlantic 2nd at page 1095. The

1 page cite also appears in our pre-hearing statement. Let's
2 see if we can conclude them, Mr. Schauer, the entirety of the
3 Restoration Society's position. Number one, going back to the
4 Watterson case, you noted that the Board included that the
5 10,000 square foot provision was arbitrary. That decision was
6 in 1981 or thereabouts, is that correct, sir?

7 MR. SCHAUER: That is correct.

8 MR. RISHER: And you said that the Board in your
9 view determined that the figure should be waived, that is the
10 10,000 square foot one, because of the historic characteristic
11 of the property? Is that your testimony, sir?

12 MR. SCHAUER: That is not only my testimony,
13 that is what the Board said in its order.

14 MR. RISHER: Now were you referring to the
15 following provision of the Board's order -- and if I am
16 incorrect, you tell me. That is, this paragraph at page 14,
17 and I am going to read the entire paragraph. "The Board
18 concludes that the requested variance from the 10,000 square
19 feet of gross floor area requirement is an area variance, the
20 granting of which requires the showing of a practical
21 difficulty inherent in the property itself upon the owner.
22 The board concludes that the existence of a structure on the
23 site creates such a practical difficulty. Without the
24 requested variance relief, the only solution would be to ask
25 the owner to increase the size of the building. The Board is
26 of the opinion that the 10,000 square feet figure is arbitrary

1 and that what the zoning commission had in mind when it
2 adopted subparagraph 3101.414 was a structure of such size
3 that it would be unreasonable to consider it for single family
4 use. By today's standards, 5,000 square feet is large." Is
5 that the paragraph you were referring to, sir?

6 MR. SCHAUER: Yes, I think it was.

7 MR. RISHER: Now that is the paragraph that you
8 say contains an explanation by the Board related to the
9 historic features of the property?

10 MR. SCHAUER: Elsewhere in the Board's order --

11 MR. RISHER: Mr. Schauer, you may answer my
12 question and then you may explain if you think an explanation
13 is required.

14 MR. SCHAUER: Would you repeat the question
15 again, please?

16 MR. RISHER: Is that the provision of the
17 Board's order that you say contains an explanation tied to the
18 historic characteristic of the property?

19 MR. SCHAUER: Yes, it does.

20 MR. RISHER: That is the provision you were
21 referring to?

22 MR. SCHAUER: Yes.

23 MR. RISHER: Thank you, sir. Now, Mr. Schauer,
24 you agree, do you not sir, that there has been no evidence to
25 indicate that what is thought here is inconsistent with the
26 master plan for the Capitol and the related areas? You don't

1 dispute that, do you sir?

2 MR. SCHAUER: No, I don't.

3 MR. RISHER: And you don't dispute that the
4 Supreme Court Historical Society's use of the property would
5 be consistent with the character of the neighborhood and also
6 would serve the interests of the District of Columbia and the
7 nation on Capitol Hill. You don't dispute that either, do you
8 sir?

9 MR. SCHAUER: No.

10 MR. RISHER: And there is no dispute, is there
11 sir, that the Society's use would be a use that is permitted
12 under the zoning regulations if the BZA should concur that
13 certain conditions have been met. There is no dispute about
14 that either, is there sir?

15 MR. SCHAUER: Well, I think that follows the
16 regulations.

17 MR. RISHER: And there is no dispute that the
18 current use is a non-conforming use, is that --

19 MR. SCHAUER: No dispute at all.

20 MR. RISHER: And so to grant the application
21 then would be to change the situation by authorizing a
22 conforming use as a replacement of a non-conforming use. We
23 are in agreement on that score also, are we not sir?

24 MR. SCHAUER: Well, I am a little concerned
25 about portraying it as a conforming use. I think what strikes
26 me about the two uses is that they are both office uses. The

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1 fact that one is under Section 217 of the regulations and the
2 other one is subject to a non-conforming variance -- as a
3 variance as a non-conforming, I think this is just semantics.
4 In both cases, the building is going to be used as an office.

5 MR. RISHER: But you agree that you told the
6 community in March, did you not sir, that the Restoration
7 Society would not object to the Society's occupancy and use of
8 the property, did you not, sir?

