

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

+ + + + +

BOARD OF ZONING ADJUSTMENT

+ + + + +

PUBLIC MEETING

+ + + + +

TUESDAY

APRIL 6, 2004

+ + + + +

The Public Meeting convened in Room 220 South, 441 4th Street, N.W., Washington, D.C. 20001, pursuant to notice at 9:30 a.m., Geoffrey H. Griffis, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

GEOFFREY H. GRIFFIS	Chairperson
RUTHANNE G. MILLER	Vice Chairperson
CURTIS ETHERLY, JR.	Board Member
DAVID ZAIDAIN	Board Member (NCPC)

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY	ACTING Secretary
BEVERLEY BAILEY	Zoning Specialist
JOHN NYARKU	Zoning Specialist

OFFICE OF CORPORATION COUNSEL STAFF PRESENT:

SHERRY GLAZER, ESQ.
MARY NAGELHOUT, ESQ.
JANICE SKIPPER, ESQ.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

<u>CALL TO ORDER:</u>	
Geoffrey Griffis	3
 <u>BEECH CENTER, INC.</u>	
<u>APPLICATION NO. 17123 - ANC-7B:</u>	5/47
Stephen Gell	8
 <u>VOTE TO DENY APPLICATION:</u>	54
 <u>JESUS IS THE WAY CHURCH</u>	
<u>APPLICATION NO. 17100 - ANC-6A:</u>	13
 <u>VOTE ON MOTION TO RECONSIDER:</u>	17
 <u>SHERIDAN KALORAMA NEIGHBORHOOD COUNCIL</u>	
<u>APPEAL NO. 17086 - ANC-2D:</u>	18
 <u>VOTE ON MOTION TO DENY APPEAL:</u>	34
 <u>CELIA BERG AND JACK BENSON</u>	
<u>APPLICATION NO. 16921 - ANC-3E:</u>	34
 <u>VOTE ON WAIVING SIX MONTH RULE:</u>	38
<u>VOTE ON APPROVAL OF MODIFICATION:</u>	46
 <u>JAMES BRADY & NEYSA RICH</u>	
<u>APPLICATION NO. 17130 - ANC-6B:</u>	55
 <u>ACTION TAKEN - REQUEST MORE DOCUMENTS:</u>	57
 <u>FOLGER PARK NORTH, LLC</u>	
<u>APPLICATION NO. 17108:</u>	59
 <u>VOTE TO GRANT APPLICATION:</u>	76
 <u>ADJOURN:</u>	
Geoffrey Griffis	77

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

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

10:13 a.m.

CHAIRPERSON GRIFFIS: Good morning, ladies and gentlemen. Let me call to order the April 6, 2004 Public Meeting of the Board of Zoning Adjustment, the District of Columbia. My name is Geoff Griffis. I am Chairperson. Joining me today is Vice Chair Ms. Miller. Also representing the National Capital Planning Commission is Mr. Zaidain on several and numerous decision makings that we will undergo today.

You will see Board Members coming in and out, depending on their participation in each of the cases.

Copies of today's hearing agenda are available to you. They are located on the wall at the door you entered into the hearing room. We are going to move off the actual written chronology of that agenda in order to facilitate some of the Members' schedules and participation.

Please, be advised that all proceedings before the Board of Zoning Adjustment are recorded and so several things we ask of you attendant to that. I would ask that people turn off cell phones and beepers, at this time. Of course, this is our Public Meeting which means that you will hear deliberation of the Board on cases that have already been heard. We

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 will not have any participation by applicants or any
2 other participants in these applications as we go
3 forward.

4 It should be noted, of course, that the
5 recording is happening in two fashions. We do have
6 the court reporter, who sits to my right, that is
7 creating the transcript and record on this. We are
8 also now being broadcast live on the Office of
9 Zoning's website. With that, why don't we go and get
10 into any preliminary matters that the staff is aware
11 of for this morning's session. And if there are no
12 preliminary matters, we can call the first case for
13 our deliberation.

14 Let me run through the schedule as I
15 anticipate it, at this point. First, we will have
16 Application 17123, which is the Beech Center. Second,
17 we will have 17100, which is the 6A reconsideration,
18 motion for reconsideration of Jesus Is The Way Church.

19 Third would be 17086, Appeal of Sheridan Kalorama
20 Neighborhood Council. Four would be 16921, Berg and
21 Benson. Five would be 17130, Brady and Rich. Sixth
22 would be 17108 of Folger Park North. That may have
23 been very fast. So I'll go through the first three
24 again. First, we'll have the Beech Center. Second
25 will be the reconsideration, motion of reconsideration

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 from the ANC in 17100, and three will be 17086, the
2 Appeal of the Sheridan Kalorama Neighborhood Council.

3 That being said, let's go to staff and
4 I'll also say a very good morning to Mr. Moy with the
5 Office of Zoning and also Ms. Bailey with the Office
6 of Zoning on my very far right, Ms. Skipper and Ms.
7 Nagelhout is representing the Office of Corporation
8 Counsel with us.

9 MR. MOY: Good morning, Mr. Chairman,
10 Members of the Board. No preliminary matters in
11 general. We'll address these case by case. The first
12 case, as you mentioned, is Application 17123 of Beech
13 Center Incorporated, pursuant to 11 DCMR 3103.2, for a
14 variance from the lot area requirements under
15 subsection 410.3, to allow the construction of two new
16 single-family detached dwellings in the R-1-B District
17 at premises 3139 and 3143 Westover Drive, S.E., Square
18 5664, Lots 70 and 71.

19 On March 9, 2004, the Board completed
20 testimony on the application and scheduled its
21 decision on April 6, 2004. The Board requested the
22 following post-hearing documents. First, from the
23 applicant is more of an explanation of how the
24 application meets the variance test. That was
25 submitted to the Board and it is in your case folders

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 under Exhibit 34. The Board also requested responses.

2 The Board received a response from ANC-7B and that is
3 in your case folder as Exhibit 35. We also have a
4 submission that came in for the Board's note this
5 morning from the applicant, and that completes the
6 staff's briefing, Mr. Chairman.

7 CHAIRPERSON GRIFFIS: Thank you very much,
8 Mr. Moy. Forgive me if I missed it, but we had the
9 additional submission from the ANC. Was that
10 indicated?

11 MR. MOY: Yes, sir, that's Exhibit 35.

12 CHAIRPERSON GRIFFIS: Okay. Excellent.
13 Thank you very much. Also, attendant to that was the
14 letter from Vince Spalding that raised some issue of
15 concern regarding the proper standing of the
16 corporation that brought the application. As you
17 indicated, of course, we have the filing this morning
18 from their attorney, Mr. Gell, that was indicating
19 that we had perhaps several options to move ahead with
20 this application. I think the critical point of it is
21 whether we have the proper documentation that shows
22 the authority of the corporation to bring an
23 application, and that is Beech Center, Inc.

24 They have told their attorney that they
25 are fully authorized to bring this file or to file

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 this application. They only lack the required written
2 documentation attesting to that fact. I think it is
3 problematic for us to move ahead with this without
4 that proper documentation, and I'll open it up to
5 Board Members for comment on that. I believe that
6 this would not take an undue amount of time to get
7 this remedied and we might set this off fairly quickly
8 for another day for deliberation. Comments?

9 VICE CHAIR MILLER: Mr. Chairman, I would
10 concur that we should put this off until we have
11 something in writing showing that Beech Center is a
12 corporation in good standing, and that this
13 application is being filed on its behalf.

14 CHAIRPERSON GRIFFIS: Others?

15 BOARD MEMBER ZAIDAIN: I agree, Mr. Chair.

16 CHAIRPERSON GRIFFIS: Very well. I
17 believe that's an appropriate action to take at this
18 time. I believe the applicant's representative at
19 this hearing can take note of that. We'll look for
20 that submission. Mr. Moy, how does our schedule look
21 on the 13th?

22 MR. GELL: Excuse me, Mr. Chair, may I
23 address the Board?

24 CHAIRPERSON GRIFFIS: Yes, briefly.
25 You're going to need to come forward and sit down and

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 give us your name.

2 MR. GELL: Yes, thank you, Mr. Chairman.
3 My name is Stephen Gell. I'm representing the
4 applicant. The chain of authority, I believe, is in a
5 fax which you may have just been distributed. We were
6 expecting it, but the fax machine was backed up. If
7 not, it's on its way and it should be here
8 momentarily. I've been told it has been sent.

9 CHAIRPERSON GRIFFIS: Which is showing the
10 proper incorporation of the owner?

11 MR. GELL: Beech Center, Inc. is, I
12 believe, an Illinois Corporation, which sold the
13 property to Shiraz.

14 CHAIRPERSON GRIFFIS: I gotcha.

15 MR. GELL: Shirag, I mean. Which has now
16 resold. There is a contract for sale to Deeohn
17 Ferris, who has -- that's the partner of Mr. Johnson,
18 and they have the authority to act for those other
19 entities. And I believe you have a letter in the file
20 to that effect from Beech Center, Inc. signed by Beech
21 Center, Inc. and signed by Shirag. That had been
22 submitted back in November.

23 We believe the chain of authority is
24 correct. We're happy to look at it again and provide
25 any further documentation, but what I have said is

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 being set out in that fax from the lawyer, who had
2 represented Beech Center, Inc., and which he said he
3 was sending this morning. Just before I came in here,
4 I got a call from his assistant saying that it was
5 literally being faxed at that moment.

6 CHAIRPERSON GRIFFIS: So what is it going
7 to tell us?

8 MR. GELL: It will lay out for you from
9 that attorney what the chain is, just what I -- I
10 believe it will set out --

11 CHAIRPERSON GRIFFIS: So who owns the
12 property?

13 MR. GELL: The property is owned by
14 Shirag. It's under a contract to Deeohn Ferris.

15 CHAIRPERSON GRIFFIS: Well, do we care
16 about Ferris for this application? I mean, does it
17 concern us? Ferris didn't bring the application. Is
18 that correct? The current owner is Shirag, you said?

19 MR. GELL: Mr. Johnson is a partner with
20 Deeohn Ferris. He is the one that filed the
21 application in the name of Beech Center, Inc. That's
22 the only reason I mentioned Ferris.

23 CHAIRPERSON GRIFFIS: Okay.

24 MR. GELL: As I say, you have that letter
25 from Beech Center, Inc. in the file originally.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 CHAIRPERSON GRIFFIS: So you say we're
2 ready to go?

3 MR. GELL: I want you to be satisfied and
4 I want to be sure this is done in a way that no appeal
5 would be likely.

6 CHAIRPERSON GRIFFIS: Who owns the title
7 on the property, Beech Center, Inc.?

8 MR. GELL: I think the title is probably
9 still in Shirag. I don't think a contract has been
10 recorded yet. The deed hasn't been transferred.

