

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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SPECIAL PUBLIC MEETING

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TUESDAY

JUNE 22, 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 L. ETHERLY, JR.	Board Member
JOHN MANN	Board Member

ZONING COMMISSION MEMBERS PRESENT:

ANTHONY J. HOOD	Commissioner
JOHN G. PARSONS	Commissioner

OFFICE OF ZONING STAFF PRESENT:

Clifford Moy,	Acting Secretary
Beverly Bailey,	Zoning Specialist
John A. Myarku,	Zoning Specialist

OTHER AGENCY STAFF PRESENT:

Karen Thomas
Kevin Hildebrand
Steven Cochran
Travis Parker

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

Time: 9:25 a.m.

CHAIRPERSON GRIFFIS: Good morning. My name is Geoffrey Griffis. With me I have Ms. Miller, Vice Chair. Also, with the Office of Zoning are Mrs. Bailey and Mr. Moy. We will begin soon with the proceedings.

Also, just to let people know what this special Public Meeting is, it is a time where we have already heard applications on proposed developments. We are going into our own deliberation. It is decision making for the Board. We will not hear any sort of additional testimony from anyone in the audience. However, we are pleased that people are here to watch and listen closely to our decision making process.

With that, I think we should call the first case for decision this morning, and I would ask that 17165 be called first. Let me give the order of our decision making this morning.

As we go through this, we are going to have 17165, which is the Public Storage. We will then go to 17109, which is the appeal of Kalorama Citizen's Association. We will then go to 17164 which is the motion on the St. Patrick's facility, and then 17100

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1 which is the motion for reconsideration on an
2 application.

3 We will take a short break just to change
4 out the Zoning Commission after the two cases in the
5 morning. With that, I bid a very good morning to Ms.
6 Bailey and Mr. Moy who are here with the Office of
7 Zoning. Ms. Bailey, if you wouldn't mind -- or Mr.
8 Moy, rather. Thank you.

9 MR. MOY: Good morning, Mr. Chairman,
10 members of the Board. The first case for decision is
11 Application No. 17165 of Public Storage, Inc.,
12 pursuant to 11 DCMR 3103.2, for a variance from the
13 off-street parking requirements under subsection
14 2101.1, and a variance from the loading requirements
15 under subsection 2201.1, to permit the development of
16 a three-story self-storage facility in the C-M-1
17 District at premises 1600-1618 Bladensburg Road, N.E.
18 (Square 4273, Lots 3 and 4).

19 On June 8, 2004, the Board completed
20 public testimony on the application and scheduled its
21 decision on June 22, 2004. The Board requested that
22 the applicant submit the following post-hearing
23 document, which are elevation plans and narrative
24 addressing the Board's signage concerns.

25 The applicant filed the submission, and it

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1 is in your case folders as Exhibit Number 30. It came
2 actually a day late, and they also submitted
3 additional filing which replaced the first four sheets
4 of Exhibit 30, which is Exhibit 31. That completes
5 the staff's briefing, Mr. Chairman.

6 CHAIRPERSON GRIFFIS: Thank you very much,
7 Mr. Moy. I have not heard this case. I will not be
8 participating in the decision making, and will return
9 for the second. Madam Vice Chair.

10 VICE CHAIRPERSON MILLER: I would suggest
11 that we first deal by consensus with a preliminary
12 matter, which is waiving the filing date for the
13 supplemental pleading that we suggested addressing the
14 signage concern. Is there consensus? Okay.

15 Then I will just do a quick summary of
16 what we have before us, which is an application for
17 variance relief to develop a self-storage facility on
18 a site that is currently being used as a used car
19 sales lot in a C-M-1 District.

20 The proposal is for a three-story self-
21 storage facility that contains a gross floor area of
22 80,121 square feet. The proposed building would
23 include 556 individual storage units.

24 The applicant is seeking a variance from
25 parking and loading requirements set forth at 2101.1

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1 and 2202.1 that set forth parking and loading
2 requirements that apply to a warehouse in a C-M-1
3 District.

4 The District doesn't have any regulations
5 that particularly apply to public storage facilities
6 of this kind which generate a much lower impact and
7 lesser requirements for loading and parking. So they
8 are seeking a variance from the warehouse regulations,
9 because these are the closest regulations to this type
10 of operation, and the variance go to just the parking
11 and loading requirements.

12 First as to the warehouse regulations, one
13 space per 3,000 square feet is required, in which case
14 they would need 27 spaces, and applicant is seeking to
15 provide nine spaces here plus two stacked for
16 employees instead of the required 27.

17 With respect to the loading requirements,
18 2201.1 requires two loading berths, one 30 feet and
19 the other 35 feet deep, each requiring a loading
20 platform. Applicant is proposing to provide one
21 loading berth with a 35 foot depth.

22 So our variance test based on 3103.2, we
23 need to find uniqueness. We need to find that that
24 uniqueness creates a practical difficulty for the
25 applicant, and that the requested variances will not

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1 result in substantial detriment to the public good or
2 the zone plan.

3 The uniqueness here is that the property
4 is triangular in shape. It is bounded by neighboring
5 properties, including a cemetery, that preclude
6 acquisition of land to rectify constraints of this
7 configuration.

8 The practical difficulty, as I see it, is
9 that the triangular shape and constraints to expansion
10 lead to the practical difficulty of fitting in the
11 required loading and parking spaces without
12 undermining the viability of the operation.

13 With respect to no detriment to the public
14 good, the variances themselves with respect to parking
15 and loading don't create any public detriment, but we
16 do have an issue that we were having the party address
17 with respect to the signage, which we can get to in a
18 moment.

19 Office of Planning supports the
20 application. They found it compatible with the
21 comprehensive plan. In addition, the ANC Commissioner
22 for the specific area supports the application, but
23 the applicant was never able to get approval by the
24 ANC as a whole, because they weren't able to have a
25 quorum each time they met.

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1 Then there was a traffic study, finding no
2 detrimental impact.

3 So I guess, in my view, they have met the
4 test. However, I know there is a concern on this
5 Board with respect to the signage, and I think that
6 Mr. Parsons would probably want to address that.

7 COMMISSIONER PARSONS: Thank you, Madam
8 Chair. I agree with you. Certainly, the parking lot
9 or existing use is one that is undesirable. However,
10 this site is surrounded by open space, cemetery on one
11 side, the Arboretum on the other, and the exhibits
12 shown that came in a day late but not short shows that
13 the building regulations of the District of Columbia
14 would permit almost 100 feet of signs on this
15 building.

16 The building is 156 feet long, and I just
17 think it is excessive. One, they've got a distinct
18 marketing advantage here. They are surrounded by
19 green space. There is no competition for signs, and
20 these signs facing Bladensburg Road especially, I
21 find, are detrimental to the public good, in my
22 judgment.

23 So I would urge my colleagues to come to
24 the same conclusion, and I would suggest that we
25 reduce the signage to two, and that is the ones at the

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1 first floor level. As shown on this exhibit on both
2 walls of the building, the south elevation and east
3 elevation, I think it would be perfectly adequate to
4 let people know they are in business as a public
5 storage unit, in that they are really an isolated
6 island here in open space, and the size of the
7 building. So that is my view.

