

## GOVERNMENT

OF

THE DISTRICT OF COLUMBIA

+ + + + +

BOARD OF ZONING ADJUSTMENT

+ + + + +

PUBLIC MEETING

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This transcript constitutes the minutes from the public meeting held on Tuesday, September 14, 2004.

The Public Meeting convened in Room 220 South, 441 4th Street, N.W., Washington, D.C. 20001, pursuant to notice at 10:00 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
KEVIN HILDEBRAND,	Board Member
JOHN A. MANN, II,	Board Member

## OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY,	Deputy Secretary
BEVERLEY BAILEY,	Zoning Specialist
JOHN NYARKU,	Zoning Specialist

## D.C. OFFICE OF THE ATTORNEY GENERAL STAFF PRESENT:

SHERRY GLAZER, ESQ.  
JANICE SKIPPER, ESQ.

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

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P R O C E E D I N G S

10:00 a.m.

1  
2  
3 MR. GRIFFIS: Good morning, everyone and  
4 let me call this meeting to order, our 14th of  
5 September 2004 public meeting of the Board of Zoning  
6 Adjustment in the District of Columbia. My name is  
7 Geoff Griffis, Chairperson. Joining me today is Vice  
8 Chair Ms. Miller, also Mr. Etherly. Representing the  
9 National Capital Planning Commission, of course, is  
10 with us, Mr. Mann. We will have different Zoning  
11 Commission Members based on the cases that we will go  
12 through decision making on this morning.

13 Copies of the hearing agenda are available  
14 for you. They are located where you entered into the  
15 Hearing Room. You can pick one up and see what we  
16 will get to this morning and where you are on the  
17 agenda.

18 We do ask, of course, because we are being  
19 recorded in two fashions, that you refrain from making  
20 any noises or disruptive actions in the Hearing Room,  
21 and importantly, of course, in our Public Meeting,  
22 these are the times where the Board has already heard  
23 a full case and will be then deliberating and making  
24 decisions on it.

25 So there is not a time during our morning

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1 session today for additional testimony or for any  
2 interaction from the Board with the public that is  
3 here in attendance.

4 I would ask that you do turn off your cell  
5 phones and beepers, or at least turn the ringers off,  
6 so that we don't have any disruption with our  
7 recording as we proceed.

8 I believe we can go straight to a very  
9 good morning to our Office of Zoning Staff that's with  
10 us, Ms. Bailey and Mr. Moy, and see if there are any  
11 preliminary matters for us, and if not, we can move  
12 right ahead into our schedule this morning.

13 MR. MOY: Yes sir, I believe, we that we  
14 can move into the matters. No preliminary matters,  
15 although Staff understands that the Board may want to  
16 take up Sidwell Friends, Application 17149 first.

17 MR. GRIFFIS: Yes, I believe that would be  
18 expeditious, 17149.

19 MR. MOY: In that case, Application No.  
20 17149 of Sidwell Friends School, pursuant to 11 DCMR  
21 3104.1 for a special exception allowing additions and  
22 enhancements to an existing private school and to  
23 increase enrollment from 780 to 825 students under  
24 section 206 in the R-1-B and C-2-A Districts. That  
25 premise is 3825 Wisconsin Avenue, N.W. That's in

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1 Square 1825, Lot 816.

2 On June 29, 2004, the Board completed  
3 testimony on the application and scheduled its  
4 decision on September 14, 2004. The Board requested  
5 that the District Department of Transportation or DDOT  
6 reply to questions from the ANC.

7 I'm going to give just a very quick  
8 outline of specific record filing.

9 MR. GRIFFIS: Yes, that would be good.

10 MR. MOY: First is the questions for  
11 DDOT's response to be submitted by ANC-3F and ANC-3C,  
12 that is in your case folders, identified as Exhibits  
13 80 and 81, 81 being a fax copy. This is from the ANC-  
14 3F. No filings from ANC-3C.

15 The Board has also received a filing from  
16 the Applicant which is the construction phasing plan.

17 That is in your case folders identified as Exhibit  
18 79. A response to the Applicant's construction  
19 phasing plan was received from ANC-3F and ANC-3C.  
20 That's in your case folders, identified as Exhibits 82  
21 and 83, respectively.

22 DDOT's reply to the ANC questions was  
23 filed on September 1, 2004 and that is identified as  
24 Exhibit 92 that is an untimely submission. There are  
25 no parties in reply to DDOT's filing.

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1           There is a submission of proposed findings  
2 of fact and conclusions of law from both the Applicant  
3 and ANC-3C and ANC-3F combined. That's identified in  
4 the case folders as Exhibits 87 and 90, respectively.

5           There is also in the case folders filings  
6 addressing Section 2516 and the issue of the measuring  
7 point as attendant to grade, yard and building height.

8           And that is filed by the Applicant and ANC-3F and  
9 that is identified as Exhibits 88 and 89,  
10 respectively.

11           The Board also received written testimony  
12 that was not presented on June 29, 2004 from a Ms.  
13 Alsap and that's in your case folders as Exhibit 86.

14           And finally, the Board had allowed ANC-3F  
15 to respond to the Applicant's roof plan and that issue  
16 was addressed in ANC-3F's proposed findings of facts,  
17 which of course, is identified as Exhibit 90.

18           That completes the Staff's briefing, Mr.  
19 Chairman.

20           MR. GRIFFIS: Good. Thank you very much.  
21 Board Members, let's take up the preliminary aspects  
22 of this one with the DDOT report and let me hear any  
23 objections to waiving our requirements for the filing  
24 date and accepting that into the record.

25           MR. ETHERLY: No objection, Mr. Chair.

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1 MR. GRIFFIS: Thank you. No other voice  
2 of objection, we'll take it as a consensus and accept  
3 that into the record.

4 Mr. Moy, I don't know if you ran over  
5 Exhibit No. 84 and 85. They are -- rather just 85.  
6 It's a letter from Barbar Beilar. I don't know that  
7 the record was open to accept this. Is that correct?

8 MR. MOY: Okay, that was Exhibit --

9 MR. GRIFFIS: 85.

10 MR. MOY: 85.

11 MR. GRIFFIS: I don't think it was.  
12 Although it relates to comments on the DDOT report. I  
13 would go in the same frame, Board Members, if there is  
14 no objection, that we could accept that into the  
15 record. It's indicating which is where I'm going to  
16 next, but let me hear any objections.

17 MR. ETHERLY: No.

18 MR. GRIFFIS: Very well. Let's accept  
19 also Exhibit 85.

20 It goes to the fact that we are well aware  
21 of the -- let's say the lack of opportunity to respond  
22 to DDOT's questions or responses to the questions that  
23 were provided them.

24 And for the correction of the record,  
25 because I think it may not be understood why there was

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1 a delay, the delay has come on the part of this Board  
2 in terms of processing. Once the questions were  
3 received and then sent out, and then resubmitted. So  
4 the circulation of all that is our full  
5 responsibility.

6 To that, Board Members, I think taking  
7 that responsibility, we should postpone the final  
8 decision on this and allow the opportunity for the  
9 parties to respond to those questions adequately to  
10 fill the record.

11 I know myself and I know all of you have  
12 prepared extensively to decide this today, but I think  
13 under -- for completeness and fairness and undue  
14 caution, that we should, in fact, allow for further  
15 opportunity to respond to those answers to the  
16 questions. But let me hear others, if they have  
17 points on that.

18 MR. MANN: I agree. I think the questions  
19 and the answers, in particular, were complicated and  
20 lengthy enough that they really deserve full  
21 consideration of everybody that wants to comment on  
22 them.

23 MR. GRIFFIS: Others. Mr. Etherly?

24 MR. ETHERLY: No.

25 MR. GRIFFIS: Very well. Then the three

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1 Members at this time, I think it would be wise to run  
2 in that direction and I think looking at the fact that  
3 our next decision making is the first meeting in  
4 October, it seems like we're pressing time again and  
5 why don't we look at what the date on November is.

6 MR. MOY: The first day for decision  
7 making, Mr. Chairman, is -- it's Election Day,  
8 November 2nd, but we have in our schedule in the  
9 morning, Public Meeting. We can accept public cases  
10 for Public Meeting in the morning of November 2.

11 MR. GRIFFIS: Sorry, let me turn the mic  
12 on.

13 Mr. Feola, you're representing the  
14 Applicant, is that correct?

15 Okay, would you mind, I just need 10  
16 seconds of your time to coordinate this, although this  
17 is out of the ordinary, but I just want to make sure  
18 that we're not creating even more problems with the  
19 result of this.

20 Mr. Feola, let me speak to you first in  
21 terms of setting this for decision making in November,  
22 do you foresee any insurmountable difficulties in  
23 that?

24 MR. FEOLA: It would -- I mean the -- as  
25 the Board probably recalls, the first project that the

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1 school was prepared to undertake if this special  
2 exception was approved was the parking garage which  
3 everyone in the community and the school believes is  
4 the thing that will solve many of the problems that  
5 exist in the neighborhood.

6 If this waits until November, we'll  
7 probably lose 18 months before we can start that  
8 project, just the way schools work and taking it out  
9 of --

10 MR. GRIFFIS: In October, save some of  
11 that time?

12 MR. FEOLA: I think if it is the meeting  
13 in October, we are probably going to be able to make  
14 up the month with permitting and doing partial  
15 permits, etcetera, to get it underway.

16 MR. GRIFFIS: Does the ANC have any  
17 difficulty in getting their responses in to DDOT's  
18 answers by the October meeting?

19 MS. REEVES: What would be the date?

20 MR. GRIFFIS: What's the meeting date, Mr.  
21 Moy?

22 MR. MOY: The last meeting for this case  
23 it will be a Special Public Meeting in October. It  
24 will be the 26th of October.

25 MR. GRIFFIS: What's our standing meeting

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1 in October? What's the date?

2 MR. MOY: The standing meeting would be  
3 October 5th.

4 MR. GRIFFIS: And the date on the  
5 Wednesday before that?

6 MR. MOY: The Wednesday before October 5th  
7 would be September 28th.

8 MR. GRIFFIS: Is it possible to get your  
9 responses by September 28th?

10 MS. REEVES: Two weeks?

11 MS. WISS: I think we could do it. I  
12 don't know that we could cover it at our next ANC  
13 meeting per se because that's next Monday. But if you  
14 would continue just allowing the team that's been  
15 working on this to respond, rather than have a vote of  
16 the ANC, we could do it.