11 CHAIRPERSON GRIFFIS: Boy now I need a
12 roster here. Okay. So you're saying that Beech
13 Center, Inc. is purchasing it?

14 MR. GELL: No, no, Beech Center, Inc. was
15 the original owner.

16 CHAIRPERSON GRIFFIS: Right. And they
17 sold it?

18 MR. GELL: They sold it and, in fact, the
19 corporation dissolved.

20 CHAIRPERSON GRIFFIS: Okay.

21 MR. GELL: But sold it to Shirag, which
22 resold it to Deeohn Ferris.

23 CHAIRPERSON GRIFFIS: Shirag is a person
24 or a corporation?

25 MR. GELL: Shirag is a corporation or a

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 limited partnership, but it's -- I have the name of
2 the gentleman, that should be in the fax as well, who
3 is the partner in Shirag.

4 BOARD MEMBER ZAIDAIN: When did Beech
5 Center sell it to Shirag?

6 MR. GELL: I would have to find that out.

7 BOARD MEMBER ZAIDAIN: I mean, because
8 according to my file, Beech Center is the applicant
9 and I'm just wondering why it sounds like in what
10 you're telling us Beech Center really --

11 MR. GELL: Well, this was back in November
12 when it was originally filed.

13 BOARD MEMBER ZAIDAIN: But did Beech
14 Center have standing at all?

15 MR. GELL: I don't know exactly whether
16 Beech Center had sold it, at that point, to Shirag,
17 but it was believed by Mr. Johnson that Beech Center
18 was the owner, at the time, and that therefore they
19 were the ones that he had to represent as the
20 applicant. We've recently found out that there were
21 these other actions that had taken place and the Beech
22 Center, Inc. has dissolved. But, as I say, the
23 authorization from each of those through to the person
24 that filed it is what we need to show you and you need
25 to be satisfied about it.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 BOARD MEMBER ZAIDAIN: So just to make
2 sure I understand what happened when the application
3 was filed, somebody -- the gentleman you named filed
4 the application on behalf of Beech Center, even though
5 he wasn't authorized and Beech Center didn't own the
6 property?

7 MR. GELL: He was authorized.

8 BOARD MEMBER ZAIDAIN: Oh, he was
9 authorized?

10 MR. GELL: Yes.

11 BOARD MEMBER ZAIDAIN: Okay. But Beech
12 Center didn't own the property at the time?

13 MR. GELL: I believe Beech Center may well
14 have owned the property at the time. I'm not sure of
15 the exact date that the contract was sold, but Beech
16 Center signed -- I mean, we assume they owned it,
17 because they signed a letter saying that they
18 authorized him to file the application.

19 BOARD MEMBER ZAIDAIN: Yes.

20 MR. GELL: Actually, what it said was that
21 it approves the Board's granting these variances.

22 VICE CHAIR MILLER: Mr. Gell, I'm just
23 wondering if the application is to be amended to
24 reflect the current owner?

25 MR. GELL: I would be happy to do that.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 CHAIRPERSON GRIFFIS: All right. Mr.
2 Gell, we're going to look for that fax. If it doesn't
3 come in proper time this morning for the Board to take
4 a look at it and process this application, then we'll
5 just set this off for next week.

6 MR. GELL: I appreciate it.

7 CHAIRPERSON GRIFFIS: I will try and put
8 it on first in our Special Meeting on the 13th and get
9 it out of the way. That being said, let's go to the
10 next case then.

11 MR. MOY: The next case, Mr. Chairman, is
12 a motion from -- it's the ANC-6A motion for
13 reconsideration of Application No. 17100 of Jesus Is
14 The Way Church, pursuant to 11 DCMR 3104.1, for a
15 special exception for a change of nonconforming use
16 under subsection 2003.1 or, in the alternative,
17 pursuant to 11 DCMR 3103.2, a variance from the use
18 provisions to allow a coffee/sandwich shop under
19 subsection 330.5, in the R-4 District at premises 129-
20 131 15th Street, N.W. This is the first floor only in
21 Square 1069, Lot 801.

22 On February 3, 2004, the Board voted to
23 approve the special exception under subsection 2003.1
24 to allow a coffee/sandwich shop. The summary order
25 was issued on February 9, 2004 with conditions. On

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 February 18, 2004, the Office of Zoning received a
2 timely motion from the ANC requesting reconsideration
3 of the application. And that letter is in your case
4 folders under Exhibit 38. So the action before the
5 Board is this motion for reconsideration. That
6 completes the staff's briefing, Mr. Chairman.

7 CHAIRPERSON GRIFFIS: Thank you very much.

8 There seems to be some discrepancy from the ANC-6A
9 whether they had submitted or participated in the
10 hearing. I know that staff and the Board Members have
11 gone back to look at the entire file and the
12 transcripts, and I think that the order was written
13 correctly, in that we had not heard definitively or
14 directly from ANC-6A. There had been mention of it in
15 the hearing and also, I believe I'm correct in saying,
16 in the Office of Planning there was note that the ANC
17 had heard this application and there was some
18 statement as to the position it was taking on.

19 I think that being said, we have the
20 motion from the ANC for reconsideration, based on the
21 fact that they were not able or for whatever reason
22 did not -- the Board did not look at their letter and
23 obviously then did not grant it great weight or
24 directly address the concerns raised by the ANC. I
25 believe we have, obviously, two courses of action

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 here. We can uphold the motion for reconsideration.
2 I would set that for a fairly quick schedule and I
3 would ask that the record stay open in order to afford
4 the opportunity for the applicant to respond to the
5 ANC's concerns or, of course, we can deny the motion,
6 based on however people want to deliberate on that.
7 Let me hear from other Board Members on this issue.
8 Ms. Miller?

9 VICE CHAIR MILLER: Mr. Chairman, my
10 understanding is that the ANC said that they sent the
11 Board a letter and we never received it. So,
12 therefore, we couldn't consider their views. I think
13 it would be prudent to consider their views and so I
14 would be in favor of reconsidering the case.

15 CHAIRPERSON GRIFFIS: Very well. Others?

16 BOARD MEMBER ZAIDAIN: Well, my general
17 opinion is, I felt that we did, through the hearing
18 process, get some representation of what the ANC's
19 view was, but Ms. Miller is correct, there was not an
20 official position. Although, I think that we
21 deliberated the case correctly, I'm all for getting
22 more information, especially when it's from an ANC and
23 make sure everybody is comfortable with where we are
24 headed, so that's fine.

25 BOARD MEMBER ETHERLY: I agree, Mr. Chair.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 CHAIRPERSON GRIFFIS: Very well. Thank
2 you all very much. I think it is a fair consensus of
3 the Board to grant the motion for reconsideration on
4 Application No. 17100, and that was pursuant to the
5 special exception, of course, under subsection 2003.1.

6 I think it may be problematic to ask the applicant
7 for a response by the 13th, in which case let's set
8 this off for -- I do not anticipate that this would be
9 a lengthy reconsideration. The ANC's position seems
10 to be in the record, at this point.

11 Mr. Moy, do you see any problems with
12 doing it on, or Ms. Bailey, the 27th of April, either
13 one? Any difficulty with that schedule?

14 MR. MOY: No, I think that can be done.
15 My understanding is Mr. Etherly will be absent on the
16 27th, other than that, we could fit that into the
17 afternoon session.

18 CHAIRPERSON GRIFFIS: Let's do that.
19 We'll set it for the 9:00 Public Meeting and we'll
20 have submissions in then by the 20th. Is that correct?

21 BOARD MEMBER ZAIDAIN: I thought I heard
22 afternoon thrown around.

23 CHAIRPERSON GRIFFIS: Did he say
24 afternoon?

25 BOARD MEMBER ZAIDAIN: I think he did.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 MR. MOY: No, no, if this is a Public
2 Meeting, then morning would be appropriate.

3 CHAIRPERSON GRIFFIS: That's fine. Oh, my
4 goodness gracious, let's get all this juggled
5 schedule, Mr. Moy, let's put it in the first of the
6 afternoon, as we have a Board Member that will be here
7 for the afternoon case. Do we need to restate that?

8 MR. MOY: Mr. Chairman?

9 CHAIRPERSON GRIFFIS: Yes?

10 MR. MOY: Prior in terms of restating, we
11 may want to take a vote on the reconsideration motion.

12 CHAIRPERSON GRIFFIS: All right. Let's
13 get all formal, shall we? I would move approval of
14 the motion for reconsideration of Application No.
15 17100 and ask for a second.

16 VICE CHAIR MILLER: Second.

17 CHAIRPERSON GRIFFIS: The motion is before
18 us and seconded. It has been set tentatively for the
19 first -- for the afternoon of the 27th of April at
20 1:00. I would ask for all those in favor of the
21 motion to signify by saying aye.

22 ALL: Aye.

23 CHAIRPERSON GRIFFIS: Opposed?

24 MR. MOY: The motion to reconsider is
25 granted, a vote of 4-0-1, the motion by the Chairman,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 seconded by Ms. Miller, also in favor of the motion,
2 Mr. Etherly, Mr. Zaidain, and we have a Zoning
3 Commission Member not participating.

4 CHAIRPERSON GRIFFIS: Interesting. Okay.

5 In which case, do we provide notice to the applicant
6 based on keeping the record open for their submission?

7 We can figure that out.

8 MR. MOY: Yes, staff will take care of
9 that, Mr. Chairman.

10 CHAIRPERSON GRIFFIS: Excellent. Thank
11 you very much. Okay. Next?

12 MR. MOY: The next case is the Appeal No.
13 17086 of Sheridan Kalorama Neighborhood Council,
14 pursuant to 11 DCMR 3100 and 3101. Staff notes for
15 the Board that, at that previous hearing, this has
16 been amended to 3100 and 3112, from the administrative
17 decision of Karen Edwards, General Counsel, Department
18 of Consumer and Regulatory Affairs, allowing the
19 transfer of the Jordanian Chancery to the Yemeni
20 Chancery without the approval of the Foreign Mission
21 Board of Zoning Adjustment. The D/R-1-D Zone subject
22 premise is located at 2319 Wyoming Avenue, N.W.,
23 Square 2522, Lot 4.

24 On February 17, 2004, the Board completed
25 testimony on the appeal and scheduled its decision on

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 April 6, 2004. The Board requested the following
2 post-hearing documents from the Department of State
3 the Board received copies of the Certificate of
4 Occupancy that was used as a basis to prepare their
5 listed locations. This is in your case folders
6 identified as Exhibit 28.

7 Findings of fact and conclusions of law
8 have been received from the Department of State and
9 the Sheridan Kalorama Neighborhood Council, Exhibits
10 29/30 and Exhibit 30, respectively. The Department of
11 State has two exhibits, 29 and 31, because they
12 submitted two proposed findings of fact and
13 conclusions. One is for dismissal. The other is for
14 denial and dismissal. And that completes the staff's
15 briefing, Mr. Chairman.