8 VICE CHAIRPERSON MILLER: Okay. My
9 understanding is that they were proposing six signs.

10 COMMISSIONER PARSONS: Correct. I would
11 like to reduce that to two.

12 VICE CHAIRPERSON MILLER: Reduce it to
13 two?

14 COMMISSIONER PARSONS: At the first floor
15 level.

16 VICE CHAIRPERSON MILLER: These would
17 front which street?

18 COMMISSIONER PARSONS: One on Bladensburg
19 Road and one on the south elevation, which is where
20 the parking lot is.

21 VICE CHAIRPERSON MILLER: Okay.

22 COMMISSIONER PARSONS: Nothing at the
23 upper story levels.

24 VICE CHAIRPERSON MILLER: Okay. So would
25 you propose that we grant the variance subject to

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1 condition that there only be two signs, one at each of
2 those locations that you suggested?

3 COMMISSIONER PARSONS; Right. As shown on
4 the exhibit, there are two. One is 2 x 23 feet facing
5 south, and one is 2 x 22 feet on the east elevation.
6 That is shown on A-5 of their recent submission,
7 Drawing Number A-5.

8 VICE CHAIRPERSON MILLER: And the
9 condition would be based on the fact that otherwise
10 six signs would create an adverse impact on
11 environment, in particular the Arboretum across the
12 street?

13 COMMISSIONER PARSONS: Correct.

14 MEMBER MANN: I have a question about
15 that. I think that, Mr. Parsons has stated that the
16 aesthetic impact is less than desirable, but just
17 perhaps for my own clarification: If they were not
18 seeking a parking variance and they were building what
19 they could as a matter of right, then the signs would
20 not be at issue at all. Is that correct?

21 COMMISSIONER PARSONS: It wouldn't be
22 before us. Right. So I am hanging my hook on
23 detriment to the public good.

24 VICE CHAIRPERSON MILLER: Okay. Is there
25 any further discussion? Okay. Mr. Parsons, do you

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1 want to move this?

2 COMMISSIONER PARSONS: I move then that we
3 grant the application and condition it with the fact
4 that there would only be two signs on the building, as
5 shown on Exhibit -- Well, it is Exhibit Number 30, I
6 believe, in our record, Sheet A-5, that shows two
7 signs at the first floor level, one over an entrance
8 on the south elevation and one facing Bladensburg
9 Road, and not the signs on the remainder of the
10 building as shown on this exhibit.

11 VICE CHAIRPERSON MILLER: Okay. I will
12 second the motion. Any further discussion? Okay. All
13 those in favor, say Aye. All those opposed? All
14 those abstaining?

15 MR. MOY: Staff would record the vote as
16 four-zero-one on the motion to grant the application
17 on the condition as stated on the motion of Mr.
18 Parsons, seconded by Ms. Miller. Also in favor of the
19 motion, Mr. Mann and Mr. Etherly, and we have the
20 Chairman, Mr. Griffis, not participating on the case.

21 VICE CHAIRPERSON MILLER: And I think that
22 can be a summary order. There was no opposition in
23 this case.

24 MR. MOY: The next case for decision is
25 the appeal of Application Number 17109 of Kalorama

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1 Citizens Association, pursuant to 11 DCMR 3100 and
2 3112, from the administrative decision of David
3 Clarke, Director, Department of Consumer and
4 Regulatory Affairs, from the issuance of Billing
5 Permit Numbers, B, as in bravo, 455571 and B, as in
6 bravo, 455873, dated October 6, 2003 and October 16,
7 2003, respectively, to Montrose LLC to adjust the
8 building height to 70 feet and to revise penthouse
9 roof structure plans to construct a five-story
10 apartment house in the R-5-D district.

11 The Appellant alleges that the under
12 construction building is in violation of the building
13 height, floor area ratio and roof structure setback
14 requirements of the zoning regulations. The subject
15 property is located at 1819 Belmont Road, Northwest,
16 Square 2551, Lot 45.

17 On April 20 of 2004, the Board completed
18 public testimony on the application and scheduled its
19 decision on June 8, 2004. And on June 8, 2004, the
20 Board rescheduled its decision to today, June 22.

21 The Board previously had asked for post-
22 hearing documents from the Appellant, a supplemental
23 statement addressing the BZA jurisdiction over the
24 Height Act issues and response to documents submitted
25 by the Intervenor. This was filed by the Appellant

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1 and is in your case folders as Exhibits 77 and 75,
2 respectively.

3 From DCRA, a response to Jim Fahey's
4 memorandum, dated September 11, 1990. Now, this is
5 also in your case folders, identified as Exhibit 78.
6 This is a letter of Denzel Nobel, Acting Zoning
7 Administrator at DCRA.

8 Finally, the Board also requested proposed
9 findings of fact and conclusions of law, and the
10 filings were submitted by the Appellant, the
11 Intervenor and the Appellee. These are identified as
12 Exhibits 79, 80 and 81, respectively.

13 And that completes the staff's briefing,
14 Mr. Chairman.

15 CHAIRMAN GRIFFIS: Good. Thank you very
16 much, Mr. Moy, appreciate that.

17 This is obviously a very complicated and
18 issue-specific case, as we find that most appeals are.

19 I want to get quickly into this. We have numerous
20 elements to talk about, which are part of the appeal,
21 the majority of which rise out of the height of the
22 building and how it is to be calculated and what
23 elements go into that calculation and actually whether
24 the BZA has jurisdiction to look at this appeal for
25 those elements.

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1 We also have the fact of the penthouse
2 structure and the setbacks and where are those
3 calculated and required to be calculated from. We
4 have an issue of an attic, an attic space that's been
5 defined by the developer and whether it is within the
6 definition of the regulation as is allowable as an
7 attic, which would not count to FAR. We had the FAR
8 calculations for other portions of the building and
9 the process of how the FAR was calculated and whether
10 the Zoning Administrator erred in making their
11 calculations for the compliant FAR for this structure.

12 I believe, lastly, there is the issue of
13 whether the appeal was timely filed. We have
14 dispensed with that in a preliminary deliberation and
15 vote, but I do want to enumerate that again as a large
16 portion of what the appeal was based, as well as the
17 other motions that were attendant to that.

18 Getting right into it, I think we're going
19 to be expeditious in looking at all of these issues.
20 First of all, I think that when this came to us --
21 well, let me say, this building has been described as
22 sticking out like a sore thumb. I think in the
23 evidence and the photographs that have been provided,
24 there is no question that it is taller than the
25 adjacent buildings. I think that it is an aesthetic

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1 opinion of whether it fits in or doesn't fit in;
2 however, I don't think it's a very close one. It is
3 clearly out of context with the rest of the block and
4 the adjacent structure.