17 Do you understand what I mean?

18 MR. GRIFFIS: I do.

19 MR. ETHERLY: So you would be able to  
20 review it and consider it and possibly deliver it as a  
21 committee, but not as a full ANC.

22 MS. WISS: That's correct. We have  
23 received it. I got it late Sunday night and I was  
24 just too tired to really do anything at that point.

25 MR. GRIFFIS: When's your meeting?

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1 On Monday?

2 MS. WISS: Next Monday, but it's a very  
3 full agenda and there's no time to take it up before  
4 then by that time.

5 MR. FEOLA: The Applicant has no objection  
6 to that. There have been other filings by the ANC in  
7 this case that have not indicated a vote.

8 MR. GRIFFIS: Right, well, when is the --  
9 the Committee is not going to have their responses by  
10 Monday or at least the notion of what it's going to be  
11 doing?

12 MS. WISS: There's no way we could do  
13 that. I have three huge cases, big zoning cases next  
14 Monday's agenda and we have several other things, so  
15 no, I can't prepare for it.

16 I think by the 28th, we could come up with  
17 responses. If you would like to receive our responses  
18 by the 28th of September, that I think, is possible.

19 MR. GRIFFIS: It's been a long August.

20 MS. REEVES: 3C is in the same position.

21 MR. GRIFFIS: Good.

22 MS. REEVES: We have our meeting on Monday  
23 and it would be done by committee also.

24 MR. GRIFFIS: Perfect. The record will  
25 stay open just for your responses. There's no

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1 response to the responses from the responses or  
2 anything of that nature. So if we get it in on the  
3 28th, that means it goes out to the Board  
4 expeditiously, probably the next morning and we will  
5 have time to review that.

6 As I said, we're fully prepared to move  
7 ahead. We're just waiting on that aspect.

8 Mr. Moy, do you see any technical problems  
9 in that?

10 MR. MOY: No, I don't. The staff can work  
11 with that.

12 MR. GRIFFIS: Okay.

13 MR. MOY: So in that case then the --

14 MR. GRIFFIS: Let's see, Mr. Feola,  
15 understood? Comfortable with that?

16 MR. FEOLA: Yes sir. The decision will be  
17 the regular decision session in October.

18 MR. GRIFFIS: In October, right. And  
19 we'll have submissions in on the 28th which will go  
20 directly to the Board. Of course, those will need to  
21 be served as usual to everybody around. But we'll get  
22 them in here by 3 o'clock on the 28th which is the  
23 Wednesday before the Tuesday.

24 Yes? The 28th? Do I keep saying the 28th  
25 and it's a Tuesday. 29th, then we're talking, is that

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1 correct, Mr. Moy?

2

3 MR. MOY: Yes. My understanding is we  
4 were talking about the 29th which is the Wednesday.

5 MR. GRIFFIS: Sorry, my mistake. I  
6 probably ought to have a calendar in front of me.

7 Okay, everyone clear on that, so it's the  
8 Wednesday before the Tuesday for decision. Excellent.

9 Thank you all very much. We appreciate  
10 your patience and I do frankly apologize for not  
11 having this out and ready for us to do this today, but  
12 I think this is the correct way to go.

13 Board Members, let me make on this  
14 specific case also just a note for our attention. I  
15 mean we have an awful lot to deal with which I know we  
16 will continue in our deliberations on our own and  
17 review the record in terms of the amount of filings  
18 that we've had in terms of specific sections and what  
19 may or may not be required in this application and the  
20 special exception.

21 I want to give some direction to the Board  
22 as we go off and continue our own review and  
23 deliberation on this and one of the aspects was the  
24 relief that was required under Section 411 which, of  
25 course, goes to roof structures or penthouse

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1 structures. And there is one filing that has  
2 indicated that we do not have the authority,  
3 jurisdiction to actually grant any sort of relief  
4 under 411.3 and I would direct the Board to look very  
5 clearly at the regulations to find, in their own mind,  
6 whether we actually have authorization or jurisdiction  
7 to grant relief under 411. I would point your direct  
8 attention to Section 411-11 and I think we will not  
9 need to have a lot of deliberation on that, as it is  
10 extremely clear, as our regulations may not always be,  
11 but this one happens to be, extremely clear on our  
12 authority or lack thereof.

13 Very well. Let's move on to the next  
14 case.

15 MR. MOY: Yes sir, the next case is a  
16 Motion for Reconsideration of the Application No.  
17 17079 of Mark Lee Phillips. Pursuant to 11 DCMR  
18 3104.1 for a special exception to increase the number  
19 of sleeping rooms in a bed and breakfast, home  
20 occupation, from two to four or six under subsection  
21 203.8 and the provisions governing special exceptions  
22 within the Capitol Hill Overlay District under  
23 subsection 1202.1 in the CAP/R-4 District at premises  
24 417 A Street, S.E. That's in Square 818, Lot 27.

25 Mr. James Berry, a party opponent, filed a

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1 Motion for Reconsideration on May 3rd, 2004 which is  
2 in your case folders identified as Exhibit 86.

3  
4 At its public meeting on July 6, 2004, the  
5 Board determined that Mr. Berry failed to serve copies  
6 of his motion to the parties in the case, even though  
7 he had satisfied the 10-day requirement. The Board  
8 then instructed that the motion be served on the  
9 parties and the meeting date be rescheduled after  
10 parties had the opportunity to respond.

11 Mr. Berry's filing is in your case folders  
12 which is a certificate of service dated July 15, 2004  
13 and it is identified as Exhibit 88.

14 On July 23, 2004, the Applicant,  
15 represented by Robins, Kaplan, Miller and Ciresi,  
16 filed an opposition to the Motion for Reconsideration  
17 and that is in your case folders identified as Exhibit  
18 89.

19 Finally, on September 10, 2004, Mr. Berry  
20 filed a response to the opposition to the Motion for  
21 Reconsideration and that is in your case folders  
22 identified as Exhibit 90.

23 And that completes the Staff's briefing,  
24 Mr. Chairman.

25 MR. GRIFFIS: Good. Thank you very much,

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1 Mr. Moy. And of course, Board Members, we're all well  
2 aware of the threshold of which we would hear a Motion  
3 for Reconsideration and let me put it briefly and  
4 succinctly, the fact of whether there is new  
5 information that comes into evidence that could not  
6 have been presented into the hearing.

7 Before we get too far into that, though,  
8 we have a particular instance of this. We're being  
9 requested to waive our timeliness in the filings of  
10 this Motion for Reconsideration and actually this  
11 would be somewhat the second step to granting the  
12 waiver of regulations for timeliness. The first time  
13 it came in, it was not served to anyone. It was  
14 served into the Board, of course, as all participants,  
15 parties in a case they ought to be well aware of  
16 whether any further processing or motions come into  
17 the record.

18 That being said, it still seems to be  
19 lacking in terms of its full service which would be in  
20 compliance with our regulations. I'm going to let  
21 others speak to this, but I do want to just touch upon  
22 the fact that in one of the filings, of course, Board  
23 Members are quoted from the transcript and I would  
24 draw attention to one and that would be myself, of  
25 course, that was indicated as being quoted as not

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1 knowing what is required and it's "I don't know what  
2 we require." Well, that's a fascinating quote. In  
3 fact, it will go into my own scrapbook.

4  
5 (Laughter.)

6 However, in seriousness, the issue comes  
7 down to the fact of I do not and I'm very clear on the  
8 fact that I will not give directions on what is to be  
9 required in terms of a full application. This Board  
10 and myself do not review applications prior to  
11 submissions, don't see if they are coming up to  
12 compliance with all our submission requirements in the  
13 regulations, timing and such. That is, in fact, why I  
14 say we run so efficiently and effectively here is  
15 because we have such capable staff in the Office of  
16 Zoning that is no responsible for all of that.

17 Obviously, an Applicant is fully  
18 responsible for understanding and fulfilling the  
19 filing requirements and anything else in the  
20 application. And again, I stress the fact that Staff  
21 always avails themselves to answering questions if  
22 there are difficulties in understanding or in fact, if  
23 there is not familiarity with what would need to be  
24 done in terms of filing submissions or service.

25 But let me open it up to others for

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1 continued discussion on this.

2 Ms. Miller?

3 MS. MILLER: I think that some of the  
4 germane facts procedurally are that Mr. Berry filed a  
5 Motion for Reconsideration on May 3rd and that was  
6 within the time limits to give us jurisdiction over  
7 this motion, but he failed to serve any of the  
8 parties. And I think, in fact, on July 6 by stating  
9 that we were going to continue this to give Mr. Berry  
10 time to serve the parties, we did waive our Rule  
11 3126.3 to give him that opportunity.

12 Now what's happened is he got a letter  
13 from the Office of Zoning from Ms. Jerilee Kress  
14 telling him what the requirements were, that he needed  
15 to serve the parties and in fact, he then failed to  
16 serve all the parties. He didn't service Office of  
17 Planning or ANC. So in fact, this is his second  
18 chance and I think that I would move to deny the  
19 motion based on failure to comply with 3126.3.

20 MR. ETHERLY: I would second that motion,  
21 Mr. Chair.

22 MR. GRIFFIS: Thank you. The motion has  
23 been made, it's been seconded. Is there further  
24 discussion?

25 MS. MILLER: I also want to point out that

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1 a lot of the grounds for the motion are asserted on  
2 behalf of others, such as Office of Planning and the  
3 ANC and they didn't file any Motion for  
4 Reconsideration.

5 MR. GRIFFIS: Good point. Further  
6 discussion? Very well, we have a motion before us  
7 that's been seconded. It is for denying the Motion  
8 for Reconsideration based on timeliness.

9 MS. MILLER: It's not based on timeliness.

10 MR. GRIFFIS: I'm sorry.

11 MS. MILLER: Just for correction, it's  
12 based on 3126.3, failure to serve all the parties.

13 MR. GRIFFIS: Excellent point. That being  
14 said and clarified, any other further discussion? If  
15 not, let me ask all those in favor of the motion  
16 signify by saying aye.

17 (Ayes.)

18 MR. GRIFFIS: Aye. And opposed?

19 (No response.)

20 MR. GRIFFIS: Abstaining?

21 (No response.)

22 MR. GRIFFIS: Very well.

23 MR. MOY: Staff would record the vote as 3  
24 to 0 to 1. This is on the motion of Ms. Miller to  
25 deny, seconded by Mr. Etherly. Also in support of the

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1 motion, Mr. Griffis. We also have an absentee ballot  
2 from Mr. Zaidain which is to deny which would give a  
3 final vote as 4:0:1. The one is a Zoning Commission  
4 Member not present, not voting.

