

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

BOARD OF ZONING ADJUSTMENT

SPECIAL PUBLIC HEARING

TUESDAY
APRIL 3, 2001

The hearing came to order at 8:30 a.m. in Suite 220, 441 4th Street, N.W., Washington, D.C. 20001, pursuant to notice, Sheila Cross Reid, Chair, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

Sheila Cross Reid	Chairperson
Susan Hinton	Board Member
Carol Mitten	Board Member
Ann Renshaw	Board Member

COMMISSION STAFF PRESENT:

Beverly Bailey	Zoning Specialist
Paul Hart	Zoning Specialist
John Nyarku	Zoning Specialist
Marie Sansone, Esq.	Corporate Counsel

C-O-N-T-E-N-T-S

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

CHAIRPERSON CROSS REID: Good morning. Please pardon our slight delay this morning. The hearing will please come to order. This is a special hearing of the Board of Zoning Adjustment for April 3. My name is Sheila Cross Reid, Vice Chair. Joining me is Carol Mitten of the Zoning Commission and Ann Renshaw.

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 in opposition, are to fill out two witness cards. These cards are located on each end of the table in front of us. When 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 variances is statement and witnesses of the applicant, government reports including Office of Planning, Department of Public Works, etcetera, report of the ANC, parties or persons in support, parties or persons in opposition, closing remarks by the applicant. Cross examination of witnesses is permitted by the applicant or parties. The ANC within which the party is located is automatically party in the case.

The record will be closed at the conclusion of each case except for any materials specifically requested by the Board, and the staff will specify at the end of the hearing

1 exactly what is expected.

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

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

12 Please turn off all beepers and cell phones at
13 this time so as not to disrupt these proceedings.

14 The Board will now consider any preliminary
15 matters. Preliminary matters are those which relate to whether
16 a case will or should be heard today such as requests for
17 postponement, continuance or withdrawal or whether proper and
18 adequate notice of the hearing has been given. If you are not
19 prepared to go forward with the case today or if you believe
20 that the Board should not proceed, now is the time to raise
21 such a matter. Are there any preliminary matters? Does the
22 staff have any preliminary matters?

23 MS. BAILEY: No, Madam Chair, we have none.

24 CHAIRPERSON CROSS REID: Okay. If not, let's
25 proceed with the first case today. Thank you.

1 MS. BAILEY: Members of the Board, good morning.
2 My name is Beverly Bailey with the D.C. Office of Zoning, and
3 the first case of the morning is Application 16677 of Darcelle
4 Walker pursuant to 3103.1 and 3104.1 to allow the establishment
5 of a nonconforming rear yard in accordance with Sections 223.1
6 and 2001.3(c) for a proposed addition to an existing single
7 family dwelling at premises 5617 First Street, N.E., square
8 3607, lots 117 and 118.

9 All those wishing to testify, would you please
10 stand to take the oath. Please raise your right hand.

11 (The witnesses were sworn.)

12 MS. BAILEY: Thank you. Please come to the
13 table.

14 BOARD MEMBER MITTEN: While they're coming
15 forward, Madam Chair, I'd just like to state for the record
16 that I have read the record in this case and I'm ready to go
17 forward and participate.

18 CHAIRPERSON CROSS REID: Thank you. I, too,
19 should mention that I've also read the remainder of the case,
20 and I am prepared to go forward with the case today.

21 MS. BAILEY: Madam Chair, a couple of notes
22 before you proceed. At the last hearing on this case, the
23 Board had requested a corrected plat and floor plans. The
24 applicant was not aware that those things should come into the
25 record before the hearing today, and she has submitted this

1 morning, and she has copies for the Board members and I have
2 the original. So would you please waive your rules, or it's at
3 your discretion if you want to receive those documents into the
4 record at this time so you can proceed.

5 CHAIRPERSON CROSS REID: Okay. I would suggest
6 that we so waive the record. As Ms. Renshaw just said, we need
7 them. So is there objection then to receipt?

8 MS. BAILEY: Madam Chair, what's being passed to
9 you is the original, but Ms. Walker does have copies for the
10 Board members.

11 CHAIRPERSON CROSS REID: At the last hearing, if
12 I understand correctly, we didn't get further than the opening
13 statements, did we? So we have to go through the entire --
14 Good morning.

15 MS. WALKER: Good morning.

16 CHAIRPERSON CROSS REID: Proceed.

17 MS. WALKER: Okay. Good morning, Chairman and
18 members of the Board. I'm here to show burden of proof for
19 variance and special exception to build an addition onto my
20 property at 5617 First Street, N.E. The lot which we are
21 building on is of an irregular shape and slopes sharply in the
22 rear yard. Granting the application will not be of substantial
23 detriment to the public good. Also, this is a small addition
24 to the house. It's actually replacing an existing room with a
25 little more space. It will not adversely affect anyone's

1 light, air, or view. It will improve the looks of the house
2 and the neighborhood.

3 Granting the application will not be inconsistent
4 with the general intent and purpose of the zoning regulations,
5 and it is in consistence with the existing R-1-B district.
6 This is for residential use in a residential zone. No harm
7 will be done to my neighbors or neighborhood by building this
8 structure. It is in harmony with the general surroundings.
9 There will be no adverse effects on my neighbors. My immediate
10 neighbors do support my proposed addition.

11 CHAIRPERSON CROSS REID: Is that all?

12 MS. WALKER: Yes.

13 CHAIRPERSON CROSS REID: Okay. Let me see here.

14 All right. Ms. Walker, you're saying that your case is being
15 made based on the fact that your lot is unusual --

16 MS. WALKER: Yes, ma'am.

17 CHAIRPERSON CROSS REID: -- because of the fact
18 that it slopes downward in the back?

19 MS. WALKER: It slopes down. It's an irregular
20 shape. It's actually located on a corner. It's a corner lot.

21 CHAIRPERSON CROSS REID: Okay. I'm looking at
22 this Sandworn map, and I'm not clear exactly where the site is.

23

24 MS. WALKER: It's an alley in the rear.

25 CHAIRPERSON CROSS REID: Okay. It's difficult to

1 ascertain on that map.

2 MS. WALKER: You need me to show you?

3 CHAIRPERSON CROSS REID: All right. Okay. I
4 see. All right. I would agree with that, that it is
5 irregularly shaped. You said that it slopes down in the back.

6 MS. WALKER: Yes. It has a little slope in the
7 back.

8 CHAIRPERSON CROSS REID: All right. Now, Mrs.
9 Walker, when you were here before, they explained to you about
10 the three-pronged test. Right? That you have to show -- you
11 don't look like -- When you were here before, did you not
12 receive instructions as to what your relief would be and the
13 test that you have to meet because you started off with saying
14 that your lot was irregular, so I'm assuming that this is to
15 demonstrate to us that your lot is unique.

16 MS. WALKER: Yes, ma'am.

17 CHAIRPERSON CROSS REID: Okay. That's the first
18 prong.

19 MS. WALKER: Okay.

20 CHAIRPERSON CROSS REID: But the second part is
21 you have to demonstrate that there is a practical difficulty --
22 this is the area, right? -- a practical difficulty for you not
23 to be able to conform with the existing zoning regulations.
24 Did they talk to you about that? Okay. We'll start like this.
25 Why do you need the variance?

1 MS. WALKER: Because between the public space and
2 the rear of the home, there isn't enough space. I think it was
3 16 feet. Remember, they said there wasn't enough space between
4 the -- you need so much space between the alley and my home.

5 BOARD MEMBER MITTEN: Your rear yard requirement
6 is 25 feet.

7 MS. WALKER: Okay. It wasn't 25 feet from the
8 alley, and that's because -- it's 23, and that's because of the
9 shape, because of the diagonal that it goes, the alley.

10 CHAIRPERSON CROSS REID: Okay. Okay. That makes
11 sense.

12 BOARD MEMBER MITTEN: Can I ask Ms. Walker a
13 question?

14 CHAIRPERSON CROSS REID: Oh, sure.

15 BOARD MEMBER MITTEN: On the drawings that show
16 your existing dwelling, am I correct that there's actually
17 something missing here which is that there's an existing 14 X
18 14 room on the back? Is that correct?

19 MS. WALKER: Yes, but they have -- I thought that
20 he asked me to do it the way that the blueprints were supposed
21 to be for the original house.

22 BOARD MEMBER MITTEN: Well, what's of interest to
23 us is the existing condition as of right now which includes a
24 14 X 14 room on the back, and what you're proposing to do, if I
25 understand what I read in the transcript from the first

1 hearing, is that you basically want to replace that structure
2 and add two feet to its width.

3 MS. WALKER: Right. I have pictures to show the
4 existing structure.

5 BOARD MEMBER MITTEN: So really, there is already
6 a nonconforming rear yard. It's already too narrow or, you
7 know, too shallow. So what we need to address ourselves to is
8 really just the addition of two feet to what's already in
9 place.

10 CHAIRPERSON CROSS REID: Yes. From what I
11 garnered from reading the record was that Mr. Sockwell had
12 asked for a corrected plat showing the existing drawing of what
13 was there at this time. Is that why you brought these
14 pictures? It doesn't show the drawing because basically --

15 MS. WALKER: No, on the plat -- she has the plat.

16 CHAIRPERSON CROSS REID: Well, okay. It said he
17 wanted the drawing to scale so that we know exactly -- is that
18 what you were saying, Ms. Mitten, that the existing addition
19 was 23 and she wants to add the other -- she wanted to add two
20 more feet, but that should be depicted on the plat.

21 BOARD MEMBER MITTEN: And, in some sense, it is,
22 I believe, because there's a line that cuts across, and I think
23 that's approximately two feet of difference.

24 CHAIRPERSON CROSS REID: Okay. Well, let me ask
25 you to look at this because is this now showing what you need

1 or what Mr. Sockwell had asked for because I wasn't sure
2 exactly what -- I wasn't here, so I wasn't --

3 MS. HINTON: This actually looks very similar to
4 what we had looked at before, and what we had asked for is for
5 the drawing to indicate where the existing structure is and
6 where the proposed structure is going to be, and there hasn't
7 been any change to this drawing to indicate that.

8 CHAIRPERSON CROSS REID: This is the same one?

9 MS. HINTON: Yes.

10 CHAIRPERSON CROSS REID: Ms. Walker, did you --
11 you're shaking your head. Can you say something?

12 MS. WALKER: No, that's not the same one. We
13 went down to DCRA. We got a corrected plat.

14 CHAIRPERSON CROSS REID: You're saying that this
15 one is the corrected one? No, this says 11-1-2000. Maybe
16 we're looking at the wrong one. Do you have one that's --

17 MS. WALKER: No, he said that that one was --
18 when I went down to DCRA, I talked to Toye Bello.

19 CHAIRPERSON CROSS REID: Okay.

20 MS. WALKER: And he said that that is the
21 corrected plat. He said it was not incorrect.

22 CHAIRPERSON CROSS REID: Okay. When did you go
23 down there?

24 MS. WALKER: I went down right after --

25 CHAIRPERSON CROSS REID: After you came here, you

1 went back down there and they told you that this is what you
2 needed to come here?

3 MS. WALKER: And he said it is not incorrect. He
4 was not going to make any changes to it because it was not
5 incorrect.