5 The basis of the appeal, of course, is not
6 whether it is in context, whether it fits in or
7 whether it doesn't fit in. One of the difficulties I
8 had in deliberating on this, reviewing and hearing the
9 entire appeal, was the fact that really we are up
10 against what the zone district is. The Zoning
11 Commission laid out the R-5-D zone for this, which
12 gave it an extreme amount of height. Of course, the
13 Height Act then comes into play in terms of
14 calculating what would actually be allowable, but the
15 R-5-D was a 90-foot height. Clearly, it puts itself
16 out of context with what was an existing developed
17 block and, frankly, as has been evidenced in the case
18 record, a very contextual block for this part of the
19 District of Columbia.

20 So we're being asked, obviously, to review
21 on the facts and the substance of what's being raised
22 here with all the issues, but I don't think any Board
23 member is -- well, I think all Board members and
24 myself clearly, clearly understand a community's
25 street view of a building that is out of context and

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1 wonder how it could have happened, but we are, of
2 course, required to look at the regulations, and it
3 seems -- frankly, I start to question how it ever
4 became an R-5-D zone, but that's not what's before us.

5 So let us get into the issues at hand, and
6 I think the first and most important that will really
7 fall out of some of the other issues is whether -- and
8 it has been briefed by all those participating in the
9 appeal -- whether the BZA has the jurisdiction to look
10 at those elements that go towards the calculation of
11 the height of this building within this appeal, and
12 I'll open it up for folks to discuss.

13 VICE CHAIRPERSON MILLER: Okay. I'll
14 start. I think the parties did an excellent,
15 excellent job in briefing this matter, and I think it
16 came before us because Corporation Counsel under the
17 Height Act has the authority to enforce the Height
18 Act, and so the question came as to whether this Board
19 then had jurisdiction over the Height Act.

20 And I certainly looked at all the statutes
21 that were referenced in the pleadings and that were
22 not, and I think that the BZA certainly does have
23 jurisdiction over the Height Act. The Height Act
24 permeates our regulations, and we have statutory
25 authorities set forth in 6-641.07, which provides for

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1 appeals being taken to the BZA based in whole or part
2 upon any zoning regulation or map adopted under this
3 subchapter. And GA Section G1 gives us the authority
4 to hear and decide appeals where it's alleged by the
5 Appellant that there is error in any order decision,
6 determination, et cetera, in the carrying out or
7 enforcement of any regulation adopted, pursuant to
8 this subchapter.

9 I believe that Office of Corporation's
10 powers are a complement to the BZA's. The BZA isn't
11 exactly enforcing in this case. What we're doing is
12 determining whether or not an error has been made in
13 the issuance of a permit.

14 CHAIRMAN GRIFFIS: Good. I think that's
15 excellently stated, and I would tend to agree. I
16 think for clarity in my thought and process in looking
17 at this is whether -- and it's clear, as you've
18 stated, that the BZA is the proper board to bring
19 appeals of the issuance of a permit and to establish
20 whether that permit was issued in error. Based on the
21 fact that this building was issued a permit, that
22 permit is under appeal, and attendant to the issuance
23 of that permit was the review of several elements,
24 roof structures and the calculation of the height of
25 the building. I think it is fully within the

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1 jurisdiction of the BZA to review those elements of
2 the building permit that was issued in this appeal.
3 Others? Any opposition to those statements?

4 MR. PARSONS: I concur with the comments.

5 CHAIRMAN GRIFFIS: Mr. Parson concurs. I
6 appreciate that. Very well. I think we can move on
7 to the next issue attendant with this, and I think
8 I'll leave it open to suggestion of what people would
9 like to take on at this point. I think perhaps the
10 roof deck and railing issue may be appropriate to go
11 to or we can do whatever folks want to. Mr. Mann, did
12 you want to weigh in?

13 MR. MANN: I was just going to suggest
14 that we start at the basement and work our way up.

15 CHAIRMAN GRIFFIS: Fabulous idea. Let's
16 do that then and talk about the FAR calculations
17 attendant to the basement level. Of course, this was
18 established to be a partial cellar and partial
19 basement, and the question in the appeal was how one
20 was to calculate that. The Zoning Administrator, of
21 course, testified on their calculation and also
22 provided the specific calculations for what's at issue
23 here, whether there is a great plane calculation to
24 establish FAR or whether there is the perimeter ratio
25 calculation. Did you want to start discussion on

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1 that?

2 MR. MANN: Well, I was going to suggest
3 that my observation was that we heard two different
4 methodologies, both of which seem entirely and seem
5 entirely acceptable, at least at one point in time or
6 another, and so the question is which one is more
7 valid and more acceptable at this point in time. And
8 it seems to me that the Zoning Administrator has a
9 certain amount of discretion and has for some time
10 been applying one particular methodology, and who are
11 we to disagree with the methodology that he chose to
12 use?

13 CHAIRMAN GRIFFIS: Excellent. Others?

14 VICE CHAIRPERSON MILLER: I concur. I
15 think the standard might be whether the Zoning
16 Administrator abused his discretion in employing the
17 method that he employed, and I don't believe that I've
18 got that expertise to second guess the Zoning
19 Administrator in this case. It seems like this one
20 that's been the clear practice, and I would have no
21 reason to second guess that.

22 CHAIRMAN GRIFFIS: Very well. I think
23 both of those are well said, and I agree with the
24 comments. I think the method for calculation of the
25 FAR by the Zoning Administrator was not in error and

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1 in fact is, as stated, the established procedure. And
2 as Mr. Mann also stated very well, the fact that there
3 is some logic to do each calculation but that the
4 Zoning Administrator, which has the authority and
5 discretion to decide which calculation and has been
6 consistent in how they have calculated FAR, I would
7 tend to agree with the fact.

8 Moving on then, it appears that we would
9 go to the discussion of the attic as most appropriate,
10 and the issue of the attic level is the fact that --
11 what was brought up of issue is I guess, generally
12 speaking, when is an attic an attic and how one
13 decides that. Let me open it up. There is a question
14 of -- there are structure elements to the attic which
15 establish a clearance of less than 6.6, which
16 therefore then, according to our regulations, would
17 remove that area from the FAR calculations. Of
18 course, the appeal has given rise to the question of
19 whether those structural members could be removed and
20 then isn't it somewhat a temporary condition? And the
21 once are those removed, it would not become an attic
22 or that attic area, or however you wanted to state it,
23 would then go to the FAR calculations.

24 I think, getting straight into this, there
25 was the testimony of the architect from the

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1 development that indicated that, yes, exactly, you
2 could remove those structural elements. However, you
3 would have to employ, or would need to employ a
4 structural engineer in order to detail and design how
5 you removed those structural elements. And after that
6 being done, of course, that area would go into the FAR
7 calculation. I think in fact that the development and
8 the design went directly looking at trying to come
9 into compliance with the regulation and how the
10 regulations define attic and remove it from FAR
11 calculations.

12 It's a difficult position to be in in
13 terms of what could be the future possibility of a
14 level on how you could manipulate structures, and I
15 think it's a difficult piece for this Board to look
16 at, especially under an appeal, to predict
17 hypothetically what could happen. Interestingly, we
18 just set a commercial jet into space. I think we
19 could probably remove some collar tops in an attic
20 level if we put our minds to it, but the exact fact of
21 the matter is that what we're looking at is what the
22 permit was granted for and whether there was an error
23 in reviewing that.