16 CHAIRPERSON GRIFFIS: Good. Thank you
17 very much. This has been quite an interesting case, I
18 must say, and I know full well that the Board has
19 taken quite a lot of time in looking at all, as we do
20 all our applications for decision, the detail, the
21 specificity. This, of course, has added to the
22 reading list the Foreign Missions Act that we have now
23 reread numerous times.

24 My understanding of this, clearly, appeal
25 of the Sheridan Kalorama Neighborhood Council brings

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 to light a very important issue for this neighborhood
2 and a specific neighborhood and that is the proper
3 proceeding for chanceries under the FMA and also under
4 the jurisdiction of the FMBZA. I'll open up just the
5 discussion on this to the Board and note that the
6 Board had already made a definitive decision to hear
7 this appeal, as the BZA and not as the FMBZA, and I
8 think the record clearly reflects our deliberation on
9 that and the action on it. I think it can be easily
10 summarized as one of the most moving points to the
11 fact that there would not have been the process and
12 procedure in place for the Sheridan Kalorama
13 Neighborhood Council to have brought an appeal before
14 the FMBZA.

15 So I think we can move ahead knowing full
16 well that it is properly before us. And let me open
17 it up to Board Members for discussion regarding the
18 merits of the appeal and whether the transfer of the
19 chancery from one country to another actually requires
20 the review of the FMBZA. Board Members?

21 BOARD MEMBER ZAIDAIN: Well, Mr. Chair, I
22 guess I'll start it off and I think you are right it
23 was a very interesting case. We heard a lot of
24 interesting discussion about the formulation of a
25 Diplomatic Overlay District and how that came about

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 and the one third, two third issue and all that, and I
2 think that was all very interesting. But I think at
3 the end of the day it boils down to very basic zoning
4 issues, just like a lot of or almost all of our cases
5 do. And that is the change of use or not a change of
6 use, it is change of ownership, so to speak, for the
7 same use and that being a chancery.

8 One of the things that I was concerned
9 with early on was whether or not there was any
10 construction taking place that would require a
11 certification of compliance for zoning, but we got
12 some testimony from DCRA about the fence that was
13 constructed. Clearly, that's a Building Code issue
14 and not within the realm of zoning, so again, we're
15 back to just a change of ownership for the same use.

16 It was put forth by the appellant that the
17 main provision of the zoning that applies is 201, I
18 believe, .1-M, I think it is and how that dictates or
19 how that controls or regulates the change of ownership
20 when it comes to chanceries.

21 CHAIRPERSON GRIFFIS: In the Residential
22 Districts?

23 BOARD MEMBER ZAIDAIN: In the Residential
24 District exactly. But the point there is that this
25 site is in the Diplomatic Overlay District and 201

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 does not apply to the Diplomatic Overlay. That is
2 simply for the outlier chanceries and not those that
3 are within the Diplomatic Overlay.

4 CHAIRPERSON GRIFFIS: So you're saying
5 that 201.1-M, I think you said, only regulates those
6 outside of Diplomatic Overlay?

7 BOARD MEMBER ZAIDAIN: Yes.

8 CHAIRPERSON GRIFFIS: Okay.

9 BOARD MEMBER ZAIDAIN: That's my
10 interpretation of those regulations. And if I'm
11 incorrect on the citation, which Ms. Miller may point
12 out here in a second, that's fine, but I think she
13 knows where I'm going. So anyway, so this site is
14 Zoned R-1-B with the Diplomatic Overlay, so looking at
15 those regulations, which are those that apply, the
16 chief regulation is 1002.1, which regulates, and this
17 one I do have in front of me, the Board of Zoning
18 Adjustment review for chanceries that are going to
19 locate, replace or expand in an R-5, D/R-5 or SP
20 District, etcetera.

21 And to me that's the real chief regulation
22 that we're looking at. And specifically the word
23 "replace" and how that is interpreted. And we pushed
24 the State Department on that issue, as well as the
25 appellant, and the State Department's interpretation,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 which I agree with, is that that is to replace the
2 building. If the building is going to be knocked down
3 and replaced with a new one, that is where that
4 regulation would come in and, of course, that new
5 project would have to come before the FMBZA for
6 disapproval.

7 Now, the reason why I agree with the State
8 Department is if you read that in the context of the
9 Foreign Missions Act and it's provisions, which would
10 support that interpretation that a change of country,
11 so to speak, in an existing chancery prior to, I
12 believe, 1982 is the rule, that it can exist and not
13 have to go before the FMBZA for interpretation. Also,
14 I think that we have to give some deference to the
15 Zoning Commission and their charge is implementing the
16 Foreign Missions Act in writing the Diplomatic
17 Overlay, so taking those two aspects, I think the
18 State Department's interpretation of the word
19 "replace," so to speak, was the proper one and as
20 such, I do not support the appeal.

21 CHAIRPERSON GRIFFIS: Ms. Miller?

22 VICE CHAIR MILLER: Mr. Chairman, I would
23 concur with Mr. Zaidain. And I want to reference the
24 regulation. It is 201.M-1 that the neighbors were
25 relying on and that says that "After February 23, 1990

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 the continued use of the chancery shall be limited to
2 the government that lawfully occupied the chancery on
3 that date." And I would concur with Mr. Zaidain that
4 that does not apply to chanceries in the Diplomatic
5 Overlay District. So those chanceries are governed by
6 1002.1.

7 And I would concur with his interpretation
8 that expand or replace or locate does not include a
9 change in the chancery that is occupying the property.

10 Also, I think what controls -- I find this a case of
11 statutory construction and we were looking at the
12 FMA's statute, which controls, which is 4306H-2, which
13 says "Approval by the Board of Zoning Adjustment or
14 the Zoning Commission or accept as provided in section
15 4305 this title by any other agency or official is not
16 required for continuing use of a chancery by a Foreign
17 Mission to the extent that the chancery was being used
18 by a Foreign Mission on October 1, 1982."

19 There was question whether that meant the
20 same chancery or whether it could apply to different
21 chanceries. And I would concur that that can apply to
22 different chanceries. And then I also want to bring
23 to the attention of the Board Provision J under 4306H-
24 2, which says "Provisions of law other than this
25 chapter applicable with respect to location,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 replacement or expansion of real property in the
2 District of Columbia shall apply with respect to
3 chanceries only to the extent that they are consist
4 with this section."

5 So I think we are bound by the FMA our reg
6 is not inconsistent with it. There is one other
7 provision, I think, in the FMA that also applies,
8 which has been referred to as the "grandfathering
9 provision" and that is 2306H-2, which provides that
10 "No agency or official approval or other such action
11 is required if any Foreign Mission wants to use any
12 site in the District for chancery use, provided that:
13 (A) The site in question was being used for chancery
14 purposes as of October 1, 1982, and (B) The chancery
15 used at the site has been continuing since that date."

16 And there hasn't been a break in use of
17 this property between chanceries, so for those
18 reasons, I believe that it was properly decided that
19 it was a matter-of-right to allow the -- to transfer
20 the Jordanian embassy to the Yemen embassy without
21 approval of the Foreign Mission Board of Zoning
22 Adjustment.

23 CHAIRPERSON GRIFFIS: Very well. Others?

24 BOARD MEMBER ZAIDAIN: Just to clarify,
25 you know, one of the issues, I think it is important

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 to reiterate the fact that this finding is based on
2 the fact that there is no construction. Even the
3 State Department conceded that if they were going to
4 put up something as minor as a flagpole, anything that
5 required, like I said, zoning certification, that they
6 would have to come to the FMBZA. So I think we got a
7 lot of testimony on that issue, because I thought that
8 was critical, and that this, you know, ruling is
9 solely focused on a change of countries.

10 VICE CHAIR MILLER: Yes.

11 BOARD MEMBER ZAIDAIN: Without any
12 expansion of the building, construction on the site or
13 any kind of other zoning issue. I think it is
14 important to reiterate that.

15 CHAIRPERSON GRIFFIS: Good. Thank you,
16 Mr. Zaidain. Mr. Zaidain, I agree with one of your
17 points that this basically a D.C. Zoning issue and I
18 think it is fairly established that the Congress had
19 delegated implementation of section 403.6 to the
20 Zoning Commission. The Zoning Commission then wrote
21 the Zoning Regulations of which are being appealed and
22 their understanding is the appeal before us.

23 If you look at 1002.1, it does state the
24 fact that to locate, replace or expand the chancery,
25 my question to the other Board Members is where is it

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 that you find that locate, replace or expand goes
2 strictly to structure? Is that not going to locating
3 a use, locating a chancery, locating a country,
4 replacing a chancery, replacing the use within the
5 structure? What is it that keeps us from looking
6 beyond the building and the use of that building?

7 In fact, why isn't it duplicative? Well,
8 let me leave it at that.

9 BOARD MEMBER ZAIDAIN: Well, I think that
10 was the whole point of the issue, and I think we
11 really pushed all of the participants on that. And if
12 you took it on the list with the kind of the three
13 verbs we're looking at, locate, would be to locate a
14 new chancery in something that was not a chancery
15 before, a vacant site or whatever. Replace would be
16 if you are knocking down the building and replacing it
17 with a new one and three is expanding. If it is an
18 existing chancery and you are going to expand with
19 anything, like what we were just talking about.

20 CHAIRPERSON GRIFFIS: Why did you say if
21 you read to locate or replace as requiring that the
22 location without exception would be reviewed by the
23 FMBZA?

24 BOARD MEMBER ZAIDAIN: What do you mean
25 the location?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 CHAIRPERSON GRIFFIS: The location. Yemen
2 is looking for a location.

3 BOARD MEMBER ZAIDAIN: Oh.

4 CHAIRPERSON GRIFFIS: They want to locate
5 in this --

6 BOARD MEMBER ZAIDAIN: Well, because I
7 think that would apply to a new chancery use coming
8 into a site that was not previously a chancery use.
9 And I agree, that's the question, and I think if you
10 look at the context of the FMA and the provisions that
11 Ms. Miller cited, I think that's where we get our
12 guidance from. Because as you said, it is a D.C.
13 Zoning Commission issue and they were there to
14 implement the FMA, which talks about the transfer of
15 countries for an existing chancery cannot be regulated
16 by the FMBZA, and that's where I came up with my
17 interpretation.

18 CHAIRPERSON GRIFFIS: Let me see if I
19 understand that. So what was your last statement?
20 The transfer?

21 BOARD MEMBER ZAIDAIN: The transfer of an
22 existing chancery before 1982, transferring between
23 two countries.

24 CHAIRPERSON GRIFFIS: Right.

25 BOARD MEMBER ZAIDAIN: I think that's the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 whole crux of the issue cannot be subject to
2 disapproval of the FMBZA.