6 MR. JIMENEZ: They were just -- one stories.
7 It's two stories.

8 MS. WALKER: Yes. That's what he did.

9 MS. BAILEY: Sir, excuse me. Hello, sir. In
10 order to speak, just please speak into the microphone.

11 CHAIRPERSON CROSS REID: You have to give your
12 name and address, sir. Sorry.

13 BOARD MEMBER MITTEN: Madam Chair.

14 CHAIRPERSON CROSS REID: Yes.

15 BOARD MEMBER MITTEN: What I -- maybe I could
16 help us to understand because I think I have an understanding
17 of what's being requested. If we go to -- we could either look
18 at the new plat or we could look at #2 which is the same plat
19 but it has the calculations for the rear yard on it. What
20 Exhibit No. 2 shows is that the depth of the addition relative
21 to the house is 14 feet as it is currently and that the width
22 of the addition is going to be 16 feet instead of the existing
23 14 feet. But in terms of the nonconformity of the rear yard
24 which this illustrates how that calculation is done, the
25 nonconformity doesn't change. And I think because of some

1 misunderstanding with drawings and so on is that the
2 -- I'm not sure it was clear from the Zoning Administrator's
3 perspective that there is this existing room on the back of the
4 house, so that our point of departure is really an existing
5 nonconforming rear yard which that nonconformity is now going
6 to be increased with what's being proposed by Ms. Walker.

7 MS. HINTON: And there's another problem with
8 these drawings that we had talked about. If you look on either
9 Exhibit 2 or on this new plat that we have, look at the length
10 of the line that's labeled 14 feet and look at the length of
11 the line that's labeled 16. Something isn't scaled properly,
12 and if you take the 16 as being correct, then the 14 is much
13 too short, which means this actually comes back into the rear
14 yard farther than it's drawn here. And if they've then scaled
15 any of these other dimensions, then those aren't correct
16 either. And that was part of what we wanted to have cleared
17 up, is this drawing is not drawn to scale, and we don't know
18 where any of the measurements were taken from. So that's what
19 we wanted to have corrected for the file.

20 I agree with what you said, that since there is
21 an existing structure there and apparently the depth of that
22 structure into the back yard isn't changing at all. What's
23 changing is how long that is along the existing house. So the
24 extent of the nonconformity probably isn't changing, but what
25 we were trying to do really is get accurate drawings in the

1 record for the Board to look at.

2 BOARD MEMBER MITTEN: I understand your point now
3 that you describe it.

4 CHAIRPERSON CROSS REID: Well yes, but I mean --
5 all right. Given the fact that the applicant went back to DCRA
6 and was told that they were correct for the purposes of coming
7 to this Board, what now do we do? That makes it difficult.

8 BOARD MEMBER MITTEN: Well, if I could just pick
9 up where Ms. Hinton left off, which is what we were striving
10 for is to get an accurate measurement on the record or in the
11 record, but at the end of the day, the fact is is that there is
12 an existing nonconformity, and the proposed addition -- and
13 whatever that nonconformity is, the proposed addition is not
14 going to make it --

15 CHAIRPERSON CROSS REID: Extend that.

16 BOARD MEMBER MITTEN: Extend it. Right. So
17 maybe without even being able to quantify the nonconformity, if
18 we can use that as a point of departure, we could at least have
19 a discussion on the merits.

20 MS. SANSONE: Madam Chair, if I could just point
21 out, if it's the case there's no increase in nonconformity, the
22 applicant would not need a variance from the Section 20001.3
23 which is about increasing nonconformity. She could simply
24 proceed under the special exception provisions of 223 and have
25 a less burdensome requirement to show.

1 CHAIRPERSON CROSS REID: Well, she could. Here's
2 where I'm a little concerned, Ms. Sansone. That being the
3 case, then why -- well, wait a minute. She is coming under a
4 special exception, isn't she?

5 MS. SANSONE: Madam Chair, she originally applied
6 for the special exception but, because the drawings were so
7 difficult to read last time, it appeared to Mr. Sockwell that
8 she might be increasing the nonconformity, which raised the
9 issue of maybe she also needed the variance relief.

10 CHAIRPERSON CROSS REID: Okay.

11 MS. SANSONE: However, it appears from the
12 discussion this morning that there would not be an increase in
13 the nonconformity, which would eliminate the need for the
14 variance. She could simply proceed under the special exception
15 for one family dwellings.

16 BOARD MEMBER MITTEN: I think that's where we
17 are. I think that's the situation.

18 CHAIRPERSON CROSS REID: That would be a lot
19 easier for you, rather than trying to make a case for a
20 variance, which is a much more difficult test. And I guess the
21 Board should make a ruling as to whether or not she would be
22 allowed to submit or have her application reviewed as a special
23 exception. This is what's on the agenda now. Was it also
24 advertised as a special exception or was it advertised as a
25 variance?

1 MS. BAILEY: It was advertised -- it was re- --
2 it should have been re-advertised as both a special exception
3 and a variance.

4 CHAIRPERSON CROSS REID: You said it should have
5 been?

6 MS. BAILEY: She had to re-post the property, and
7 it should have been re-posted as both a special exception and a
8 variance.

9 CHAIRPERSON CROSS REID: Did you?

10 MS. WALKER: Yes, I did.

11 CHAIRPERSON CROSS REID: If she has re-posted the
12 property as a variance or special exception, the special
13 exception being a lesser burden, then I would think that that
14 would be in keeping with her requirements for notice.

15 MS. WALKER: Yes, Madam Chair.

16 CHAIRPERSON CROSS REID: Okay. You're not going
17 to a higher one. So should we take a vote on proceeding as a
18 special exception, Ms. Sansone?

19 MS. SANSONE: Madam Chair, I think the Board
20 could take a vote or proceed by consensus, if that's
21 appropriate.

22 CHAIRPERSON CROSS REID: Okay. Well, I would
23 move that we would accept this application as a special
24 exception.

25 BOARD MEMBER MITTEN: Second.

1 CHAIRPERSON CROSS REID: All in favor.

2 ALL: Ayes.

3 CHAIRPERSON CROSS REID: Okay. Opposed, none.

4 All right, now, Ms. Walker, this makes it a lot
5 easier, so we go now to basically we go through the other steps
6 in your case. Okay? And then if the Board has any other
7 questions, then we can have you to address those questions and,
8 Ms. Hinton, the point that you raised in regard to the drawings
9 being corrected, I think that regardless, we should still have
10 her to submit prior to an order going out the corrected but
11 have them be true to scale and that they reflect properly what
12 they're supposed to reflect.

13 MS. HINTON: I think if we rely on the dimensions
14 of the drawing that we're given and we make a decision on
15 those, then that would be adequate.

16 CHAIRPERSON CROSS REID: Well, I'm a little
17 perplexed because my understanding was that you felt that they
18 were -- Mr. Sockwell felt that they were not correct and then
19 you also concurred with that.

20 MS. HINTON: That's right, but if it's your
21 intention to make a decision on the drawings that we have, then
22 I don't believe we should ask for new drawings.

23 CHAIRPERSON CROSS REID: Well, can we do that?
24 Ms. Sansone, if the drawings are not, you know, correct, can we
25 proceed?

1 MS. SANSONE: Madam Chair, I believe that in the
2 past what we've done is left the record open to receive the
3 drawings or else have the order be conditioned on submitting
4 correct drawings.

5 CHAIRPERSON CROSS REID: I think that that would
6 be appropriate, that we just leave the record open to accept.
7 Ms. Walker, do you have an architect? You're the architect?

8 MS. WALKER: He's my contractor.

9 CHAIRPERSON CROSS REID: All right. What you
10 need to do is to have the architect to make sure that the
11 drawings are correct. Now, the staff can assist you. You can
12 have your architect talk to staff. But prior to any order
13 being issued, make sure that your architect talks to staff and
14 make sure that the drawings that are submitted are correct
15 because they're still not exactly right. They're not drawn
16 exactly like they're supposed to be. Do you understand what
17 I'm saying?

18 MS. WALKER: The drawings that I submitted, the
19 floor plan?

20 CHAIRPERSON CROSS REID: Right. The second
21 drawing that you submitted. The one that Mr. Bellow told you
22 was okay is not.

23 MS. WALKER: Okay. That's from DCRA.

24 CHAIRPERSON CROSS REID: Exactly, and
25 unfortunately, you're having to contend with being told

1 something that's -- one entity telling you one thing and
2 another entity telling you another thing, and I know you don't
3 like to feel like a ping pong ball, so what I'm going to try to
4 do is put some closure to that.

5 MS. WALKER: Okay.

6 CHAIRPERSON CROSS REID: All right. And just
7 basically have him talk to staff and get an understanding as to
8 what is required for here, not what Mr. Bellow says, so that
9 the record can be corrected. Okay?

10 MS. WALKER: Okay.

11 MS. HINTON: I guess I still have the problem
12 that we had originally, and that is without the correct
13 drawings, we really can't determine whether this nonconformity
14 is being extended. If we take the dimension, if we say that 14
15 is actually correct and it's the drawing that's wrong and that
16 the new addition is not going to be any more than 14, then we
17 can make that determination. But without knowing, we can't
18 make that determination, and that's exactly where we were last
19 time we looked at this. The way that this existing addition is
20 shown is not 14 feet deep, so if the proposal is to build one
21 that is 14 feet deep, then it is an extension of the
22 nonconformity. And this is why I hesitate, and I do not like
23 the practice of making a decision and then having corrected
24 drawings submitted to the record. We need to have the correct
25 drawings in front of us before we make a decision. And that's

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1 the way I look at this.

2 I don't think that we can assume that it is 14
3 and it's drawn wrong. It may be drawn correctly and may only
4 be eight feet, in which case if you are taking an addition
5 that's eight feet deep and you're going to build one that's 14
6 feet deep, you are extending the nonconformity and you do need
7 a variance. So that's -- I mean we need to know that. We
8 can't guess about it.

9 BOARD MEMBER MITTEN: Can I just interject
10 something? In terms of -- and somebody else can correct me if
11 I'm wrong, but my understanding is that when you go to the
12 surveyor's office and you get a plat, it does not show a
13 building. The architect puts the building on the plat,
14 positions it on the plat. So who drew the building on this
15 plat? Mr. Bellow didn't do that.

16 MR. JIMENEZ: Our architect drew it. He went to
17 the house and drew the plat.

18 BOARD MEMBER MITTEN: Okay. Our question is when
19 you look at this, the proposed addition, which is supposed to
20 be 14 X 16, if you look at it as it's scaled, that doesn't look
21 like it's in proportion. So if I show you this -- this is the
22 room we're talking about, it's the existing condition -- we're
23 not sure, because of the way this is drawn, that this
24 measurement is 14. We're worried that it's less than 14. So
25 we need someone to measure this accurately and draw us

1 something to scale.

2 MR. JIMENEZ: The thing is when you go to the
3 house, the house, you can see in the plat, it shows far in
4 front and actually it's not. It's four or five feet back where
5 it's supposed to be, and that shows you in the back and then
6 the back is according to the plan, the alley, doesn't affect
7 anybody, the view, anything. It has one residence on the left
8 side which she agreed to the addition. The already existing
9 addition is 14 X 12 or whatever. It's two feet smaller than
10 we're going to build up.

11 BOARD MEMBER MITTEN: I just want to go back to
12 what you just said, how you started off. You said that this
13 shows an eight foot front yard.

14 MR. JIMENEZ: Yes, it shows smaller than actually
15 what it is. The house back --

16 BOARD MEMBER MITTEN: So there's actually -- the
17 front yard is deeper than eight feet.

18 MR. JIMENEZ: That's right.

19 BOARD MEMBER MITTEN: Which means, again, that
20 this is wrong. Okay. So our concern is is that the building
21 is not properly depicted on this plat.