5 MR. GRIFFIS: Good, thank you very much.

6 MR. MOY: The next application is No.  
7 17197, 1600 Fourteenth Street, Limited Partnership.  
8 Pursuant to 11 DCMR 3103.2 and 3104.1 for a variance  
9 to reduce the requirements to provide residential  
10 recreation space under Section 773, a special  
11 exception to reduce the requirements to dedicate at  
12 least 50 percent of the ground floor to service or  
13 retail uses under subsection 1901.1 and a subsection  
14 of 1901.6, a special exception from the restrictions  
15 allowing more than 25 percent of the retail frontage  
16 along Fourteenth Street to be eating or drinking  
17 establishments and, in the special exception to allow  
18 a roof structure whose walls would not be of equal  
19 height, or have all walls removed from the edge of the  
20 building at a distance at least as great as the height  
21 of that roof structure under sections 777 and 7411,  
22 and a variance to allow the elevator shaft to exceed  
23 the height limit of roof structures under subsection  
24 1902.1(a) in the Arts/C-3-A District at premises 1401  
25 Q Street, N.W., and 1602 to 1604 Fourteenth Street,

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1 N.W. That's in Square 208, Lots 11, 139, 800 and 801.

2 Staff notes for the record that on July  
3 20, 2004, the Applicant amended the application to  
4 withdraw the zoning relief from Section 1901.6.

5 Also on July 20, 2004, the Board completed  
6 testimony on the application. It scheduled its  
7 decision on September 14, 2004. The Board requested  
8 the following post-hearing documents: first, proposed  
9 findings of fact and conclusions of law. These were  
10 filed by the Applicant and the Q Group. This is in  
11 your case folders identified as Exhibits 38 and 39,  
12 respectively.

13 The Board also allowed the Applicant to  
14 submit its evaluation of the applicability of the  
15 Federal Fair Housing Act to the current application.  
16 That was filed on August 31, 2004 and is identified as  
17 Exhibit 37.

18 And that completes the Staff's briefing,  
19 Mr. Chair.

20 MR. GRIFFIS: Good. Thank you very much,  
21 Mr. Moy, and an absolutely correct reading of that,  
22 the application did come in and it was, in fact,  
23 revised as we processed through.

24 So let's focus and open our deliberation  
25 and discussion on the aspects that we'll have, of

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1 course, with the residential recreation space and  
2 those provisions under Chapter 1900 going to the  
3 reduction from the first 50 percent of the first floor  
4 retail.

5 Very well. As we recall, this development  
6 project, although it seems in terms of quite frankly  
7 the size and the shape and the location to be perhaps  
8 a substantial nature, it's actually quite small when  
9 you look the number of units and then cross with that  
10 the total square footage that's required.

11 The Board is all very well familiar with  
12 the requirements of the 14th Street Corridor as well  
13 as the commercial zoning designation on this building  
14 in terms of the requirements for the residential rec  
15 space. I think we ought to start initially with the  
16 residential recreation space relief that's being  
17 requested. As you balance in and I think that there  
18 is a substantial amount setting up the uniqueness and  
19 practical difficulty in this task, one of the  
20 uniqueness is and I think we'll go further into it,  
21 but is the overall requirements of the arts and the C-  
22 3-A. As the zoning itself puts the burdens on  
23 specific properties, it is oftentimes, as actually  
24 this Board has seen, but specifically and uniquely in  
25 this case, it is incredibly difficult to provide the

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1 full amount and full extent of the residential  
2 recreation space when also having to take the first  
3 floor of the structure to provide the retail under the  
4 requirements. We've seen it before and it's  
5 interesting in this case that the community was saying  
6 and balancing well perhaps there's something else  
7 provided in lieu of the residential, maybe it's  
8 parking.

9 I don't personally see the correlation or  
10 connection to residential recreation space and the  
11 provision of parking. However, we have seen it in  
12 previous cases as to if you provide residential rec  
13 space, it actually does away with parking. You put it  
14 in where parking is provided and so there is a balance  
15 of well, which do you try and provide and oftentimes  
16 in this area and others parking is always more of a  
17 pressing value for the surrounding area than the  
18 residential recreation space.

19 This has an analogous competition of space  
20 and that is for the retail. Now as we look at this  
21 building, of course, we're familiar with how  
22 residential buildings are laid out, having seen so  
23 many recently, and happily so. The core, the location  
24 of the core and the elevators and the stairs are  
25 always of particular and unique location.

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1           As we look at this building and its  
2 footprint and also looking at providing a large  
3 percentage of the first floor for retail, a majority  
4 of which focused on 14th Street, you start to realize  
5 you can't make a lot of choices as the Applicant has  
6 said in their filings. There is not a lot of  
7 flexibility as to where elements are located. And the  
8 building code is going to require a certain amount.

9           The square footage of the retail pushes  
10 the core deep into the building itself off of 14th  
11 Street. You still need your separation and then the  
12 diminished distance to get to the egress is based on  
13 the building code, of course. You've got to fit a  
14 residential entrance and lobby. And then unique to  
15 this aspect is how the parking is actually being  
16 serviced with the below grade parking and that is the  
17 ramp that enters into and of course, as has been shown  
18 on this and other projects, it's hard to build  
19 recreation space on parking ramp because the cars seem  
20 to get in the way. But in seriousness, the aspect is  
21 it takes a lot of height and dimension for the  
22 requirements.

23           What's fascinating about this project is  
24 that they've really maximized that space and it was  
25 somewhat in my mind looking at this, it was actually

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1 difficult to understand the plans on the first look as  
2 to what was happening at what level, but what's  
3 happening is that they've platformed over portions of  
4 the entrance in to maximize the space available for  
5 the residential recreation.

6 All that, I see all those, the confluence  
7 of all the aspects of putting this building program  
8 together and complying with the fullest extent of the  
9 zoning regulations that are put on it. I see that the  
10 diminished recreation space obviously is uniquely and  
11 practically difficult to this. Would it impair the  
12 intent and integrity of the zone planner map or go  
13 against the public good? This is an interesting  
14 aspect to any various test and specifically, to  
15 residential rec.

16 I don't believe in any way, shape or form  
17 that it in fact would impair the intent and integrity  
18 of the zone plan. The zone plan, in fact, with the  
19 overlay seems to support exactly what this building  
20 will be doing and that is creating one, a public  
21 presence on 14th Street, meaning a public access to  
22 retail and therefore animating the sidewalk. It will  
23 also bring new residents on to that corner on which  
24 was up to late a surface parking lot. I imagine it  
25 was a glorious building before the surface parking

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1 lot, but nonetheless, its projected future is apt to  
2 bring urban life back to that corner, which again  
3 complies with what I would say the base zoning  
4 outlines in terms of allowing a mixed use in the C-3-A  
5 zone and very specifically to the arts overlay which  
6 is looking to bring new residents, but also create  
7 lively streets.

8 The fact, and there was some extensive  
9 discussion on the residential recreation available in  
10 close proximity to this and in fact, in one of the  
11 filings, I believe, it's -- the Party in Opposition's  
12 filings and it's the finding of fact number 25, I  
13 believe it is, that incidents and I think distinctly  
14 puts together what they had laid out in their  
15 presentation and that is looking at all of the  
16 surrounding areas and what would be available to the  
17 tenants here.

18 I'm not going to go into dispute and argue  
19 the facts that they presented in terms of how each of  
20 these spaces are laid out and for what uses they're  
21 laid out, but my point with this is directly there  
22 isn't any relevancy that I see in terms of  
23 distinguishing that areas are utilized or not utilized  
24 and how they're utilized. Going back a step even,  
25 look residential recreation is required in this

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1 building. The mere fact that there is other  
2 recreation areas in the surrounding and adjacent area  
3 isn't important as it goes to not deterring or being a  
4 detriment to the public good. There's numerous  
5 aspects, I think, related to residential recreation  
6 space and public good.

7 But going now to the specifics of the  
8 argument that was laid out in terms of one of the  
9 schools that is close by that has skateboard equipment  
10 and things like that, I don't see how that isn't  
11 recreating, the point being our regulations, of  
12 course, don't require certain spaces to be situated,  
13 furnished or occupied by different age groups or not.

14 The fact that skateboards are probably used by a  
15 younger crowd may be a great thing if folks in this  
16 building have kids.

17 In any case, there was also the talk about  
18 Dupont Circle and there was actually pictures of  
19 Dupont Circle that was empty, not Dupont, I'm sorry,  
20 Logan Circle. And the benches were in disrepair and I  
21 feel very strongly in looking at that and just  
22 assessing, just going at this particular aspect of the  
23 presentation of this, but I understand that we  
24 certainly don't want to overwhelm our public  
25 recreation areas so that people feel they can't use

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1       them because they're so crowded.       However, the  
2       recreation areas that I think that are in close  
3       proximity would only benefit from an increased  
4       population in utilization of it and the diversity of  
5       utilization and timing of that.

6                So I'll end there and let someone else  
7       pick up or I'll continue, if they don't.

8                Very well, thank you.

9                MS. MILLER:   I'll go.   I basically just  
10       want to add to your points.   One is with respect to  
11       the variance test, with respect to the first prong  
12       which is uniqueness.   I think that you basically did  
13       cover it.   And that being said, there are physical  
14       design constraints that are caused by this confluence  
15       of factors and that this building is subject to  
16       various zoning requirements, one being the arts  
17       overlay, one being the residential recreation  
18       requirements, another being -- not zoning, but  
19       historic preservation review which caused certain  
20       setbacks in the building.

21               And there's only so much space that we're  
22       dealing with and so there have to be tradeoffs.   This  
23       falls into that category.   It seems that they would  
24       have to need a variance from some zoning requirement.

25       I think they stated if they didn't get the

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1 residential recreation requirement variance, then they  
2 would need a variance from the Height Act in order to  
3 put the residential use up on the roof.

4 So I think that this clearly falls within  
5 uniqueness, as well as the practical difficulties  
6 caused by that situation, the design constraints  
7 within the parameters of the zoning requirements.

8 With respect to substantial detriment, I  
9 mean the Office of Planning didn't finding any  
10 detriment caused by the reduction in residential  
11 recreation space. Again, there are tradeoffs and I  
12 think parking was one of them, and in fact, the  
13 Advisory Neighborhood Commission supported the  
14 application on grounds that the Applicant would  
15 provide additional parking.