3 CHAIRPERSON GRIFFIS: Okay. Ms. Miller?

4 VICE CHAIR MILLER: I get it from the
5 Rules of Statutory Construction that we need to read
6 the reg in a way that it is consist with the statute,
7 and the way Mr. Zaidain has articulated it, it is
8 consistent with the statute. If we were to decide
9 otherwise, it would be inconsistent.

10 CHAIRPERSON GRIFFIS: Where do you find
11 the consistency?

12 VICE CHAIR MILLER: I find the consistency
13 in that it is an exception if we're talking about
14 construction. 4306H-2 talks about use. Is that the
15 way you interpreted it as well? If you interpret it
16 1002.1 to locate, replace or expand as involving
17 construction, that's different from just one embassy
18 taking its place and using the facility.

19 CHAIRPERSON GRIFFIS: I understand.

20 VICE CHAIR MILLER: And 4306H-2 talks in
21 terms of use.

22 BOARD MEMBER ZAIDAIN: Well, I think, you
23 are using the word -- if I understand what you are
24 saying, it's not just use, it's ownership more so to
25 speak. The use of a chancery is already established.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 CHAIRPERSON GRIFFIS: Right.

2 BOARD MEMBER ZAIDAIN: It's who is using?
3 I mean, it's kind of a dual meaning for the word use.

4 CHAIRPERSON GRIFFIS: Occupant.

5 BOARD MEMBER ZAIDAIN: Yes, who is
6 occupying the chancery? The use as a chancery has not
7 changed. It's the fact that it's a different country
8 that's in there now.

9 CHAIRPERSON GRIFFIS: So you are saying,
10 Ms. Miller, that based on the fact that 4306 and other
11 portions deal with occupants and use, that therefore
12 1002.1 has to go to structure and construction?

13 VICE CHAIR MILLER: Yes, that's what I'm
14 saying. I'm saying if they were to undergo
15 construction by expanding the chancery or raising it
16 and putting up a new chancery or --

17 CHAIRPERSON GRIFFIS: I understand all
18 that.

19 VICE CHAIR MILLER: Okay. Then it
20 wouldn't fall under 4306. It wouldn't be
21 inconsistent. If you're just talking about a new
22 embassy moving in, it would fall under 4306 and
23 wouldn't require going before the FMBZA.

24 BOARD MEMBER ZAIDAIN: I think it also
25 goes to the heart of the kind of a theory here with

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 the Diplomatic Overlay. There is an area identified
2 by, you know, the District and the National Capital
3 Planning Commission and other agencies way back when
4 as an area to try to concentrate or try to get the
5 chanceries located in and that became a Diplomatic
6 Overlay. The outlier areas outside of that were to be
7 more restricted.

8 So if you look at 201.M-1, whichever one
9 it is, that's a very restrictive regulation that
10 applies to those outlying. If you look at the
11 Diplomatic Overlay, that is to reflect what the
12 provisions of the FMA and to allow those chanceries
13 that were preexisting to continue existing, granted
14 they don't expand or replace their building or
15 whatever. And I think if you look at it in that
16 context as well, the interpretation is even more
17 clear.

18 CHAIRPERSON GRIFFIS: Okay. So to
19 reiterate, I guess, the point the two of you are
20 making is the fact that 4306H-2, I believe it is, goes
21 towards the continuing use of a chancery if it was
22 established before 1982 and was used by a Foreign
23 Mission. And somehow you made a leap that says that
24 then our Zoning Regulations 1002.1 must then deal with
25 construction as use is taken care of other places.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 That's probably not the most fair terms to put it in.

2 BOARD MEMBER ZAIDAIN: That's all right.
3 That's all right.

4 CHAIRPERSON GRIFFIS: I understand.

5 BOARD MEMBER ZAIDAIN: I understand.
6 Well, I think that it's an interpretative call that we
7 have to make, which we do all the time in appeals, and
8 I think if you look at it in the context of the
9 Foreign Missions Act, what the intent of the
10 Diplomatic Overlay and the outlying regulations are
11 and not to mention the fact that, you know, we have to
12 give some deference that the Zoning Commission knew
13 what it was doing in implementing the FMA, I think --
14 I don't think it is quite a leap.

15 CHAIRPERSON GRIFFIS: Okay.

16 BOARD MEMBER ZAIDAIN: But that's my
17 position.

18 CHAIRPERSON GRIFFIS: Lastly?

19 VICE CHAIR MILLER: I would also say that
20 I think if the Zoning Commission intended us to apply
21 it otherwise, it would have adopted a provision
22 similar to 201.M-1, which is very specific, as applies
23 to the residential areas, and that kind of provision
24 is not listed under Chapter 10.

25 CHAIRPERSON GRIFFIS: I understand your

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 point. That may be problematic and interpretative in
2 the future.

3 VICE CHAIR MILLER: Yes.

4 CHAIRPERSON GRIFFIS: It exists that a
5 section doesn't exist, therefore, it must mean
6 something else. Okay. Anything further? Is there
7 action proposed by the Board then? What do you need?

8 BOARD MEMBER ZAIDAIN: Okay. Thank you.
9 I'll make a motion to deny the Appeal No. 17086 of the
10 Sheridan Kalorama Neighborhood Council pursuant to 11
11 DCMR 3100 and 3101 from the administrative decision of
12 Karen Edwards, General Counsel, of DCRA, allowing the
13 transfer of the Jordanian chancery to the Yemeni
14 chancery without the approval of the Foreign Missions
15 Board of Adjustment in the Diplomatic Overlay R-1-B
16 Zoned property at 2319 Wyoming Avenue, N.W.

17 VICE CHAIR MILLER: Second.

18 CHAIRPERSON GRIFFIS: The motion is before
19 us and has been seconded. Further deliberation on the
20 motion? Any last comments? Very well. I think we
21 have fleshed this out quite thoroughly and gone
22 through the numerous aspects and details on this. It
23 is, and as I said before, fascinating to roll into not
24 only the Zoning Commission's legislative history, but
25 the Senate and the House's legislative history, which

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 was provided, and I know we all reviewed. It was very
2 illuminating. And so let me ask for all those in
3 favor of the motion signify by saying aye.

4 ALL: Aye.

5 CHAIRPERSON GRIFFIS: Opposed? I am
6 opposed. Abstaining? Why don't we record the vote
7 then?

8 MR. MOY: Yes, Mr. Chairman, the staff
9 would record the vote as 3-1-1 on the motion to deny
10 the appeal. Motion from Mr. Zaidain, seconded by Ms.
11 Miller, also in favor of the motion is Mr. Etherly,
12 opposing the motion to deny is Mr. Griffis, the Chair.
13 We also have a proxy from Mr. Parsons, and his
14 absentee vote is to deny the appeal, so that would
15 give a final vote as 4-1-0.

16 CHAIRPERSON GRIFFIS: Is everybody clear?
17 Okay. Thank you, Mr. Moy. Let's move on. What do
18 we have next, 16921? Is that correct?

19 MR. MOY: That's correct. Sorry, I was
20 flipping through my paperwork.

21 CHAIRPERSON GRIFFIS: That is okay.

22 MR. MOY: This is the request for
23 modification to Application No. 16921 of Celia Berg
24 and Jack Benson, pursuant to 11 DCMR 3104.1, for a
25 special exception to allow a rear addition to a

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 single-family dwelling under section 223, not meeting
2 the lot occupancy, section 403, rear yard, section
3 404, and nonconforming structure subsection 2001.3
4 requirements in the R-2 District at premises 4432
5 Faraday Place, N.W., Square 1582, Lot 190.

6 On October 29, 2002, the Board voted to
7 approve the special exception application which would
8 allow a rear addition to a single-family dwelling.
9 The final order was issued on March 24, 2003. The
10 request for modification is -- well, strike that. The
11 applicant has requested modification of the approved
12 plans and these were submitted on February 23, 2004,
13 and that's in your case folder identified as Exhibit
14 46.

15 So, therefore, the action before the Board
16 here is the action on the modification under section
17 3129.1 and .2, waiver of the six month rule under
18 section 3129.3, because the proposed modifications
19 were filed later than the required six months after
20 the date of the final order. We also have filed
21 recently, this morning, Mr. Chairman, I trust the
22 Board Members have this in their case folders by now,
23 a letter from the applicant's architect regarding the
24 revised site plan, rather the revised surveyor's plat.

25 And the letter is dated April 5th and signed by the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 architect, Allen Denniston. And that completes the
2 staff's briefing, Mr. Chairman.

3 CHAIRPERSON GRIFFIS: Thank you very much,
4 Mr. Moy. In fact, yes, we have just been handed this,
5 which is a little problematic in terms of not having
6 had two minutes to review it, but Ms. Miller may buy
7 us some time.

8 VICE CHAIR MILLER: Mr. Chairman, I just
9 want to note for the record I didn't participate in
10 hearing this case, and I will not be participating in
11 the deliberation.

12 CHAIRPERSON GRIFFIS: Do you have any good
13 jokes you could keep people amused with while we read
14 this? To be clear on the modifications, Mr. Moy, as
15 you've indicated was going towards the rear yard
16 setback, also the design in terms of the roof line,
17 which actually was an important aspect to the
18 application, but in all clarity for the submission for
19 a permit, they would need to revise the plans
20 accordingly and the design of the stairway location.

21 BOARD MEMBER ZAIDAIN: Mr. Chair?

22 CHAIRPERSON GRIFFIS: Yes?

23 BOARD MEMBER ZAIDAIN: I think I got a
24 head start on looking through this, so maybe I can
25 point to an issue. I think this is something that we

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 were looking for in able to properly process in terms
2 of the survey plats that came with it. I think the
3 roof line change was reflected in the elevations we
4 received, but we were looking for generally a site
5 plan, and I think we haven't seen it. I don't think
6 that the rear yard is, again, I'm just glancing at
7 this and maybe I'm wrong, not reflected on this new
8 drawing.

9 CHAIRPERSON GRIFFIS: Okay. We've kind of
10 stepped into this and I note that the Zoning
11 Commission Member, Ms. Mitten, had raised concerns
12 about processing this without the site plans Mr.
13 Zaidain was just going to, of which has been delivered
14 to us. Here is the situation. We will need to have a
15 motion to waive the six month rule under 3129.3 in
16 order to deliberate on the proposed modifications that
17 were obviously filed later than six months from the
18 order.

19 BOARD MEMBER ETHERLY: I would so move,
20 Mr. Chair.

21 CHAIRPERSON GRIFFIS: Thank you. Is there
22 a second?

23 BOARD MEMBER ZAIDAIN: I'll second.

24 CHAIRPERSON GRIFFIS: Thanks. I think it
25 is fairly clear in terms of why this has come out and

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 the history we find warrants the request for the
2 modification, so I'll open it up for any further
3 deliberation on the motion to waive our rules. Not
4 noting any, all those in favor signify by saying aye.

