

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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PUBLIC MEETING

+ + + + +

TUESDAY,

FEBRUARY 1, 2005

+ + + + +

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

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

GEOFFREY H. GRIFFIS	Chairperson
RUTHANNE G. MILLER	Vice Chairperson
CURTIS L. ETHERLY, JR.	Board Member
JOHN A. MANN, II	Board Member (NCPC)

ZONING COMMISSION MEMBER PRESENT:

JOHN G. PARSONS	Commissioner
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OFFICE OF ZONING STAFF PRESENT:

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

OFFICE OF PLANNING STAFF PRESENT:

ARTHUR JACKSON	Office of Planning
STEPHEN MORDFIN	Office of Planning

This transcript constitutes the minutes from the Public Meeting held on February 1, 2005.

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AGENDA ITEMPAGEWELCOME/OPENING REMARKS:

Geoffrey Griffis 3

KALORAMA CITIZEN'S ASSOCIATION

APPEAL OF APPLICATION NO. 17109: 4

Motion to Deny Appeal 27

Vote to Deny Appeal 29

2224 R STREET, LLC

APPLICATION NO. 17260: 29

Motion to Approve Application 36

Vote to Approve Application 37

THOMAS AND KATHRYN TOGGAS

APPLICATION NO. 17270: 37

Reopen for Specifically Requested Material 46

Action Taken 59

IDS-DC, INC.

APPLICATION NO. 17290: 60

Motion to Approve Application 63

Vote to Approve Application 63

ADJOURN:

Geoffrey Griffis 65

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

10:14 a.m.

CHAIRPERSON GRIFFIS: Good morning, ladies and gentlemen. Let me call to order the 1st of February 2005 Public Meeting of the Board of Zoning Adjustment of the District of Columbia. I am Chairman Geoff Griffis. Joining me today is Vice Chair Ms. Miller and also Mr. Etherly, our Board Member. Representing the National Capital Planning Commission is Mr. Mann and representing the Zoning Commission with us on several cases through the day is Mr. Parsons.

Copies of today's agenda are available for you. They are located where you entered into the hearing room. As I have indicated off the record, we are staying with the chronology as published on our schedule. Please, be advised of several things. Of course, in our Public Meetings, this is the time to let the Board go through its own public deliberation and decisions on cases. The record to this point is closed on all of these cases and they are ready to proceed to decision.

There is not opportunity for any sort of additional testimony or for addressing the Board. We certainly are glad that people are here to hear us in

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1 person, but we will not be calling anyone to present
2 before the Board this morning. I would also ask that
3 people just turn off their cell phones and beepers,
4 so that we don't disrupt the transmission as we are
5 also being transmitted live on the Office of Zoning's
6 website and, of course, the Court Reporter is
7 creating the official transcript for all of our
8 deliberations.

9 Let me say a very good morning to the
10 Office of Zoning Staff with us, Ms. Bailey, also Mr.
11 Moy and see if they have any preliminary matters for
12 the Board's attention for this morning.

13 MR. MOY: Good morning, Mr. Chair and
14 Members of the Board. There is no preliminary
15 matters in general.

16 CHAIRPERSON GRIFFIS: Excellent. Then
17 let us move ahead.

18 MR. MOY: The first case for decision
19 concerns the Appeal of Application No. 17109 of
20 Kalorama Citizen's Association, pursuant to 11 DCMR
21 3100 and 3112, from the Administrative decision of
22 David Clarke, Director, Department of Consumer and
23 Regulatory Affairs from the issuance of Building
24 Permit Nos. B455571 and B455873, dated October 6,
25 2003 and October 16, 2003, respectively, to Montrose,

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1 LLC, to adjust the building height to 70 feet and to
2 revise penthouse roof structure plans to construct a
3 five story apartment house in the R-5-D District.

4 The appellant alleges that the under
5 construction building is in violation of the building
6 height, floor area ratio and roof structure set-back
7 requirements of the Zoning Regulations. The subject
8 property is located at 1819 Belmont Road, N.W., and
9 that's in Square 2551, Lot 45. At a Special Public
10 Meeting on June 22, 2004, the Board made its decision
11 to grant in part and to deny in part this appeal.

12 At its Public Meeting on December 7,
13 2004, the Board reopened the record and requested all
14 parties to respond to the question of whether a
15 sidewall of the building should or should not be
16 considered an exterior wall if the adjacent property
17 shares a party wall or may lawfully construct a
18 shared party wall between the buildings. The Board
19 also invited parties to address the ramification of
20 the Board's decision on future residential and
21 commercial development in the District, as well as
22 whether the Board may consider those ramifications.

23 The first set of filings were submitted
24 on January 11, 2005, first from ANC-1C and the
25 Kalorama Citizen's Association as a whole, and that

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1 is identified in your case folders as Exhibit 86.
2 The second filing is from Montrose, LLC, the
3 intervenor in this appeal case, that is identified as
4 Exhibit 87. And a filing from the appellee in the
5 case, DCRA, that is identified as Exhibit 88.

6 The final set of submissions were in
7 reply to the submissions, submitted on January 25,
8 2005. The first from ANC-1C and the Kalorama
9 Citizen's Association, that is identified as Exhibit
10 89. And finally, a submission from Montrose, LLC,
11 that is identified as Exhibit 90. And I think with
12 that, the Staff will complete its briefing, Mr.
13 Chair.

14 CHAIRPERSON GRIFFIS: Good. Thank you
15 very much, Mr. Moy. Let me first start out and say,
16 obviously, the Board has spent a great deal of time
17 looking at this and I think it's appropriate that
18 this Board, in terms of its review and also looking
19 at writing and issuing an order, re-review the record
20 and the details on it. I do believe that it's
21 appropriate and the Board has, in this case, taken up
22 a reconsideration of our deliberation, based on the
23 facts and the filings in this case.

24 It's a difficult position to take always.
25 The Board, of course, would be happy for us to say

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1 we were right and we're always right. However, it
2 is, I think, one of the strengths of this Board that
3 is able to say perhaps we need to reinvestigate or
4 further the record in our own deliberation, and that
5 is where we have found ourselves today. It's a
6 complex issue and, I think, it is complex for
7 numerous reasons. The base reason, I believe, is
8 perhaps not the clarity in the regulations and also
9 not the clarity in terms of the past informing
10 documents on the issues that are before us today.