22 MR. JIMENEZ: So would you like for us to move
23 the drawing back like it shows here?

24 BOARD MEMBER MITTEN: We'd like it to be accurate
25 is what we would like, and we'd also like the measurement of

1 this existing room, the room that's got siding on it --

2 MR. JIMENEZ: The measurement. Okay.

3 BOARD MEMBER MITTEN: We'd like that to be shown
4 accurately because that's going to show us how it is now. Then
5 you can show us the proposed by contrast so we can see what's
6 changing. That's the important thing for us is is there going
7 to be any change in the nonconformity and, if there is no
8 change in the nonconformity, because what would make your life
9 the easiest is however deep this is, that you don't change how
10 deep it is. You can change the width but not the depth. So
11 when you bring the drawings back, whatever you bring back, if
12 you maintain that existing nonconformity, then you have this
13 lesser test, this special exception test. But we do need to
14 have accurate drawings in the record.

15 CHAIRPERSON CROSS REID: All right. Well, I hate
16 to continue this again because it really bothers me when an
17 applicant or citizen get the wrong information and they have to
18 keep coming back, and I'm just trying to think of a way that we
19 could accommodate Ms. Walker so that we could basically satisfy
20 what our needs are here but at the same time not have her to be
21 unduly burdened by this whole process.

22 MS. SANSONE: Madam Chair, Mr. Nyarku is going to
23 see if Mr. Bellow could be available, and perhaps we could try
24 to take this up later this morning, depending on whether Mr.
25 Bellow could have some input.

1 CHAIRPERSON CROSS REID: Okay. All right then,
2 Ms. Walker, what we're going to do is try to contact Mr. Bellow
3 and see if we can get a read from him as to why he instructed
4 you as he did.

5 MS. HINTON: I think that Ms. Mitten has cleared
6 that up, that the house is added to the plat, that Mr. Bellow
7 didn't do that. The plat is correct. It's placing the house
8 on the lot that is the problem and that the architect did. So
9 Mr. Bellow can't help with that, but perhaps if the architect
10 can go out to the site this morning and correct the drawings
11 and bring them back here by the end of -- before we close this
12 session, then we could --

13 CHAIRPERSON CROSS REID: Well, the problem I had
14 with it was that she went back to Mr. Bellow and Mr. Bellow
15 told her this was correct.

16 MS. HINTON: He told her the plat was correct.
17 The plat is correct.

18 CHAIRPERSON CROSS REID: No. He told her that
19 the -- did you show it to him like it is with the drawing on
20 it?

21 MS. WALKER: Yes.

22 CHAIRPERSON CROSS REID: My understanding is that
23 she asked him was this what she needed to come here with the
24 dimensions like this, and he said yes. That's what I was
25 saying. I just don't understand why he would tell her that

1 when obviously he should have known.

2 MS. HINTON: Well, that's not going to solve her
3 problem this morning. The only thing that will solve the
4 problem is if the drawings are corrected and the house is
5 placed on the lot where it actually is, which they can
6 accomplish very quickly just by going out to the property,
7 taking the measurements and redrawing.

8 CHAIRPERSON CROSS REID: Is your architect
9 available this morning?

10 MR. JIMENEZ: I don't think he's available. No.
11 He has a job that he works. They'll have to be submitted
12 another time.

13 BOARD MEMBER RENSCHAW: Madam Chair, I believe
14 that we are going to have to continue this to get these
15 corrected drawings since the architect is not available. It
16 was very clear on the 27th of February what the Board had
17 requested and, unfortunately, we don't have the proper drawings
18 to make a determination, I don't feel.

19 CHAIRPERSON CROSS REID: Did you understand what
20 was being asked at that time, Ms Walker?

21 MS. WALKER: Yes, I believe I did. That's why I
22 went back to Mr. Bellow, and I guess, based on Mr. Bellow
23 saying this is not incorrect, I went on.

24 CHAIRPERSON CROSS REID: Well, unfortunately,
25 what seems to have happened is that Mr. Bellow was not the one

1 to have gone to. The architect was who you should have gone
2 to. Did you talk to staff about what you needed to do?

3 MS. WALKER: I tried to contact staff.

4 CHAIRPERSON CROSS REID: Okay.

5 MS. WALKER: I didn't get any return calls.

6 CHAIRPERSON CROSS REID: Okay. Well, let me
7 apologize first for your having to go through this again
8 because I just feel that perhaps you didn't understand exactly
9 what you had to do and, as such, just went to Mr. Bellow and
10 Mr. Bellow kind of gave you misinformation. Well, that's the
11 only thing we can do is to -- I, for one, feel that this could
12 be -- well, that we could move forward on this and just have
13 the drawings submitted prior to us making a decision. I can't
14 see why that's a problem. We've done that in previous cases.

15 MR. JIMENEZ: I'll show the drawings. May I
16 present to you?

17 BOARD MEMBER MITTEN: I think we have those in
18 the record.

19 CHAIRPERSON CROSS REID: Does that show the right
20 dimensions?

21 BOARD MEMBER MITTEN: Well, it shows the
22 -- it doesn't show existing. It shows the proposed addition as
23 16 feet X 14 feet.

24 CHAIRPERSON CROSS REID: So you have already.
25 Okay. And what we want to see is what exists there now.

1 Basically, that's it. What we need to see is what --

2 MS. HINTON: Ms. Reid, maybe if I can show you
3 what my dilemma is. If you look on the plat, which is the only
4 drawing we have that places this building on the lot, the shape
5 of the addition, look how rectangular it is. You can visibly
6 see it is rectangular. If you look at the shape of the one
7 they're proposing, it's almost square. So that's how we know
8 that this is not correctly. That's one of the ways we know.

9 CHAIRPERSON CROSS REID: Exactly, and Mr.
10 Sockwell asked for scaled.

11 MS. HINTON: This has to be scaled because we can
12 tell that the dimensions are not right and, if you use that
13 dimension, see, they drew this and then they calculated the
14 rear yard off of this. But if this isn't drawn right, then all
15 of these dimensions are wrong.

16 CHAIRPERSON CROSS REID: It's thrown off.

17 MS. HINTON: So that's why. This isn't an issue
18 of where we know what this situation is and the drawings just
19 need to be changed a little bit. I don't feel like I know what
20 the situation is because we don't have drawings in the record
21 that really show the existing condition or that show the
22 proposed condition plotted on anything that's a scale drawing.

23 So because of that, I don't think that the Board would be wise
24 in making a decision.

25 CHAIRPERSON CROSS REID: This looks --

1 MS. HINTON: This is scaled, but this isn't on
2 any property. We don't have anyone that shows where they're on
3 their lot lines, and what we have to determine at the extent of
4 nonconformity has to do with the dimension between the building
5 and the lot. So we can't use this to determine that. That's
6 why we need it on the plat.

7 CHAIRPERSON CROSS REID: All right.

8 MR. MCCARTHY: May I make a suggestion?

9 CHAIRPERSON CROSS REID: Yes, come forward.

10 MS. BAILEY: No, sir, you may not. You may not
11 unless -- you weren't sworn in. Were you sworn in? Madam
12 Chair, did you want to entertain a comment from the person in
13 the audience?

14 CHAIRPERSON CROSS REID: Sure. He can be sworn
15 in.

16 MS. BAILEY: Okay. Would you please stand, sir.
17 Raise your right hand.

18 (The witness was sworn.)

19 MS. BAILEY: Thank you. Please come forward and
20 identify yourself.

21 MR. MCCARTHY: Excuse me. My name is Brian
22 McCarthy.

23 CHAIRPERSON CROSS REID: Into the mic, please,
24 sir.

25 MR. MCCARTHY: My name is Brian McCarthy. I'm

1 presenting in the next case, and it occurs to me, I don't know
2 what records she has with her, but if the addition is old
3 enough and she has a house location survey with her, it would
4 be on that document which would give you the correct dimensions
5 because, as an architect, that's the document I use to
6 translate that information onto the city's plat. I don't know
7 if she has that with her.

8 MS. WALKER: Apparently the people who had the
9 home prior to me never filed for permits or nothing to get that
10 addition, so it was never placed on anything.

11 MR. MCCARTHY: Well, when you settle on the
12 house, you are given a house location survey.

13 MS. WALKER: And they didn't put it on that
14 either.

15 MR. MCCARTHY: Well, that's the surveyor should
16 put it on. It's not the homeowner that makes the drawing.

17 MS. WALKER: Okay. The surveyor didn't put it
18 on.

19 MR. MCCARTHY: I see. Okay.

20 CHAIRPERSON CROSS REID: Ms. Walker, would your
21 architect be available any time today or any architect to do
22 the drawing because we do have hearings this afternoon?

23 MR. JIMENEZ: No. He wouldn't be able to.

24 CHAIRPERSON CROSS REID: And I was thinking that
25 perhaps we could squeeze you in somehow.

1 MS. WALKER: How late this afternoon?

2 CHAIRPERSON CROSS REID: Well, we have a case
3 that was withdrawn, so at 1:00. Could you do it by 1:00?

4 MS. WALKER: I will definitely try. The person
5 who drew the floor plans I will try to make available.

6 CHAIRPERSON CROSS REID: Well, we need that
7 person to make sure that the drawings are done correctly.
8 That's what we're asking for. That's what you need.

9 MS. WALKER: Okay.

10 CHAIRPERSON CROSS REID: Okay.

11 BOARD MEMBER RENSHAW: But it sounds like it's
12 doubtful that your architect would be available.

13 MS. WALKER: I have to call.

14 BOARD MEMBER RENSHAW: Because we would need to
15 have the paperwork. It's not enough for him to come in and
16 tell us. We would need to have something on a piece of paper.

17 CHAIRPERSON CROSS REID: Right. He would have to
18 go and take the measurements --

19 BOARD MEMBER RENSHAW: -- measurements and draw
20 them to scale.

21 CHAIRPERSON CROSS REID: -- and draw them to
22 scale.

23 BOARD MEMBER RENSHAW: And bring them back.
24 Correct.

25 CHAIRPERSON CROSS REID: I mean if he could be

1 available, I mean if he has any time this morning, I mean it's
2 a relatively simple thing to go and measure and it doesn't take
3 too long for him to draw it.

4 BOARD MEMBER RENSCHAW: Well, the contractor had
5 said that he, the architect, is working eight hours.

6 MR. JIMENEZ: He's not available today.

7 BOARD MEMBER RENSCHAW: He's not available today
8 so, therefore, we won't have --

9 MR. JIMENEZ: Do you think I can go and draw it
10 myself to scale and put in what it is? I can do that myself.

11 CHAIRPERSON CROSS REID: Can a contractor do it?

12 MR. JIMENEZ: I'll do the exact measurements and
13 the exact --

14 CHAIRPERSON CROSS REID: All right. That's fine.

15 I mean I wasn't sure if it had to be the architect.

16 MR. JIMENEZ: I can do that.

17 CHAIRPERSON CROSS REID: Well, then that would
18 take care of it if you could do it.

19 MR. JIMENEZ: And I can submit by 1:00.

20 CHAIRPERSON CROSS REID: Then that's fine because
21 we have a case that was withdrawn today, and we could put you
22 on at 1:00 and we can take you up at that time, if the Board
23 has no objection, because I would like to try to get done with
24 this today rather than have her come back.

25 BOARD MEMBER RENSCHAW: All right.

1 CHAIRPERSON CROSS REID: Okay?

2 MS. WALKER: Okay.

3 BOARD MEMBER RENSHAW: See you at 1:00.

4 CHAIRPERSON CROSS REID: Thank you.

5 MS. WALKER: All right.

6 MR. JIMENEZ: That will solve the problem, I
7 hope.

8 CHAIRPERSON CROSS REID: Yes, hopefully.

9 Next case, please.

10 MS. BAILEY: The next case is No. 16684 of Lucia
11 Edmonds pursuant to 11 DCMR 3103.1 for variances under
12 Subsection 2001.3(a), (b) and (c) to allow the enlargement of
13 an existing nonconforming three unit apartment building and
14 under Subsection 44.1 to allow an addition to a nonconforming
15 rear yard and Section 406.1 to allow an extension into a
16 nonconforming width of open court at premises 1610 15th Street,
17 N.W. The site is located in Square 193 on Lot 120.