5 ALL: Aye.

6 CHAIRPERSON GRIFFIS: Aye. And opposed?
7 Abstaining? Very well. It goes to the next point of
8 the fact of whether we want to take up the
9 modification or the request for modification under
10 3129 at this point or do we have to set this off in
11 order to digest all of the information here? I think,
12 as I had stated it, Ms. Mitten has brought up
13 excellent points that obviously we needed clarity as
14 the lot occupancy was to be adjusted and therefore
15 what were we actually looking at?

16 What I see before us now, and as Mr.
17 Zaidain has laid out, first of all, we do have the
18 narrative that outlines the lot percentage as
19 calculated. We also have the plat and in addition we
20 have the new revised drawings. Of course, all those
21 are attendant and the revised drawings are attendant
22 to the application and are therefore before us for the
23 modification. Obviously, it would have to ride with
24 any sort of order or action and go into permitting.

25 My point being I believe we can move ahead

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 on this if so desired by the Board, but let me hear
2 from others.

3 BOARD MEMBER ETHERLY: I would agree, Mr.
4 Chair. I believe we have adequate information to move
5 forward. I understand Mrs. Mitten's concerns, but I'm
6 always happy to see the ongoing process of resolving
7 concerns at the neighborhood level and I think clearly
8 this project is moving in the direction that is most
9 amenable for a number of the parties involved. In
10 particular, of course, we did entertain significant
11 comment or testimony in opposition to the application
12 from one of the adjacent neighbors and I think the
13 information and direction in which the application is
14 now heading with the modifications, should it be
15 adopted, would address in substantial part those
16 concerns. So I would be supportive of moving forward
17 today, Mr. Chair.

18 CHAIRPERSON GRIFFIS: Good. Thank you
19 very much. And for specificity, it lists the lot
20 occupancy of 34.7 percent with a slight margin for
21 error. So I think your point is well taken, Mr.
22 Etherly. We do like to keep our schedule in motion,
23 but want to make sure that we have all the information
24 that is absolutely and definitively required. Others
25 on that point? Mr. Zaidain?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 BOARD MEMBER ZAIDAIN: Well, have you had
2 a chance to look through those? If you could go to
3 the proposed addition survey?

4 CHAIRPERSON GRIFFIS: Yes.

5 BOARD MEMBER ZAIDAIN: I just want to make
6 sure that -- it's my understanding that they are
7 requesting a rear yard setback change from 8.6 feet to
8 16 and I think that says 19 plus. I don't know. I
9 just want to -- I don't think it is a huge issue,
10 because they are increasing it, which means that, you
11 know, they are not coming out of compliance with
12 something, but I just wanted to know if I
13 misunderstood about something, since we're trying to
14 pin this together.

15 Otherwise, I agree with Mr. Etherly's
16 comment. I mean, it's kind of a rare occasion to see
17 a project that has party in opposition come back for a
18 request for consideration or modification and that
19 party in opposition is in support. So I think this is
20 a direction that we would like to see other issues go,
21 but unfortunately don't very often. But, I mean, I
22 think the elevations as I said reflect the roof line
23 and the stairwell relocation to a point that I'm
24 comfortable with. I was just concerned about the
25 setback on the site plan.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 CHAIRPERSON GRIFFIS: Okay. And you were
2 referring to the 19 feet plus or minus?

3 BOARD MEMBER ZAIDAIN: Yes, am I --

4 CHAIRPERSON GRIFFIS: Is that not the
5 front of the building?

6 BOARD MEMBER ZAIDAIN: You are correct.
7 I'm looking at the hatching room.

8 CHAIRPERSON GRIFFIS: And from the filing
9 of the motion, it says that "Modified addition design
10 requires significantly less variance from the 8 foot
11 rear lot setback." Okay. So 20 feet is the initial
12 that is obviously required. Modified plan includes a
13 16 foot setback, only a 4 foot variation or deviation
14 from required. Compared to the original proposal
15 which contained an 8 foot 6 inch setback.

16 BOARD MEMBER ZAIDAIN: Okay.

17 CHAIRPERSON GRIFFIS: Now, one of the
18 points that that does bring up, however, then is we're
19 looking at two different points of measuring. The
20 plat shows the 9 feet as the addition and the actual
21 submission of the modification shows the setback, but
22 that's not uncommon for us, I believe, to figure out
23 if we could cross-reference the drawings. Do you
24 understand my point?

25 BOARD MEMBER ZAIDAIN: I do.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 CHAIRPERSON GRIFFIS: Okay. You have to
2 believe there's a way to make these more easy to
3 practice, don't you? That's just on the side.

4 BOARD MEMBER ZAIDAIN: But I guess that's
5 why I was looking at that as a front yard, because
6 they are requesting a modification of the rear yard
7 and from my reading of this, they are not really
8 showing the rear yard setback. They are just showing
9 the length of the addition, correct?

10 CHAIRPERSON GRIFFIS: That's correct. The
11 drawings attendant to the request for modification
12 show a 16 foot setback.

13 BOARD MEMBER ZAIDAIN: Well, I guess in
14 terms of the floor plan, the big one that does reflect
15 the setback, I mean, I don't see a stamp, a surveyor's
16 stamp, on this, but there is some sort of --

17 CHAIRPERSON GRIFFIS: What, on the
18 architectural plan?

19 BOARD MEMBER ZAIDAIN: Yes, because I
20 think that's the difference in terms of permitting is
21 they want a certified stamped drawing in order to pull
22 a permit, and I think that's what we're -- right, but
23 that doesn't reflect the rear yard. I'm looking at
24 it.

25 CHAIRPERSON GRIFFIS: No, it reflects the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 addition.

2 BOARD MEMBER ZAIDAIN: Okay.

3 CHAIRPERSON GRIFFIS: These are both going
4 to have to be taken together though.

5 BOARD MEMBER ZAIDAIN: Yes.

6 MS. BERG: Mr. Chair, I just wanted to let
7 you know that I am here if you have any questions.

8 UNIDENTIFIED SPEAKER: As is the party who
9 was originally in opposition.

10 CHAIRPERSON GRIFFIS: Thank you both very
11 much. Well, how does the Board feel? I can certainly
12 set this off, but I think that the information is all
13 there in terms of the correct and accurate
14 dimensioning and what is being modified. I mean,
15 really what we need to do is look at this in terms of
16 what is being modified and we have taken up the motion
17 for a minor modification, so we need to assess, in
18 fact, one, whether this had any or has any impacts
19 materially to the previous application, whether it
20 changes it substantially enough to, well, move us into
21 a different direction, but not necessarily reconsider
22 the entire piece, but to review it within the same
23 frame that we did previously.

24 I think that this on general terms is
25 fairly clear that this actually strengthens the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 previous application, as well as the architectural
2 design, as well as accommodating the concerns of the
3 adjacent neighbor. And I believe that there is
4 substantial enough documentation here that we can be
5 comfortable with the fact of we know what we're
6 looking at, one, and two, when it is actually
7 permitted, that it is absolutely clear what the lot
8 occupancy is and what the rear yard setback is, as
9 well as the side yard and all the other aspects to
10 this.

11 So let me hear from others if they
12 disagree.

13 BOARD MEMBER ZAIDAIN: Mr. Chair, I agree.

14 I think the last thing you hit on there is, I think
15 that's the solution, we have got the information of
16 what they are doing. We have got plans that I think
17 reflect it, and I agree with you in terms of
18 supporting the modification. I think what the problem
19 may be, and it's not necessarily our problem, but in
20 terms of when they go to permitting, they are just
21 going to have to show compliance with our modified
22 order in terms of the setback and the pitch of the
23 roof or the design of the roof line and the stairwell.

24 So I think that there is enough level of
25 detail in the survey drawing and then the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 architectural floor plan that gives me a level of
2 comfort since these are modifications to an
3 application that we went through pretty
4 comprehensively.

5 CHAIRPERSON GRIFFIS: Excellent. Yes?

6 BOARD MEMBER ETHERLY: I agree, Mr. Chair.

7 CHAIRPERSON GRIFFIS: Okay. Then I would
8 move approval of the motion for modification and the
9 approval of plans noting the modified plans include
10 the 16 foot setback in the rear, as well as the roof
11 line modifications as stated in the submission by the
12 applicant, and ask for a second.

13 BOARD MEMBER ETHERLY: Second, Mr. Chair.

14 CHAIRPERSON GRIFFIS: Thank you. I think
15 it's pretty clear that although we have kind of gone
16 back and around this and tried to get the detail, as
17 this document was just handed to us, I think it's
18 fairly clear of the modifications of the stairway and
19 also the rear yard and then the roof line.
20 Previously, in the application, those were issues that
21 created aspects for great deliberation and discussion,
22 and I think that this actually goes in the proper
23 direction of addressing the concerns of the adjacent
24 neighbor and also the concerns of the property owners
25 themselves.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 And therefore, I would ask that all those
2 in favor of the motion signify by saying aye.

3 ALL: Aye.

4 CHAIRPERSON GRIFFIS: Aye. Opposed?

5 MR. MOY: Staff would record the vote to
6 approve the modification of Plans 302 on the motion of
7 the Chair, Mr. Griffis, seconded by Mr. Etherly. Also
8 in support, Mr. Zaidain. We have a Board Member and a
9 Zoning Commission Member not participating on the
10 vote.

11 Mr. Chairman, the staff is asking whether
12 the Board would like a summary order or a full order?

13 MS. BAILEY: Modification order, Mr.
14 Chairman?

15 CHAIRPERSON GRIFFIS: Yes, I think the
16 modification order is fine. Thank you. We're ready
17 whenever you are. Where is it?

18 MR. MOY: The staff has received a fax
19 transmission on the Beech case. Would the Board like
20 to go back to the Beech case or move on to the fifth?

21 CHAIRPERSON GRIFFIS: Yes, this is review
22 on the fly, right, handing information up here?

23 MR. MOY: Yes, sir.

24 CHAIRPERSON GRIFFIS: What are we at?
25 We're at 11:15? We're going to take a five minute

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 break and just review this.

2 (Whereupon, at 11:16 a.m. a recess until
3 11:40 a.m.)

4 CHAIRPERSON GRIFFIS: Very well. Let's
5 resume. I think it would be appropriate to go to
6 Application 17123 at this time.

7 MR. MOY: Yes, that's correct, sir. I
8 have already read the --

9 CHAIRPERSON GRIFFIS: Oh, good, so we're
10 in it.

11 MR. MOY: That's right, sir.

12 CHAIRPERSON GRIFFIS: That's right.
13 Forgive me, just to review this. This letter received
14 today, it's dated April 6, 2004, it's signed by Mr.
15 Andrew Polott, I believe it's the pronunciation, who
16 is one of the partners in the law firm. I think the
17 Board can rely on this letter that indicates that
18 there is proper jurisdiction for the entity to bring
19 the application.