11 This Board takes very seriously all of
12 the decisions before us and we have looked at this as
13 having extending impact and that is to the individual
14 properties, but also to the City as a whole, not
15 indicating that we set policy or precedent and
16 certainly in reviewing special exceptions and
17 variances, we do not. However, in appeals, an appeal
18 is a different animal before the Board. An appeal
19 that we're trying to decide is whether an error was
20 produced be it through the Zoning Administrator's
21 decision or not.

22 In those errors there is clearly larger
23 issues than that just relate to a specific property.
24 There are questions and issues of process,
25 interpretation and I think it is well-worth our

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endeavor to spend the adequate time and get things hopefully in the end absolutely correct.

What we're looking at in terms of Belmont here, I think, is also the complexity of the specific property. I think we have heard a great deal from the community about the appropriateness of the size and the massing of what was constructed to date. We obviously have photographic evidence of that. I think the Board appropriately has put aside our own design opinions of what was done. And really I'm stuck on the fact, in my individual opinion, that the problem has been brought before us in many respects that is not necessarily ours, meaning, not the BZA's, but rather that when the Zoning Commission actually zoned this area of the property, perhaps it made logical sense in terms of the map and adjacencies of what the Zoned District should be and what it would allow, but in the specifics of this block did not make sense.

My meaning is this, the Zoning Commission designated the R-5 Zone District on this block which would allow in our regulations 90 feet of height. Whether that is, in fact, within context or appropriate to this block is not an issue that is before us today. We, obviously, are well-aware that

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1 this case brought forth the Height of Buildings Act
2 of 1910 and its controlling aspect that began, rather
3 that limited the building height to 70 feet.

4 There is numerous opinions and testimony
5 in the record indicating that this is inappropriate
6 for the block. Again, it's not an issue that we are
7 to take up, but rather perhaps the Zoning Commission
8 will look at again in terms of what the
9 appropriateness for the Zoned District should be on
10 that particular block.

11 Now, going to the substance of what
12 actually is before us. It really goes to the fact of
13 looking at the Zoning Administrator and how they
14 dealt with this case in looking at the penthouse and
15 where the penthouse set-backs would be. I think what
16 has arisen in our discussion deliberation, and my own
17 particular, is that there needed to be a fleshing out
18 of the distinction and differences and similarities
19 between how the Building Height Act of 1910 set forth
20 the required set-backs of penthouses and how our own
21 regulations under differing sections are referred to
22 through 411 also deal with penthouse set-backs.

23 When looking at that, I have found, in
24 reading numerous now times more than I thought I ever
25 would the Height of Buildings Act and our own

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1 regulations, that there is great consistency and
2 similarities, but there is also a difference. The
3 Height of Buildings Act of 1910, I believe, lays out
4 the fact that set-backs for the penthouse structure
5 are to be from the front and the rear of buildings.
6 That is the exterior wall that fronts the street and
7 the rear portion of the building.

8 The Zoning Regulations set up, as I have
9 looked at it, actually are more restrictive
10 requirements and that is not only would one be set-
11 back from the front and the rear of buildings, but it
12 would also be set-back from those walls which were
13 exposed to open areas. Meaning, public alleys, side
14 yards, rear yards, open spaces. It blends itself.
15 My logic is followed with the fact that are Zoning
16 Regulations then incorporate some sort of relief and
17 that is the special exception from those areas which
18 would be more restrictive than the Height of
19 Buildings Act of 1910.

20 So it goes down into this particular, is
21 that how do you establish for the Zoning Regulation
22 purposes, in this particular case, what the penthouse
23 set-back would actually require? And what we would
24 look at is putting ourselves in the shoes of the
25 Zoning Administrator and indicating if these plans

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1 were brought before us, how would we assess this
2 situation and what sort of requirements we would put.

3 Therefore, we would look at, obviously, the side
4 that is of issue, and that is the party wall side on
5 the east elevation.

6 And when we look at it, the Zoning
7 Administrator would have to indicate, in reading the
8 regulations, whether that wall was exterior or not.
9 Now, throughout this it has always been a difficulty
10 of mine in saying if you are a person walking down
11 the street, there is one way to look at this, and
12 that might seem very logical, exterior or not
13 exterior. But I think there is a distinct difference
14 that we rise to in looking at the Zoning Regulations
15 of how things are classified and how they are
16 actually dealt with.

17 And I think that is reinforced often in
18 cases before this Board that there may well be a
19 difference between how a Building Code indicates a
20 certain issue and how zoning deals with that same
21 word, but regulates and perhaps regulates
22 differently. My meaning is this, how would the
23 Zoning Administrator have established whether that
24 wall was an exterior wall or a not exterior wall in
25 order for it to be either required a set-back or not

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1 required a set-back under our regulations?

2 I think in looking at this, the Zoning
3 Administrator must be able to make decisions on a
4 single rule of interpretation. Meaning, things would
5 not change depending on numerous situations or
6 specifically depending on what was there currently on
7 adjacent properties or what may well have been there
8 or could be there or what was in process of being
9 there. There has to be a logical process of
10 administrative ease.

11 One decision, you look at something and
12 it should be clear. It's one way or it isn't. And
13 so I believe that the Zoning Administrator looked at
14 this in assessing whether it was an exterior wall or
15 not and took it as not exterior, based on its legal
16 potential. Meaning, the legal potential of the
17 adjacent property would be to build according to the
18 zoning designation by the Zoning Commission would be
19 able to build all the way to 70 feet creating an
20 entire enclosed party wall.

21 I think one might say walking down the
22 street again that this issue of exterior wall and
23 looking at what I have just stated seems to point to
24 exterior being an ambiguous kind of definition. I do
25 not believe for the Zoning Regulations and the Zoning

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1 Administrator's interpretation that exterior and
2 exterior wall is ambiguous. I believe it is
3 unambiguous and it is very clear. It is as clear as
4 if the adjacent property had a flush part of the wall
5 against that which has now been constructed.
6 Meaning, a full party wall.

7 And the Zoning Administrator, in my
8 opinion in looking at, and we'll get into a lot of
9 these documentations, I imagine, in looking at the
10 past procedure and process and looking at the exact
11 letter of those regulations and law, the
12 interpretation was looked at as what could be and
13 that is that the adjacent wall has the legal ability
14 and the legal potential to be totally enclosed. And
15 I believe that that was reasonable.