18 All those wishing to testify, please stand.
19 Please raise your right hand.

20 (The witnesses were sworn.)

21 MS. BAILEY: Thank you.

22 Members of the Board, this case was last heard on
23 February 27 of this year. At that time, the Board requested
24 additional information, and that information is a clarification
25 of the description of what is to be constructed, a revised

1 dimension plat to show the proposed addition and existing
2 condition, a letter from an Advisory Neighborhood Commission 2B
3 indicating that the project was reviewed by the entire
4 Commission, and the applicant was to address how the project
5 fits into the Dupont Circle overlay district. The applicant
6 has submitted all of the requested information, and the case is
7 now ready to go forward.

8 BOARD MEMBER MITTEN: Madam Chair, I'd just like
9 to state for the record that I have read the transcript and the
10 record in this case, and I'm prepared to participate fully.

11 CHAIRPERSON CROSS REID: Thank you and I, too,
12 have read the record in this case, and I am prepared to go
13 forward.

14 BOARD MEMBER RENSHAW: Just for the record, Madam
15 Vice Chair, we were given some material this morning, and it
16 has the technical requirements revised, I believe, and I have
17 not had a chance to review this, as it was just given to us.
18 So if we could take maybe five or 10 minutes to take a look at
19 this, I would appreciate it.

20 CHAIRPERSON CROSS REID: Another thing, too, is
21 that we would have to weigh the record.

22 MS. BAILEY: Madam Chair, the information was
23 submitted last week by Doctor Edmonds, and it was submitted,
24 #1, because it took some time for the transcript to come in.
25 However, that information has been in the office for a few

1 days.

2 DOCTOR EDMONDS: It's been in the office since
3 last Wednesday. Since last Tuesday.

4 CHAIRPERSON CROSS REID: Okay. Submission from
5 the applicant, I think that was in the record, wasn't it?

6 MS. HINTON: Can I ask why it wasn't in our
7 packages that weren't delivered until Friday?

8 MS. BAILEY: It was an oversight.

9 CHAIRPERSON CROSS REID: Which part?

10 MS. HINTON: This whole thing and this whole
11 thing. None of this was in the package.

12 CHAIRPERSON CROSS REID: Affidavit of posting and
13 the revised surveyor's plat. All right then, let's take a few
14 minutes and read over the material that was submitted by Doctor
15 Edmonds. I'm sorry that we didn't receive it in a timely
16 fashion.

17 DOCTOR EDMONDS: Yes, but I do want it to be
18 clear that I submitted that material last Tuesday, and I
19 brought the posting in on Wednesday.

20 CHAIRPERSON CROSS REID: Right. I think you just
21 heard staff say that it was an oversight that we didn't receive
22 it. Right?

23 DOCTOR EDMONDS: Yes, I did.

24 (A pause in the proceedings while the documents
25 are examined.)

1 CHAIRPERSON CROSS REID: Is everyone ready?
2 Okay, Doctor Edmonds, proceed.

3 DOCTOR EDMONDS: Yes. Since there is at least
4 one person who wasn't here the first time I presented, and you,
5 I don't think you were here, my name is Lucia Edmonds and I am
6 the owner of 1610 15th Street and I am seeking a permission to
7 construct -- to enclose an existing rear deck and to build a
8 closet onto the third floor bedroom of my home, and this is my
9 architect, Brian McCarthy.

10 This is my second appearance before the Board
11 and, in my first appearance, the Board found that there were
12 errors drawn to the plat, and the plat included a new deck when
13 no such new deck was requested. There was a lack of clarity
14 regarding the dimensions of the existing structure and the
15 desired additions. There were inconsistencies as to whether
16 the subject property was a single family or multi-family
17 dwelling, and there was the absence of a letter of support from
18 the Dupont Circle ANC as a whole, while I did have a letter of
19 support that was signed by my representative to the ANC.

20 So I am appreciative of this opportunity to
21 appear before you again and to correct some of the deficiencies
22 that you found in my first report. And I have organized this
23 presentation in terms of, #1, technical requirements, #2,
24 neighborhood impact, #3, ANC support, #4, neighborhood support,
25 and #5, the relationship between this support and my original

1 submission.

2 So the first thing that I did after the first
3 hearing was to go to Brian McCarthy, my architect, and to ask
4 him to create a new plat with accurate measurements and to show
5 accurate dimensions on the additions to the house, and I have
6 asked him to come here today to present those to you.

7 CHAIRPERSON CROSS REID: All right. Before you
8 go there, Doctor Edmonds, we received your submission.
9 However, I did not see -- and perhaps I missed it and I wasn't
10 here -- I did look at -- I did read over the testimony the last
11 time you were before us and I didn't see it there because I
12 have it in my notes, but did you -- were you informed as to the
13 test for a variance, the three-pronged test?

14 DOCTOR EDMONDS: The what kind of test?

15 CHAIRPERSON CROSS REID: Three-pronged test for a
16 variance as to the relief that you're asking for, that you
17 would have to demonstrate how you are able to meet that test?

18 DOCTOR EDMONDS: Well, I think -- are you talking
19 about -- let me see -- Section 2001.3? Is that what you're
20 referring to?

21 CHAIRPERSON CROSS REID: No. I'm specifically
22 talking about the test for a variance which comes before the
23 Board which is DCMR 3103.2 which is to show that there's
24 something unusual or unique about your property that would
25 cause a practical difficulty for you to comply with existing

1 zoning regulations.

2 DOCTOR EDMONDS: Okay. Well, I have responded to
3 that. I do respond to that.

4 CHAIRPERSON CROSS REID: Okay. Could you tell
5 us? This is what you need to -- you need to give us that
6 information and demonstrate that to us at this time.

7 DOCTOR EDMONDS: Okay. Do you want me to do that
8 first?

9 CHAIRPERSON CROSS REID: Please.

10 DOCTOR EDMONDS: Okay. Well, in terms of the
11 practical difficulty --

12 CHAIRPERSON CROSS REID: No. You want to start
13 with what's unusual and unique about your property.

14 DOCTOR EDMONDS: What is unusual and unique about
15 my property is that it is exposed -- it has a rear deck which
16 is completely exposed and it is not possible to enclose that
17 rear deck as it is. The house sits along an alley way, and
18 homeless people roam the alley way and at night sometimes sleep
19 on that deck. So I am asking for enclosure of the deck so that
20 I can increase the perimeter of security around my house, and I
21 have pictures that are better than the ones that you have which
22 demonstrate it would be impossible to close the deck. I mean
23 it would be impossible to erect a barrier to have access to the
24 deck without enclosing it.

25 CHAIRPERSON CROSS REID: Okay. I think that

1 that's not exactly what I'm looking for. What is it that is
2 inherent in your property that is unusual or unique about your
3 particular property as opposed to the other properties on that
4 block or the other neighboring properties? What makes your
5 property different?

6 DOCTOR EDMONDS: It is the only property that
7 does not have a barrier to entrance to the back. It is the
8 only property on the block that does not have that on either
9 side of the alley. Every house on that alley way is protected.

10 BOARD MEMBER MITTEN: When you say protected, how
11 do you mean?

12 DOCTOR EDMONDS: Protected with a fence, with
13 fences. May I show you? They're in the folder.

14 CHAIRPERSON CROSS REID: But that would not be
15 something inherent in the land itself. That's something that's
16 been put on the land, but what is it about your property? Let
17 me just give you some examples about the shape, the slope, if
18 it has some shallowness or something irregular or unusual about
19 your property inherent in the land and your property.

20 DOCTOR EDMONDS: The only thing that is inherent
21 in my property is that it is on the alley way. There's nothing
22 unusual about it in terms of the slope or, you know --

23 MS. HINTON: Why is it that your property
24 couldn't have a fence similar to the way the other properties
25 are?

1 DOCTOR EDMONDS: Let me show you some pictures
2 that I think will make that clear.

3 CHAIRPERSON CROSS REID: You can give it to
4 staff, please. What I don't understand is when she was here
5 before --

6 DOCTOR EDMONDS: I was not told to do anything in
7 that area.

8 CHAIRPERSON CROSS REID: I understand that. What
9 I don't understand is when she was here before, it would appear
10 to me that she would have gotten instructions as to what she
11 needed to do. I mean your submission, I can see that you've
12 put a considerable amount of time and effort into trying to
13 make sure that you had everything you needed to come here
14 today, and I appreciate that. But the main thing that you need
15 to be here today for I don't see and I don't understand why
16 when you came here before no one explained to you what you
17 needed to do.

18 MS. HINTON: Doctor Edmonds' original submission
19 did include information regarding the variance, regarding all
20 three prongs.

21 CHAIRPERSON CROSS REID: Where?

22 MS. HINTON: In her original submission.

23 CHAIRPERSON CROSS REID: Where, because I looked
24 at that and I did not see it when I went through the record.
25 Can you please point it out to me? Maybe I missed it. This is

1 what I had in the record at first as being submitted by her and
2 I had in my notes as I went through the record that there was
3 not a -- she did not address that test.

4 BOARD MEMBER MITTEN: Madam Chair, if I could, I
5 think that what Doctor Edmonds just repeated is what is in the
6 record, and I think that she's made an attempt to show how she
7 complies with the three-pronged test. I think maybe the
8 problem is that she doesn't quite make the threshold.

9 CHAIRPERSON CROSS REID: No, I don't think so. I
10 think what I'm garnering from this conversation is that she
11 didn't understand. No one explained to her what she needed to
12 do in order to be able to do it. She tried to, and she put
13 forth effort to do so, but she missed it and she went in
14 another direction.

15 MS. BAILEY: Madam Chair, I've spoken to Doctor
16 Edmonds and we have attempted to try to address the practical
17 difficulty of this case. Doctor Edmonds has visited our office
18 on many occasions, and I have had discussions with her, and we
19 both have tried to come up with the practical difficulty --

20 CHAIRPERSON CROSS REID: No, I think, Ms. Bailey,
21 the first thing that you needed to come up with was -- to help
22 her to come up with was the uniqueness --

23 DOCTOR EDMONDS: Excuse me.

24 CHAIRPERSON CROSS REID: -- of her property.

25 DOCTOR EDMONDS: May I ask you why -- and this is

1 really a sincere question. May I ask you why a variance is
2 required in this situation?

3 CHAIRPERSON CROSS REID: Because my understanding
4 is that you have -- this is not just a single family house.
5 It's a three unit building.

6 DOCTOR EDMONDS: Right.

7 CHAIRPERSON CROSS REID: And once you exceed two
8 units, I think you have to get a variance.

9 DOCTOR EDMONDS: Once I exceed two units.

10 CHAIRPERSON CROSS REID: Once you exceed two
11 units. If it was a single family house, perhaps it could be a
12 special exception, but my understanding is that because it's a
13 three unit building, it requires a variance which is a --

14 DOCTOR EDMONDS: A variance whenever you do
15 anything or a variance because you are wanting to change the
16 building in a particular kind of way?

17 CHAIRPERSON CROSS REID: Well, it depends on what
18 you want to do with it, ma'am. Predicated upon what, in fact,
19 you desire to do when you apply for your building permit, they
20 will then determine whether or not you need a variance or, if
21 you have an architect, sometimes they can self-certify the type
22 of relief that you need.