9 MR. SCHAUER: No, of course not. The Society
10 would be a valuable neighbor. I have no problem with that.

11 MR. RISHER: And you agree that the Society's
12 plan to restore the facade of the property also would be a
13 significant contribution to the character of the neighborhood,
14 do you not, sir?

15 MR. SCHAUER: It would be very commendable, yes,
16 sir.

17 MR. RISHER: And you also agree that the
18 Society's application is unlike that of any other that you
19 have cited, namely it is a request to change a non-conforming
20 use to a more restrictive, less economically valuable
21 conforming use rather than to go the other way of trying to
22 convert a residential use into an office use. You would agree
23 with that, would you not also sir?

24 MR. SCHAUER: I suppose so.

25 MR. RISHER: And you would agree also, would you
26 not sir, that the Society's application is unique in another

1 respect in that it would return to the neighborhood the
2 Society's existing building for residential use. You would
3 agree that that is also a distinguishing characteristic here,
4 would you not, sir?

5 MR. SCHAUER: Yes, I would.

6 MR. RISHER: And you would agree, would you not
7 sir, that the Society is the only applicant, given again the
8 examples which you have cited, which can lay claim to a unique
9 and important relationship with one of the three branches of
10 Government located on Capitol Hill. You would agree with
11 that, would you not, sir?

12 MR. SCHAUER: I would.

13 MR. RISHER: And you would agree also, would you
14 not sir, that if this building, for example, had 5,000 square
15 feet, then it would be the same size as the Watterson House.
16 You would agree with that, would you not sir?

17 MR. SCHAUER: Right.

18 MR. RISHER: And you wouldn't be making the same
19 argument, would you, and that is because it doesn't have 5,000
20 square feet or because it does have 5,000 square feet, you
21 should deny the application. Would your position be the same,
22 sir?

23 MR. SCHAUER: It would be the same.

24 MR. RISHER: It would be the same. And so the
25 position of the Restoration Society then, if I understand it
26 correctly, is we don't oppose the Society's use of the

1 property. We don't oppose the Board approving the use because
2 we find nothing inconsistent about the Society's use in the
3 zoning regulation. What we are saying is that we want the
4 Board to deny the application because of what the Board says
5 is an arbitrary 10,000 square foot rule. Do I have it
6 correctly, sir?

7 MR. SCHAUER: Well, I kind of dislike your
8 laying out my arguments for me.

9 MR. RISHER: Would you take the bitter with the
10 sweet? Do I have it correctly, sir?

11 MR. SCHAUER: No, I don't think you have it
12 correctly.

13 MR. RISHER: And where do I not have it
14 correctly?

15 MR. SCHAUER: We would oppose any exception
16 under 217, and no matter how fine the Supreme Court Historical
17 Society is as an organization, there is nothing in Section 217
18 that says we have to consider the good merits of the non-
19 profit which is planning to use the building. In fact,
20 Section 217 -- a special exception under Section 217 runs with
21 the land, and the Supreme Court Historical Society could
22 decamp the next day and some other non-profit could take over.
23 And that is exactly what happened in the Watterson case.
24 Because the Watterson case originally was decided at the time
25 that the Cato Institute was occupant of the building. They
26 have since left and the building has gone over to the Indian

1 Gaming Commission. It was transferred -- the use was
2 transferred. The special exception under 217 running with the
3 land ran right along with the Indian Gaming Commission. The
4 character or the identity of the non-profit that hence
5 occupied the building is important only in one respect. In
6 seeing whether some of the tests that are contained in 217
7 about parking and such like sale of goods and et cetera --
8 whether this particular non-profit can meet those
9 requirements. But beyond that, the identity of the non-profit
10 really is fairly immaterial in these cases. The important
11 thing is whether this owner can show a practical difficulty
12 for which Section 217 relief should be granted.

13 MR. RISHER: Let me see if I understand
14 correctly, Mr. Schauer, as I try to conclude here. You have
15 agreed that this application presents a number of features
16 that are unique and without precedent with reference to the
17 other applications that you have discussed, am I correct, sir?

18 MR. SCHAUER: There is nothing unique arising
19 from the property that I can see in the testimony or in the
20 pre-hearing statement. Nothing unique arising from the
21 property.