16 But let me open it up to others and we'll
17 hear from other Board Members. Mr. Parsons?

18 COMMISSIONER PARSONS: I have been
19 struggling with this like you have for many months
20 now, almost a year, I guess, and I don't think
21 anybody would disagree that this is an aesthetic
22 nuisance in this community. But I have to agree with
23 your opening remarks. Certainly, nobody would
24 disagree that the first four floors of this building
25 is a party wall on each side, because it's abutting

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1 another property. How is it then that this wall
2 becomes something different when it leaves the roof?

3 We can blame the Zoning Commission. I
4 suppose we could do that.

5 CHAIRPERSON GRIFFIS: That's always easy.

6 COMMISSIONER PARSONS: And I don't mean
7 that in jest, that's the problem, that's what you
8 opened up with here is the zoning would allow
9 something much more obnoxious than is actually before
10 us. But I think what has been the problem throughout
11 this whole case is because this wall is exposed, it
12 somehow becomes exterior. And I don't think we can
13 have a wall that is exposed and potentially obnoxious
14 that somehow becomes an exterior wall in the short-
15 term.

16 Hopefully, none of these buildings will
17 come to this height over time. But I can't come to
18 any other conclusion that this is other than a party
19 wall. Even though it has windows in it, it's windows
20 at their risk. I think the classic example of this
21 is the Lincoln Building across from Ford's Theatre,
22 that very narrow building.

23 CHAIRPERSON GRIFFIS: Yes.

24 COMMISSIONER PARSONS: That now has a
25 mural on the side. It was considered very obnoxious

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1 when it was built. Now, has historic preservation,
2 of course, would have a different view if we made a
3 move to tear it down. I don't mean this is the case
4 here. I think the most obnoxious part about this is
5 its design. I would hope that can be improved, but
6 that's beyond our jurisdiction. So I must concur
7 with you, Mr. Chairman.

8 But reflecting on this, we're now looking
9 at the Zoning Commission at a community called Forest
10 Hills, which I'm sure you're all familiar with, where
11 we've been struggling with an R-1-A Zoning where
12 people have a matter-of-right to build something that
13 is much larger than is on the site now. And a
14 community that has come to the Zoning Commission
15 trying to preserve that. That is the R-1-A was not
16 built out originally, and now people are doing that
17 and some people call them McMansions or whatever, but
18 I'm wondering if we shouldn't be looking at some of
19 these other zones.

20 Is this block of Belmont Street a fluke
21 or are there other row houses, communities in this
22 City that could have an equally intrusive addition,
23 if you will? So with that, Mr. Chairman, I will
24 rest.

25 CHAIRPERSON GRIFFIS: Thank you very

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1 much. I think it's absolutely true what you say in
2 all respects and to continue on a little, well, let
3 me leave that for closing. Let me open it up to
4 others. Go ahead.

5 VICE CHAIR MILLER: First, I would like
6 to compliment the parties on their briefings. I
7 think they were incredibly thorough and very helpful
8 and brought to light all the legislative history with
9 respect to at least the Zoning Commission's actions
10 and the Zoning Administrator's interpretations and
11 Corp Counsel's interpretations. So I think we're not
12 looking at this in a vacuum though, I don't think
13 that the BZA has ever actually adjudicated on it.

14 I think I would agree with my fellow
15 Board Members who have just spoken. At first blush,
16 it looked like exterior meant exposed to the outside,
17 at least to me, and the top of this building
18 certainly was and perhaps our inquiry could end there
19 based on plain meaning of exterior. However, looking
20 beyond that it seems that exterior walls is not
21 defined in the Federal Height Act and it's not
22 defined in our regulations. We look then to the
23 legislative history, at least I did, and a long
24 period in which the Zoning Administrators determined
25 that that really applies to the streets under the

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1 Federal Height Act.

2 So I think we have over 40 or 50 years of
3 that interpretation. And I think that that
4 interpretation is logical based on what has been said
5 by my colleagues here that the Zoning Administrator
6 does not necessarily look at that as a moment in time
7 exterior, but by what is allowed as a matter-of-right
8 on the sides.

9 So I think that's very logical and I also
10 looked to the legislative history to see could I find
11 any guidance from the Zoning Commission. And I think
12 that there is some guidance to be found in the WTA's
13 GWU case, which is Zoning Commission Order No. 749-A
14 and I'm very aware that that did go to court and then
15 was remanded and disappeared. But during those
16 proceedings I found it persuasive that the Zoning
17 Commission said that they concurred with the Zoning
18 Administrator that the project, as modified, did not
19 violate the Height of Buildings Act of 1910 and they
20 were relying on a letter from the Zoning
21 Administrator that said that the set-back
22 requirements of roof structure under provisions of
23 the Act of 1910 have always been interpreted by the
24 Zoning Division as being required to set-back from
25 the property line which adjoins the street.

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1 CHAIRPERSON GRIFFIS: Can I just
2 interrupt and cite that?

3 VICE CHAIR MILLER: Yes.

4 CHAIRPERSON GRIFFIS: Because I think
5 that is incredibly controlling and it was from Joseph
6 Bottner. Is that correct, 1993?

7 VICE CHAIR MILLER: Yes.

8 CHAIRPERSON GRIFFIS: November 24.

9 VICE CHAIR MILLER: I think it might be
10 1993.

11 CHAIRPERSON GRIFFIS: 1993.

12 VICE CHAIR MILLER: November 24, 1993.

13 CHAIRPERSON GRIFFIS: I'm looking at '93
14 and saying '94. Right, 1993.

15 VICE CHAIR MILLER: And that's Exhibit
16 92, Case No. 93-9C, which is the Zoning Commission
17 case. So it just appears to me that that's the way
18 the Zoning Commission has interpreted it and that
19 there is this whole history behind that and I don't
20 see a good reason at this point to deviate from that.

21 And it doesn't go against what the Height Act was
22 protecting, which is it seems to be the light and
23 air. So those are my initial comments.