16 Also, I think it's a little bit stretched  
17 to say -- there are 26 units in this proposed  
18 building, 10 of which have their own private  
19 recreation spaces. And I think one of the arguments  
20 of the opponents was that it would burden already the  
21 recreational areas in the neighborhood if they didn't  
22 have the full residential recreation space and I  
23 didn't find that persuasive at all and I don't really  
24 think that that is a test.

25 On the one hand they said it would burden

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1 them, and on the other hand they said that well, these  
2 aren't so great anyway for them to use as an  
3 alternative. And I think basically that issue should  
4 go before the Parks Department, if they're not  
5 satisfied with recreation space in the area, they  
6 should bring that to the attention of the Parks  
7 Department. I don't think that's something we can  
8 remedy.

9 Oh, it came up -- the question came up in  
10 our hearing about well, if they can't provide the  
11 recreational space they should do something of a  
12 public benefit and we were stating that -- and I don't  
13 think it's in our regulations that like a PUD that we  
14 can mandate that the Applicant provide some other  
15 public benefit in place of that.

16 I think that concludes my comments.

17 MR. GRIFFIS: Excellent. Mr. Mann?

18 MR. MANN: Ms. Miller actually discussed a  
19 point that I wanted to make, but again, I just wanted  
20 to reiterate that with over 26 units in the building,  
21 it's not like they're not providing any recreation  
22 space. They are providing recreation space and as you  
23 noted, there is potentially underused public space  
24 that could benefit from additional participants. So I  
25 just wanted to make that point again.

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1 MR. GRIFFIS: Right, and they also had  
2 made the point that there are balconies provided over  
3 half the units which does speak to the availability of  
4 space.

5 Okay. Anything else then on that? Any on  
6 the 1901, I believe it is, in terms of the limited  
7 reduction for the ground floor service retail uses?

8 MR. MANN: It's pretty minimal. I mean  
9 the difference between what they're required and what  
10 they're providing is negligible.

11 MR. GRIFFIS: Right, it is negligible and  
12 I think that says two things and I think I understand  
13 where you're going with that. One, to me, in looking  
14 at that as you look at shaving off percentages which  
15 is really small amount of square footages and then we  
16 look at actually what has been laid out as the  
17 uniqueness and practical difficulty for the other  
18 aspects of this, you realize that it is incredibly  
19 difficult to add or eke more space into the retail  
20 without encumbering on a required egress stair without  
21 encumbering on access to the residential rec space or  
22 the main entrance into the residential lobby,  
23 etcetera. It does become very problematic in fitting  
24 it all in. And so I think the case is laid out by the  
25 Board, also fits within that.

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1 Ms. Miller, going to what you were saying  
2 in terms of the parking and trading off aspects, I  
3 absolutely agree. I think it is well said by the  
4 party in opposition that Office of Planning is looking  
5 at putting a dollar value on residential rec space in  
6 the DV overlay and therefore one might be able to buy  
7 out of it and then that could go into the public parks  
8 and the surrounding area. I don't know if that's fact  
9 or not. What I'm just addressing is that aspect and  
10 idea that they've laid out that OP is looking at. I  
11 think it would benefit everybody and certainly a new  
12 building or a residential building owner to invest in  
13 the surrounding area.

14 Likewise, the new residents that come in,  
15 I imagine, will also not all of them necessarily, but  
16 in different ways invest in the public area around.  
17 So the point being, if we all get together on this,  
18 we'll probably make it an even better city than it  
19 already is. But the mere fact is that it's hard for  
20 us, if not impossible, and outside of our jurisdiction  
21 to do a kind of -- I was going to say quid pro quo,  
22 but that's not what I really mean. But to remove  
23 residential rec space and then require, for instance,  
24 a donation or the tree planting on the block.  
25 Obviously, steps beyond what we actually have the

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1 authority to do, even though we may well support  
2 something of that aspect which brings up the point of  
3 the public area outside as being talked about and also  
4 as it was laid out in the plans in terms of how it was  
5 going to be hard and soft scaped, with seeding areas.

6 There was some initial comment from the Board. I  
7 know I had opinions about it and I will share those.  
8 I think the design of that aspect really needs to be  
9 looked at fully.

10 I'm encouraged by the fact that the  
11 neighborhood is also very interested in what happens  
12 there and is engaged in communication on that. I  
13 think we ought to support the continued design and  
14 communication regarding that space. It only tends or  
15 stands to benefit everyone on Q Street. It does move  
16 beyond our jurisdiction to get into those aspects and  
17 certainly I'll let others comment on it. But I'm  
18 going to let it go at that.

19 Very well. Then let's go to the parking.  
20 Picking up the parking end and whether we would  
21 condition the requirement of additional level or  
22 additional parking in this application and it is my  
23 position, unless otherwise persuaded, that the  
24 parking, first of all, did not come in for any sort of  
25 relief that the count for the units and spaces were

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1 provided. In fact, there is above what is required by  
2 the regulations, if I'm correct. But going  
3 directly to it, the plans as approved would be the  
4 ones that would proceed into permitting and they are  
5 showing an upper and a lower level of parking.

6 Ms. Miller?

7 MS. MILLER: I just want to follow on  
8 procedurally, are you moving into conditions at this  
9 point?

10 MR. GRIFFIS: No.

11 MS. MILLER: No. Okay, because I know  
12 that one was one of the conditions. Okay, well, I  
13 just also want to say I don't know whether we're off  
14 the special exception or not, but that there was no  
15 opposition to the request for the special exception  
16 and that I think Office of Planning laid out the  
17 criteria set forth in 1906.1 and that it meets that  
18 criteria. I don't think we need to belabor going  
19 through --

20 MR. GRIFFIS: Absolutely not.

21 MS. MILLER: Okay.

22 MR. GRIFFIS: I'm sorry, I wasn't clear. I was  
23 saying it almost meets the variance test in relating  
24 to the aspects that we talked about, but okay. Very  
25 well.

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1                   Anything other than on that? Other  
2 aspects that we need to discuss?

3                   MS. MILLER: With respect to parking, I  
4 think it is going to come up in the conditions, but if  
5 you brought it up --

6                   MR. GRIFFIS: What conditions, go ahead?  
7 I'm kidding. Go ahead.

8                   MS. MILLER: But Applicant has proposed  
9 some conditions.

10                   Parking, it seems, I just want to state  
11 for the record that the ANC did condition, I believe,  
12 their support based on the Applicant's providing  
13 additional parking. And that may have been qualified,  
14 unless there are unforeseen circumstances or something  
15 that would prevent it. And so I think it just should  
16 be part of the order, in any event, that the Applicant  
17 has made that representation, that they would provide  
18 this additional parking, unless there were some  
19 unforeseen circumstance.

20                   We can look at it in the condition. I  
21 think it's set forth in the condition. That might be  
22 the more systematic way to approach this, but you had  
23 brought up parking. So --

24                   MR. GRIFFIS: No, absolutely. Okay.  
25 Well, then let's get right to it. We have the --

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1 actually, let me go through a couple of aspects of  
2 this first.

3 Looking, of course, the parties in  
4 opposition, all of their filings, their case and then  
5 the proposed findings of fact and conclusions, are  
6 there any other specific items or elements based on  
7 the Applicant's submission and proposed findings and  
8 conclusions?

9 Very well, I'll just make one note to the  
10 Board for your consideration. On page 13, under 38,  
11 the heading reads "facts relevant to determine the  
12 variance relief can be provided without causing  
13 substantial detriment to the public good", you go to  
14 item in which there was some discussion in the hearing  
15 regarding quiet residential street and how we define  
16 that and the Board is familiar with these aspects of  
17 characterization and official characterizations.

18 There is a proposed finding that indicates that  
19 we actually went to DDOT's website and actually looked  
20 at the highway plan and made some determination and  
21 have some understanding of major arterial and local  
22 collector and minority arterial and such.

23 I don't think that that, in fact, should  
24 go -- it's not a finding that I have in terms of a  
25 determination, deliberation, first of all, the

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1        specifics of where that information is from,  
2        sectionally. I'm not sure its conclusion is something  
3        that I find being persuaded by, let alone having come  
4        up with myself.

5                So if that is absolutely clear, anyway,  
6        I'd have you focus on item i and whether it is  
7        something that would, in fact, be part of our  
8        deliberation at this point.

9                MS. MILLER: I just want to clarify for  
10       the record in case I didn't hear you say that you were  
11       reading from the Applicant's proposed findings and  
12       conclusions of law.

13               MR. GRIFFIS: That's correct. Exhibit 38.

14               MS. MILLER: Okay.

15               MR. GRIFFIS: Okay. It seems to actually  
16       be bordering on the fact of introducing new  
17       information and evidence into the record without  
18       having it actually introduced at the hearing. Unless  
19       I'm mistaken, I don't see it in my file.

20               It is, of course, a public document,  
21       anyone can go to the website. The District  
22       government's website is fantastic, but to base an  
23       assertion or a finding on that, I think is going a  
24       little too far.

25               Let's then go to the proposed conditions

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1 by the Applicant and also in Exhibit 38 and just  
2 discuss those. I think it may bring some relevancy to  
3 other aspects of the application that we may need to  
4 discuss or may well not.

5 Condition A through J, actually, are  
6 outlined here. I'm going to start off very quickly.

7 Condition A indicates the residential rec  
8 space provided for this project as set forth in  
9 Exhibit 23. And basically, it's saying they're going,  
10 if approved, provide the residential recreation space  
11 as shown in Exhibit 23 which is actually their  
12 drawings. Of course, it does go to the ASK's 7 of its  
13 most relevancy.

14 There's two points to this, I think.  
15 First of all, that's a redundant aspect if this  
16 proceeds in the affirmative, to reiterate, actually,  
17 what the Board would then be approving as a condition  
18 of its approval. So I don't think it's required in  
19 terms of a condition. But it brings up the other  
20 point of options as the Board has been provided these  
21 options. That gets to be a little bit cumbersome and  
22 I think it actually works much better off as  
23 Applicants come in and take one direct approach. I  
24 don't believe it's harmful. I think it's actually  
25 very successful to show what the repercussion of doing

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1 that or why it becomes difficult, but to give the  
2 Board options to pick or choose.

3 One, I think we can handle, but it does  
4 add to the complexity of a full application,  
5 especially when you're dealing with community and  
6 neighborhood groups that are having to look at this  
7 also. I think it can be somewhat more difficult and I  
8 don't think it serves anyone great purpose to do it  
9 that way. But it's obvious that we're looking at it  
10 was placed, the documents, probably Option 1, whatever  
11 it is. The roof deck, I believe would not have the  
12 elevator access as proposed.