22 MR. RISHER: My question of you, Mr. Schauer,
23 whether you want to say there is nothing unique in respect to
24 the property or not, is far broader. You agree, do you not
25 sir, that this application presents factors and facts that are
26 unique and have no precedence in reference to the other cases

1 that you have cited?

2 MR. SCHAUER: There are different factual
3 situations here, yes. I don't think they particularly bear on
4 the legal implications -- the test that the applicant must
5 make in this case.

6 MR. RISHER: And you have not, have you sir,
7 offered any evidence nor argument that would suggest that any
8 other applicant is likely or possibly can lay claim to the
9 same unique aspects as represented by this application? Do I
10 have it correct, sir?

11 MR. SCHAUER: Probably no other applicant could
12 present the same kind of fact situation. However, I keep
13 going back. The uniqueness must arise from the property, not
14 from the potential occupant of the property.

15 MR. RISHER: So let me then conclude. You are
16 saying that nonetheless, this application should be denied
17 because even though the Society's relationship with the
18 Supreme Court is unique, intensive, daily, essential to the
19 operation of much of the Supreme Court, and even though the
20 Society is returning its other property back to residential
21 use, you have speculated that at some future date the Society
22 is going to abandon this property and some other non-profit,
23 that you have not identified, but which you have said without
24 having identified it, is totally objectionable would be
25 permitted by this Board to occupy the property, and therefore
26 based on all of those suppositions and that hypothesis, the

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1 Board should deny the application. Do I have it correct, sir?

2 MR. SCHAUER: No, you do not.

3 MR. RISHER: To what extent do I not have it
4 correct?

5 CHAIRPERSON HINTON: Okay. I think I am going
6 to stop here. Because this is the fourth time, Mr. Risher,
7 that you have attempted to conclude and summarize this party's
8 testimony, and I think for the fourth time the party is not
9 agreeing with the way that you are putting things. So I think
10 it is clear to the Board members what everyone's position is
11 at this point.

12 MR. RISHER: I have only one other request. I
13 am sorry, Mr. Schauer may have more witnesses. Thank you,
14 Madam Chair.

15 CHAIRPERSON HINTON: Okay. Are there other
16 persons or parties in opposition? No. We are now at the
17 closing remarks by the Applicant. And if the Applicant would
18 indulge, Mrs. King has some questions that she would like to
19 ask. Why don't we have those questions before your closing
20 remarks.

21 MR. RISHER: I was going to request that. That
22 is fine. Would you like Mr. Pride back at the witness --

23 CHAIRPERSON HINTON: Yes.

24 MS. KING: If he is the person who gave the
25 initial testimony. There are just a couple of clarifying
26 questions that I would have posed had I been here.

1 Whereupon,

2 DAVID T. PRIDE

3 was recalled as a witness, and having been previously duly
4 sworn, was examined and testified as follows:

5 DIRECT EXAMINATION

6 MS. KING: As you know, I have read your earlier
7 testimony and again Mr. Risher has raised this question of
8 returning the present building to residential use when you
9 occupy your next space. Do you have a contract on that?

10 MR. PRIDE: No, we do not.

11 MS. KING: So it is perspective -- I mean, are
12 you only going to offer it for residential use?

13 MR. PRIDE: That is what the Society has
14 represented and we will do that, yes.

15 MS. KING: I see. And the other question that I
16 had was as I recall in your testimony, you talked about that
17 you have four employees and that they would be essentially the
18 only people who would be in your building on a regular basis,
19 is that correct?

20 MR. PRIDE: That is generally the case.

21 MS. KING: Okay.

22 MR. PRIDE: Now understand I can't --

23 MS. KING: Now you also in your testimony talked
24 -- either written or oral, I can't remember which -- talked
25 about this new building would give you facilities for
26 displays, is that correct?

1 MR. PRIDE: That is correct.

2 MS. KING: And would you not be inviting the

3 public in to examine these displays?

4 MR. PRIDE: Well, I think that I put it that it

5 would give us room for display items. The Society has a

6 variety of furnishings and portraits and whatnot that it has

7 acquired over the years and some of them are in our building

8 now. I have Chief Justice Berger's chess table. I have

9 portraits of some of the past Justices that are kind of rare.

10 MS. KING: I understand. But I mean --

11 MR. PRIDE: But people do not --

12 MS. KING: The larger space would make it

13 possible for you to display these, but you would not be

14 inviting the members of the Society or the public in general

15 to see these displays, is that correct? It would be simply

16 for the edification of the four staff members?