24 CHAIRPERSON GRIFFIS: Good. Thank you.
25 Others?

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1 BOARD MEMBER ETHERLY: Mr. Chair, I'm in
2 agreement with everything that has been said. There
3 is not a need to kind of plow ground that has already
4 been tilled. I think both you, my colleagues, Mrs.
5 Miller and Mr. Parsons, have all kind of hit on, I
6 think, the point that has been a point of struggle
7 throughout this case. And Mr. Parsons, I think, hit
8 it right on the head in that there may indeed be
9 something that feels untoward or out of place about
10 this structure, but our struggle often times is to
11 ensure that those feelings are processed through the
12 prism of the Zoning Regulations and the Height Act,
13 which are at issue here.

14 I think the interpretation, I think,
15 result is a right one. All along as we have entered
16 into this phase of this particular case and this
17 experience with this particular property, it has just
18 been a struggle for me. I was very concerned about
19 kind of moving down this road, reviving it, if you
20 will, but I think we've come to the right direction.

21 The thing that I've always struggled with and I
22 believe I said as much on the record earlier was
23 trying to gather an understanding of what we're
24 talking about.

25 Because I think where we are is where

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1 we're at. We're at a nexus between trying to
2 interpret what the law, what the regulations, what
3 the Height Act requires and what is happening in
4 terms of practical application of the regs. And what
5 I struggled with was understanding what the practical
6 application was. I think as Mrs. Miller alluded to,
7 the briefing on both sides, especially as we came
8 down the home stretch here, was absolutely top flight
9 and helped to illuminate for me what I think is the
10 practical import of the question that is in front of
11 us.

12 What I wanted to ask as a way of inviting
13 some conversation with particular attention to the
14 briefing that has been offered by KCA, because I
15 think that briefing raised some very important
16 questions, some very important points, and I think it
17 would be helpful for the Board to speak a little bit
18 to what I think is kind of the underlying question
19 here regarding what type of situation would result,
20 in the minds of any of my colleagues, and once again
21 I'm inviting this not because I am on the fence here,
22 I agree with the points that have been made and I'm
23 ready to go forward, but I think it's important to
24 address some of the questions that have been raised
25 by KCA.

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1 In particular, a portion of their
2 briefing, once again which was very solid, at Exhibit
3 B illuminated a number of buildings where KCA
4 endeavored to point out what it believed or what it
5 interpreted to be perhaps different outcomes, which
6 refuted the point that it alleged was being raised,
7 refuted the point that it believed was being raised
8 by Montrose and that is well, if you do this, there
9 are a number of other buildings that wouldn't get
10 built or couldn't get built or there are a number of
11 other buildings which would all of a sudden become
12 noncompliant.

13 And I think it's an important question to
14 raise, so I wanted to invite a little bit of
15 discussion from my colleagues or perhaps from the
16 Chair with respect to what would necessarily change,
17 in your mind, the outcome here regarding this
18 property? Say, for example, if the property were
19 adjacent to an alley or adjacent to a street on the
20 relevant side, would there be a different outcome or
21 would there be a different requirement, in your mind,
22 as relates to the set-back requirement?

23 CHAIRPERSON GRIFFIS: Good. And I
24 appreciate that. It actually goes directly to a
25 point that I think we need to assess, because as

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1 you've indicated that Montrose has submitted
2 documentation and we did open up the question,
3 although I think we're all very well-aware of how far
4 we can go into what the impact will be. But we
5 opened the question and invited it and actually from
6 also the ANC in their submission, which is Exhibit
7 89, Tab B, they provided also an aerial photograph of
8 numerous buildings that they said, in fact, supported
9 their claim that penthouses are always set-back.

10 I'll get perhaps a little indirectly,
11 because I want to assess this looking at what has
12 happened and going to Ms. Miller's discussion, if you
13 look at the photograph by the ANC, what is
14 fascinating, to me, is in the largest and at the
15 lowest point of the photograph, which is the largest,
16 most close buildings, you see the first three
17 buildings in there, I think are evidence of what our
18 discussion is today.

19 You have penthouses that are flush to the
20 party walls. And whether that is definitive or not,
21 whether we have full documentation on it or not, it
22 was informative to me to look at the fact of how this
23 has impacted. Going directly to your question is
24 well, you know, what's the difference? How could
25 this have been different? And I would say this, our

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1 Zoning Regulations are actually more restrictive in
2 terms of the set-back than the Height of Buildings
3 Act of 1910. And there are several aspects to that.

4 If you look at 411, we require more
5 numerous things. The one that bring to mind is a
6 single enclosure and single height. I mean, we talk
7 about going further in terms of the design aspects of
8 penthouses. In the same respects, in our regulations
9 being more restrictive, we also allow for a relief.
10 We allow a special exception to be applied for in
11 order to get relief from those.

12 I would say that the Zoning Regulations
13 require that penthouses be set-back from the exterior
14 line of a building where it is exposed to an open
15 area. So the difference would be if this had another
16 alley, a public alley or if it was set on a side yard
17 or perhaps, well, it would be a side yard, a rear
18 yard would be taken into. So in an open area, and I
19 think that's where our regulations go above what the
20 requirements of the building Height Act is. And
21 those are the elements that are also able to be
22 granted relief if successfully argued before this
23 Board.

24 BOARD MEMBER MANN: I would also add just
25 in response to Mr. Etherly's question, perhaps

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1 somewhat more theoretically, that if history is
2 prolonged, this has simply not been an issue in
3 residential neighborhoods, although hypothetically
4 and speculatively this could become an issue. But it
5 seems more on point with what, I believe, either Mr.
6 Parsons or the Chairman said that in most of these
7 residential neighborhoods the controlling aspect
8 seems to be the actual underlying zoning. And
9 perhaps that's the reason why we haven't come across
10 this problem prior to this.

11 CHAIRPERSON GRIFFIS: Good point. Okay.

12 Anything else, other issues? Then let's bring it up
13 to fruition on this and I think if I can somewhat
14 recap, it looks as though we should have a motion
15 that we can make it, how do we make it? It appears
16 that the Board's opinion is the fact that we have not
17 found that this penthouse is in violation or that
18 there was an error issued by the Zoning Administrator
19 in granting the permit to build this penthouse.

20 But it then goes to the entire appeal and
21 what is it that would maintain it or do we throw out
22 the entire appeal and deny it? I think, as I recall
23 and I know we've looked at this very limitedly, but
24 in the discussions of the appeal, we had another
25 element on the roof and I think that in my opinion,

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1 and I obviously hope that it's correct, but I
2 strongly feel that in our discussion deliberation
3 that we were finding, and I certainly find, that it's
4 reasonable for the Zoning Administrator to interpret
5 permitting a guardrail on a compliant structure.