23 DOCTOR EDMONDS: You see, I think -- and I'm not
24 sure but I think that the statement that a variance was needed
25 was based on the fact that on the original plat there was drawn

1 a new deck which intruded onto the back yard and so it reduced
2 the back yard from a legal or the required number of feet to
3 seven feet. So I think that was why they said that I needed a
4 variance. In fact, I don't think that I need a variance, you
5 see, because we are not requesting a rear deck. That was an
6 error, and I have corrected the plat to show that.

7 BOARD MEMBER MITTEN: If I could just interject,
8 based on the new computations by the architect, which is
9 Exhibit No. 3 to the new submission, at a minimum there's a lot
10 occupancy nonconformity, and the proposal is increasing that
11 nonconformity. So that alone would establish that you need a
12 variance, although there may be other factors that were taken
13 into consideration originally that don't apply now. But the
14 lot occupancy, and then I did have a question about the floor
15 area ratio calculations, but that's a second -- I think we're
16 into variance territory if, for no other reason than the lot
17 occupancy.

18 DOCTOR EDMONDS: So we are proposing to increase
19 the current lot occupancy by approximately one percent.

20 MS. HINTON: That is true. However, the lot
21 occupancy here that is grandfather'd is the lot occupancy of
22 the original structure which is a 60 percent. And this deck,
23 unless there is some sort of Board action that granted approval
24 to construct the deck, that lot occupancy has to be considered
25 as part of the variance because the only part that's

1 grandfather'd is what was in the original structure. So we're
2 actually looking probably at a 10 percent increase of lot
3 occupancy to take the existing deck and to close it in and make
4 it a sunroom.

5 MR. MCCARTHY: The original structure was 65
6 percent.

7 MS. HINTON: Was it 65 percent? So it's five
8 percent. Do you know when the deck was built and was there a
9 permit or a variance granted?

10 DOCTOR EDMONDS: I purchased the house in 1978.
11 I purchased it with a deck. I don't know whether there was a
12 permit or not.

13 CHAIRPERSON CROSS REID: Okay. Well, the fact of
14 the matter is that you do need a variance and, in order to do
15 so, let's go back to how you need to proceed in order to be
16 able to make your case, and that is let's go back to the aspect
17 of uniqueness. I'm looking at a Sanborn map that shows the
18 siting of your particular property, and it appears to be
19 similar to the other properties right beside it except for
20 yours is the only one on the alley.

21 DOCTOR EDMONDS: Yes, and it's the only one
22 that's exposed.

23 CHAIRPERSON CROSS REID: All right. Let's go at
24 it like this. If in fact you contend that the aspect of your
25 particular property that's unusual or unique is the fact that

1 your property is sited on an alley, it's a semi-detached on an
2 alley, then the next prong of the test is what is the practical
3 difficulty that would result for you not being able to comply
4 with the existing zoning regulations?

5 DOCTOR EDMONDS: The practical -- well, I've
6 shown you the picture. I need to be able to protect the back.

7 I have said that street people roam the alley and they come up
8 on the deck and they park on the deck and they defecate on the
9 deck and about a month ago someone threw a rock through the
10 front window of the ground floor apartment, of the first floor
11 apartment, and it is not a safe neighborhood. So what I am
12 asking is some relief from that condition, and I don't know how
13 else to pose it because it is absolutely exposed and there's no
14 way of protecting those stairs except to enclose that deck.

15 BOARD MEMBER MITTEN: Madam Chair, could I ask
16 Doctor Edmonds a question?

17 CHAIRPERSON CROSS REID: Yes, sure.

18 BOARD MEMBER MITTEN: You mentioned that yours is
19 the only property that is not enclosed with a fence.

20 DOCTOR EDMONDS: Yes, that is true.

21 BOARD MEMBER MITTEN: And what precludes you from
22 building a fence?

23 MR. WEBSTER: Well, I showed -- I passed pictures
24 there and if you can figure how I can build a fence and protect
25 it with that, then I would appreciate that input.

1 BOARD MEMBER RENSHAW: Has your architect, Mr.
2 McCarthy, taken a look at putting up a fence? Have you been
3 asked to examine that aspect?

4 MR. McCARTHY: No, I have not.

5 BOARD MEMBER RENSHAW: Can you address that
6 question as to whether or not there is room on the other side
7 of the car? In other words, allow for space for the parking of
8 the car and then put up a fence and turn the fence back to the
9 stairs.

10 MR. McCARTHY: I think -- well, if there's any
11 practical difficulty, it would just be the turning radius of
12 the car because the alley is narrow.

13 CHAIRPERSON CROSS REID: I'm sorry. You said
14 there was a practical difficulty if you what?

15 MR. McCARTHY: If there was a practical
16 difficulty, it would just be the turning radius of the car
17 getting into the parking space if a deck were out to the edge
18 of that stair and beyond the stair.

19 DOCTOR EDMONDS: If the deck?

20 MR. McCARTHY: The stair down now, the existing
21 staircase.

22 DOCTOR EDMONDS: I'm sorry. What deck are you
23 talking about?

24 MR. McCARTHY: What I'm suggesting is currently
25 there's a fence here.

1 BOARD MEMBER MITTEN: Could you speak into the
2 microphone. Pull it over there.

3 MR. MCCARTHY: Currently there's a fence along
4 the alley that separates the basement or cellar apartment
5 areaway from the alley. Then there's this landing and
6 staircase down several feet west of that but no impediments
7 further west of the staircase aside from the support columns
8 for the existing deck. I don't know if extending a fence out
9 further along the alley would make it possible to get the car
10 in and out. I haven't studied that.

11 BOARD MEMBER MITTEN: But in terms of creating a
12 fence that would effectively enclose this stair and access to
13 the stair, it doesn't seem like that would even need
14 necessarily to interfere with the parking space.

15 DOCTOR EDMONDS: But how would you enclose the --
16 I don't see. The stair is open so even if a fence were put by
17 there, I'm not seeing --

18 BOARD MEMBER MITTEN: I think what I'm suggesting
19 is enclosing just the access to the stair, not that the entire
20 stair would be enclosed.

21 CHAIRPERSON CROSS REID: You were saying this
22 area here, just this area here?

23 BOARD MEMBER MITTEN: Well, even just the area at
24 the base of the stair where someone would -- where you start to
25 go up the stairs.

1 CHAIRPERSON CROSS REID: You mean a fence or a
2 gate?

3 BOARD MEMBER MITTEN: Something like that. I
4 mean some kind of enclosure.

5 CHAIRPERSON CROSS REID: A gate?

6 BOARD MEMBER MITTEN: Yes. You can even have a
7 gate at the top of the -- you know, when you get to the top of
8 the lowest set of stairs before you get to the landing, you
9 could have a gate at the landing at the top of those stairs or
10 at the base of the next level of stairs. That landing is just
11 literally a landing. It doesn't lead anywhere. Right?

12 DOCTOR EDMONDS: But I could climb over that
13 gate, such a gate. I could.

14 BOARD MEMBER MITTEN: Well, your neighbors have
15 fences that are of a certain height. At least it's implied
16 that they're an effective way of dealing with the problem, so
17 whatever gate would be there would need to be of sufficient
18 height.

19 DOCTOR EDMONDS: They're six feet high. Those
20 fences are six feet high. So is the stumbling block in terms
21 of enclosing the deck the additional two feet?

22 BOARD MEMBER MITTEN: The problem is that to get
23 a variance granted, it's a fairly high threshold in terms of
24 what makes your property different from everybody else and then
25 what difficulty does that cause you and if there are other ways

1 without compromising the zoning ordinance to dealing with
2 whatever problem may exist, then that's preferential to giving
3 a variance. So that's why the test is high.

4 DOCTOR EDMONDS: Can I ask the question again
5 then. Would I still need a variance if I simply wanted to
6 enclose the deck and not to extend it?

7 BOARD MEMBER MITTEN: Yes.

8 DOCTOR EDMONDS: Okay. Would you explain why
9 because it's a fact that it's on the ground so if I don't want
10 to make any change other than to enclose what is already in
11 existence, I'm not clear why I would still require a variance.

12 BOARD MEMBER MITTEN: Well, I'll say yes from my
13 perspective which is I think, in addition to having a lot
14 occupancy nonconformity, I think you have a density
15 nonconformity. So you would be adding density to your dwelling
16 and, in that sense --

17 DOCTOR EDMONDS: Is the density the floor area
18 ratio?

19 BOARD MEMBER MITTEN: Yes.

20 DOCTOR EDMONDS: Well, we're below the floor area
21 ratio, even with the addition.

22 BOARD MEMBER MITTEN: Maybe we could talk about
23 that for a minute then.

24 CHAIRPERSON CROSS REID: I don't know how that
25 would be ascertained correctly as to whether or not that would

1 exceed -- if she's below the FAR. Wouldn't we have to
2 calculate the amount of the enclosure and whether or not that
3 would exceed it?

4 BOARD MEMBER MITTEN: And Mr. McCarthy has done
5 that. I just wanted to ask him a couple of questions about his
6 calculations. On Exhibit No. 2 where you calculate the
7 density, there's an English basement apartment. Am I correct?

8 MR. MCCARTHY: Yes, I believe it qualifies as a
9 cellar though.

10 BOARD MEMBER MITTEN: Well, how can you have
11 people living in a cellar?

12 MR. MCCARTHY: That's the definition, as I
13 understand it, in the zoning ordinance.

14 BOARD MEMBER MITTEN: Well, it's either a cellar,
15 which doesn't count in FAR and is non-livable area, or it's a
16 basement, which does count as FAR and is livable area. It
17 can't be both.

18 MR. MCCARTHY: I've never had that distinction
19 drawn before. I did a variance request for an apartment house
20 converted to an office building. They have offices in the
21 cellar but, because it was a cellar, it did not count as FAR.

22 BOARD MEMBER MITTEN: It's different when you're
23 talking about people living there.

24 MR. MCCARTHY: I see. Well, basically, I was
25 just expanding upon the DCRA calculations that Doctor Edmonds

1 gave me which identified -- her submission identified the
2 building as three stories with a basement, as I understand it,
3 and they didn't count that in the FAR calculation so I assumed
4 they came to that same conclusion, that it was a cellar.

5 BOARD MEMBER MITTEN: Well, you can correct me if
6 I'm wrong, but I thought the original submission was also that
7 it was a single family dwelling which would -- it's a different
8 kettle of fish if you're talking about that being part of
9 someone's house overall versus saying that's an independent
10 living unit.

11 MR. MCCARTHY: Okay.

12 BOARD MEMBER MITTEN: So I mean it's either -- I
13 mean I would say that the proper assumption to make is that
14 since it's a livable unit, that this would qualify as a
15 basement and then that basement should be counted in the FAR
16 calculation which then puts you well over the minimum density
17 in the R-5-B zone.

18 MS. BAILEY: Ms. Mitten, I hate to interrupt but
19 traditionally -- I'm not sure, things change all the time --
20 but traditionally how the Zoning Administrator has interpreted
21 that is that below grade space was not included in the FAR.
22 Now, that could have changed, but traditionally that space has
23 not been included in the FAR.

24 BOARD MEMBER MITTEN: Well, I mean I think the
25 ordinance is pretty clear about what counts and what doesn't

1 count.

2 MS. BAILEY: I'm just saying how traditionally
3 the ZA has interpreted that.

4 BOARD MEMBER MITTEN: Okay.

5 CHAIRPERSON CROSS REID: It's been my
6 understanding that below grade was not counted in FAR.

7 BOARD MEMBER MITTEN: Well, the indicator is
8 whether or not the ceiling of the lowest level is at or below
9 four feet above grade. If it's below four feet, it's a cellar
10 and it's non-livable area. If it's at or above four feet, it's
11 English basement or basement, and it counts as livable area and
12 counts as FAR. That's what the ordinance says.