17 MR. PRIDE: Well, no. The Society's members and

18 certainly the public are welcome to come and see them and

19 indeed in our brochures now we routinely invite them to come

20 in and see them, but the foot traffic is so low as to be

21 negligible. I would say if we get three visitors a month,

22 that would be a good month.

23 MS. KING: All right. Thank you. I have no

24 further questions.

25 CHAIRPERSON HINTON: I have a follow up question

26 for that. The property that you are in now, do you intend to

1 sell it with the condition that it could only be used for
2 residential?

3 MR. PRIDE: I don't really know what the Board's
4 intention is in that regard. I know that the Board has
5 indicated that it will guarantee residential use.

6 CHAIRPERSON HINTON: For what period of time?

7 MR. PRIDE: I apologize, but I don't know how
8 that works in a contractual arrangement, so I can't answer.

9 CHAIRPERSON HINTON: Okay. Thank you. If there
10 are no other questions, we have closing remarks by the
11 applicant.

12 MR. RISHER: Madam Chairperson, with reference
13 to the question both you and Ms. King put regarding the
14 residential use of the current site, I would like to respond
15 by saying two things, and this is part of my closing. The
16 zoning regulations require that this property be used only for
17 a residential use. Mr. Pride responded to your question, I
18 think, as a non-lawyer would. I happen to chair the Executive
19 Committee Search Committee and I could tell you what the legal
20 consequences are, but I don't believe that I am here to
21 testify. What I do want, however, is to say that Mr. Pride's
22 answer was a very direct one and not of a lawyer. I will
23 be very, very brief in my summary.

24 MS. KING: What does that mean?

25 CHAIRPERSON HINTON: I am sorry, you
26 have --

1 MS. KING: I don't understand what you are
2 saying.

3 CHAIRPERSON HINTON: You have lawyer'd that to
4 the point that we don't understand.

5 MR. RISHER: Very well. The Society's position
6 is that the property will be sold only for residential use.
7 We cannot, however, assure that at some future date someone
8 may not make a contention that the property should be used for
9 something else. But that is the Society's position. That is
10 the Society's official position, and I believe that what Mr.
11 Pride was doing was trying to avoid making some representation
12 as to what some future person might do. Because we have
13 always been very careful in saying we can't predict the
14 future. We can tell you, however, what we will do. We will
15 sell it only for residential use.

16 MS. KING: Under what circumstances is it
17 presently being operated as a non-profit headquarters? You
18 say that the zoning there is residential?

19 MR. RISHER: It is being operated -- it has been
20 since 19 -- if I have the year correct -- 1981 as a private
21 club.

22 MS. KING: As a private club.

23 MR. RISHER: That is correct.

24 MS. KING: And that is permitted in a
25 residential area?

26 MR. RISHER: That is permitted as of right. And

1 we are not suggesting that we would market it for private club
2 use. Mr. Pride is being very careful. We are saying we will
3 market it only for residential use and that is the Society's
4 position.

5 MS. KING: Okay.

6 MR. RISHER: It may be used as a matter of right
7 for the private club as a museum. Mr. Pride was very careful
8 in saying that we are not acquiring the new site for use as a
9 museum -- we could have posited that basis for acquiring it --
10 because we don't intend that it be a museum. That is why he
11 answered your question the way in which he did.

12 As I was saying, I believe that my summary can
13 be quite brief in light of the cross examination of Mr.
14 Schauer. Both my questions and his answers I believe
15 eliminate the background. The district in which the property
16 is located was established to protect and promote, of course,
17 the public health, safety, and general welfare of the U.S.
18 Capitol Precinct and the adjacent areas in a manner consistent
19 with the goals and mandates of Congress established by the
20 master plan for development of the Capitol grounds and the
21 related areas. That is the overriding purpose for this
22 overlay district in which the subject property is located.

23 The subject property is zoned, therefore, in a
24 way that recognizes the importance of the federal
25 establishment, in particular the Congress and the Supreme
26 Court, on Capitol Hill. There has been and there can be no

1 serious suggestion here that granting this application would
2 not serve both the national and the local interest that the
3 zoning regulations have been promulgated to promote.