6 Meaning, the roof, if it was established,
7 was compliant for the Height Act and also our
8 regulation. A guardrail on top of that would be
9 within the Zoning Administrator's purview to allow
10 for that safety rail. That is, of course, not the
11 case in this specific appeal, because this Board has
12 found that the roof deck rises above what was
13 allowable. Therefore, the connection of the rail is
14 attendant to that of the deck, but not the rail
15 itself.

16 You know, I can argue this even more if
17 we need to, but it seems to be firm not only in the
18 reading but in the absolute intent of the Height Act.

19 I mean, if we really look, I know we have looked at
20 substantially the Height Act, a lot of it, well, most
21 of the attention was on the building itself, the
22 structure and how that was to be regulated. And it
23 really was an outgrowth of life safety issue and that
24 of fire proofing. And to say that the Height Act
25 somehow would preclude a life safety issue of a

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1 guardrail seems to be absurd.

2 Clearly, words and details that were
3 drafted in 1910 and adopted have gone through a
4 little bit of interpretation. We have, obviously,
5 interpreted stair enclosures and elevators and we
6 have kind of moved away from water tanks on top of
7 towers. We don't see a lot of cases for exceptions
8 to those these days. My point being that things have
9 to have some sort of life beyond the instant that
10 they are written and there is a difference today than
11 from 1910.

12 I think the guardrails reasonably fall
13 within that interpretation from the Zoning
14 Administrator and certainly the prescriptive nature
15 of the Height Act. Ms. Miller?

16 VICE CHAIR MILLER: Mr. Chairman, it's my
17 understanding that this reconsideration just goes to
18 the question of the set-back of the penthouses and
19 not to the roof deck and railings, and that we should
20 just rule on the question of exterior walls and how
21 that affects that one area in dispute in the appeal
22 whether the Zoning Administrator made an error with
23 respect to the set-back question.

24 CHAIRPERSON GRIFFIS: I tend to agree.

25 VICE CHAIR MILLER: Okay.

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1 CHAIRPERSON GRIFFIS: But for
2 clarification, what I have done is just lay out what
3 I think is my clear intention, but what the entire
4 appeal was as we have a piece of that. We now have
5 action that's being asked of the Board and so in
6 order to clarify that, what I'm saying is that we
7 have not revisited nor therefore changed the aspect
8 that the roof deck, that actual element, on that was
9 found by this Board to not be compliant with the
10 Height Act.

11 I was just clarifying the railing of that
12 which is attached to it which, therefore, is part of
13 that noncompliance, if that railing was, in fact, on
14 the roof, which is found to be in compliance. It
15 would be appropriate under the Height Act. Good. So
16 let's move on then. Is there a motion? Would you
17 like to make a motion? Anybody?

18 VICE CHAIR MILLER: Okay. I would move,
19 well, I think we have already decided to reconsider
20 the question of whether the Zoning Administrator
21 erred. Okay. And in finding that the set-back was
22 in compliance with the Height Act. Okay. So I would
23 move, at this time, to deny that aspect of the appeal
24 that alleges that the Zoning Administrator erred in
25 his determination that the set-back of the penthouse

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1 was in accordance with the Federal Height Act.

2 CHAIRPERSON GRIFFIS: Is there a second?

3 BOARD MEMBER MANN: Second.

4 CHAIRPERSON GRIFFIS: Thank you, Mr.
5 Mann. Further discussion? Let me say two last very
6 brief things, and I think it is appropriate to look
7 at it as we have, and that is that there is one rule
8 of application. And just to fill it out a little
9 bit, I think it would be illogical for the Zoning
10 Administrator to have to look at this and say well,
11 you know, are there permits being pulled from the
12 adjacent? Is there anticipation of or what is there
13 exactly now?

14 But rather it needs to have one clear and
15 distinct avenue for, frankly, administrative ease,
16 but also administrative clarity. There needs to be
17 one set of rules, and I think the rules which the
18 Zoning Administrator had relied on was that of the
19 legal potential. And I think that's appropriate.

20 And lastly, just to summarize I think
21 what we have all touched on is that it's difficult to
22 say for me, because it would be easier in some
23 respects to come out and be popular and to take a
24 route that was of ease with people that look at this
25 and have interpreted not as we are being required to

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1 decide this. And I think that's probably one of the
2 most difficult things that we are faced with on this
3 Board is how do you balance those aspects? We
4 certainly listen and look, but we have to at the end
5 of the day filter all and look at the base facts and
6 that of what we have actually been charged and the
7 responsibility and the jurisdiction that we have.

8 And so I guess it's one way of saying we
9 may not be popular with an awful lot of people with
10 this, but I think it's actually the correct and
11 responsible way. And again, as I say, that's why we
12 have been given this great honor to be able to serve
13 in these types of capacities. So with that, I'll
14 open it up to any others. We do have a motion before
15 us and it has been seconded.

16 Then let me ask for all those in favor of
17 the motion to signify by saying aye.

18 ALL: Aye.

19 CHAIRPERSON GRIFFIS: And opposed?
20 Abstaining?

21 MR. MOY: Staff would record the vote as
22 5-0-0. This is on the motion of Ms. Miller, the Vice
23 Chair, seconded by Mr. Mann, the motion to deny that
24 part of the appeal that alleges that the ZA erred in
25 the set-back penthouse requirements. Also in support

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1 of the motion is Mr. Griffis, the Chair, Mr. Etherly
2 and Mr. John Parsons.

3 CHAIRPERSON GRIFFIS: Thank you, Mr. Moy.

4 Why don't we move on?

5 MR. MOY: The next case for decision is
6 Application No. 17260 of 2224 R Street, LLC, pursuant
7 to 11 DCMR 3104.1, for a special exception to
8 establish a 10 room bed and breakfast as a home
9 occupation under subsection 203.10, and modification
10 under subsection 203.10(b), to allow 10 sleeping
11 rooms subsection 203.8(c)(1), and to allow more than
12 eight clients/customers on the premises in any one-
13 hour period subsection 203.4(m), in the D/R-3
14 District at premises 2224 R Street, N.W., that's in
15 Square 2512, Lot 13.