13 CHAIRPERSON CROSS REID: I think this is above,
14 isn't it?

15 MR. MCCARTHY: No, I believe it's below.

16 CHAIRPERSON CROSS REID: It's below?

17 MR. MCCARTHY: I believe so.

18 BOARD MEMBER MITTEN: You're saying that the
19 ceiling is below four feet.

20 MR. MCCARTHY: Of the alley. Right.

21 BOARD MEMBER MITTEN: Say it again.

22 MR. MCCARTHY: I believe the ceiling is less than
23 four feet above the elevation of the alley.

24 BOARD MEMBER MITTEN: How about at the front?

25 MR. MCCARTHY: The front -- well, there's not

1 much fall to the front. There's an area way in the front that
2 then steps up to 15th Street. I have
3 -- as far as number of steps down, there are eight steps down
4 to the basement and, assuming if they were even six inch
5 risers, which usually they're more outside, that would be four
6 feet.

7 BOARD MEMBER MITTEN: So what's your position?
8 Your position is is that it's a cellar.

9 MR. McCARTHY: Yes.

10 BOARD MEMBER MITTEN: So then how can people live
11 in it, I mean because under the zoning ordinance, they wouldn't
12 be allowed to as an independent living unit.

13 MR. McCARTHY: I can't speak to that. I just
14 know they do live there.

15 BOARD MEMBER MITTEN: Okay. I mean for me,
16 there's an issue about the FAR of the building and whether --
17 so, in answer to Doctor Edmonds' question whether or not if she
18 just enclosed the deck without expanding the deck, we'd have to
19 have that sorted out.

20 MS. HINTON: What is the floor to ceiling height
21 in that cellar unit or basement unit?

22 MR. McCARTHY: I've never been down in the
23 cellar.

24 MS. HINTON: Do you know, Doctor Edmonds?

25 DOCTOR EDMONDS: I don't know.

1 MS. HINTON: Because the number you've given us
2 would be four feet down to the floor. We still don't have any
3 idea where the ceiling is.

4 MR. MCCARTHY: I recognize that. There are very
5 few cellar or basements I've seen in buildings this old where
6 the ceiling height would exceed eight feet, but I don't know
7 that.

8 MS. HINTON: We don't. Right.

9 DOCTOR EDMONDS: Well, the ceiling height in my
10 apartment is nine feet and my ceilings are high. They feel
11 high, and it's not that in the basement.

12 CHAIRPERSON CROSS REID: So Doctor Edmonds, this
13 is what the issue is in making your case for your variance.
14 Let's go back to the first aspect of it. The first problem was
15 uniqueness or unusualness, and we kind of looked at perhaps we
16 could look at the fact that it is the only one that's on the
17 alley as a means of maybe perhaps reaching that particular
18 test. Then the practical difficulty aspect of it was one that
19 I'm not sure you're able to do yet.

20 And then you have the additional burden of the
21 other variance that you're asking for which is in regard to the
22 third floor balcony, is it?

23 DOCTOR EDMONDS: Third floor closet.

24 CHAIRPERSON CROSS REID: Closet, I mean. The
25 closet. You have to also make a case for that as to, #1, what

1 is unusual or unique about your property other than the fact
2 that you're saying you don't have enough space up there, that
3 you have to put your clothes under a bed. But I don't know if
4 that -- if you go there, you're going to have to be able to
5 defend and justify what makes that any more unusual or unique
6 than any other similarly situated room without the closet and
7 why you would not be able to accommodate perhaps with a
8 wardrobe or something that people do and how does that pose a
9 practical difficulty for you not to comply with the zoning
10 regulations. The task before you today is kind of difficult.

11 MR. MCCARTHY: Well, we came today under the
12 impression that we were below the FAR requirement, in which
13 case the closet, we didn't believe, was a part of the zoning
14 issue today because it doesn't--

15 CHAIRPERSON CROSS REID: You're asking for two
16 variances, aren't you?

17 MR. MCCARTHY: That was an original
18 misunderstanding in the first application. There seems to be
19 some understanding in the first submission that there was an
20 open court problem, which we don't believe there is because
21 we're not encroaching on the open court which is currently the
22 minimum six feet. And it does not -- it certainly doesn't go
23 anywhere near the rear yard, that third floor addition, and
24 because we thought that the cellar did not count and that we
25 were below FAR, that was the only other issue that seemed

1 relevant as far as the closet was concerned.

2 CHAIRPERSON CROSS REID: So where does that leave
3 you today?

4 MR. MCCARTHY: Well, I think as of when we came
5 in this morning, we thought that the closet was a matter of
6 right but it's included in the submission to clarify earlier
7 misunderstandings and that the sunroom was projecting an
8 additional two feet or one percent as far as the lot occupancy,
9 and I think candidly the hope was that that was a minimal
10 change to an existing, nonconformity and, since the ANC
11 supported and that the neighbors didn't have a problem with it,
12 it wouldn't be an issue.

13 CHAIRPERSON CROSS REID: Do you have any
14 comments, questions?

15 BOARD MEMBER MITTEN: No. I just -- I mean we
16 have something that needs clarified. I mean I don't see how
17 there could be another interpretation made under the ordinance,
18 but if someone can make an effective argument that I'm wrong,
19 then I'm willing to listen to that.

20 CHAIRPERSON CROSS REID: Do you have anything
21 else?

22 DOCTOR EDMONDS: I'm sorry?

23 CHAIRPERSON CROSS REID: Do you have anything
24 else to say or to present as far as your case is concerned?

25 DOCTOR EDMONDS: Well, aside from -- I don't,

1 aside from the fact that it is supported by the ANC and it is
2 supported by my neighbors and we did feel that we were within
3 the existing FAR and that the only area of contention was in
4 terms of adding a one percentage increase to the lot occupancy.

5 I don't have another aspect. I have difficulty seeing how I
6 could put a fence up without violating the side yard and the
7 back yard requirements because the fence has to come out from
8 the stairs and we only meet the six feet minimum, so I would
9 have to get a variance in order to put the fence up. So I feel
10 like I'm really between a rock and a hard place as far as that
11 is concerned.

12 CHAIRPERSON CROSS REID: So that's the reason why
13 you would not be able to put the fence up?

14 DOCTOR EDMONDS: To tell you the truth, it is a
15 reason, but I don't see how that would work. I just don't see
16 how it would work. Visually I am not able to visualize how I
17 could put a fence up that would block access to those stairs
18 which are open in between. I'm not seeing it, but maybe
19 there's a way.

20 MS. SANSONE: Madam Chair, I just wanted to
21 clarify. The open court requirement for a one family dwelling
22 is six feet but for other structures it would be 10 feet, so I
23 don't know how the architect feels, if there's a problem with
24 that, but there is a difference.

25 CHAIRPERSON CROSS REID: Thank you. All right.

1 Well, let's go into the next segment. In regard to the
2 government reports, ANC, we have a letter from the ANC, then a
3 corrected letter from the ANC.

4 BOARD MEMBER RENSHAW: We have a letter ANC 2B
5 signed by the Chairman Vince Macone and also by Jeff Hopp, the
6 Commissioner for single member district 2B04. The letter is
7 dated March 14, 2001 and indicating support from this ANC for
8 Doctor Edmonds' case. They corrected the statement with their
9 March 14th letter that the applicant is seeking variances for a
10 single family dwelling. The letter should have indicated the
11 residence as existing nonconforming three unit apartment
12 building.

13 Their letter with the same signatures dated March
14 8th spoke about a February 14, 2001 ANC2B meeting where they
15 considered application 16684 and, with six of seven
16 commissioners in attendance, the vote was unanimous in favor of
17 Ms. Edmonds' request.

18 CHAIRPERSON CROSS REID: Okay. We have no other
19 government reports on this particular case, I don't think.
20 Persons and parties in support. Is there anyone else here?
21 There were some letters of support received in the file,
22 letters from some of her neighbors in support of this
23 application, and in opposition, to my knowledge, there was
24 none. I don't remember seeing anything. Okay then, we go now
25 to closing remarks by the applicant.

1 DOCTOR EDMONDS: I'm trying to think what I can
2 say that I haven't said. I would certainly appreciate
3 favorable consideration of my application. As I say, it
4 increases, it makes an increase of lot occupancy of
5 approximately one percent. That's the only change. There are
6 no changes on the ground. The rear yard remains conforming.

7 CHAIRPERSON CROSS REID: I'm sorry. Was it one
8 percent or 10 percent?

9 DOCTOR EDMONDS: I'm sorry.

10 CHAIRPERSON CROSS REID: It's only what?

11 DOCTOR EDMONDS: It's one percent.

12 BOARD MEMBER RENSHAW: But in the calculation we
13 have yet to determine whether or not the cellar versus basement
14 is to be worked into this formula per what Ms. Mitten has said.

15 MR. MCCARTHY: As far as lot occupancy, there's
16 no impact between the basement and cellar that would impact the
17 FAR.

18 CHAIRPERSON CROSS REID: Okay. Any other
19 questions, Board Members?

20 I think that I would recommend that we decide
21 this case at our next regularly scheduled meeting. That will
22 give us an opportunity then to kind of look at some of the
23 issues that were raised today to make a determination as to
24 what in fact our position will be. That would be my
25 recommendation. Are there any comments? The next scheduled

1 meeting date would be what, Mr. Hart?

2 MR. HART: May 1, Madam Chair.

3 CHAIRPERSON CROSS REID: I'm sorry? What date
4 was that?

5 MR. HART: May 1.

6 CHAIRPERSON CROSS REID: May 1st?

7 MR. HART: Yes.

8 CHAIRPERSON CROSS REID: Okay.

9 DOCTOR EDMONDS: Is there something that I am to
10 do before then?

11 BOARD MEMBER MITTEN: There's a few things that I
12 think might be helpful. One is if we had the certificate of
13 occupancy so we could determine whether or not the unit in the
14 basement is legally permitted and then perhaps Mr. McCarthy
15 could verify whether or not that would, absent the issue about
16 livable area, is it a cellar or is it a basement?

17 MR. MCCARTHY: Based on the ceiling height issue?

18 BOARD MEMBER MITTEN: Yes.

19 MR. MCCARTHY: Okay.

20 BOARD MEMBER MITTEN: That would be helpful to
21 me.

22 MR. MCCARTHY: Okay.

23 CHAIRPERSON CROSS REID: All right. Then we'll
24 make the decision at that time. If you get the information in
25 before that, it would help us with our deliberation. All

1 right. Thank you very much.

2 DOCTOR EDMONDS: So am I to understand that the
3 only thing standing in my way is whether the basement is a
4 basement or whether it is a cellar?

5 CHAIRPERSON CROSS REID: No, that's not the only
6 thing. The whole thing in a nut shell, Doctor Edmonds, is that
7 we'll look at the case in its entirety and then make a decision
8 based upon the three-prong test, based upon adverse impact,
9 based upon the aspect of it not impairing the intent and
10 integrity of the zoning map or the plan, and then after having
11 considered all those things, we will make a determination as to
12 whether or not we feel you made your case. So it's not just
13 one thing. It's several things we'll be looking at.

14 Thank you very much.

15 MR. HART: Excuse me, Doctor Edmonds. Please
16 have the Board's request in by April 25th.

17 DOCTOR EDMONDS: Have it in by April 25th?

18 MR. HART: Yes, ma'am. Thank you.

19 BOARD MEMBER RENSHAW: And also could we ask the
20 architect to determine the turning radius in the back if a
21 fence were put up. Would you just take a closer look at this
22 as to whether or not that's possible?