24 And when reviewing a permit, one, I do not
25 believe that the Zoning Administrator should

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1 hypothetically predict what could or might possibly
2 happen to the structure if it was renovated or somehow
3 structurally altered but rather what are the drawings
4 in front of the Zoning Administrator showing and
5 whether they are compliant.

6 However, we go into the issue, and what
7 gave me pause was the fact that we have this
8 residential building that has, my opinion, but a
9 sizable attic. It has this attic as well as having a
10 penthouse structure, a mechanical penthouse. And,
11 logically, I think, looking at it, one would say,
12 "Well, what was the need for both? Is this some sort
13 of redundancy in spaces?" And I think one could
14 persuasively say this is redundant.

15 However, then for the jurisdiction and the
16 correct deliberation that this Board does, we have to
17 look at what the regulations tells us. We have to
18 step away from our personal opinions, in many
19 respects, and say, "Well, now, does the regulation
20 preclude you from having both?" I have not found that
21 in the regulations, and I have not been persuaded by
22 the fact that if you went in and structurally altered
23 the attic or removed elements in the ceiling, that we
24 should therefore calculate that into the FAR and
25 therefore it would have been an error by the Zoning

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1 Administrator. But let me have others speak to that
2 issue if need be.

3 VICE CHAIRPERSON MILLER: Well, it
4 basically came down for me, even more so than the
5 previous issue, a question of second guessing a
6 potential structural feature of the building, and I
7 wasn't convinced by the case that the Appellants made
8 to take that leap in doing that. So I would deny this
9 in the appeal.

10 MR. PARSONS: I agree. The unfortunate
11 part of this, the only reason for this attic that was
12 given by the Applicant was to let more light and air
13 into this apartment from its street elevation, and it
14 contributes to the obnoxious nature of it, but it does
15 not exceed the Height Act. So even if you remove the
16 floor of the attic to give 16-foot ceilings to this
17 apartment, it would not change the exterior
18 appearance.

19 CHAIRMAN GRIFFIS: That's an excellent
20 point, Mr. Parsons, and that being, of course, the
21 participants that brought the appeal have great
22 concern with, as you described it, the obnoxious
23 element of this, and that being the mass, the height
24 of this. And I absolutely agree with you. If you
25 remove the attic by removing the floor or the ceiling

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1 of the upper most story, you would not change at all,
2 any way, the exterior elevation. So that the height
3 would not be diminished at all or the massing of it.
4 The interior volume would end up changing. Okay.
5 Others? Mr. Mann.

6 MR. MANN: One of the things that was
7 implied during the testimony was that because of the
8 certain number of outlets or the type of lighting
9 fixtures or the light that was available to the room,
10 was that perhaps the attic wasn't intended to be as
11 attic space, and that may or may not be true, but,
12 nonetheless, I agree with what you said earlier. I
13 mean the structural portions of the building are
14 there, and I find it hard to believe that they were
15 there with the intention of tearing them out. The
16 intention of that attic space may not be purely a
17 storage or it may be, I don't know, but, nonetheless,
18 it doesn't change what the construction of the
19 building is.

20 CHAIRMAN GRIFFIS: Well said. And I think
21 we're bound, of course, to what the regulations tell
22 us of what an attic is. And nowhere does it say it's
23 limited to two outlets or one fixture, which may be
24 true. Maybe the regulations should better define what
25 an attic is and what it should be used for and how it

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1 should be proportioned or however else we want to deal
2 with it if it is strongly felt by the Commission that
3 it is inadequately described in the regulations.

4 Very well. Then moving on top of an
5 attic, we can go to a penthouse, a penthouse which of
6 course has brought the issue rising as to the setback
7 and where is the setback location. This, of course,
8 being taller than the adjacent buildings, the
9 structure, of course, starts as a party wall, and then
10 as the adjacent properties terminate, there is an
11 exposed wall on the sides of the structure itself.
12 The penthouse structure, of course, as has been
13 interpreted in the regulations, I think are slightly
14 clear on the fact of where the setback is taken on a
15 building for the penthouse structure, and it is from
16 the exterior walls and those have been procedurally
17 interpreted as the front and rear of an attached row
18 dwelling. That would then bring into, and I think
19 there is no discrepancy, in the opinion that the
20 penthouse structure is set back appropriately from the
21 front and rear. What's at issue, of course, is the
22 size. Let me open it up to discussion on this.

23 MR. PARSONS: Well, I'll jump in.

24 CHAIRMAN GRIFFIS: Good, Mr. Parsons.

25 MR. PARSONS: The party wall issue is

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1 something I think we probably all understand that the
2 regulations, as a matter of right, would permit this
3 building to have this party wall and that they're at
4 the own risk by building windows into it. That is, if
5 the adjacent properties ever reach this height, they
6 would butt up against that.

7 And, theoretically, I guess -- maybe not
8 theoretically, but -- let me start over again. It
9 seems to me that the obnoxious quality -- again, using
10 that term rather subjective but that's my view -- of
11 this penthouse as a temporary measure, if you will,
12 should not be allowed to extend at the party wall
13 edge. Certainly, there's no reason for a penthouse of
14 this size to gain access to the roof. Certainly, 16
15 feet wide is much too wide for a simple stairway.

16 If the block was built out to this height
17 in the future, possibly this penthouse, along with its
18 neighbors, could be expanded, because the theory of
19 the penthouse, of course, is the view from the street.

20 So this temporary view from the street, I think, is
21 unacceptable and should be reduced in some fashion;
22 that is, to set it back from the building edge to
23 accommodate a stairway if that's needed. But that
24 relates to the deck itself as to whether it violates
25 the Height Act, and its railings I think do, so what

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1 is the necessity to get to the roof, which is what the
2 argument has been about.

3 So, one, I don't think we should allow
4 that penthouse to exist as it does but notch it back
5 and then deal with the issue as to whether a stairway
6 is really needed or not.

7 CHAIRMAN GRIFFIS: Very well. Others?

8 VICE CHAIRPERSON MILLER: With respect to
9 the penthouse, I see the issue as turning on deciding
10 on whether the side walls are exterior or party walls,
11 because the Height Act requires the setback from all
12 exterior walls. There are no regulations defining
13 exterior walls, at least in our regulations, so then
14 we turn to Webster's Dictionary, and I think that the
15 side walls fit the definition of exterior walls in
16 that Webster defines it as, one, being on an outside
17 surface; two, observable by outward signs; three,
18 suitable for use on outside surfaces. Whereas a party
19 wall is defined as a wall which divides two adjoining
20 properties usually having half its thickness on each
21 property in which each of the owners of the adjoining
22 properties has rights of enjoyment. Anyway, it's
23 defined as a wall between two structures, and the
24 upper parts of the building on the sides don't exist
25 for a party wall to exist.

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1 And I know that the issue is, well, they
2 could exist someday because they are allowed to build
3 up, but I think we need to look at what exists when
4 the requirement's being imposed. So I think I would
5 agree with Mr. Parsons that -- well, I don't know if
6 he said that, actually, but I would consider these
7 exterior walls in which case I would conclude that the
8 penthouse should be setback in accordance with the
9 Height Act for those walls as well as the front and
10 the back.