16 On January 4, 2005, the Board completed
17 public testimony on the application and scheduled its
18 decision on February 1, 2005. The Board requested or
19 allowed the Embassy of Greece to submit to the record
20 any relevant information from the U.S. Department of
21 State concerning the issue of security. The Office
22 of Zoning has received no filings.

23 As a preliminary matter, Mr. Chair, the
24 Board has received from the applicant a letter
25 requesting a waiver to accept into the record an

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1 attached correspondence dated January 24, 2005, which
2 the U.S. Department of State had sent to the Embassy
3 of Guatemala regarding the issue of security, and
4 that is in your case folder identified as Exhibit 35.

5 And Staff will complete its briefing, Mr. Chair.

6 CHAIRPERSON GRIFFIS: Good. Thank you
7 very much, Mr. Moy. Board Members, as Mr. Moy has
8 indicated, we have been asked for a waiver and
9 actually here is my understanding of it. We had left
10 the record open for any filings from the State
11 Department, because it was one of the issues that was
12 brought up, that this has come not directly from
13 them. I think it is perfectly appropriate to waive
14 it. We were leaving the record open for that type of
15 communication, not knowing what, in fact, it might
16 be.

17 And so I don't have any difficulty in
18 doing that, but let me hear from others if there is
19 any opposition to accepting that into the record.
20 Not noting any opposition voiced, then let's move
21 ahead, as a consensus of the Board, and accept
22 Exhibit 35. 35 is that correct, Mr. Moy?

23 MR. MOY: That's correct, Mr. Chair.

24 CHAIRPERSON GRIFFIS: Okay. Good. Then
25 let's move right into what is before us, and it is,

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1 of course, the special exception under 203.10 for the
2 10 bedroom bed and breakfast. I'll open it up to
3 anyone to start discussion if they would. Good. Mr.
4 Mann?

5 BOARD MEMBER MANN: Well, as far as I'm
6 concerned, the major issue, in my mind, was whether
7 or not there were any legitimate security concerns on
8 the part of the neighboring chanceries. And although
9 I didn't suspect that there were any, I would say
10 that the letter that was submitted from the State
11 Department via the applicant kind of put to rest, in
12 my mind, that there were any concerns. I think that
13 any of the chanceries in that neighborhood have an
14 obligation, well, they certainly have an obligation
15 to themselves, to make an assessment of their
16 security risks.

17 And being as this is a bed and breakfast
18 as a matter-of-right use in that neighborhood, I
19 think that that sort of concern should have been
20 factored into any chanceries decision to expand or
21 increase their services.

22 CHAIRPERSON GRIFFIS: Excellent. Thank
23 you. And I absolutely agree. In addition to those
24 comments looking at the requirements of 203 and, of
25 course, the requested waivering of two of the

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1 conditions, it was a very strong case in how the bed
2 and breakfast would comply with our regulations. And
3 what was interesting to me, in a general aspect, was
4 the amount of testimony that was brought forth from
5 the surrounding community. As we are often familiar
6 with in bed and breakfast cases, we have more
7 testimony indicating the problems that would be
8 created.

9 In this particular case, we actually were
10 addressed with testimony of what a positive influence
11 this would be. Specifically, the substance of that,
12 the importance of it is we look at what is evidenced
13 in the testimony, not counting the number of how many
14 people want or not want, but what is the substance.
15 And it goes directly to what we are asked and charged
16 to decide, would there be adverse aspects that were
17 created, obviously, in all of the requirements that
18 are set forth in our regulations.

19 I didn't see any that were rising to that
20 which would move this Board to have to deny that. In
21 fact, the Office of Planning, I think, lays out very
22 well its own analysis, and I think the testimony and
23 evidence that was presented falls directly in line
24 with that. In terms of, you know, the specific
25 requirements of cooking facilities, whether there

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1 would be or not or whether the dwelling would be
2 owned and occupied by principal residents, it seems
3 to meet all of the criteria as we run down it.

4 I think significantly for this area and
5 also for this building and of interest is section (f)
6 which goes to no interior structure alterations shall
7 be permitted if it would make it difficult to return
8 the premises to use which is exclusively residential.

9 And it was testified to the fact that there were no
10 interior structural alterations proposed that would
11 make that difficult to return it. And, I think, by
12 the nature of the business itself, it would reinforce
13 that fact.

14 So I would agree with Mr. Mann. I think
15 it's a very strong case, except for that one element
16 that we had wanted to be further informed on and I
17 think we have sufficient information on it, at this
18 time.

19 BOARD MEMBER MANN: I also had one other
20 thing, I thought it was somewhat paradox, I recall
21 the Sheridan-Kalorama Neighborhood Council was
22 actually opposed to the special exception. But given
23 that the alternative might have been that the
24 building either remain vacant and unused or perhaps
25 used as a chancery, which I get the impression they

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1 would also be opposed to that use, but in my mind the
2 Sheridan- Kalorama Neighborhood Council was not
3 opposed to the use of a bed and breakfast as a
4 matter-of-right.

5 They were simply opposed to the special
6 exception of increasing the number of rooms and other
7 attendant things with this application. But I wasn't
8 convinced that the impact was going to be much
9 greater if the special exception were granted than if
10 they just used it as a matter-of-right bed and
11 breakfast.

12 CHAIRPERSON GRIFFIS: Excellently put and
13 a good point to bring up. And I think it would have
14 been a different aspect if we were looking at an
15 addition to an existing structure in order to create
16 new bedrooms, but clearly this is and was testified
17 and it's, I think, straightforward enough that the
18 size of this is accommodating that. Not that it's
19 being added to in order to increase the size. Good
20 point. Others? Yes, Ms. Miller?

21 VICE CHAIR MILLER: I would like to note
22 that Office of Planning supported the application,
23 but thought that a use variance was required. And we
24 had some dialogue about this at the hearing. And, I
25 think, it's the position of the Board, it's certainly

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1 my position, that in accordance with our Phillips
2 decision, Application No. 17079, we determined that
3 under 203.10(b), which this case is brought, that
4 allows for the Board to provide relief by special
5 exception if the party is seeking up to two
6 modifications of the provisions set forth in 203.8,
7 which is a bed and breakfast.

8 I mean, it's broader than that, but we're
9 looking at 203.8. And the first modification was to
10 limit the number of clients or customers to eight in
11 one-hour period and that wasn't at issue by OP. But
12 what was at issue was whether we could modify
13 203.8(c) by special exception to increase the rooms,
14 sleeping rooms to 10. And we found in Phillips and I
15 see no reason to find differently in this case that
16 203.10(b) specifically allows us to grant by special
17 exception up to two modifications in 203.8, and
18 that's what we would be doing here.