4 There also can be no question here that the
5 community at large, and by that I refer to the Stanton Park
6 Community Association, I refer to ANC 6A, I refer to ANC 6B,
7 have unanimously set. There is no objection to this
8 particular application. It advances important local
9 interests. Moreover, it does not establish a precedent
10 because of the unique relationship that the Supreme Court
11 Historical Society has with one of the three branches of our
12 federal government.

13 The Office of Zoning report similarly recognizes
14 and correctly summarizes the applicable legal standards that
15 apply here.

16 Now I would say three things in respect of the
17 use variance argument that the Capitol Hill Restoration
18 Society advances. First, what is most obvious is that the
19 Society relies upon what this Board has determined to be an
20 arbitrary figure as the only -- and I am referring now to the
21 10,000 square foot provision -- as the only basis for the
22 Restoration Society's concern.

23 The Restoration Society is concerned with
24 preserving its view of the history of Capitol Hill. Surely
25 the Restoration Society does not suggest that the Supreme
26 Court Historical Society does not have the same point of view.

1 The concern that is expressed is a concern expressed by all of
2 the community supporters, as their letters before you
3 demonstrate. Namely that there not be some amorphous rule
4 that would give rise to a legitimate rational concern that the
5 residential character of Capitol Hill would quickly dissipate
6 because of ill-advised precedents. I would suggest that 15
7 years of history of rulings by this Board have demonstrated
8 that there be no need -- that there is no rational basis for
9 concern that this Board has not judiciously applied Section
10 217. Only one case has been cited by the Capitol Restoration
11 Society as posing any concern and that is the Watterson House
12 case.

13 But beyond that, the unique aspects of this
14 case, going from a non-conforming use to a conforming use,
15 returning residential property, that is the other site, back
16 to the market are just two of the many distinguishing features
17 about this application that ought to allay any concern. And
18 we don't doubt for one second the concerns expressed by the
19 Capitol Restoration Society are genuine. It should allay any
20 concerns. As ANC 6A in the Stanton Hill Land Use Committees
21 so forcefully put it forth in their letters, we don't endorse,
22 they say, office use, but we do endorse the granting of this
23 application because it returns the property to a permitted use
24 and we have no concern that it will establish a precedent that
25 presents reasons for concern.

26 I would conclude by saying that the Society's

1 contract to acquire the site, as Mr. Pride testified, is
2 contingent upon obtaining the zoning that we seek, the
3 granting of this application. Only by granting this
4 application is there any reason to believe that this property
5 would cease to be used for a non-conforming use. The
6 un rebutted economic testimony is that Mr. Brylawski would lose
7 the value of this property were he to try to market it for
8 non-office use. The converse of that is the right to use this
9 property for the non-conforming office and professional use is
10 a perpetual one that runs with the land that can be changed
11 only by the voluntary action of the owner of the property. It
12 is unrealistic to expect that Mr. Brylawski would downgrade
13 the value of this property that has never been used for
14 residential purposes.

15 The Society's application, therefore, is totally
16 unique in that only by granting the application do we serve
17 the purposes of the zoning regulations. And for that reason,
18 we would ask that the application be swiftly granted so that
19 the acquisition of the property can be consummated. Thank you
20 very much.

21 CHAIRPERSON HINTON: Thank you.

22 MS. RICHARDS: Madam Chairperson?

23 CHAIRPERSON HINTON: Yes.

24 MS. RICHARDS: One final question has arisen if
25 we may?

26 CHAIRPERSON HINTON: Certainly.

1 MS. RICHARDS: Do you want to go ahead?

2 MS. KING: No, you go ahead. You are the
3 lawyer.

4 MS. RICHARDS: Mr. Risher, you represent and
5 your pre-hearing application statement and the note from the
6 Supreme Court Historical Society also represents that you are
7 entitled as a matter of right to use the property as a private
8 club and museum and if relief is denied here, will the Society
9 proceed under that matter of right representation?