11 CHAIRMAN GRIFFIS: Mr. Mann?

12 MR. MANN: I think to me it's almost a
13 joke to call those exterior walls party walls, but at
14 the end of the day, unfortunately, I have to come down
15 on the side of calling them party walls because, as
16 Ms. Miller just said, of the potential that those
17 buildings on either side of that structure could one
18 day reach those same heights, and that's what defined
19 in the zoning regulations and not exterior wall.

20 VICE CHAIRPERSON MILLER: It's not
21 specifically defined on the basis of could. I mean I
22 read it as defined on what exists. And if you look at
23 this block, I mean the other houses are established.
24 It's not like there's nothing on either side at all
25 and you don't know what's going to be built. So I'm

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1 basically looking at the reality of what's there.

2 MR. MANN: But there's a certain reality
3 of what it's zoned to be also, potentially.

4 CHAIRMAN GRIFFIS: I think that's a
5 critical dividing point, and I think that -- it
6 certainly is not clear to me what the exact right
7 avenue to take is. But what you've hit on is exactly
8 what we're struggling with, and that is do you, when
9 you look at the zoning regulations and compliance with
10 the regulations, go beyond the property line of the
11 instant application or property to see what's
12 happening next door, which would then define how you
13 would look at a building itself. Mr. Parsons hit it
14 correctly that 411 in roof structures and attendant
15 sections in the regulations that really the intent is
16 to not create visual impairments of these penthouse
17 structures which have not been the most visually
18 intriguing pieces of the building.

19 So do you then have to look adjacent or
20 down the street or where does your view stop and start
21 of these? And so the issue is, is it the instant
22 snapshot of what's there or is it looking at what is
23 potential as a matter of right? And I think it would
24 be very difficult for the Board to find that we'd look
25 at what's currently there and then assess how it

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1 impacts the property under question, meaning I think
2 Mr. Mann's correct in looking at you have to look at
3 what the matter-of-right development is on the
4 adjacent properties in order to assess and analyze
5 what is and isn't in terms of the definitions of the
6 specific property.

7 When you look at party wall, clearly it
8 starts as a party wall. How does it not vertically
9 change in degree and become something totally
10 different when in the future, as Mr. Parsons has said,
11 those windows would be covered up? They have built
12 half a party wall all the way to the extent and they
13 have built a full party wall down below, but the party
14 wall definition goes to the fact that a wall is built
15 on one property and the other and it's adjoined. I
16 mean it is a common ownership, perhaps, of a single
17 wall.

18 Well, they've built half of it, and so it
19 seems to start to fit the definition. Again, I think
20 we're caught with a difficult situation and that is
21 what's actually allowable in terms of height on this
22 block based on the R-5-D zone. And that's what I
23 have. Others?

24 You know, it goes to the fact of say this
25 was an undeveloped square and this was the first

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1 building. Would you be precluded from doing certain
2 things that are essentially matter of right in the
3 regulations based on the fact that no one else had
4 developed yet? And doesn't that then, in a logical
5 extreme, say that no one would want to go first based
6 on the fact that all their property would be assessed
7 and analyzed on their adjacent neighbors? I mean I
8 think it's a difficult analysis to really agree with
9 that we look at an instant snapshot of what's there or
10 what isn't there. I think we have to look at what is
11 allowable in order to define it.

12 Now, again, Mr. Parsons, I think, has
13 eloquently described the building for those that have
14 participated, brought this appeal, in terms of its
15 intrusion of its mass, but there is nothing precluding
16 at this point any of the other properties from doing
17 somewhat of an identical massing on this block.

18 MR. PARSONS: Well, that's true, but the
19 probability of that happening, I think, is remote. I
20 would sense soon after this case is decided that
21 there's going to be a movement on the part of the
22 citizens of this community to rezone this area.
23 Obviously, this building is out of context with its
24 neighbors, as you've pointed out is probably ill-
25 zoned. I'm not going to defend my Zoning Commission.

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1 I probably was on the case that decided this should
2 be what it is, but to say this is okay and this is the
3 kind of buildings we would like to see in the city as
4 the cutting edge of who development should occur in a
5 community that's properly zoned for it, I just think
6 it's a bad signal to anybody who's watching that
7 common sense says this is wrong.

8 CHAIRMAN GRIFFIS: Right. And to stick to
9 the regulations and say, "Well, that's the way it is,
10 looks fine to us," is just not looking favorably on
11 this Board as somebody -- as a panel and is here to
12 adjudicate things like this.

13 CHAIRMAN GRIFFIS: I absolutely agree with
14 you. I think if I based on my decision solely on
15 personal opinion, I would probably remove substantial
16 portions of this building.

17 MR. PARSONS: Yes.

18 CHAIRMAN GRIFFIS: But it's fairly clear
19 what we're charged with doing, and that has created
20 the struggle. We must be legally based on the
21 decision, and I think that there has been an
22 incredible amount from each of the members on the
23 Board in its deliberation, its investigation of the
24 facts of this case. And it is very difficult to look
25 at the regulations and the law and to find that there

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1 are numerous errors in the issuance of this permit.

2 Okay. Other issues for the penthouse
3 setback?

4 VICE CHAIRPERSON MILLER: Well, I just
5 want to make a couple points. One is that my
6 impression of the Height Act is that it's supposed to
7 be pretty strictly construed. The Zoning
8 Administrator cannot allow any deviations from setback
9 provisions under the Height Act. And I think it is a
10 difficult issue to decide whether the exterior versus
11 party wall issue turns on the present day or what
12 could be done in the future, but I think that the
13 Height Act deals somewhat with views from the street,
14 and you have to look at what are the views, I think,
15 right then and there. I mean if there is nothing else
16 around this building, then the penthouse could be seen
17 from all sides, and I don't think that -- I think it
18 would be in accordance with the Height Act to strictly
19 apply it to all four sides.

20 CHAIRMAN GRIFFIS: But that would make
21 sense if this was an application for approval, and
22 somehow we were the authority on approving compliance
23 with the building height. But you have to catch it,
24 and I'm trying to understand, you're saying that the
25 Zoning Administrator in looking at this said, "This is

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1 not visually intruding," and somehow that's an error
2 because we see it more logically as a visual
3 intrusion?

4 VICE CHAIRPERSON MILLER: No. I was just
5 going to what I thought one of the purposes of the
6 Height Act was. I think --

7 CHAIRMAN GRIFFIS: Well, and I think it's
8 -- the intent of the Height Act is directly
9 incorporated in Section 411. But so what? What do we
10 do with that?

11 VICE CHAIRPERSON MILLER: Well, I think
12 the stricter application of it would be to consider in
13 this case all four walls exterior walls. The more
14 lenient would be to consider the two on the side a
15 party wall and not be concerned about the view,
16 because the fact that they're treated as exterior --
17 because there are party walls, you can see from those
18 sides.

19 CHAIRMAN GRIFFIS: Yes. So how do you
20 logically take it because all buildings in a row won't
21 be built to exact heights. Even when the same height
22 allowable, they may be different heights and
23 variances. How do you then establish what is visual,
24 what isn't? Look at this particular block. As
25 evidenced in the photographs, it has a grade change.