20 Although, I believe that we would want to
21 add to the application the name of Suraj, S-U-R-A-J,
22 Corporation, at this time, in noting that our
23 understanding of the submission by the law firm and
24 also that of the attorney representing the applicant,
25 that they are part of the application unless others

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 want to add to that. Any additional comments? In
2 which case the reliance on this letter and also that
3 of the representation of the attorney, I believe we
4 can continue and process this application.

5 Let me open it up to the Board. We are
6 clearly looking at a variance from the lot area
7 requirements, that is listed under 401.3, to allow the
8 construction of two single-family detached dwellings.

9 This is in R-1-B District on Westover Drive, S.E.
10 And let me open it up to deliberation. Mr. Zaidain?

11 BOARD MEMBER ZAIDAIN: Just very briefly
12 in reviewing the transcript from the previous hearing
13 and looking at this submission from the applicant for
14 our deliberation today, I guess two issues that
15 trouble me. One is the topography issue. You know,
16 the land obviously has some definite hillside issues
17 that the topography is challenged, but I still
18 struggle and maybe somebody else on the Board can
19 convince me otherwise, but I struggled to find the
20 connection between that and lot occupancy.

21 To me, the practical difficulty comes from
22 a construction challenge related to the hillside or
23 trying to preserve that hillside by moving your
24 building somewhere else on the site, which would then
25 lead to like a locational type of variance of your

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 footprint of your building like a front yard setback,
2 side yard setback, etcetera.

3 And I struggled from reading the
4 submissions and reviewing the transcript on what the
5 connection between the topography and the lot
6 occupancy variance is, because these lots are existing
7 and I don't see how granting a smaller lot occupancy
8 is going to help develop this site in a manner that
9 reflects the challenges of the topography, which then
10 leads me to the second issue, is the economic issue,
11 which we are presented with and I think I have been
12 pretty clear on the case about how I struggle with
13 that in terms of granting variances based on economic
14 hardship.

15 So I would like to hear more from the
16 Board Members, but I think that the record really
17 didn't fill out the prongs of the test that we're
18 looking for for a variance, and I was kind of
19 struggling in finding ways to support this. I'm not
20 really sure that the application is there, but, like I
21 said, I would like to hear more from the rest of the
22 Board.

23 BOARD MEMBER ETHERLY: Mr. Chair?

24 CHAIRPERSON GRIFFIS: Yes?

25 BOARD MEMBER ETHERLY: I will agree very

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 quickly and succinctly with Mr. Zaidain in terms of
2 his identification of the weak, the stress points,
3 shall we say, of the two prongs of our variance
4 analysis. I will also note that with regard to
5 substantial detriment, we did of course entertain
6 significant testimony regarding some of the challenges
7 of that particular community from a topographic
8 standpoint as the residences that are currently
9 existing on the side relate to one another.

10 We, of course, heard discussion regarding
11 impacts of land shifting, shifting land impacts on
12 some of the adjacent residential streets. That
13 testimony, let me just put it succinctly, I think for
14 me did raise a question with regard to whether or not
15 the public good would be substantially impaired or
16 otherwise damaged here. And so with those concerns,
17 once again, I'm open to some additional discussion,
18 but I think this application does present some
19 significant shortcomings that do not enable it to meet
20 the variance test. Thank you, Mr. Chair.

21 CHAIRPERSON GRIFFIS: Thank you. Ms.
22 Miller?

23 VICE CHAIR MILLER: I just want to set the
24 framework here perhaps that since this is an area
25 variance, there are three prongs that the applicant

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 needs to meet. One is uniqueness. Two is practical
2 difficulty and three is that there be no detriment to
3 the public good. And I did see some uniqueness in the
4 property in that there is a steep slope and there are
5 some difficult soil conditions. And the connection I
6 see that Mr. Zaidain raised is between the soil
7 conditions and the variance test is because the soil
8 conditions are so difficult. I think that the
9 applicant is arguing that they need to build two
10 houses instead of one in order to have the economics
11 work, and I think we have contradictory evidence in
12 the record.

13 If I recall from the testimony, the
14 applicant said well, if I can't build two, then I will
15 build one. So that said to me that well, then they
16 can build one and that the economics don't rise to the
17 level of practical difficulty to meet the variance
18 test. And I think in the later submissions there is
19 some evidence that there are some economic
20 difficulties in building just one, but it didn't rise
21 to the level for me, given the contradiction in the
22 record, to reach practical difficulty.

23 I think that this case turns a lot on
24 detriment to the public good. We heard an awful lot
25 of testimony from the community about concerns with

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 the soil erosion, and I believe Office of Planning was
2 also concerned about that and opposed to the
3 application.

4 There was a question raised with respect
5 to estoppel, but that also was an equitable doctrine
6 and if there is a question of a detriment to the
7 public, then estoppel won't go in favor of the
8 applicant and the same is true with laches. I think
9 that was raised in the final documents that were
10 submitted, and I didn't see that the District sat on
11 any rights. If this isn't a case where they are
12 taking enforcement at a later point, this is just a
13 question of where the application comes in at a later
14 point and I just don't see that the equities are in
15 favor of the applicant.

16 CHAIRPERSON GRIFFIS: Others? Yes, Mr.
17 Etherly?

18 BOARD MEMBER ETHERLY: I will just also
19 note, of course, and my colleagues are aware, that we
20 are in receipt of the Advisory Neighborhood Commission
21 report of Commission 7B, which was not part of our
22 hearing when we first came together on this case and
23 the ANC is, as is OP, in opposition to the
24 application.

25 CHAIRPERSON GRIFFIS: Indeed. Well noted.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 Others? Ms. Miller, I understand that your point is
2 that in your mind in deliberation that this
3 application does not meet the threshold of the third
4 prong of the test. Is that correct?

5 VICE CHAIR MILLER: Yes, that's correct.

6 CHAIRPERSON GRIFFIS: Okay. And that, as
7 Mr. Etherly has said, is substantiated by the position
8 of the ANC-7B. Is that correct?

9 VICE CHAIR MILLER: Yes, I believe that's
10 true, yes.

11 CHAIRPERSON GRIFFIS: Okay. Others?

12 VICE CHAIR MILLER: I would just add from
13 the ANC report that they say "Be it resolved that for
14 public safety and to minimize risk to surrounding
15 properties, ANC-7B opposes the application of Beech
16 Center, Inc."

17 CHAIRPERSON GRIFFIS: Anything further?
18 Any proposed action by the Board?

19 VICE CHAIR MILLER: Mr. Chairman, I would
20 move that we deny Application No. 17123 of Beech
21 Center, Inc., pursuant to 11 DCMR section 3103.2, for
22 a variance from the lot area requirements under
23 subsection 410.3, to allow the construction of two new
24 single-family detached dwellings in the R-1-B District
25 at premises 3139 and 3143 Westover Drive, S.E., Square

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 5664, Lots 70 and 71.

2 CHAIRPERSON GRIFFIS: Second?

3 BOARD MEMBER ETHERLY: Second, Mr. Chair.

4 CHAIRPERSON GRIFFIS: We have a motion
5 before us that has been seconded. Further
6 deliberation on the motion? If there is nothing
7 further then, I would ask for all those in favor of
8 the motion to signify by saying aye.

9 ALL: Aye.

10 CHAIRPERSON GRIFFIS: Aye. And opposed?

11 MR. MOY: The staff would record the vote
12 as 4-0-0 on the motion to deny the application, the
13 motion by Ms. Miller, the Vice Chair, seconded by Mr.
14 Etherly. Also in favor of the motion, Mr. Zaidain and
15 Mr. Griffis. We also have an absentee vote from Mr.
16 Parsons and his absentee vote is to deny the
17 application, which would give a final vote as 5-0-0.

18 MS. BAILEY: Mr. Chair, could you, please,
19 clarify who seconded the motion for me?

20 CHAIRPERSON GRIFFIS: Mr. Etherly seconded
21 the motion.

22 MS. BAILEY: Thank you, sir.

23 CHAIRPERSON GRIFFIS: Thank you. What's
24 next?

25 MR. MOY: Okay. The next application is

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 Application No. 17130 of James Brady and Neysa Rich,
2 pursuant to 11 DCMR section 3104.1, for a special
3 exception to allow the construction of an accessory
4 garage serving a single-family row dwelling under
5 section 223, not meeting the lot occupancy
6 requirements, section 403, and pursuant to 11 DCMR
7 section 3103.2, a variance from the alley centerline
8 setback requirement for an accessory garage under
9 subsection 2300.2(b) in the R-4 District at premises
10 407 11th Street, S.E., Square 972, Lot 7.

11 On March 23, 2004 the Board completed
12 testimony on the application and scheduled its
13 decision on April 6, 2004. The Board requested that
14 the applicant submit the following post-hearing
15 documents. First, his revised architectural drawings,
16 plans. That was received by the Office of Zoning and
17 is in your case folders identified as Exhibit 28, a
18 letter from the Fire Department addressing any
19 potential safety concerns. The Office of Planning
20 submitted a supplemental report, which comments that
21 they had not received any comments from the Fire and
22 Emergency Medical Services Department. That is
23 identified as Exhibit 29.

24 The Board also requested a letter of
25 support from the neighbor at the rear of the site

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 across the alley and that was received from Jill
2 Lawrence, the neighbor, is a document in support dated
3 April 1, 2004 identified as Exhibit 30. This document
4 is not timely submitted and that completes the staff's
5 briefing, Mr. Chairman.

6 CHAIRPERSON GRIFFIS: Excellent. Thank
7 you, Mr. Moy. First of all, Board Members, I don't
8 see any reason to waive our rules and open the record
9 to accept this submission that Mr. Moy has enumerated
10 unless there is an overall objection or any objection
11 from the Board. We can have further discussion. If
12 not, I will take that as consensus of the Board then
13 and keep the record closed as indicated in our process
14 of the hearing.

15 I'm sure you are all, I know you are all,
16 well aware of this, the facts of this case as we have
17 been deliberating on this, and the issue was that we
18 set this off, so that the documents could be revised
19 or order to reflect distinctly and directly that of
20 the comments that came up in the Public Hearing, but
21 most importantly to correct the aspect of a mezzanine
22 or mezzanine storage in the garage, which would
23 obviously make it a one story structure not two level,
24 a two story structure, which would not be allowed.

25 The submission of the documents as I see

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 them and have reviewed them and I know the other Board
2 Members with great attention, Mr. Mann has gone
3 through and dimensioned all of this and looked at it,
4 but I think on face we can clearly see that a
5 mezzanine as provided for the definition in this
6 Public Hearing and the record was to be one third of
7 the floor below it or no more than one third of the
8 floor below it. Well, we have, approximately, a 20
9 foot dimension of the floor below and a 7 foot, 3 inch
10 dimension of the loft.

11 You know, it perturbs me to have to spend
12 so much time to look at the details. You get
13 everything right, you know, to make sure that it's --
14 well, the time consumption of us to have to get this
15 correct is a bit frustrating. I think this is a very
16 positive application of which the Board spent a great
17 deal amount of time looking at and I, in my personal
18 opinion, don't see, at this point, why it would not
19 proceed to fruition.