13 Condition B, the overall proportion of the  
14 ground floor facing 14th Street would be used for --  
15 this will turn out well in the transcript when they  
16 can't figure out what I'm mumbling -- but Condition B,  
17 of course, is in front of all of us. Arts overlay  
18 retail services, ASK, shown as ASK 3. Again,  
19 referring to the documents which is the first  
20 condition of any order that would go out. Parking  
21 would be provided as set forth in ASK 2, again  
22 referring to the documents.

23 ASK 2, I mean, we're looking at ASK 1 and  
24 2.

25 Okay, anyway --

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1 MS. MILLER: In essence, I mean when we  
2 grant an order it states that application is granted  
3 in accordance with the plans that are submitted.

4 MR. GRIFFIS: That's correct.

5 MS. MILLER: So it's basically redundant  
6 and it doesn't -- they don't need to be set forth in  
7 conditions, right?

8 MR. GRIFFIS: Well --

9 MS. MILLER: Or else maybe in one  
10 condition.

11 MR. GRIFFIS: No, I think that's exactly  
12 right. I mean in all clarity, yes. The documents  
13 that are submitted run with the order. Now it doesn't  
14 mean that nothing can change in those documents and I  
15 mean quite frankly it's those aspects that came before  
16 us that are so rigid. I mean if you change the aspect  
17 and this is -- well, if you change the aspect of which  
18 the basis of the decision or the direct decision went  
19 to, then sure, that's obviously problematic. What  
20 we're -- what I'm -- well --

21 MS. MILLER: Certainly those aspects of  
22 the plans are germane to our decision.

23 MR. GRIFFIS: Right. Okay, let's continue  
24 on then.

25 Condition E which was the layout of the

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1 apartments may vary within the overall area as shown  
2 for the apartment units. I don't see how that's a  
3 condition that relates directly to the relief sought.

4 F is in the same frame. The layout of the  
5 area set aside for retail service along 14th frontage  
6 on the ground level may vary within the outer  
7 perimeter as shown. Certainly not the language of a  
8 condition. And I don't believe there would be  
9 anything that would preclude the owner from setting up  
10 demising walls depending on the retailer that went in  
11 there as long as the square footage didn't change.

12 G is in the same frame in terms of laying  
13 out the fluctuation as long as it doesn't step across  
14 onto any of the aspects of the zoning that came before  
15 us for relief. And again, the area of public space, I  
16 think we've addressed that substantially.

17 Are there others who would like to say  
18 something more about this? This Condition H,  
19 actually, I have a great deal of problems with saying  
20 we're conditioning that the developer need not deal  
21 with the area outside. Again, it's off the -- it's  
22 outside of the property, so it removed itself from the  
23 jurisdiction of zoning.

24 Ms. Miller?

25 MS. MILLER: I was going to say basically

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1 the same thing, that it's public space, so it's beyond  
2 our jurisdiction, but certainly I think we were saying  
3 we would encourage the community to work with the  
4 Applicant on making that public space work and be  
5 beautiful, etcetera, but that's beyond our  
6 jurisdiction.

7 I think the cases that come before us have  
8 to go before other agencies as well and they belong in  
9 their jurisdictions such as public space and historic  
10 preservation, so this one is not within ours.

11 MR. GRIFFIS: Right, and I think it's in  
12 the case fact that it is the new owners or however the  
13 association of the building would deal with, it is a  
14 responsibility to maintain that area, so the  
15 maintenance, hopefully, will be adequate and  
16 beautiful.

17 Applicant may make modifications to  
18 exterior facade. Of course, we don't need to address  
19 that, it's certainly not a condition of this order.

20 My question is why J would be needed. In  
21 fact, there's no way that J is a condition on this.  
22 We have our normal course and proceedings and it goes  
23 to the fact of whether minor modifications' requests  
24 could be brought to the Board and I don't think we  
25 need to address that at all. And it would be

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1 premature in doing that.

2 Okay, anything else?

3 MS. MILLER: I just want to make a further  
4 comment about parking because I think that we're going  
5 in the direction of not including most of these  
6 conditions and there is that condition that addresses  
7 parking and I see the language proposed by the  
8 Applicant compared to the language proposed by the ANC  
9 and it's basically the same, and what I was trying to  
10 articulate before, that the Applicant is representing  
11 that it's going to provide additional parking unless  
12 it's not feasible as the plans and construction  
13 proceeds due to unforeseen conditions in the ground.  
14 It seems to me that this belongs as a representation  
15 in the order, what we're relying on, but not as a  
16 condition.

17 MR. GRIFFIS: Right, excellent point. I  
18 think you're absolutely correct.

19 MR. MANN: The problem that I would have,  
20 if it were a condition is does that put us in the  
21 position of deciding what's reasonable or when  
22 something is unforeseen? How and why should we be  
23 making that decision?

24 MS. MILLER: I also want to note that the  
25 opponents didn't propose any conditions as well, and

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1 it seems like a lot of these conditions are merely  
2 reiterating generalizations or requirements that we  
3 take for granted that are within the regulations or  
4 understood in the body of the orders or referenced  
5 inthe body of the orders.

6 MR. GRIFFIS: Thank you. Anything else?  
7 Any other aspects? Further discussion? Let's have  
8 further discussion then under a motion. I would move  
9 approval of Application 17197 of the 1600 14th Street  
10 Limited Partnerships as application has been amended  
11 to deal with the variance and reduced requirement for  
12 the residential rec space; special exception, reduce  
13 the requirement to dedicate 50 percent of the ground  
14 floor, arts and that's under 1901.1.

15 I think that's it, isn't it?

16 As the 777 and 411, I do not believe are  
17 invoked and needed for discussion. So there it is.  
18 The motion is before us. Is there a second?

19 MS. MILLER: Second.

20 MR. GRIFFIS: Thank you. Further  
21 discussion?

22 Very well, I think we've laid out very  
23 completely the aspect of the tests and all the  
24 relevant facts that the Board has relied on in its own  
25 deliberation and I think we can move on from here. We

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1 have a motion before us. It has been seconded.

2 Indeed. Then I would ask for all in favor  
3 signify by saying aye.

4 (Ayes.)

5 MR. GRIFFIS: Opposed?

6 (No response.)

7 MR. MOY: Staff would record the vote as 3  
8 to 0 to 1. This is on the motion to approve, as  
9 amended, made by the Chair, Mr. Griffis, seconded by  
10 Ms. Miller. Also in support of the motion, Mr. Mann.

11 We have one Board Member not participating on the  
12 case. We also have a Zoning Commission Member who  
13 submitted an absentee ballot which is to approve the  
14 application, so that would give a final vote as 4 to 0  
15 to 1.

16 MR. GRIFFIS: Good. Thank you, Mr. Moy.  
17 Let's move on. 17166.

18 MS. BAILEY: This is a full order. Is  
19 that the question? Is the question whether this is a  
20 full order?

21 MR. GRIFFIS: Yes, this is a full order.  
22 We've got a party in opposition on this.

23 MR. MOY: The next case is Application No.  
24 17166 of Dinesh Sharma and Murali Nadipelli, pursuant  
25 to 11 DCMR 3103.2, for a variance from the lot area

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1 and width requirements under section 401, a variance  
2 from the lot occupancy requirements under section 403,  
3 a variance from the rear yard requirements under  
4 section 404, a variance from the off-street parking  
5 requirements under section 2101.1, and a variance from  
6 the use provisions under subsection 330.5, to allow  
7 the construction of a three-story, 4-unit apartment  
8 building in the CAP/R-4 District at premises 430 3rd  
9 Street, N.W. and that's in Square 755, Lot 835.

10 The Staff notes that on July 13, 2004, the  
11 Applicant amended the application to a three-story, 2-  
12 unit flat and therefore withdrew the requested zoning  
13 relief from sections 404, 2101.1, and 330.5.

14 On July 13, 2004, the Board completed  
15 public testimony on the application and scheduled its  
16 decision on September 4, 2004. The Board requested  
17 the following post-hearing documents. There was a  
18 series of specific supplemental information that the  
19 Board requested which the Staff will not go through.  
20 Suffice it to say the Applicant filed its submission  
21 on September 8, 2004 and that's in your case folders  
22 identified as Exhibit 42 and that was dated September  
23 3rd which makes the submission untimely.

24 Finally, the Office of Planning was asked  
25 to submit a supplemental report which they filed on

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1 September 7th and it's in your case folders,  
2 identified as Exhibit 41.

3 And that concludes the Staff's briefing,  
4 Mr. Chairman.

5 MR. GRIFFIS: Excellent.

6 (Pause.)

7 MR. GRIFFIS: Very well, Mr. Moy,  
8 excellent outlaying of this. The first issue for the  
9 Board at this time is looking at Exhibit 42, as Mr.  
10 Moy has laid out the fact that the document is not  
11 timely filed.

12 I would move that we waive our time  
13 requirements and accept Exhibit 42 and I ask for a  
14 second.

15 MR. HILDEBRAND: Second.

16 MR. GRIFFIS: Thank you, Mr. Hildebrand.  
17 Is there any further discussion? If not, we have a  
18 motion before us and seconded to accept Exhibit 42. I  
19 ask for all in favor signify by saying aye.

20 (Ayes.)

21 MR. GRIFFIS: Opposed? Abstaining?

22 (No response.)

23 MR. GRIFFIS: Very well. Let's go to the  
24 specifics of that and that filing. I think it was  
25 fairly evident in looking at this that we have a very

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1 -- well, a nonconforming lot, based on its side, its  
2 width dimension and there was the case that it was  
3 that it lended itself to great practical difficulties  
4 in putting the building as proposed on it. Of course,  
5 we should take note that the original application was  
6 four units have been diminished to two units or flat  
7 which is, of course, a matter of right in this zone  
8 and for this specific site.

9 They have an existing lot size that, of  
10 course, it has not been changed and won't be changed  
11 and from all the evidence present, cannot be changed  
12 as the adjacent lots, of course, are separately owned  
13 by other individuals and in fact, structures are on  
14 them.

15 Let's go to then the filings. We had some  
16 question about whether -- because the elevation that  
17 was provided, whether the FAR actually was properly  
18 calculated. Of course, in the R-4 zone in the Capital  
19 Hill overlay, the FAR as proscribed, as it is not  
20 anywhere else or generally in the residential zones.  
21 It is not prescribed FAR. It goes -- well, it's  
22 treated differently.