19 CHAIRPERSON GRIFFIS: Excellent. And
20 that's exactly right. In line with my thinking, I
21 appreciate you bringing that up. Let me add one
22 thing to it that the Office of Planning in assessing
23 a use variance actually recommended approval of the
24 use variance, which, of course, is the highest
25 threshold of variances that we hold. And so it was,

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1 I think, a productive discussion, but I think it's
2 fairly definitive in our look that this was an
3 allowable under a special exception criterion.

4 Very well. Anything else? Then I would
5 move approval of Application 17260 for the special
6 exception under 203 to convert the former Taiwanese
7 Military Attache Dormitory into the 10 bedroom bed
8 and breakfast.

9 BOARD MEMBER ETHERLY: Second, Mr. Chair.

10 CHAIRPERSON GRIFFIS: Thank you very
11 much. Is there further discussion, deliberation?
12 Very well. We have a motion before us. It has been
13 seconded. I ask for all those in favor to signify by
14 saying aye.

15 ALL: Aye.

16 CHAIRPERSON GRIFFIS: And opposed? Good.
17 Mr. Moy?

18 MR. MOY: The Staff would record the vote
19 as 4-0-0 on the motion of the Chair, Mr. Griffis, to
20 approve the application, seconded by Mr. Etherly. We
21 also have an absentee vote/ballot from Mr. Parsons,
22 who is sitting on the case, and his ballot is to vote
23 in favor of the application. So that would give a
24 resulting vote of 5-0-0. The other individuals in
25 support of the motion is Mr. Mann and Ms. Miller.

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1 CHAIRPERSON GRIFFIS: Thank you very
2 much, Mr. Moy. Why don't we move on.

3 MR. MOY: The next case for decision is
4 Application No. 17270 of Thomas and Kathryn Toggas,
5 pursuant to 11 DCMR 3104.1, for a special exception
6 to allow an addition to an existing single-family
7 semi-detached dwelling under section 223, not meeting
8 the side yard, section 405, requirements in the R-1-B
9 District at premises 3112 Legation Street, N.W.,
10 that's in Square 2293, Lot 835.

11 On January 18, 2005, the Board completed
12 public testimony on the application and scheduled its
13 decision on February 1, 2005. The Board requested
14 the following post-hearing documents: First is an
15 axonometric wire frame diagram showing the special
16 relationship of the applicant's residence in relation
17 to the adjacent properties, and that's identified in
18 your case folders as Exhibit 40.

19 Also, allowing rebuttal testimony on
20 specific documents from all parties. The documents,
21 in particular, there is a letter dated September 25,
22 2003 from Gary Wilson, that's identified in the case
23 folder as Exhibit 36. And also in response to a
24 letter dated January 17, 2005, which is identified as
25 Exhibit 31, the filing is from the party opponent,

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1 Joseph and Cynthia Dempsey, represented by George
2 Keys, and that is in your case folders as Exhibit 41.

3 And finally, a letter from the ANC
4 clarifying the representation and participation of
5 Ms. Renshaw, former ANC Commissioner, that's in your
6 case folder identified as Exhibit 42. And that
7 completes the Staff's briefing, Mr. Chair.

8 CHAIRPERSON GRIFFIS: Good. Thank you
9 very much, Mr. Moy. I apologize for coming and going
10 briefly. I've had a small family emergency, but will
11 be here now for the rest of the morning. Let me also
12 set aside this case for a brief moment just to
13 clarify our last decision. And I would like to hear
14 any opposition for waiving our rules and regulations
15 and issue a summary order on that, unless anyone sees
16 any difficulty in issuing a summary order.

17 VICE CHAIR MILLER: Was there a party in
18 opposition? Okay. Okay. No, I was just wondering
19 if there was a party in opposition in that case,
20 because when there is a party in opposition, we don't
21 normally waive our rules that way. But it appears
22 that there wasn't, so I have no objection.

23 CHAIRPERSON GRIFFIS: Good.

24 BOARD MEMBER ETHERLY: Mr. Chair?

25 CHAIRPERSON GRIFFIS: Yes?

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1 BOARD MEMBER ETHERLY: I also would just
2 like to note for the record that while I did begin
3 this particular case that the Board is now turning
4 its attention to, I did have to leave early due to a
5 professional commitment last week, but the week this
6 hearing was first held and as the transcript was not
7 made available, I will not be able to sit on this
8 case for decision making purposes. So I just wanted
9 to note that for the record.

10 CHAIRPERSON GRIFFIS: All right. Indeed.
11 The issue that Ms. Renshaw, which as I've indicated,
12 I do appreciate the clarification, I think, clearly,
13 we will take what Ms. Renshaw indicated before the
14 Board as testimony and important testimony and let it
15 go at that and not get into any of the further issues
16 attendant to this letter.

17 Moving on then, I think we do have a
18 substantial amount of information on this. Not often
19 is a file so thick for a 223, but it certainly is a
20 fascinating case and perhaps not 100 percent clear,
21 at this point. There was, of course, the letters,
22 you gave, Mr. Moy, that was submitted in terms of the
23 rebuttal testimony in written form of that
24 information that was put into the record. I think
25 it's perfectly appropriate and the Board utilizes

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1 that vehicle quite often, not conducting oral cross
2 examination, but allowing for all and every issue to
3 be addressed in written form.

4 Quite frankly, I find it much more
5 persuasive and articulated and substance based in
6 that form. So I don't think we have run across any
7 procedural errors in getting to where we are today.
8 But let me open it up for brief discussion. Again, I
9 thought it was very informative to receive the
10 axonometric three dimensional documentation and I
11 think that was quite helpful. But, Mr. Mann?

12 BOARD MEMBER MANN: Well, I'm sorry to
13 say that what we got actually left me with more
14 questions than answers, and I think there was a lot
15 of important information that was submitted since the
16 hearing. But there is a lot of things that are now
17 kind of unsettled in my mind and if I could, I'll
18 just go over a few of those.