20 However, I don't think that we can take up
21 this application, at this time, with the documents as
22 shown and I think we need to send this out for the
23 last time to see whether we can get revised drawings
24 that reflect a mezzanine in conformance with the
25 regulations for our review.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 Otherwise, I think what we're doing is
2 taking an application that is looking at a two level
3 private parking garage and I don't think the case has
4 been made sufficiently to allow, to undergo or that I
5 would support in terms of approval of it and I don't
6 think that's the intention of the applicant either.

7 So with that being said, let me hear from
8 others if they have additional comments or any
9 disagreement with that. Is the applicant present
10 today, Brady, Rich? Not noting any indication of that
11 and nor is their representative not that that makes
12 any matter of fact or difference.

13 But, Mr. Moy, let's set this for next week
14 if we could. If I could rely on staff to just give a
15 brief phone call to them indicating the difficulty the
16 Board had with it.

17 MR. MOY: Yes, sir, staff will take care
18 of that.

19 CHAIRPERSON GRIFFIS: Excellent. Thank
20 you very much. Next week note that our schedule is
21 for a straight 17 hours of hearing as we keep loading
22 all of this up, so let's all get a good night's sleep
23 beforehand.

24 With that, Mr. Moy, let's move on to the
25 next case.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 MR. MOY: The next application is
2 Application No. 17108 of Folger Park North, LLC,
3 pursuant to 11 DCMR section 3103.2, for a variance
4 from the lot width and lot area requirements under
5 section 401, to allow the construction of three flats,
6 two-family dwellings, in the CAP/R-4 District at
7 premises 206, 208 and 210 D Street, S.E., Square 763,
8 Lots 26, 27 and 28.

9 On February 24, 2004 the Board completed
10 testimony on the application and scheduled its
11 decision on April 6, 2004. The Board requested the
12 following post-hearing documents. The first, from the
13 applicant to submit a copy of the property deed from
14 Pepco and that is in your case folders identified as
15 Exhibit 51. From the party opponents, written
16 testimony in opposition that was presented at the
17 February 24, 2004 Public Hearing, and that is also in
18 your case folders identified as Exhibit 52, submitted
19 by Robbins, Kaplan, Miller and Ciresi on behalf of the
20 persons testifying.

21 Also, findings of fact and conclusions of
22 law were submitted into the file from the applicant,
23 which is identified as Exhibit 53 and from the party
24 opponents identified under Exhibit 54. The Office of
25 Zoning has also received from the applicant a request

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 to the Board to receive their objections to the party
2 opponent's proposed findings of fact and order, which
3 is dated April 2, 2004, and that is identified as
4 Exhibit 55 in your case folders, and that completes
5 the staff's briefing, Mr. Chairman.

6 CHAIRPERSON GRIFFIS: Thank you very much,
7 Mr. Moy. Well, it may get redundant with me saying
8 this all the time, but this again is one of the cases
9 clearly this morning that we're looking at, but
10 perhaps of all time this is incredibly detailed and
11 complex in terms of its aspects that we need to focus
12 and make judgment on, meaning looking at the history
13 of how we got to this application of Folger Park North
14 and then all the other attendant issues that came up
15 in the hearing.

16 Clearly, we're here for a variance from
17 the lot with and lot area requirements under 401, but
18 in addition to that there were other issues that were
19 brought up by the adjacent neighbors and some in
20 opposition and some in support. We brought up varying
21 issues of private pathway. There is easement off the
22 lot. We have the Building Code questions. We have
23 the construction means and methods questions and
24 concerns. We have the Storm Water Management
25 environmental aspects.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 Well, let me leave it at that and note
2 for, of course, our understanding, but for the record
3 also to make sure that folks are clear on what we will
4 be basing our deliberation on, there are aspects that
5 are well beyond our jurisdiction.

6 I think that I can speak for the Board in
7 saying we had great concern in looking at some of the
8 issues of the construction and how it may have and did
9 negatively impact the adjacent neighbors in terms of
10 the communication and, you know, the pleasantries and
11 civility of reaction, of course, is also a major
12 concern. The means and methods in Building Codes, the
13 private pathway, which is off of the property and
14 Storm Water Management environmental concerns are all
15 beyond our jurisdiction.

16 We may have compassion and empathy for
17 that, fully understand it, wish often aspects of it
18 had not taken place and whether they did or not, I
19 don't think we're deciding whether it's factual or
20 not, the point being again that it is well beyond our
21 jurisdiction to bring those into the deliberation, but
22 also to have any sort of impact or resolution on the
23 situation.

24 What is before us, of course, is the
25 strict variance test of which has been presented, and

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 I think there is clearly enough in the record for a
2 full and substantial deliberation. And so let me just
3 start us off saying, I think, that in terms of the
4 case that has been presented before us, the uniqueness
5 and practical difficulties, I think, have strongly
6 relied on the zoning history with this application.

7 You know, it was fascinating to look at
8 this, all the documents in this 4 or 5 inch full
9 record and the historic documents and the historic
10 stance granted aside, but it shows how long and
11 involved that this has been starting it with the tax
12 lots, the 800 lots, the single lot and then the
13 subdivision. The point, in fact, of there were
14 existing three townhouses on these, which would have
15 related to the tax lot situation, but that was prior
16 to, of course, the Pepco structure that was built that
17 crossed all three of the lots.

18 All that involved brings us somewhat
19 quickly to where we are today and looking at the
20 variance test. So let me open it up to further
21 deliberation, then I will get back into it, oh, excuse
22 me, if there are others that want to speak. Ms.
23 Miller?

24 VICE CHAIR MILLER: Well, just for clarity
25 as to what we're going to be addressing with respect

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 to the variance test, I think it's important to put in
2 context some of the issues that you touched upon, one
3 being the recorded lots by their surveyor that seem to
4 be narrower than what is allowed under zoning, that
5 plus the regulations that the neighbors raise, that
6 the applicant didn't meet 401.1 or 401.2 or 401.4 and
7 3.

8 I think I see them in the context that
9 well, let's say that's why they need a variance.
10 Let's just assume that they don't meet those
11 regulations and we don't necessarily need to decide on
12 the validity of the lots. We're just going to assume
13 if they are not valid, that they are going to need a
14 variance. So I think that the history of the
15 subdivision issue is what's important to the variance
16 test with respect to either -- well, most likely the
17 zoning history is to the uniqueness prong and
18 practical difficulty prong. So I just want to put
19 that in for context.

20 CHAIRPERSON GRIFFIS: Excellent point.
21 And I think that's exactly correct, that that's the
22 point of -- well, as they say, the point of departure
23 for our deliberation on the variance is exactly that.

24 We have before us a fact that there is a subdivision
25 in place and we are looking at the aspect of them not

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 being of the required size and, therefore, looking for
2 the uniqueness and practical difficulty. Did you want
3 to speak to those in continuing on?

4 VICE CHAIR MILLER: Okay. With respect to
5 uniqueness, I think the zoning history is pretty
6 strong for this applicant in that we have evidence in
7 the record that the applicant and its architect and
8 zoning consultant were advised at least seven times,
9 is what's in the record, that construction on the
10 property was a matter-of-right on the three separate
11 lots.

12 And I think that it was reasonable for the
13 applicants to rely on the surveyor's plat and the
14 representation from DCRA in this case. There is
15 certainly support by the Court of Appeals and this
16 Board that this type of zoning history can rise to
17 meet the uniqueness test. There is the De Azcarate
18 case and the Monaco case.

19 Then we get to the practical difficulty
20 prong. I think given that there was reasonable
21 reliance, I think there is in the record that by the
22 second Stop Work Order the applicant had spent \$1.2
23 million and by the time of the hearing had expended
24 \$2.4 million, and I think that's a pretty sizeable
25 amount.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 And let's see, there is also testimony, I
2 believe, from an ANC Commissioner, as well, a concern
3 that if this variance is not granted, that the
4 applicant may face bankruptcy and what would be left
5 would be an abandoned building.

6 I think to me what turns most for this
7 case is the third prong even, which is the public good
8 and no detriment to the integrity of the Zoning
9 Regulations and Map, if the variance is granted. In
10 contrast to the case we previously heard this morning
11 or decided where we found public detriment for a
12 variance, in this case there is a lot of evidence for
13 public good. The three buildings improve the
14 property. The previous use of the property was an
15 abandoned Pepco station. It brings residential
16 housing to the neighborhood, which is one of the goals
17 of the Comprehensive Plan of this mayor.

18 There was testimony about the increased
19 density by the neighbors and I didn't find undue
20 density. We're talking here about an increase by only
21 one flat, which would be, I think, at most four people
22 on a block where a park is across the street. Also,
23 in this case there is evidence from HPRB and OP that
24 the buildings are in character with the neighborhood
25 and, again, I guess for the public good, the ANC

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 representative testified that the alternative might be
2 abandonment, which would bring problems to this
3 neighborhood.

4 So for all those reasons, I would support
5 granting the variance.

6 CHAIRPERSON GRIFFIS: Excellent. Very
7 well said, I think, hitting on the fact of the
8 density. I mean, we're looking at, for instance, the
9 lot width dimension. If you added 2 feet, would that
10 support a family then? Meaning how much density is,
11 actually in terms of context, being put here in order
12 for us to weigh the detrimental impact to it?

13 There was concern, of course, of the
14 parking that was indicated in the application that one
15 would be provided as is required by the regulations.
16 There was an objection raised whether the easement for
17 the shared driveway was properly in place and, again,
18 that is going to step beyond what the application is
19 actually for and is before us with. Clearly, we are
20 looking at this as complying with the requirements of
21 parking as it's not here for any sort of relief from
22 parking.

23 And so I think you well said it in terms
24 of the density not rising to the level of creating a
25 detriment to the public good and it certainly is, as

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 you said, I think in terms of the Historic
2 Preservation Review, stays in character, but most
3 importantly what that -- I think one can also look at
4 and I think in our deliberation we can note that in
5 the R-4 it is clearly a use and massing that is in
6 respect to the Zone Plan and Map.

7 You indicated at first, if I understand
8 you correctly, that the exceptional situation is
9 really the zoning history, is that correct, that
10 creates its essential practical difficulty of being
11 able to build on these lots. Is that my understanding
12 of your statements?

13 VICE CHAIR MILLER: Yes.

14 CHAIRPERSON GRIFFIS: Okay. So very well.

15 Let's move on then. Others? Let me note the fact
16 that also in the submissions, in the proposed findings
17 and conclusions by the neighbors in opposition to the
18 application, brought up the issue of whether a side
19 yard was required under section 405, I believe is the
20 section regulating side yards. I will note that I do
21 not believe we'll have any deliberation on that issue
22 as we have an application before us that is asking for
23 certain and specific relief.