23 DOCTOR EDMONDS: Can I come forward so you can
24 tell me where you see a fence being put up because, I swear, I
25 can not visualize it.

1 CHAIRPERSON CROSS REID: You have to talk to
2 staff and if you will, after this hearing, Ms. Renshaw can make
3 that available to staff and staff can then demonstrate to you
4 what in fact she's saying. But you can't talk directly to the
5 Board Members.

6 DOCTOR EDMONDS: Then I would like to request the
7 pictures, the photos back.

8 CHAIRPERSON CROSS REID: Once you submit it to
9 the Board, it becomes part of the record. I'm sorry. We can
10 not return them to you.

11 MS. BAILEY: Members of the Board --

12 DOCTOR EDMONDS: I thought I was just loaning
13 them so you could look at them. I Didn't know I was submitting
14 them.

15 CHAIRPERSON CROSS REID: You have your negatives.
16 Right?

17 DOCTOR EDMONDS: No. Thank you.

18 MS. BAILEY: Members of the Board, this ends the
19 special public hearing for this morning.

20 Did you want to take a few minutes' recess, Madam
21 Chair, to start the meeting?

22 CHAIRPERSON CROSS REID: Thank you.

23 (Off the record at 10:14 a.m. to commence again
24 at 1:08 p.m.)
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1 A-F-T-E-R-N-O-O-N S-E-S-S-I-O-N

2 1:08 p.m.

3 CHAIRPERSON CROSS REID: Good afternoon, ladies
4 and gentlemen. Welcome to the April 3rd public hearing of the
5 Board of Zoning Adjustment. We're going to do something a
6 little different. We have a matter that we had to finish from
7 this morning, so we're going to take that case first and then
8 we'll take the first case of the afternoon. As a preliminary
9 matter, we'll address the case that has been withdrawn but
10 first let's have the people who were here this morning come up.
11 Would you call the case now?

12 MS. BAILEY: Madam Chair, it's just a
13 continuation of this morning of Darcelle Walker, and that's
14 Application No. 16677 for the record.

15 CHAIRPERSON CROSS REID: Okay. Thank you. All
16 right, Ms. Walker.

17 MS. WALKER: I'm here to submit the redrawing of
18 the plat and also another drawing.

19 MS. BROWN: The scaled --

20 CHAIRPERSON CROSS REID: Excuse me. You need to
21 give your name and your address.

22 MS. BROWN: My name is Trina Brown. What else do
23 you need?

24 CHAIRPERSON CROSS REID: Your address.

25 MS. BROWN: 11804 Bignonia Terrace. I live in

1 Laurel, Maryland.

2 CHAIRPERSON CROSS REID: Okay. You're testifying
3 in what capacity, Ms. Brown?

4 MS. BROWN: Architect just doing the drawing.

5 CHAIRPERSON CROSS REID: Oh, okay.

6 MS. BROWN: The scale drawing on the plat.

7 CHAIRPERSON CROSS REID: All right. Thank you.

8 Okay, Ms. Hinton.

9 MS. HINTON: Yes, Madam Chair.

10 CHAIRPERSON CROSS REID: Would you like to take
11 the lead in requesting the additional drawings?

12 MS. HINTON: I want to thank you for the revised
13 drawing, and I think that this does clear up some of the
14 questions that we had when we were looking at the other maps
15 and documents that were in the record. It appears that, just
16 looking at the structure that is behind the house, the
17 addition, the existing addition seems to be 16 feet X 10 feet
18 and the proposal then is to add onto that existing space in a
19 resultant shape that would be 16 X 14.

20 MS. WALKER: Correct.

21 MS. HINTON: Correct. Great. So we really
22 appreciate that clarification.

23 MS. WALKER: Thank you.

24 MS. HINTON: Very helpful.

25 CHAIRPERSON CROSS REID: Any others?

1 BOARD MEMBER MITTEN: And just to pick up where
2 we left off this morning when we were discussing whether or not
3 this was a special exception or variance, we are into a
4 situation where the nonconformity is being increased, so you do
5 have the variance test to meet if you want to have the addition
6 extend into your back yard another four feet. And that was the
7 more strict test that Chairman Reid was walking you through
8 this morning.

9 CHAIRPERSON CROSS REID: Okay. Do you understand
10 that?

11 MS. WALKER: Yes.

12 CHAIRPERSON CROSS REID: Okay. Because of the
13 fact that the extension, it's going further into the yard, then
14 that makes you have to satisfy the test for a variance rather
15 than just a special exception, and that's the three-prong test
16 we started off with. Remember, whether you felt your property
17 was unique or unusual.

18 MS. WALKER: Yes.

19 CHAIRPERSON CROSS REID: Okay. You want to
20 reiterate that for us?

21 MS. WALKER: Yes. The property is of a unique
22 shape because it's a diagonal shape due to the public alley or
23 the public space.

24 CHAIRPERSON CROSS REID: You say diagonal shape.

25 MS. BROWN: What are you speaking of? The whole

1 property?

2 CHAIRPERSON CROSS REID: Yes. What is it
3 inherent in the property itself that makes it unique or unusual
4 in comparison to the other properties?

5 MS. BROWN: Well, it's on the edge. It's on the
6 alley, so we have like a curved back yard. It's not diagonal,
7 but the back yard kind of curves. I'm not quite sure why it
8 would be considered unique. I wasn't here for the early part
9 of the hearing, so I'm not quite sure why it was classified as
10 unique, but it does have a curved back yard. It's on the end
11 of the street.

12 MS. BAILEY: Madam Chair, one of the things that,
13 from looking at the plat, it seems as if there are two lots
14 here and the house was built on both of those lots. So that's
15 a particularly different feature of this lot. I'm not quite
16 sure.

17 CHAIRPERSON CROSS REID: I was going to ask about
18 that because it seemed to be like double the size of most of
19 the other lots in this particular area. Do you know anything
20 about that?

21 MS. BROWN: No.

22 BOARD MEMBER RENSHAW: Have two lots been
23 combined?

24 CHAIRPERSON CROSS REID: It must have been
25 subdivided at some point.

1 BOARD MEMBER RENSHAW: I'm just wondering. Is it
2 back into one record lot or are you sitting on two lots?

3 MS. WALKER: I'm sitting on two lots.

4 CHAIRPERSON CROSS REID: You have two lots.

5 BOARD MEMBER RENSHAW: And it's right in the
6 middle of the two lots.

7 MS. BROWN: Exactly.

8 CHAIRPERSON CROSS REID: Ms. Sansone, could you
9 weigh in on this because this is the first time I've seen this.
10 Is this common?

11 MS. SANSONE: No, Madam Chair, this is not
12 common. I believe at the first hearing on this we addressed or
13 Chairman Sockwell addressed the need for combining these two
14 lots into one record lot, and then the Zoning Administrator had
15 indicated that that could be accomplished while the case was
16 going through the permitting process.

17 CHAIRPERSON CROSS REID: Okay.

18 MS. SANSONE: We could include it in the order.
19 It could be referenced in the order or even included as a
20 condition to granting the final certificate of occupancy but at
21 some point does need to be combined. I did notice from the
22 Zoning Administrator's original memorandum, he indicates that
23 the lot would have a required lot area of 5,000 square feet but
24 only 4,130 square feet are provided, which should make this a
25 substandard lot for the zoning district. It's 17 percent

1 smaller than the minimum lot size.

2 CHAIRPERSON CROSS REID: Okay. Thank you, Ms.
3 Sansone. I think I do remember now in reading Mr. Sockwell's
4 statement and that it would be basically reconciled and further
5 processed once they're finished here at the BZA level. Okay.
6 Well, I think that would certainly put it in a category of
7 being unique or unusual.

8 Now, the second part of it, Ms. Walker, is how do
9 you -- how is it a practical difficulty for you to be able for
10 you not to comply with the existing zoning regulations? What
11 caused you not to be able to comply with existing zoning
12 regulations?

13 MS. WALKER: Because there's not enough space
14 between public space and where I'm trying to build or it's
15 supposed to be 25 feet from public space but because the lot is
16 curved, it's impossible for me to get it.

17 CHAIRPERSON CROSS REID: Okay. In other words,
18 that's the nonconforming feature of it in the first place and
19 then the variance is because you're extending that. In other
20 words, you're adding onto that.

21 MS. WALKER: Yes.

22 CHAIRPERSON CROSS REID: All right.

23 BOARD MEMBER MITTEN: If I could just interject.
24 The nature of the question is what is it about your house that
25 you need to extend to that point that does extend -- that would

1 increase the nonconformity? It's why do you need to do this is
2 really the nature of the question.

3 MS. WALKER: Actually --

4 MS. BROWN: We want to make it livable space.
5 Right now it's just a porch, and we want to make it livable,
6 usable space.

7 MS. WALKER: I've recently adopted two kids --
8 unexpectedly, too. I was supposed to get one. And I need the
9 additional space.

10 MS. BROWN: Yes, livable space for the house to
11 accommodate the amount of the family that's living in the home.

12 MS. WALKER: And also my mother is getting older
13 and the steps are becoming a hassle.

14 BOARD MEMBER MITTEN: Is it possible for you to
15 answer the question? It's supposed to be a little bit more
16 generic type of issue, not a personal issue to your
17 circumstance but one that there's something about the house
18 itself that necessitates an addition of this kind. Is the
19 house unusually small relative to the rest of the neighborhood
20 or something of that nature, because we have to look at it as
21 not your personal situation but something inherent in the
22 property that warrants this kind of zoning relief rather than
23 just my family is suddenly bigger than I had anticipated. Is
24 there anything like that about the house?

25 CHAIRPERSON CROSS REID: Well, I mean I think

1 that you're leading her to the same kind of conclusion in that
2 the house -- how many bedrooms do you have there?

3 MS. WALKER: Three.

4 CHAIRPERSON CROSS REID: All right. The question
5 is, is this particular house an unusually small house compared
6 to the other houses in the community?

7 MS. WALKER: No, but --

8 CHAIRPERSON CROSS REID: The configuration of the
9 house -- okay. Let's look at the configuration of the house.
10 It seems to be rather different, to say the least. This
11 addition that you're talking about, you want to -- it's a porch
12 that you want to make into a bedroom?

13 MS. BROWN: Right. Make it just part of livable
14 space for, you know, like the rest of the house, a bedroom.
15 And you say it's smaller. Well, it doesn't have as many
16 bedrooms as most of the houses have in the neighborhood in that
17 row, so it does have less amount of sleeping space.

18 CHAIRPERSON CROSS REID: But the size of the
19 house itself square footage-wise?

20 MS. BROWN: It's probably about the same as the
21 rest of the homes.

22 MS. SANSONE: Madam Chair, I think we could
23 consider the curvature of that rear lot line as contributing.
24 The curvature being a unique condition of that particular
25 parcel and it's contributing to the applicant's difficulty

1 because she's not able to maintain the 25 foot deep rear yard,
2 and so it's actually the curvature of the lot, the shape of the
3 lot that's causing her difficulty. I don't have the corrected
4 plat, but in the initial one, that would seem to be
5 contributing to her practical difficulties.

6 CHAIRPERSON CROSS REID: Yes. Well, I think that
7 we had ascertained that the curvature of the lot made it unique
8 but I think the issue that has been raised by Ms. Mitten was in
9 regard to the practical difficulty of extending the
10 nonconformity. What would be the justification for doing that
11 that would keep her from being able to comply with the existing
12 zoning regulation, and that's the hurdle that we're trying to
13 help her to scale right now. I'm not sure I see it.