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1 The buildings all may be the same height as calculated
2 correctly by the zoning regulations, but those on the
3 higher portion of the grade will obviously be more
4 visual. So where do you then establish what your
5 visual aspect is? Where do you take your point of
6 view? And across the street, if there's a building on
7 a the top floor and they can see a penthouse, is it
8 then a visual intrusion? Where does the visual impact
9 start and

10 VICE CHAIRPERSON MILLER: Well, what I see
11 as distinct in this case is we're talking about the
12 Height Act. If you were just talking about other
13 heights allowed in zoning districts, I think you have
14 a lot more flexibility. But with respect to the
15 Height Act, it's very strictly applied for good
16 reason.

17 MR. PARSONS: So let's deal with the
18 Height Act and the roof deck and its railing. What
19 are your views on that? That it exceeds it?

20 VICE CHAIRPERSON MILLER: Yes. I think it
21 does exceed it with respect to those features as well.

22 MR. PARSONS: I would agree.

23 VICE CHAIRPERSON MILLER: Okay. I mean
24 the Height Act allows for waivers for certain
25 features, such as stair or towers, et cetera, but not

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1 for a floor compartment used for human occupancy, and
2 I think a roof deck is definitely used for human
3 occupancy.

4 CHAIRMAN GRIFFIS: One of the other
5 aspects, just to jump in here, in terms of the Height
6 Act, of course, as you've indicated, there are certain
7 elements that can be granted a waiver as far as in the
8 penthouse in this case, although there is in evidence,
9 to my recollection and reviewing the entire record,
10 that there was a waiver granted. Clearly, that would
11 be something that would be required for this penthouse
12 structure. But what you're saying in your analysis is
13 that fact that the roof deck, which is, as you've
14 described it, is occupiable, which is an interesting
15 -- but the roof deck and the railing itself go into
16 elements that would not be allowed to exceed that
17 height which is established from the Building Height
18 Act or the Height of Buildings Act.

19 VICE CHAIRPERSON MILLER: Right, because
20 it doesn't fall within the exceptions that are
21 specifically delineated.

22 CHAIRMAN GRIFFIS: Others?

23 MR. PARSONS: Perhaps "living space" would
24 be a better term than "occupiable space."

25 CHAIRMAN GRIFFIS: Is a roof deck living

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1 space?

2 MR. PARSONS: Occupiable implies something
3 other than a deck, I think.

4 CHAIRMAN GRIFFIS: Yes.

5 MR. PARSONS: A living space, to me, is an
6 amenity that this is.

7 CHAIRMAN GRIFFIS: Right. I don't think
8 we need to spend a lot of time on it, because I don't
9 think it's critical, unless others do, in defining
10 that, whether it's occupiable or not, but bringing up
11 the occupancy, there's arguments on both sides, but I
12 think in looking at it for this calculation, I mean,
13 certainly, occupiable doesn't mean -- to make it
14 occupiable -- all the structures they're talking about
15 in the Height Act are occupiable, meaning you can get
16 into them and you can walk in. I mean a mechanical
17 penthouse you certainly have to occupy.

18 I think there's a different higher
19 threshold in which occupancy was looking at, which is
20 I think what Mr. Parson is starting to say is it's
21 actually going to the more habitable or permanent
22 space for living. For instance, a rear yard is
23 occupiable space, but a rear yard cannot have lot
24 occupancy in certain zone districts. It's the element
25 of more of a full structure, I think, with a roof and

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1 enclosure and in fact probably some sort of protection
2 from the elements.

3 But let's move on with that. Let's hear
4 more about why in fact this roof deck, which the
5 record shows actually goes above a four-foot dimension
6 if you take it from the roof to the top of the
7 railing, why it is not allowed under the allowable
8 height for this district.

9 MR. PARSONS: Well, I'm not sure that's
10 our decision here. I mean it violates the Height Act.

11 CHAIRMAN GRIFFIS: That's right.

12 MR. PARSONS: Whether it's permitted in
13 the zone district, I don't understand.

14 CHAIRMAN GRIFFIS: No. I was saying more
15 to the height allowable in this district based on the
16 Height Act is 70, so it is a fact in the case.

17 MR. PARSONS: Right.

18 CHAIRMAN GRIFFIS: Yes. I'm not going --
19 sorry, that wasn't clear. It is the height
20 established by the Height of Buildings Act. So why
21 does it not comply? Because it goes above the 70
22 feet?

23 MR. PARSONS: Correct.

24 CHAIRMAN GRIFFIS: And that's the clear
25 nature of it.

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1 MR. PARSONS: Right.

2 CHAIRMAN GRIFFIS: And it then would be a
3 structure that would not be allowable.

4 MR. PARSONS: Right.

5 CHAIRMAN GRIFFIS: I see.

6 MR. PARSONS: And if that is not there,
7 there is really no need for this penthouse to gain
8 access to the roof.

9 CHAIRMAN GRIFFIS: Right.

10 MR. PARSONS: Certainly not of this size.

11 And that's where I feel we should focus our attention
12 on restricting that to something that should be set
13 back as is required in the zoning regulations for
14 penthouses, period, and not deal with the fact that
15 someday if these buildings were all built out to the
16 same height that this penthouse might be expanded to
17 this party wall. I mean I'm talking about a temporary
18 situation. I don't know whether you're ever dealt
19 with something like this before, but that to me would
20 cure a portion of this eyesore.

21 CHAIRMAN GRIFFIS: Okay. Others?

22 VICE CHAIRPERSON MILLER: I think there's
23 the question of the railings, whether or not they're
24 allowed, and the Zoning Administrator determined that
25 they were allowed, because they didn't exceed four

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1 feet. Therefore, they didn't have to be included in
2 the calculations for height and cited 11 DCMR 2503.
3 However, 2503 talks about structures in open spaces
4 with respect to yards, and I don't believe it has
5 anything to do with the Height Act. And, again, the
6 Zoning Administrator has no flexibility to permit
7 deviations of roof structure heights, pursuant to
8 2522.1. So I find that to be in violation of the
9 Height Act, that being the railing.

10 CHAIRMAN GRIFFIS: Others?

11 MR. PARSONS: Well, I guess our silence
12 means we've beat this to death.

13 CHAIRMAN GRIFFIS: Perhaps. One last
14 thing, I think there is not clarity in terms of
15 whether the railings go to -- and it's really two
16 issues that I think we need to -- well, I have
17 struggled with, and that is how the Height of
18 Buildings Act takes and restructures and defines those
19 and let's them allowable and how our regulations
20 actually look at those, and it's two different and
21 distinct issues. This appeal has brought it up as
22 under the Height of Buildings Act.

23 Because I think you stated 2503 in terms
24 of projections into structures in required open
25 spaces, and you look at it and say, "But, look, I

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1 don't see anything that says railings on the top of
2 the roof; therefore, they're not allowable." But I
3 think it's fairly logical and implicit to say that as
4 it is not calculated in the required open spaces, that
5 being a yard where it starts to talk about that it
6 would not necessarily be calculated based on our
7 zoning regulations calculated into the projection in
8 to the open space, which is that of height or open air
9 above a building. I think 2502 reinforces the
10 implicit intent of our regulations in terms of
11 projections into required open spaces.