24 Anything, of course, outside of that
25 request for relief, if needed and not requested and

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 granted, would be picked up by the Zoning
2 Administrator in permit processing and if it wasn't in
3 conformance, would be sent back to us in order for
4 further review and relief. Although, I would love to
5 take up the discussion of side yards and what the
6 requirements are, especially in this particular
7 application, I believe this Board's last action on
8 that are enough said on it, and I think we can move
9 on. Unless others disagree, I think that is the way
10 we ought to look at it.

11 Some of the other aspects, I think, in
12 terms of just filling out the circumstances and the
13 unique circumstances that relate to this situation and
14 I think they do rise, as Ms. Miller has indicated, to
15 exceptional circumstances, and I believe I mentioned
16 them in my brief overview of the history of this, is
17 the fact that the existence of three townhouses and
18 why is that important? Of course, the tax lots, the
19 800 lots were made and may well have or could have, at
20 some point, not may well have, they could have, at
21 some point, then been recorded into recordation lots.

22 This was not done based on somewhat the
23 ownership and the use that continued from, I believe,
24 if I'm not mistaken, the '40s on past 1958 and to the
25 point at which it was then subdivided. The point

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 being at some time previously, if needed, it could
2 have been recorded in. That it wasn't based on this
3 kind of unique utilization of the three lots or the
4 three tax lots, I think, also goes to the
5 circumstances that are exceptional and that have
6 created the fact that they would not then be buildable
7 and that, obviously, is a practical difficulty.

8 Let me also go back to some of the aspects
9 that I summarized in terms of, quite frankly, some, I
10 found, quite disturbing testimony and submissions on
11 the practice and the relations with the surrounding
12 neighbors. I mean, certainly any urban, and certainly
13 in residential, but any urban development is going to
14 be a little bit inconvenient, but throwing in
15 difficulties of either miscommunication or very poor
16 communication and not maintaining the safety and
17 stability of the adjacent neighbors and their
18 property, I think, is of great concern and I certainly
19 hope that that hasn't continued to date and would not
20 continue at all no matter what the outcome of this
21 hearing is.

22 And so I say that just to note, again, to
23 underscore the fact of how important. This Board, I
24 know, understands these issues, but let us go back to
25 the test then if there is anything else required to be

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 stated on this or we can take up action at this time.

2 Ms. Miller?

3 VICE CHAIR MILLER: I just also want to
4 note for the record that there were allegations that
5 DCRA's actions were a result of misrepresentations by
6 the applicant and I didn't find that substantiated in
7 the record. I mean, if we did find that way, we may
8 have decided otherwise, but I didn't.

9 CHAIRPERSON GRIFFIS: But misstatements of
10 the applicant were going to the establishment of the
11 subdivision, were they not?

12 VICE CHAIR MILLER: You're asking me
13 specifically?

14 CHAIRPERSON GRIFFIS: Yes.

15 VICE CHAIR MILLER: My general impression
16 is that there were more than one allegation of
17 misrepresentations and the point was that DCRA's
18 actions were a result of these misrepresentations.

19 CHAIRPERSON GRIFFIS: I see.

20 VICE CHAIR MILLER: Which may have
21 included the subdivisions.

22 CHAIRPERSON GRIFFIS: Okay.

23 VICE CHAIR MILLER: But I'm just finding
24 in general that I didn't see that.

25 CHAIRPERSON GRIFFIS: Okay. But from your

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 opening statement, and I absolutely concurred with
2 that, is if we're taking this at the point of
3 departure of we have the subdivision, the actions are
4 done. We're not questioning the actions at this
5 point. The actions are what they are and now, we just
6 have the variance based on three nonconforming lots.

7 VICE CHAIR MILLER: That's true. However,
8 if we're relying on the zoning history to meet the
9 uniqueness test and it was, you know, colored by
10 misrepresentations, we might not find that way.

11 CHAIRPERSON GRIFFIS: Excellent point, one
12 of those vicious circles we keep getting caught in.
13 Okay. Others?

14 BOARD MEMBER ETHERLY: Mr. Chair?

15 CHAIRPERSON GRIFFIS: Yes?

16 BOARD MEMBER ETHERLY: I'm in agreement
17 with your analysis and that of my colleague, Mrs.
18 Miller, as it relates to prongs two and three of the
19 relief that's requested here. What I'm interested in
20 is perhaps making certain that I'm clear with regard
21 to the uniqueness or other exceptional situations or
22 conditions here.

23 You just noted that with respect to the
24 zoning history, is our decision reaching consideration
25 of that zoning history and, in particular, the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 subdivision as part and parcel of the exceptional
2 circumstances? The reason why I inquire that is, of
3 course, my colleagues are familiar with the frequency
4 with which we have arguments around alleged errors or
5 other missteps or misstatements that have been relied
6 on, and I want to be sure that we're very clear in
7 perhaps what takes this situation a little further
8 beyond what we typically see as part of allegations
9 concerning, you know, be it appeals or be it other
10 applications.

11 So I just want to be sure that I'm clear
12 that as we look at exceptional situations or
13 conditions here, our discussion of the zoning history
14 of this property is also inclusive of the subdivision
15 and subsequent reliance there.

16 CHAIRPERSON GRIFFIS: I absolutely agree.
17 I think that's a lot of what I was trying to --

18 BOARD MEMBER ETHERLY: Okay.

19 CHAIRPERSON GRIFFIS: -- briefly
20 deliberate on, but yes, this has a very unique zoning
21 history to it from the 800 lots to even the lot for
22 the Pepco, the Pepco structure crossing each of the
23 800 lots. I mean, we looked at action on the creation
24 of let's say, well, I mean, there was action all the
25 way back to the 1700s on this in dealing with it,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 which I think it does inform and does create quite a
2 unique zoning history.

3 VICE CHAIR MILLER: I would like to add to
4 that also. It is somewhat of a subjective judgment.
5 This is somewhat of an equitable issue, as well, and I
6 think that what did it for me was one, how many
7 approvals they were relying on, how many documents.
8 It is documented in their pleadings, but it was at
9 least seven times. It wasn't just one official. And
10 what were these documents? You know, it was a
11 surveyor's plat. It was permits. It was a variety of
12 documents and officials that an applicant should be
13 able to reasonably rely on.

14 So if you add them up to at least seven, I
15 don't think we see that very often. We see sometimes
16 like one document. And again with what the Chairman
17 said, I think that this zoning history is extremely
18 unique. It's not the norm that we see.

19 CHAIRPERSON GRIFFIS: Good. Thank you.
20 Although, it was stated there were seven approvals
21 that were relied on or seven reviews and
22 interpretation, I think the Board would probably
23 disagree with actually how many or whether the HPRB,
24 Historic Preservation staff members, called the DCRA
25 to see if this was okay with Zoning and they were told

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 yes, it was, is some sort of an official or even
2 anything that one should rely on in terms of
3 interpretation. Yes, clearly, one, I think, could be
4 added a bit of comfort in that it wasn't stated
5 directly that you were not, but I don't think you can
6 proceed ahead.

7 However, with the accumulation of all the
8 actions and I think the issue, as I stated before,
9 goes to other information that we can actually rely on
10 in terms of the test for the variance and I think it's
11 more appropriate to do that. And that is, you know,
12 that actually it goes more towards the third prong
13 about whether, clearly, Historic Preservation is
14 looking to see whether it fits within the Historic
15 District and that would speak to the fact of whether
16 it was properly massed and designed, and that is, I
17 think, something that we would look at, is whether it
18 would fall within the Zone Map and Plan or be any sort
19 of detriment to the public good. Obviously, if it
20 fits fairly well with the surrounding area, that small
21 aspect of what we look at, I think, is addressed.
22 Okay.

23 VICE CHAIR MILLER: I also want to note
24 for the record, it is in the record, that Office of
25 Planning doesn't address this kind of uniqueness and

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 leaves that up to the Board. So with respect to that
2 issue, we don't have anything upon which to give great
3 weight to OP on that question.

4 CHAIRPERSON GRIFFIS: All right. Very
5 well. I appreciate the deliberation on this. I will
6 ask the Board for action in a moment, but I also
7 wanted just to follow-up with -- Mr. Moy, I know,
8 indicated that we had Exhibit 55 that was submitted
9 into the Office of Zoning. I believe that it is
10 appropriate for us to waive our rules in terms of
11 finding and accept that into the record. Well, I
12 don't believe it will prejudice anybody involved in
13 this if we accept that unless there is any great
14 objection from the Board. Not noting any objection,
15 we can continue on with this then.

16 Is there a motion for action then in this
17 case, Ms. Miller?

18 VICE CHAIR MILLER: Mr. Chairman, I would
19 move to grant Application No. 17108 of Folger Park
20 North, LLC, pursuant to 11 DCMR section 3103.2, for a
21 variance from the lot width and lot area requirements
22 under section 401, to allow the construction of three
23 flats, two-family dwellings, in the CAP/R-4 District
24 at premises 206, 208 and 210 D Street, S.E., Square
25 763, Lots 26, 27 and 28.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 CHAIRPERSON GRIFFIS: Thank you. Is there
2 a second?

3 BOARD MEMBER ETHERLY: Seconded, Mr.
4 Chair.

5 CHAIRPERSON GRIFFIS: Thank you, Mr.
6 Etherly. Further deliberation of the Board on the
7 motion? Is anything further needed? I think it is
8 very sufficient in terms of deliberation that's here
9 and also that of the testimony or rather, our comments
10 in the record and the submissions here.

11 So I would ask that all those in favor
12 signify by saying aye.

13 ALL: Aye.

14 CHAIRPERSON GRIFFIS: And opposed?

15 MR. MOY: Staff would record the vote to
16 grant the application as 3-0-1 on the motion of Ms.
17 Miller, the Vice Chairperson, seconded by Mr. Etherly.

18 Also in support of the motion, Mr. Griffis, the
19 Chair. We have one Board Member not participating.
20 Mr. Chairman, we also have an absentee vote from Mr.
21 Hood whose vote is to approve the application, which
22 would give a final vote as 4-0-1.

23 CHAIRPERSON GRIFFIS: Excellent. Thank
24 you very much, Mr. Moy. The motion was made by the
25 Vice Chair, Ms. Miller, and seconded by Mr. Etherly.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 Is that correct?

2 MR. MOY: Yes, sir.

3 CHAIRPERSON GRIFFIS: Excellent. Thank
4 you very much. Is there anything else for our
5 attention this morning in this session?

6 MR. MOY: No, sir.

7 CHAIRPERSON GRIFFIS: Really? Well,
8 that's darn good news then. If there is nothing
9 further then for the Board's consideration, I would
10 adjourn the morning Public Meeting of April 6, 2004.

11 (Whereupon, the Public Meeting was
12 concluded at 12:27 p.m.)
13
14
15
16
17
18
19
20
21
22
23

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com