14 BOARD MEMBER MITTEN: Ms. Walker, could you
15 accomplish pretty much the same thing by just rebuilding the
16 structure as a 16 X 10 room as opposed to extending it the
17 additional four feet or could you tell us why do you need to
18 expand it beyond the current depth of the house? Why do you
19 need that room to be 16 X 14 instead of 16 X 10?

20 MS. WALKER: It was closet space and possibly a
21 bathroom or shower. Just a shower.

22 CHAIRPERSON CROSS REID: So you're saying that
23 this space, that the addition would provide a bedroom and a
24 bathroom and a closet?

25 MS. BROWN: We're not going to build the bathroom

1 now. We're just building space to accommodate the bathroom
2 just in case the person who will be utilizing that space as
3 she's getting older, just in case she needs to put a bathroom
4 in there, we will have the space for it in the near future.
5 We're planning for the future, I guess, is what we're doing.
6 When it's built, the bathroom is not going in at that time, but
7 we would like to build for the future if it does have to go in
8 there.

9 CHAIRPERSON CROSS REID: There's no other
10 bathroom on the first floor?

11 MS. BROWN: There's not a full bath. Just a
12 powder room. But there's no shower or tub on the first floor.

13 CHAIRPERSON CROSS REID: Okay. All right. Any
14 other questions, Board Members?

15 MS. HINTON: Ms. Renshaw and I were looking at
16 the layout of your house, and in order to justify a variance,
17 part of what you have to do is look at other alternatives that
18 are available to you that would not require relief from zoning
19 and sort of explain why those alternatives may or may not work
20 for you and, as we're looking at the house, there's sort of a
21 notch cut out of the front. It's not a square house. It's L-
22 shaped. Have you looked into filling in that portion of the L?

23 MS. BROWN: It would cost way too much money to
24 fill that in. That is brick. We would have to cut through the
25 brick and build additional -- enclose that whereas if we just

1 add this space, there's already an opening there. We don't
2 have to cut through the brick. There's an opening. And then
3 it just takes away from the character of the house if we add on
4 to the front of the house. It has an A frame in the front and
5 it's just the way it's -- the structure of the house, it would
6 just take away from that.

7 MS. HINTON: Okay. Good. Thank you.

8 CHAIRPERSON CROSS REID: Okay. All right. Let
9 us go now to the government report. ANC. We didn't have a
10 report from the ANC. Did one come in?

11 MS. BAILEY: No.

12 CHAIRPERSON CROSS REID: Okay. You did talk to
13 the ANC, Ms. Walker? What kind of response did you get when
14 you talked to them?

15 MS. WALKER: I talked -- well, I left messages
16 with my Commissioner, several messages, and she never called me
17 back.

18 CHAIRPERSON CROSS REID: Typically, if we don't
19 receive anything from the ANC, it's assumed that they don't
20 have any objection to it and if they did, they would let us
21 know.

22 MS. WALKER: I did have a letter in there from my
23 neighbor.

24 CHAIRPERSON CROSS REID: A letter of support.

25 MS. WALKER: Yes.

1 CHAIRPERSON CROSS REID: Okay. Then persons or
2 parties in support of this application, persons or parties in
3 opposition. We did have one letter.

4 BOARD MEMBER MITTEN: It's Exhibit No. 26.

5 CHAIRPERSON CROSS REID: And it's a letter of
6 support from a neighbor.

7 BOARD MEMBER MITTEN: Yes.

8 CHAIRPERSON CROSS REID: Okay. So there is a
9 letter of support in the file. Closing remarks by the
10 applicant.

11 MS. WALKER: I'm requesting permits so I'm able
12 to do this or permits for the contractor.

13 CHAIRPERSON CROSS REID: In other words, you'd
14 like to have your application approved.

15 MS. WALKER: I would like to have my application
16 approved.

17 CHAIRPERSON CROSS REID: Okay. That's easier.

18 MS. WALKER: I had it all written out.

19 CHAIRPERSON CROSS REID: Let's see now. I don't
20 know. Do you want to dispose of it today or at the next
21 meeting date?

22 BOARD MEMBER RENSHAW: Madam Chair, I would
23 recommend that we vote on this today.

24 CHAIRPERSON CROSS REID: All right. Okay.
25 Discussion or a motion.

1 BOARD MEMBER RENSHAW: In regard to the case
2 number -- I'm looking for the case number here.

3 BOARD MEMBER MITTEN: 16677.

4 BOARD MEMBER RENSHAW: 16677. Thank you. I move
5 that we approve the variance to allow for the establishment of
6 a nonconforming rear yard addition.

7 CHAIRPERSON CROSS REID: I'd second it. Any
8 further discussion?

9 BOARD MEMBER MITTEN: Perhaps the other Board
10 Members could just put me at ease a little bit about how you
11 view the variance test being met in this particular case, and
12 I'm speaking most particularly about the additional four feet
13 that would extend into the rear yard beyond where the porch is
14 right now. If you could just put me at ease about how you see
15 that meeting the test.

16 CHAIRPERSON CROSS REID: Well, from my point of
17 view, I look at the case in its entirety. I think that the
18 first prong of the test in regard to the uniqueness and it
19 being unusual is pretty apparent and then I look at the other
20 parts of it. I'll come back to practical difficulty. And that
21 is in regard to adverse impact. There does not seem to be any
22 adverse impact in regards to parking, light, air, noise, and we
23 have not heard anyone complain about this having any kind of
24 detriment to their enjoyment of life and I don't think that it
25 impairs the integrity of the zoning regulations, the zoning map

1 or the zoning plan.

2 In regard to the practical difficulty, I think
3 that's a difficult test to make in this particular instance
4 because of the fact she's extending an already existing
5 nonconformity. If in fact the intention is to try to develop
6 it to the point of enclosing it to be utilized as a room,
7 another room, and if in fact that could be done but I think
8 that the intention is also to, along with additional space, to
9 have room enough for a bathroom and a closet.

10 My feeling is that if we had some opposition to
11 it, I might feel a differently but, if we don't and if we're
12 going to -- it's already nonconforming and if we're going to --
13 if she could be allowed to enclose what's existing, I think
14 that the additional four feet that she's asking for would not
15 constitute a detriment and so, therefore, I have no problem
16 with it.

17 BOARD MEMBER MITTEN: If I could maybe just share
18 my concerns, and I sense that the reason why it's desirable to
19 have this room bigger is because there should be a full bath on
20 the first floor because there is going to be an elderly
21 relative in the home and yet there's, I'm sure, thousands of
22 dwellings in the District of Columbia that don't have those
23 kind of provisions on a first floor that could accommodate an
24 elderly relative and my concern would be whether or not that is
25 going to be -- whether that circumstance, accommodating an

1 elderly relative, is enough of a -- meets the threshold for a
2 variance given that other requests may follow for variances and
3 that will be the critical element of meeting the test. And you
4 have more experience in this regard than I, so I'll defer to
5 you, but my concern is is that this becomes a precedent for
6 folks that don't have these kind of accommodations on the first
7 floor, that that becomes the basis for a variance request.

8 CHAIRPERSON CROSS REID: You know, as far as I am
9 concerned, if in fact in trying to meet her test she contends
10 that this particular -- her practical difficulty is the fact
11 that if in fact she were to leave the -- the reason why she's
12 here is to try to get additional space based on the fact that
13 if she has to accommodate an elderly person or the additional
14 children that she has. My contention is that if you're going
15 to grant a variance, then she wouldn't be here asking for the
16 additional space if it could be accommodated with the space
17 that she has there. I don't think that it would cause any
18 adverse impact. I think that you have to look at the whole
19 picture in its entirety and I feel that if in fact you looked
20 at all of the various aspects of this particular test in this
21 case, I don't think -- this is my own contention -- I don't
22 feel that it would cause a detriment to the zoning map, the
23 zoning plan or cause or any adverse impact to do so.

24 BOARD MEMBER RENSHAW: Madam Chair, we had
25 discussed with the applicant and the architect the possibility

1 of using the front space to avoid having to extend out in the
2 back and it seems that that is too expensive for the applicant
3 to do and I can understand that that would perhaps ruin the
4 look of the house as it is now from the front. The back is
5 irregularly shaped. It's difficult. It curves because of the
6 public alley, and the applicant wants a reasonable amount, not
7 an excessive amount, of extra space to have a more livable
8 unit, and I can support the applicant in this request. I think
9 that she has met her burden of proof, and I would like to move
10 that we accept this.

11 CHAIRPERSON CROSS REID: One other thing I'd like
12 to say in this regard -- this just occurred to me and I made
13 this argument in other cases -- is that these regulations were
14 promulgated in 1958 and quite a bit has changed in our society
15 since that time, one of which is that the elderly are living a
16 lot longer where before people were dying earlier and they
17 either went to nursing homes. Now you're seeing more and more
18 the elderly being accommodated at home, and I don't think this
19 is an unreasonable request.

20 BOARD MEMBER MITTEN: I'm satisfied, Madam Chair.
21 I'm ready to go forward.

22 MS. HINTON: Could I just add? A different way
23 of looking at it but I've arrived at the same conclusion, and
24 that is the lot is a substandard lot for what would be required
25 in this zone district for a single family detached home and

1 when I look at the dimensions of the existing home and the
2 existing yard, there isn't any addition that could be made that
3 would not require a variance and so, given that, even a smaller
4 addition would require a variance. Any addition would require
5 a variance and because we do have the floor plans, I agree that
6 the mouth of space that's being requested is not excessive,
7 given the existing home that is on the lot and so I would vote
8 to adopt also.

9 CHAIRPERSON CROSS REID: All in favor.

10 (Ayes)

11 CHAIRPERSON CROSS REID: Opposed.

12 (No response)

13 MS. BAILEY: Staff will record the vote as four
14 to zero to approve the application, motion made by Mrs.
15 Renshaw, seconded by Mrs. Reid, Mrs. Hinton and Mrs. Mitten in
16 agreement, and the order should reflect that the applicant
17 should combine both lots into one lot of record prior to
18 obtaining the building permit.

19 BOARD MEMBER RENSHAW: And is she able to get a
20 bench decision?

21 CHAIRPERSON CROSS REID: We just did.

22 BOARD MEMBER RENSHAW: We did. Thank you. Just
23 checking.

24 MS. BAILEY: Summary order.

25 BOARD MEMBER RENSHAW: Summary order. Thank you.

1 CHAIRPERSON CROSS REID: You will have your order
2 in about two weeks, and good luck. That was a difficult case
3 for you to make.

4 MS. BAILEY: Madam Chair, we had left the January
5 16th minutes for the vote from Mr. Hood. Did you want to take
6 that up at this time?

7 CHAIRPERSON CROSS REID: Please.

8 MS. BAILEY: Okay. On January 16th the Board
9 Members who were present for that hearing were Mr. Hood, Mr.
10 Moulten, who is no longer with the Board, Mrs. Renshaw, Mrs.
11 Reid and Mr. Sockwell, who is no longer with the Board. Staff
12 is requesting adoption of the January 16th minutes at this
13 time.

14 BOARD MEMBER RENSHAW: I so move.

15 CHAIRPERSON CROSS REID: Okay. Second. All in
16 favor.

17 (Ayes)

18 CHAIRPERSON CROSS REID: I and the proxy for Mr.
19 Hood.

20 MS. BAILEY: Mr. Hood sent a proxy in agreement.
21 The motion was made to adopt the minutes by Mrs. Renshaw,
22 seconded by Mrs. Reid, and the vote is three to zero.

23 Madam Chair, we're now ready for the afternoon
24 session.

25 CHAIRPERSON CROSS REID: Thank you.

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(Off the record at 1:37 p.m.)