12 However, the difficulty is as we run into
13 the Height Act, and it isn't enumerated, and it seems
14 to be so specific that I'm surprised we don't have
15 more spyers all across the District, because that's
16 something that can be granted a waiver, and it's so
17 limiting in how it's stated, somewhat tragically, if
18 we look at personal opinions, that we wouldn't be able
19 to animate our roofs. But, nonetheless, I tend to
20 agree that I think we are somewhat bound to look at
21 the strict reading of the Height Act in order to
22 interpret whether this is an allowable element to the
23 building.

24 So that being said -- well, you know, the
25 other piece of it in terms of the regulations when we

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1 look at that, and that's why it's so specific to the
2 Building Height Act with this application is that as
3 we look at other applications that would come into the
4 height of buildings and how they would be calculated.

5 Our definitions in 189 are very clear on how we
6 define the height of buildings, and I think the
7 subsequent sections go to what elements are in and are
8 not and what structures are in or not. Again, just to
9 be of all clarity, that the Height Act doesn't get
10 into that detail and specificity, which is somewhat
11 difficult for my own deliberation on this to find
12 clarity to the issues of whether the Zoning
13 Administrator erred or not. But I'll leave it at
14 that. Anything else?

15 Very well. If there's nothing else on
16 that issue, are there other issues that I may not have
17 enumerated or that need to be revisited? Anything
18 else on the Board's mind regarding this appeal?

19 Very well. I think we're prepared and
20 ready then for action if someone is so motivated.

21 MR. PARSONS: Well, Mr. Chairman, do you
22 want me to start a motion here or somebody's got to do
23 something.

24 CHAIRMAN GRIFFIS: Yes, I'll say.

25 MR. PARSONS: It would appear based on our

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1 discussion that we should -- this divides into four
2 sections, I guess, first being the calculation of
3 gross floor area. Would you like one motion on this?

4 CHAIRMAN GRIFFIS: I think we need to get
5 it into one motion.

6 MR. PARSONS: Okay. So I would move as
7 part of that motion to deny that aspect of the appeal.

8 Regarding the attic and whether it is actually a
9 floor ad should be included in the calculation of
10 gross floor area, I would add to that motion denial of
11 that aspect of it. I would grant the appeal regarding
12 the roof deck and railing that are not permitted under
13 the Heights Act and grant that aspect of the appeal
14 that would require the penthouse to be set back from
15 all exterior walls.

16 CHAIRMAN GRIFFIS: Is there a second to
17 the motion? It can be restated if need be. We have
18 four elements of the motion. The FAR, Mr. Parsons
19 said, moves to deny the appeal in regards to that
20 element; also to deny the appeal in regards to the
21 attack and has moved to approve the appeal -- to
22 uphold the appeal in regards to the requirement of the
23 setback of the penthouse and also that with the non-
24 compliance of the deck rail, the deck and the rail,
25 finding that the Zoning Administrator erred in those

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1 elements in issuing the permit.

2 VICE CHAIRPERSON MILLER: I would second
3 that.

4 CHAIRMAN GRIFFIS: Okay. Very well.
5 Further discussion on the motion? Interesting. I
6 think it's well put to put all these elements into a
7 single motion. However, I have great trepidation in
8 terms of the elements of the penthouse and the
9 setback. I think this is an incredibly peculiar and
10 unique situation that we're in in looking at this,
11 and, overall, do support the motion except for great
12 concern about the establishment of the party wall
13 issues. I would make a friendly motion, Mr. Parsons,
14 to remove that element if we could and take up a
15 motion of the first FAR attic and deck and rail, and
16 then we can take up as a separate motion the penthouse
17 setbacks.

18 MR. PARSONS: I think it would be
19 worthwhile just to vote on the motion.

20 CHAIRMAN GRIFFIS: Very well.

21 MR. PARSONS: I wouldn't take that as a
22 friendly amendment.

23 VICE CHAIRPERSON MILLER: I just want to
24 make a comment here. Often I don't like to separate
25 out certain issues because they affect the property as

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1 a whole, but I think in this case it would not affect
2 it. In either event, we would be granting the appeal
3 and we would just have a separate opinion on a legal
4 issue, really.

5 MR. PARSONS: I call the question.

6 CHAIRMAN GRIFFIS: Very well. There is a
7 motion for us to call the question without dispensing
8 with all the required process that takes up more time.

9 The maker of the motion is not accepting of breaking
10 it out. I think we need to move ahead. We have the
11 four elements, two to deny and two to uphold the
12 appeal, and I would -- I think the facts and the
13 opinions in this case have been well stated and
14 deliberated, and I would ask that all those in favor
15 of the motion signify by saying aye.

16 And opposed?

17 MR. MOY: Staff would record the motion as
18 five-zero-zero in favor of the motion. The motion
19 made by Mr. Parsons, seconded by Ms. Miller. Also
20 supporting in favor of the motion Mr. Etherley and Mr.
21 Mann.

22 CHAIRMAN GRIFFIS: Good. Thank you very
23 much, Mr. Moy.

24 (Whereupon, the foregoing matter went off
25 the record at 10:28 a.m. and went back on the record

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1 at 11:04.)

2 CHAIRPERSON GRIFFIS: Very well. Let's
3 reconvene. Of course, we are still in our Special
4 Public Meeting of the morning. One aspect of the
5 schedule: I am going to postpone the discussion the
6 Board needs to have on the Shagnon case, which is
7 168839. We will take that up at another time, as we
8 are losing precious moments in this.

9 Why don't we call 17164.

10 MR. MOY: Yes, sir, Mr. Chairman. This is
11 the Applicant's motion to reopen the record to admit
12 proposed findings of fact and conclusions of law to
13 Application No. 17164 of St. Patrick's Protestant
14 Episcopal Church, pursuant to 11 DCMR 3121.

15 This application was for a special
16 exception limited to the modification of approved
17 private school plans to allow the use of a portion of
18 the basement for classroom purposes under Section 206
19 (no change in the governing cap on students and staff
20 is proposed) in the R-1-B District at premises 4925
21 MacArthur Boulevard, N.W. (Square 1393, Lot 17 (823)).

22 I will leave it at that, Mr. Chairman.

23 CHAIRPERSON GRIFFIS: Very well. Thank
24 you very much. This is a motion to reopen the record
25 in order to take in findings of fact and conclusions

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1 of law.

2 I think I would have absolutely no concern
3 about doing this except that I think the Board is well
4 aware, at the conclusion of the hearing -- and it was
5 a bench decision -- that findings and conclusions were
6 not needed and that issues were well evidenced and
7 fully deliberated by the Board.

8 My concern on the specifics is more of
9 process than substance in this case, and that being
10 our record is closed, of course, and the decision is
11 already made. Taking into the record or reopening the
12 record after the decision is made, at worse, would
13 call into question our processing and procedures, and
14 I think it is a better safeguard not to look at this.