23 This prescribes 1.8, the proposal is to  
24 move that upwards of 2.25. The question was going to  
25 whether the basement in which the Applicant

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1 continually referred to as a basement was actually a  
2 basement or as is designed in the zoning regulations a  
3 cellar. It has been submitted into the record  
4 indicating that it, in fact, is a cellar as described  
5 in the zoning regulations, even though the submission  
6 actually calls it a basement, ceiling height above  
7 which is below the four foot height that would include  
8 it in the FAR.

9 I think we understand what is being said  
10 here and that is absolutely correct. It should  
11 actually read cellar ceiling, height above the grade  
12 which is below the four feet height which obviously is  
13 not included in the FAR, so we do have the correct FAR  
14 calculations. It is still well above the 1.8 which is  
15 specifically prescribed in the overlay which this  
16 building is located.

17 The revised plans to the stairway -- and I  
18 think that was an important aspect because the  
19 stairways were being talked about of taking up so much  
20 space within the footprint of the building.  
21 Obviously, we're well aware of vertical communication  
22 and how much space it does take up and require and  
23 that was essentially pushing the building out so that  
24 it would have to go well beyond the 60 percent lot  
25 occupancy, well into the above 70 percent lot

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1 occupancy. And that has been provided.

2 Let me open it up to others' comments and  
3 I have more to say, but let me give others an  
4 opportunity to speak.

5 Yes, Mr. Mann?

6 MR. MANN: I just wanted to note, first of  
7 all, that over the I think the Applicant was before us  
8 maybe two or three times. And each time we asked them  
9 for a little bit more information to help us to make  
10 our decision. And each time we got a little bit more,  
11 but we never got everything that we wanted, including  
12 on this submission, there's still several pieces of  
13 information that were not submitted in the manner in  
14 which we requested. And I find it very difficult to  
15 assess the true nature of this application because of  
16 the information that is still not been submitted.

17 MR. GRIFFIS: Okay, did you want to talk  
18 specifically about the information you were looking  
19 for or not?

20 MR. MANN: Well, for example, one of the  
21 things that you said a moment ago was regarding the  
22 FAR. We asked for the FAR calculations and those were  
23 actually never given to us. So I still don't have a  
24 great deal of comfort that the FAR has been calculated  
25 correctly. We asked for the perimeter calculations

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1 regarding whether or not it was a basement or a  
2 cellar. We didn't get that. We didn't get a plan  
3 that depicts the relative sizes of the buildings on  
4 either side of the building as we requested, so that  
5 we could see what the length of the proposed building  
6 was in relation to the existing buildings. Those are  
7 three items that come to mind that we requested that  
8 we didn't get.

9 And I also wanted to point out and I think  
10 this probably does not go to our deliberation that in  
11 the Exhibit 42, that there's a statement that somebody  
12 from the Office of Historic Preservation saw no  
13 reasonable objection on historic preservation level  
14 that would indicate Historic Preservation Review Board  
15 would object to this project. But it's not in a --  
16 the submission also goes on to say that it's not  
17 located in a historic district and that's probably  
18 neither here nor there, but I didn't understand the  
19 disconnect there either.

20 MR. GRIFFIS: Oh. On that last point, let  
21 me clarify because I believe, as I recall in the  
22 hearing, we had talked about well, where are you with  
23 historic preservation and you will have to put a  
24 review obviously in the Capitol Hill Overlay and it  
25 was attested that they were anticipating doing that

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1 and I believe, if I'm correct, made an indication --  
2 well, probably gave an indication that you know, they  
3 may change things after we deal with this. So that's  
4 probably why it was indicated that Ms. Paulus at the  
5 Historic Preservation Office, at least had looked at  
6 it and didn't see any initial objections. But  
7 I think it's a good point to bring up.

8 MR. MANN: And finally, the other thing  
9 was that it states a couple of times that if this  
10 structure can't be built as proposed, that there are  
11 no feasible alternatives, that nothing else could be  
12 built on the property and it never explains why.

13 MR. GRIFFIS: Okay, that's an excellent  
14 point I want to come back to. Others?

15 Yes, Mr. Hildebrand.

16 MR. HILDEBRAND: Could you give me a  
17 reference point for that last one? I just want to  
18 mark it in my exhibit.

19 MR. MANN: What I was just talking about?

20 MR. HILDEBRAND: Yes.

21 MR. MANN: If you could look at the bottom  
22 of page 3, the last paragraph and the last sentence on  
23 page 5.

24 MR. HILDEBRAND: I think everyone who has  
25 lived on Capitol Hill would certainly be able to say

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1 that that's probably not a realistic statement, but I  
2 agree with you completely.

3 One of the things I was really looking  
4 forward to seeing in this revised submission was the  
5 relationship of the rear of the addition to the  
6 adjacent properties in determining light and air  
7 impact on the property, particularly the property to  
8 the north. I was very interested in seeing where the  
9 current building stops and once again, I'm looking  
10 through the drawings and even though it says in the  
11 cover letter that they're clearly shown on the site  
12 plan, I still don't see a description on the drawing  
13 of where the actual back face of either building are.  
14 So I think that's a real concern to me.

15 MR. GRIFFIS: Other aspects?

16 MS. MILLER: I just want to concur with  
17 Mr. Mann's statement. They say it a few times that  
18 they assert that they can't construct any structure in  
19 accordance with lot occupancy requirements, but they  
20 don't provide any support for that, either on economic  
21 grounds or on design grounds.

22 MR. GRIFFIS: Others? Very well, if  
23 there's nothing else, is there direction, action the  
24 Board would like to take?

25 MR. MANN: Sure. I'd move that we deny

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1 Application No. 17166.

2 MR. GRIFFIS: Okay, before I ask for a  
3 second on that, can I have a brief discussion on that  
4 in terms of the three aspects that we're looking at  
5 and perhaps we look at one, we have a nonconforming  
6 lot width that I believe there's no real difficulty as  
7 the Board has assessed and Office of Planning tends to  
8 concur. Perhaps we could break the application up in  
9 its approval and denial?

10 MR. MANN: I'd be okay with that.

11 MR. GRIFFIS: Okay.

12 MR. MANN: So should I restate the motion?

13 MR. GRIFFIS: That would be great.

14 MR. MANN: Would that require a multiple  
15 motions or should I do this under one motion?

16 MR. GRIFFIS: I think you can do it all  
17 under one motion and then we'll see how it proceeds.

18 MR. MANN: Okay, so I'd move that we  
19 approve the request for a variance to decrease the lot  
20 width from 18 feet to 14 feet and to decrease the lot  
21 area from 1800 square feet to 1372 square feet; deny  
22 the request for a variance to increase lot occupancy;  
23 and deny the variance to increase the FAR. And that's  
24 all in the application 17166.

25 MR. GRIFFIS: Excellent. Is there a

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1 second?

2 MR. HILDEBRAND: Second.

3 MR. GRIFFIS: Very well. Mr. Mann has  
4 made a motion and it has been seconded, for  
5 clarification, I think, we can have continued  
6 discussion about the lot width and lot area, but I  
7 think it's very straight forward and fully understood  
8 by the Board, one, its uniqueness, but also the  
9 practical difficulty that arises out of that  
10 uniqueness in terms of the nonconforming and existing  
11 site and site dimensions and it wouldn't impair  
12 integrity of the zone plan and map or the public good,  
13 if approved, the variance to decrease as it is an  
14 action that's decreasing it, but actually an existing  
15 condition.

16 Going to the aspect of the lot occupancy  
17 and also going to the aspect of the FAR, which of  
18 course are closely linked and tied as they should be  
19 as they have actually be crafted.

20 When I was looking at this, I tend to  
21 agree with the Board in terms of their analysis and  
22 persuasiveness of their arguments, looking at these.  
23 I don't think the Board or I should speak for myself,  
24 personally, I think this is an excellent addition to  
25 the block that needs more buildings that may well look

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1 like this and perhaps did at one time. And I think  
2 the elevation and the height, of course, aren't under  
3 any sort of jurisdiction for us or request for relief,  
4 but it obviously fits in well or fits in hopefully  
5 what continues to be the character of that surrounding  
6 area.

7 Well, it comes down to the fact of the  
8 base argument and there are two, in terms of the  
9 percentage of lot occupancy and also the increase in  
10 the FAR and that is everything inside can't fit in a  
11 conforming footprint and the specific one that really  
12 hit me was stairs, that the amount of space that the  
13 stairs were to take up, but again, what we're being  
14 asked to look at is two units in the building, which  
15 is not a requirement from zoning aspects and I don't  
16 see how that rises to creating a practical difficulty,  
17 if it's even unique, but if it created a practical  
18 difficulty I think a single family residence on this  
19 site in the conforming lot occupancy is, in fact, able  
20 to be constructed.

21 Mr. Mann, I think Mr. Hildebrand then  
22 asked for the site of it, indicated in the filings of  
23 the undue economic hardship argument that was brought  
24 up. There's two aspects to that. One, the Applicant,  
25 as Mr. Mann has indicated at the bottom of page 3,

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1 said that the Applicant could not build anything on  
2 the property. That's a very, very strong statement,  
3 as I believe that the record will show that there was,  
4 in fact, an existing structure on that lot.

5 Going more importantly to the undue  
6 economic hardship, the cases cited are excellent  
7 cases; Tyler Merrick and I believe also the  
8 Preservation -- there are several others that actually  
9 establish the fact that this Board can and does look  
10 at the economic difficulties or practical difficulties  
11 from an economic aspect.

12 But all this is is, in fact, a statement  
13 that is there and Ms. Miller, I believe adequately and  
14 accurately said that there was no evidence shown of  
15 what it is. And I don't think that the Board looks  
16 for huge pro formas and large financial spreadsheets,  
17 but a little bit of something in terms of why it would  
18 have -- or why it would create an economic hardship  
19 when, as Mr. Hildebrand has said, one could probably  
20 look at the large extensive Capitol Hill and find  
21 smaller homes that were occupied.

22 Again, I think it's a lot being asked of a  
23 very small site and not a lot, but it's a lot in terms  
24 of the overlay restrictions of the 1.8 FAR. 1.8 FAR  
25 is puny for most buildings and when you reduce the

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1 site itself it's small, but to extend it upwards of  
2 2.25 or extending it at all I think is a difficulty as  
3 the Capitol Hill Overlay is very prescriptive and  
4 descriptive of why and what is to be provided.