10 MR. RISHER: No. The Society made the decision
11 -- and when I say the Society, the Executive Committee of
12 which I am a part -- made the decision, and this is stated
13 perhaps in different words in our note to the community, that
14 there should be no doubt about the Society's intent in respect
15 of this property as to the use. And that is that the Society
16 would use the property only as its headquarters. We have
17 rejected suggestions that have been made to us that we seek to
18 occupy the property as a private club, that we seek to occupy
19 the property as a museum. Indeed, we could buy the property,
20 as I am sure you appreciate, under its existing permitted
21 uses, that is for offices and professional use, and then we
22 could, if we qualified, could occupy it as a private club,
23 because that is a use permitted of right, and retain the
24 existing right to use it for non-conforming use. The Society
25 has made it very, very clear that we do not want to avail
26 ourselves of those legal avenues. The property is being

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1 acquired by the Supreme Court Historical Society -- and they
2 are very concerned that what it does be beyond question -- for
3 only one purpose, for its headquarters. We will acquire it
4 only for that purpose.

5 MS. RICHARDS: And does this have any bearing on
6 your 501C3 tax exempt status for use of the building as a
7 private club?

8 MR. RISHER: No, it does not. The use of the
9 property in no way implicates -- in no way in which I am
10 aware, and I believe that I would -- the tax exempt status of
11 the Society.

12 MS. RICHARDS: Okay. Thank you.

13 CHAIRPERSON HINTON: Are there any other
14 questions from the Board? No. Seeing none, it would be my
15 preference to take some time to review the record and make a
16 decision in September, but I am willing to decide now if the
17 other members feel strongly about that. Would you rather
18 wait?

19 MS. RICHARDS: Yes. I think we could mull over
20 the occupancy for today.

21 CHAIRPERSON HINTON: Very Good. Ms. Rose, can
22 we set this for our September meeting?

23 MS. ROSE: At the July 2 hearing, Ms. Richards
24 indicated that she wanted a clarification from ANC 6A on
25 whether their committee vote was to be taken as a pool of the
26 ANC --

1 MS. KING: I am sorry, I can't hear you.

2 MS. ROSE: At the July 2 hearing, at the end of
3 the hearing or at the point that the ANC material was
4 reviewed, Ms. Richards indicated that she wanted to leave the
5 record open for another letter from the ANC 6A with regard to
6 whether their committee vote was the vote that represented the
7 full ANC. And I just wanted to remind her of that to see if
8 you wanted to accept something else from them.

9 MS. RICHARDS: That was that there was a failure
10 of the formalities and we wanted to be in a position to give
11 it the weight entitled to by law.

12 CHAIRPERSON HINTON: And I think that we should
13 still do that. How long could we give them if we set the
14 decision for September 3?

15 MS. ROSE: Any new submissions would be due by
16 August 21 and responses would be due by August 28 with
17 proposed findings due on that date as well, August 28.

18 MS. BENNETT: And Madam Chair, I don't know
19 about this particular commission, but many ANC's do not
20 schedule meetings for the month of August. So that there may
21 not be an opportunity for them to come together and take the
22 correct action of the whole commission by the September
23 meeting.

24 MS. RICHARDS: Well, they must have some
25 provision in their by-laws that enables them to take action --
26 a call meeting or something.

1 MS. KING: In most cases, they do not.

2 MS. RICHARDS: They do not?

3 MS. KING: No.

4 MS. RICHARDS: I wouldn't want to hold this

5 beyond our September meeting. I think it would be right for a

6 decision by then. I think we can only offer them the

7 opportunity and see what happens.

8 CHAIRPERSON HINTON: Right. My understanding

9 was we were looking for clarification. The vote may well have

10 been taken, but the letter that was written wasn't clear.

11 MS. KING: That is right.

12 CHAIRPERSON HINTON: So let's leave it open

13 until August 21. Ms. Rose, will the Office of Zoning send

14 correspondence to the ANC to let them know?

15 MS. ROSE: Yes.

16 CHAIRPERSON HINTON: Very good.

17 MS. KING: If I might suggest, if the staff

18 could make a phone call to the chairperson or if they have a

19 staff person to say this even though it needs to be confirmed

20 later in writing, it might make it possible for them to

21 respond in a timely fashion without calling an extraordinary

22 meeting in August.

23 MS. ROSE: Yes.

24 CHAIRPERSON HINTON: Very good. A good idea.

25 Thank you, Ms. King. That concludes this case. The Board is

26 going to take a five-minute break before we call the last case

1 on the agenda.

2 (Whereupon, at 11:01 a.m. the hearing on the
3 above-mentioned case was concluded.)

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