15 In addition, I do not believe that it is
16 required. I would anticipate that an order of this
17 magnitude would be -- As I said, the evidence was
18 presented and the deliberation was full on this.

19 So I would move the denial of the motion
20 regarding reopening the record in 17164 and ask for a
21 second.

22 MEMBER MANN: Second.

23 CHAIRPERSON GRIFFIS: Thank you, Mr. Mann.

24 Any other deliberation, discussion? All in favor of
25 the motion, signify by saying Aye. And opposed?

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1 MR. MOY: The staff would record the
2 motion to deny the motion to reopen the record to
3 admit proposed findings of fact, motion on Mr.
4 Griffis, the Chair, seconded by Mr. Mann. Also in
5 favor of the motion, Ms. Miller, Mr. Etherly and Mr.
6 Hood.

7 The next case is the remand from the
8 District of Columbia Court of Appeals. This is to the
9 BZA Application Number 16566 of the President and
10 Directors of Georgetown College.

11 The original order was issued March 29,
12 2001, and that will complete the briefing from the
13 staff, Mr. Chairman.

14 CHAIRPERSON GRIFFIS: That's it?

15 MR. MOY: Yes, sir.

16 CHAIRPERSON GRIFFIS: Fabulous. Here we
17 are picking up speed. The Board is well aware of what
18 we are situated with here in terms of the remand from
19 the Court of Appeals and also the vacating of our
20 order.

21 I would suggest this, if it is amenable to
22 the Board at this time, that we issue two orders. Of
23 course, it would be our communication element to those
24 participating in this campus plan.

25 The first one would go to requesting what

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1 evidence would like to be addressed in the continuing
2 processing of this, and in addition, how that
3 processing would like to be. Does that make sense?
4 How the participant would envision the further
5 processing taking place, whether it would be, for
6 instance or example, by total written submissions,
7 whether it would be oral testimony and rehearing of an
8 entirety.

9 We will be much more clear and concise in
10 the issuance of this, but basically what we will be
11 looking for is what issues are going to or would be
12 like to be addressed by those participants. We will
13 have those submissions, and that is a very brief
14 submission, of course.

15 These are going to be, as I visualize it,
16 bullet point elements as we go down those. Those
17 would be required to be into the Office of Zoning on
18 Monday, August 2nd.

19 The second order, procedural order, will
20 go to -- again, regarding the remand, will go to what
21 the further processing will be, how it is to take
22 place, what specific issues will need to be briefed,
23 and how they will be briefed. That, of course, will
24 be based on the first issuance of the order.

25 I will not set a date for when we will

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1 issue that, but I would not anticipate that before
2 mid-September.

3 Any other issues from the Board,
4 clarifications? Very well. Then I would anticipate
5 that the first order would be out fairly
6 expeditiously, depending on staff's schedule, but I
7 would think it would be within two weeks, and that
8 will be for the clarity on that.

9 If there is nothing further then, let us
10 move on, Mr. Moy.

11 MR. MOY: Yes, sir.

12 CHAIRPERSON GRIFFIS: Let's go to 17100.

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

23 The Board's decision date on this
24 application was on February 3, 2004. The summary
25 order was issued on February 9, 2004. There have been

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1 a number of continuations on this motion for
2 reconsideration because of a lack of a Board quorum.

3 Finally, the Board rescheduled this
4 decision to today, June 22, 2004. That completes the
5 staff's briefing.

6 CHAIRPERSON GRIFFIS: Thank you very much,
7 Mr. Moy. That is very complete. Of course, Board
8 members, we do have a quorum of participants on this
9 application today. So we can move ahead with it.

10 I think that, in my opinion, we did
11 establish reconsideration of this application and, I
12 think, undue caution in terms of that issues that were
13 brought up by the ANC, and the ANC had some difficulty
14 in understanding why we didn't accept their letter.

15 I am not going to get into a lot of
16 details, because I think the record is fairly clear
17 that it was not put in and where it went is not at
18 issue at this point.

19 Relooking at the letter and all the issues
20 that were brought up by the ANC, I do not see anything
21 of new evidence or anything that we did not cover and
22 fully deliberate, either brought up by the Office of
23 Planing or brought up by the Board itself or brought
24 up by those in opposition to the application when we
25 heard it.

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1 So that being said, based on the fact that
2 I believe that all the issues were fully evident and
3 deliberated on, I would move to uphold the previous
4 vote, and would ask others to weigh in on this.

5 VICE CHAIRPERSON MILLER: Mr. Chairman, I
6 concur with you, and I think you have gone through
7 this pretty quickly. I guess my question is whether
8 or not we need to afford the ANC great weight in this
9 case by more specifically addressing their issue, if
10 in a reconsideration, but I could highlight a few just
11 to be more clear on that.

12 CHAIRPERSON GRIFFIS: And I'm sure you
13 could do it quickly.

14 VICE CHAIRPERSON MILLER: I know we are
15 behind schedule. Basically, they made points that the
16 block is saturated with commercial establishments, and
17 another commercial establishment would detract further
18 from the residential character of the block and the
19 surrounding neighborhood, and there would be no
20 substantial benefit to the community.

21 So what you are saying is that we did hear
22 evidence to the contrary at the hearing that they
23 missed, and this application has the support of the
24 Capitol Hill Restoration Society and the Office of
25 Planning with conditions designed to mitigate any

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1 possible adverse effects on the neighborhood, and it
2 was conditioned for three years only, in part to
3 address that concern.

4 Also, there is not really a test whether
5 it adds substantial benefit, but rather whether there
6 is public detriment, and we found that there wasn't.

7 That's all I really want to add.

8 CHAIRPERSON GRIFFIS: Good. I would add
9 just very quickly, in terms of the commercial aspect
10 of it, there was an awful lot of testimony and some
11 evidence in terms of the Office of Planning's report
12 and the aerial photograph and such.

13 There was no evidence presented by the ANC
14 to substantiate that claim. There was a claim that
15 this was a saturation of a commercial and residential
16 zone. There was nothing to base that on or really
17 fully deliberate.

18 Therefore, I would move that we uphold the
19 previous decision and order in this case, and I would
20 ask for a second.

21 VICE CHAIRPERSON MILLER: Second.

22 CHAIRPERSON GRIFFIS: Thank you. All
23 those in favor, signify by saying Aye. And opposed?

24 MR. MOY: Staff would record the vote as
25 three, zero to one on the motion of the Chairman, Mr.

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1 Griffis, to uphold the previous order, seconded by Ms.
2 Miller. Also in support of the motion, Mr. Etherly.

3 We also have an absentee vote from Mr.
4 Zaidain which supports the motion. So that gives a
5 final vote of four to zero to one. We have the one,
6 which is the Zoning Commission member, not
7 participating on this case.

8 CHAIRPERSON GRIFFIS: Thank you very much.
9 Anything else for the Board's attention at the
10 Special Public Meeting this morning?

11 MR. MOY: Not today, sir.

12 CHAIRPERSON GRIFFIS: Very well, in which
13 case we can adjourn the Special Public Meeting.

14 (Whereupon, the foregoing matter went off
15 the record at 11:19 a.m.)

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