5 That being said, I'll let others speak to  
6 the motion.

7 MR. ETHERLY: Mr. Chair, I'll speak very  
8 briefly. I struggled quite a bit with this  
9 application and quite honestly, wished I could find a  
10 way to make it work. However -- and I would also  
11 probably admit that I was somewhat on the fence coming  
12 into the deliberation and discussion today, but would  
13 tend to agree with my colleagues for the simple reason  
14 that I think the economic argument if perhaps fleshed  
15 out a little further, might have assisted or helped in  
16 perhaps buttressing the weakness that comes in under  
17 the uniqueness in the practical difficulty prongs of  
18 the variance test here.

19 As a Board, we're probably oftentimes  
20 confronted with properties such as this where you see  
21 the current state of disuse or neglect of the site and  
22 you want to do something. You want to do something to  
23 make it work. You want to do something to bring that  
24 particular lot back into practical, I'm sorry, back  
25 into productive use, but I believe as was noted

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1 earlier by my colleagues, there probably are just too  
2 many gaps left in the application to be filled with  
3 respect to what's happening at the rear of the  
4 property, as was discussed earlier.

5 At this point, we're probably left with  
6 perhaps having to fashion some conjecture or some very  
7 artful imagination to sort that out at the rear of the  
8 property. And as was noted by my colleague, Ms.  
9 Miller, with respect to the retort to the inquiry of  
10 well, we can't build anything else here, why doesn't a  
11 single family property work in this particular  
12 instance and why wouldn't that perhaps be a better,  
13 more equitable use of the lot that you have here.  
14 It's a difficult call. It's a difficult call and  
15 perhaps if there were more there on the economic side,  
16 I would work with it. But I'll also note, of course,  
17 that the submission that was offered by the Stanton  
18 Park Neighborhood Association, Exhibit 34, did discuss  
19 and note, of course, that properties or lots such as  
20 this are not uncommon on Capitol Hill, and in fact,  
21 still are used to fairly substantial levels of success  
22 from a market standpoint.

23 So all that to say this is perhaps a  
24 reluctant support of the motion, but I think it's the  
25 appropriate outcome, given what we have in the record

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1 in front of us.

2 Thank you, Mr. Chair.

3 MR. GRIFFIS: Good. Thank you very much.

4 I think that's very well said and I think probably  
5 addresses, if not a majority, quite a few of the Board  
6 Members' own opinions.

7 Very well, anything further then?

8 Ms. Miller?

9 MS. MILLER: I just want to note for the  
10 record that the Office of Planning recommended  
11 approval of the variance for the lot area and width  
12 and denial for lot occupancy and increasing the FAR  
13 and we give great weight to Office of Planning. And  
14 my understanding is that ANC 6-C and Capitol Hill  
15 Restoration Society also support the lot area  
16 variance. And I think that the -- as we have stated,  
17 and I'll just say it one more time that the variances  
18 for the lot occupancy and the FAR seem to me to fail  
19 the second prong which is -- of the variance test  
20 which is the practical difficulty of complying with  
21 the zoning regulations.

22 MR. GRIFFIS: Good, thank you. Others?  
23 Very well. We have a motion before us and it's been  
24 seconded. I ask for all those in favor signify by  
25 saying aye.

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1 (Ayes.)

2 MR. GRIFFIS: And opposed? Abstaining?

3 (No response.)

4 MR. MOY: Staff would record the vote as 5  
5 to 0 to 0. This is on the motion of Mr. Mann which  
6 would approve the lot area in width, but deny the lot  
7 occupancy and the FAR request; seconded by Mr.  
8 Hildebrand. Also in support of the motion, Mr.  
9 Griffis and Mr. Etherly.

10 MR. GRIFFIS: Thank you, Mr. Moy.

11 MR. MOY: The next case and the last case  
12 for decision is Application No. 17188 of Deborah Miles  
13 Dominique, pursuant to 11 DCMR 3103.2, for variances  
14 from the lot occupancy requirements under section 403,  
15 and a variance from the alley set-back requirements  
16 under subsection 2300.2(b), to construct an accessory  
17 garage serving a single-family row dwelling in the  
18 CAP/R-4 District at premises 409 3rd Street, N.E. And  
19 that's in Square 780, Lot 26.

20 On July 13, 2004, the Board completed  
21 public testimony on the application and scheduled its  
22 decision on September 14, 2004. The Board requested  
23 the following documents. First is a supplemental  
24 report from the Office of Planning. This filing was  
25 submitted in our case folders and is identified as

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1 Exhibit 30. The Applicant was allowed to provide  
2 supplemental information and that filing was submitted  
3 on September 3, 2004 and revised with attached  
4 photographs on the same date and that's in your case  
5 folders under Exhibits 31 and 32.

6 And that completes the Staff's briefing,  
7 Mr. Chair.

8 MR. GRIFFIS: Thank you very much, Mr.  
9 Moy.

10 Let me just say on this case as we get  
11 into it, I am very well aware of how much time the  
12 Board has spent on this and to be quite frank and to  
13 be quite honest at such a small scope and small case  
14 it should not have required so much of our attention.

15 And our attention came because I think this is a very  
16 important case for the Board and it seems to simple  
17 and so straight forward. A homeowner of an existing  
18 structure wants to build a garage and somehow our  
19 zoning regulations don't allow it.

20 And I think that's giving me -- and I  
21 think I speak correctly for others some pause of how  
22 can this be? How can we be faced with the situation  
23 that we have that's before us. But let's get into it  
24 then and talk about this. First of all, of course, we  
25 did keep the record open that Mr. Moy has talked about

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1 in order to establish whether there was a history of a  
2 structure or an accessory building on the alley lot.  
3 And I think in my mind I was looking for the  
4 establishment of one more aspect of uniqueness to this  
5 particular property which will then go to any sort of  
6 practical difficulty, but also in a very informative  
7 way of how is it in 1904 and 1928 and in the 1960s it  
8 was appropriate to have the accessory structure on  
9 this specific site and not today and try to factor  
10 that into my own thinking and see where it came.

11 Looking at the uniqueness, I think that  
12 this case may not be the strongest we've ever seen  
13 evidenced, but there are aspects of uniqueness that I  
14 think are, in fact, able to be relied upon. And that  
15 is one, the commercial surface parking lot that  
16 centers the square. This is an interesting square.  
17 I'm not very familiar with many like it, but having  
18 such an open, almost quadrants in the center of it and  
19 that quadrants have been utilized for numerous years  
20 as actually this Board is well aware of because we've  
21 approved the use of that and still had to study that  
22 square. But we had the use of as a commercial parking  
23 lot.

24 That then creates and I think Office of  
25 Planning said it well and succinctly, the fact that

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1 there is the unique aspect behind this with the  
2 increased traffic and commercial traffic in and out.  
3 It also lends itself to a larger type of circulation  
4 that might be going into the alley and being in the  
5 alley utilizing the alley. It becomes more of a let's  
6 say a mixed use alley system which lends itself to an  
7 interesting aspect that the Applicant had brought up  
8 and that is in terms of safety and the types of crime.

9 I don't think that's particularly unique  
10 to this. Hopefully, it will not be existing anywhere  
11 in the city at some point, crime that is, and safety,  
12 but the point is I don't think it's unique to consider  
13 this, but what the unique aspect is is perhaps the  
14 level or the volume or the perception of it, based on  
15 the fact that you have not necessarily homeowners that  
16 are just utilizing the alley or a commuter that's  
17 trying to cut through once in a while, but rather,  
18 you're sharing this with a larger type of use and user  
19 which lends itself to a much more kind of an  
20 unpatrollable amount of circulation and population in  
21 the back.

22 That then lends itself to the uniqueness  
23 and the practical difficulty of -- well, to the  
24 reality of how one secures their rear area and in  
25 securing their rear area, and their parking pad, the

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1 practical difficulty of providing that type of  
2 structure with the set-back required from the alley,  
3 but also with the lot occupancy. And I dare say if we  
4 do and we need to discuss this, we need to look at  
5 Section 2500.3 which is the percentage that an  
6 accessory structure can occupy of a rear yard. This  
7 is, of course, an allowable accessory structure. It  
8 is allowed to be in the rear yard, but it cannot  
9 occupy more than 30 percent. I think with undue  
10 caution we might want to assume that, in fact, it is  
11 occupying more than 30 percent of the rear yard and  
12 look to having that also discussed in any relevancy  
13 for the processing of this.

14 Let me open it up to others. Well, let me  
15 lastly just say in terms of the intent and integrity  
16 of the zone plan, there's two aspects to this. One in  
17 its particular would this destroy the R-4 zoning as it  
18 has been laid out if it was approved. I dare say no.

19 But in the larger aspect of what would this do  
20 actually to the zoning if -- well, let me leave it at  
21 that.

22 Ms. Miller?

23 MS. MILLER: I'd say this is a case that I  
24 really struggled with, I think almost more than any  
25 case I've had before here where it makes such good

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1 sense that they ought to have the garage here. There  
2 seems to be no good reason that they shouldn't, other  
3 than the fact that our regulations don't seem to allow  
4 it and our job is to apply our regulations. And the  
5 prong that I found not fulfilled was the unique prong,  
6 the first test of the variance test and that being  
7 that the uniqueness really goes to the whole square,  
8 all the houses around this parking lot and that if we  
9 were to grant the variance in this case, then there  
10 would be no good reason not to grant it to all the  
11 other homes in a similar situation around this parking  
12 lot which has similar problems by the fact that there  
13 is a parking lot there.

14 And I was hoping in the submission that  
15 there might be something unique that would come  
16 forward, but when I saw the plans, it seems or the  
17 different maps, it seemed that a lot of houses were in  
18 the same situation, that there may have been a garage  
19 there before, for other properties as well as this  
20 property, so it wasn't unique in that way.

21 And I think that that's unfortunate and  
22 that the remedy may be a text amendment or something  
23 before the Zoning Commission. I think that the safety  
24 issue is an important one and it could possibly fill  
25 the practical difficulty test, but I couldn't -- prong

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1 -- but I can't see the uniqueness.

2 And with respect to substantial detriment  
3 to the public good of the zone plan, I don't see any  
4 substantial detriment. Many of the homes around this  
5 parking lot have garages. There was a garage there  
6 before. It doesn't violate the purpose of the R-4  
7 District, so for me it just failed on uniqueness.

8 MR. GRIFFIS: Okay, others?

9 MR. MANN: I'm afraid that I have to agree  
10 with Ms. Miller. And I also don't want to deny  
11 somebody a garage which just seems to simple and  
12 straight forward, but I also don't understand what  
13 makes this unique. Your argument that you presented  
14 earlier certainly goes to the fact that the square is  
15 unique, but I just can't see where this particular lot  
16 is any different than any of the others around it.

17 One other thing that I just wanted to  
18 point out, I don't know if this is worthy of  
19 discussion or not, but the Capitol Hill Restoration  
20 Society has also expressed their opposition to this  
21 project.

22 MS. MILLER: Wasn't that basis that they  
23 weren't different from the other properties and that  
24 it would lead to everybody else wanting to do it?

25 MR. MANN: That's right.

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1 MR. GRIFFIS: Yes, I think it really  
2 speaks to Ms. Miller's -- both of your points and  
3 actually it's the Stanton Park Neighborhood  
4 Association also. Is that what you said?

5 MR. MANN: The Capitol Hill Restoration  
6 Society.

7 MR. GRIFFIS: Okay. Well, Stanton Park  
8 also underscores the fact that granting the  
9 Applicant's request in this case would create an  
10 unfortunate precedent with the home owner with a  
11 typical property is granted a variance to construct 90  
12 percent lot coverage and to do so without showing  
13 hardship or unique circumstances than a lot occupancy  
14 restrictions imposed under D.C. zoning law would be  
15 kind of essentially meaningless, as nearly every other  
16 property owner could expect similar treatment. I  
17 believe that's a direction that you're going in. I  
18 see. Okay.

19 MR. ETHERLY: Mr. Chair, just to round out  
20 the comments, I will associate myself with the  
21 remarks, with my colleagues and at the risk of  
22 sounding like a broken record on this relative to the  
23 case that we just had previously, I share Ms. Miller's  
24 concerning conflict that I'd love to do it, I really  
25 would and I know that those words are probably going

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1 to be little solace to the home owners here who are  
2 trying to do something and that is a fairly simply  
3 undertaking, but it's a simple undertaking with a  
4 fairly complex lineage attached to it.

5 I think the Office of Planning's July 20th  
6 submission was very instructive as it was talked  
7 through the maturation process, if you will, of this  
8 particular community, this particular neighborhood  
9 with those accessory structures that attached to a  
10 number of the homes in this area. At one point, the  
11 submission taking us from 1904 essentially to 2002 in  
12 an aerial photo I think was just very helpful in  
13 illustrating the change that this particular area has  
14 undergone.

15 All I can say is it's perhaps very  
16 frustrating to kind of hear, as a homeowner, I'm sure,  
17 and at the risk of being presumptuous in putting  
18 myself in the shoes of the Applicant here, it's  
19 probably frustrating here that part of the concern is  
20 a slippery slope, if you will, that if doors are  
21 opened on this particular, in this particular  
22 instance, we might indeed see a plethora of other  
23 applications presenting similar requests.

24 I think that is a very practical concern  
25 and I'll only differ with Ms. Miller's assessment in

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1 the respect that I believe that is where potentially  
2 you do have a substantial impairment of the intent and  
3 integrity of the zoning regulations. I think as the  
4 Office of Planning's report alluded to, Section 2001  
5 is meant to try to bring nonconforming properties into  
6 greater conformance here and the door that would be  
7 opened, whether it's just a crack or opened all the  
8 way here, is a difficult one to open, because if you  
9 open it here, you're going to have to open it  
10 elsewhere, but I just felt compelled to recognize that  
11 and I know that's going to be little comfort to the  
12 Applicants in this case to hear that, because you want  
13 your garage. And there was something there before,  
14 probably, in all likelihood, and why can't you just  
15 put it there now? I recall, of course, that there  
16 was, I think, Office of Planning noted the e-mail  
17 submission from one of the agencies, DDOT, regarding  
18 the proposed garage's close proximity conceivably to  
19 the alley and perhaps some concerns, turning radius  
20 for trash vehicles and others types of vehicles might  
21 create some difficulty. I wasn't too much swayed by  
22 that, nor was I swayed about, I think there was some  
23 discussion in the Office of Planning report about  
24 potentially visual impact of a garage structure.

25 I noted that the Office of Planning did

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1 make reference to conceivably perhaps tinkering with  
2 the -- and I'm looking for the specific reference, but  
3 perhaps tinkering to the placement of the garage at  
4 the rear of the property such that maybe a special  
5 exception would be a route that could be pursued here,  
6 rather than a variance and that was for a moment  
7 attempting analytical junket to try to go off on, but  
8 I didn't want to try to work that out or tease that  
9 out in my head because I still think it brings us back  
10 to the overall concern that is, if you do it in one  
11 stance, you're going to have to do it in others.  
12 That, as Ms. Miller noted, and as others have noted,  
13 brings us back to the uniqueness aspect of this in  
14 that there are other properties which are similarly  
15 situated on this lot, as the Office of Planning noted,  
16 other lots facing east and/or west on the square and  
17 some of the adjacent lots are a similar size. So the  
18 property is not quote unique in this respect.

19 So once again, it's a long-winded way of  
20 saying I agree with my colleagues here. It's an  
21 outcome that I wish could go another direction, but I  
22 think it's the appropriate one under the regulations  
23 as they are currently drafted.

24 Thank you, Mr. Chairman.

25 MR. GRIFFIS: Thank you very much. The

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1 last thing about the Office of Planning, looking at  
2 it, I believe they were discussing the special  
3 exception or 223 if the garage is to attach to the  
4 building, but if I'm not mistaken, they did also then  
5 go to but you still have the lot occupancy to deal  
6 with.

7 I remember when I first in also, I wanted  
8 to see where the first floor came in to see whether  
9 this was above it. Obviously, the section shows it's  
10 well above it. It's all straight forward in terms of  
11 what it is in terms of lot occupancy. I think it's  
12 been well said the frustration that we have with our  
13 own regulations on this case.

14 Very well. Is there action, direction  
15 from the Board at this time, in which case I think  
16 it's best that we do proceed in a motion, noting the  
17 hesitation, I think it just lends itself to restate  
18 the Board's opinion on this.

19 However, I'm going to move to deny  
20 Application 17188 for the variances and the lot  
21 occupancy requirements under 403, variance from the  
22 alley set-back requirements under 2200.2(b) and that  
23 would allow construction of an accessory garage  
24 serving a single family row dwelling which happens to  
25 be in the CAP/R-4 District, premises 409 3rd Street,

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1 N.E. and ask for a second.

2 MR. MANN: Second.

3 MR. GRIFFIS: Thank you, Mr. Mann.

4 I think we've deliberated this quite extensively in  
5 terms of the difficulty in establishing the uniqueness  
6 of what some Board Members have indicated. All of the  
7 elements have been stated and I think the individuals  
8 seem to make their own assertion on whether there is  
9 uniqueness or not and vote accordingly.

10 Moving to the practical difficulty out of  
11 that uniqueness, again, there are differences perhaps  
12 of opinions and not on the specifics, but I believe  
13 that it has not been strongly made in terms of one or  
14 the other of those as I've heard the Board lay it out.

15 I'll let others speak to the motion, if  
16 need. Ms. Miller?

17 Oh, I'm sorry, one last aspect that we've  
18 been dancing around here. It is not -- I think it's  
19 an excellent point to look at the Zoning Commission  
20 and actually rely hopefully on Office of Planning's  
21 great expertise in looking at the regulations and how  
22 they deal with single family garages. After all, we  
23 do have excellent sections that have been changed in  
24 order to accommodate additions to existing  
25 nonconforming structures and perhaps under that type

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1 of relief sought, this type of scenario might be made.

2 As they were originally constructed they  
3 do fulfill an important need and requirement. We have  
4 how many cases that come before us and the largest and  
5 biggest most controversial issue is parking. They may  
6 be larger projects and such, but that doesn't diminish  
7 the aspect that we all now is an important one for  
8 safety, but also for accommodation.

9 So I would -- and I think this Board can  
10 do quite a bit in terms of being a participant in  
11 drafting that type of proposed text amendment which  
12 would then be incorporated into the zoning  
13 regulations.

14 Obviously, that doesn't happen fast, but I  
15 think we ought to spend a good amount of time and  
16 focus on it this year. So that being said, Ms.  
17 Miller, did you have further --

18 MS. MILLER: Basically on the same line.  
19 I support the motion to deny the application, but I  
20 believe that it leads to a bad result which is  
21 unfortunate and that I think that we are required  
22 though to find this way in light of the authority that  
23 we have under our regulations and that I believe a  
24 text amendment would be the appropriate remedy.

25 MR. GRIFFIS: Excellent. Thank you.

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1 Others?

2 MR. ETHERLY: Just as a final comment, Mr.  
3 Chair, perhaps it's appropriate that being the first  
4 day back from recess that the Board is as effusive as  
5 it is today with our commentary, but I think also it's  
6 an important message to communicate, not only to this  
7 Applicant, but to other applicants that there are  
8 times when the results aren't those that we wish to  
9 reach, but they're the results that are dictated by  
10 the zoning regs. Hopefully, this property and the  
11 address will continue to be an enjoyable property for  
12 the Applicant as a home, contributing to the vibrancy  
13 of the Capitol Hill community of which I'm a member  
14 and doesn't sour the Applicant in any major or  
15 significant way on the wonderful life that is life in  
16 Washington, D.C. So I wish them the best with the  
17 continued use and enjoyment of the property.

18 Thank you, Mr. Chair.

19 MR. GRIFFIS: Good. Thank you very much.  
20 Very well, then we have a motion before us and it has  
21 been seconded. I ask all those in favor of the motion  
22 to signify by saying aye.

23 (Ayes.)

24 MR. GRIFFIS: Opposed? Abstain?

25 (No response.)

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1                   MR. MOY: Staff would record the vote as 4  
2 to 0 to 1. This is on the motion of the Chair, Mr.  
3 Griffis, to deny the application; seconded by Mr.  
4 Mann. Also in support of the motion, Ms. Miller and  
5 Mr. Etherly and we have one Zoning Commission Member  
6 not participating on the case.

7                   MR. GRIFFIS: Thank you. Is there any  
8 other further business for us this morning, Mr. Moy?

9                   MR. MOY: No sir.

10                  MR. GRIFFIS: Very well then. I can  
11 adjourn the morning session of 14 September 2004.

12                  (Whereupon, at 11:50 a.m., the Public  
13 Meeting was concluded.)

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