19 One of the most important to me was there
20 was some -- it was very unclear to me whether or not
21 the structure was going to be rebuilt to the line
22 where the previous structure had been torn down or if
23 it was, in fact, extending closer to the neighbor's
24 residence. And there seems to be some sort of
25 conflicting documentation that makes me unable to

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1 figure out actually what the proposed building plans
2 are.

3 And further, there is some discussion
4 that there are some wall check issues that seem to
5 muddy that up a little bit, in my mind. And there is
6 also this issue raised of whether or not the proposed
7 structure is, in fact, going to infringe on the, I
8 think it's the, 15 foot building restriction area,
9 which at the end of the hearing, I thought it was
10 fairly clear that it was not going to extend into
11 that area, now I'm not so certain, based on the
12 submissions that we received.

13 Regarding the axonometric, I agree that
14 it was very helpful to actually see the proposed
15 structure in relation to other homes in the
16 neighborhood and I thought it was interesting and it
17 went somewhat beyond our request that they showed
18 where other residential units had had additions. But
19 that also left me with some questions about the
20 additions in the relationship of the additions on
21 other homes to the addition on this home.

22 Perhaps not pertinent to the case, but I
23 was left with the question of how many square feet is
24 this addition really? The first time around we heard
25 that it was 7,000-something. The second time around

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1 we heard it was 4,000-something. I'm inclined to
2 believe that it is closer to the 4,000-something, but
3 without any real definitive plans, it's, again,
4 difficult to tell.

5 And finally, although I don't think that
6 this either is pertinent necessarily to the decision
7 at hand, I was left wondering what could be built as
8 a matter-of-right on that lot. So those are a
9 handful of the questions that I was left with after
10 reading the submissions that came in per our request.

11 And quite frankly, I would find it very difficult to
12 make the decision that I would like to make based on
13 the information that we have.

14 And by that, I mean, I think I have
15 enough information that I could make a decision, but
16 I would like more.

17 CHAIRPERSON GRIFFIS: Okay. All
18 excellent issues raised. Taking the first one, what
19 would be allowed matter-of-right. Well, which one do
20 we take first? Well, let me hear from others.

21 Let me just say I have the same
22 questions, and I think when logically, I mean,
23 looking at this building, when the first 7,000 square
24 feet was thrown out there, it seemed to be not
25 correctly calculated. And looking at this, I don't

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1 believe this gets close to 7,000 square feet. That's
2 a gigantic home and the dimensions and the floor
3 plans that we're showing here, I think they need
4 three or four more stories to reach that.

5 But you bring up a very serious issue in
6 terms of two aspects of the site and the siting of
7 this, which goes directly to what could be built
8 matter-of-right. One is the adjacent side yard,
9 which is indicating on C-1 of the applicant's
10 submission of their documentation as a 5 foot area or
11 5 foot side yard, and that is dimensioned to the
12 existing porch, and then the line of the proposed
13 addition is in line with that of the existing porch.

14 What I don't see is, when we put it into
15 the new plans, where the property line actually is.
16 According to the plans here, we could probably -- I
17 think what you're asking, Mr. Mann, is find one
18 document that has all the dimensions in one place,
19 because what we have to do is, essentially, piece it
20 together, at this point. And with the fact that we
21 do have site plans that show differing information,
22 which then go to the building restriction line and
23 the setting to the building restriction line, I
24 think, that's also appropriate.

25 BOARD MEMBER MANN: Well, and then it

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1 goes to the nature of the relief that is being
2 requested.

3 CHAIRPERSON GRIFFIS: Right. Now, I am
4 not 100 percent certain, but I don't believe in 223
5 we could grant relief from building over a building
6 restriction line. Actually, I am very clear on that.

7 We would not be able to, but it does go to, in fact,
8 the exact siting on this property, which for our
9 specific aspect is that side yard.

10 In terms of what could be built matter-
11 of-right, we clearly have the existing side yard on
12 the alley side, which is 1 foot, 7 inches, and so
13 that is what would need relief, because it's an
14 existing nonconformity. They are well within the lot
15 occupancy for the special exception and, in fact,
16 they are below, if I recall, I will find it, but they
17 are below the allowable matter-of-right lot
18 occupancy. They have also indicated that they are
19 below the matter-of-right height. So you know,
20 conceivably, you could look at a larger lot occupancy
21 building and a taller building as matter-of-right.

22 VICE CHAIR MILLER: But the side yards
23 would be larger, basically, because that's what they
24 are seeking here, right?

25 CHAIRPERSON GRIFFIS: Yes, one aspect to

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1 look at. If it helps, I'm not really sure it's going
2 to, but if it helps, yes, you could have a more
3 narrow and very long extension. I mean, what's
4 interesting that refocused my attention for review of
5 this as part of the information that's in it is how
6 deep the lot actually is. There is a substantial
7 amount of land area there and, obviously, we're
8 looking at how that's impacted, but in terms of lot
9 occupancy in this zone, there is a lot that is
10 allowed.

11 But what I'm hearing, Mr. Mann, that
12 you're saying is that you're actually not fully ready
13 to decide this today.

14 BOARD MEMBER MANN: I think that's right,
15 and I think the most important thing to me is I can't
16 figure out whether or not they are building beyond
17 where the old building was on the west side of the
18 structure. That's the single most important issue, I
19 think, in my mind.

20 And secondary to that, although very
21 important, is are they building into the 15 foot
22 restriction line. The other questions are important,
23 as well, but I'm particularly concerned regarding the
24 proposed addition on the west.

25 CHAIRPERSON GRIFFIS: Ms. Miller, comment

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1 on that?

2 VICE CHAIR MILLER: I think it's very
3 basic to our decision whether they are building
4 beyond that 5 feet, so I would concur with Mr. Mann
5 in postponing if we can get further information to
6 clarify that, and as well as the 15 foot building
7 line.

8 CHAIRPERSON GRIFFIS: Well, we better be
9 together on this, because we're only three. Okay.
10 Not pushing the issue then, let's do that. Let's
11 reopen the record to accept the architectural
12 documentation indicating where the existing or where
13 the existing porch was and its line, and that of what
14 is being proposed, obviously, as dimensioned off of
15 the property line, which will be the controlling
16 aspect for our review on that.

17 In addition to that, the setting up. I
18 think it would be appropriate to show the building
19 restriction line just to address that issue of the
20 siting of the building itself. Okay. I think we
21 ought to set this for a Special Public Meeting next
22 Tuesday.

23 There shouldn't be any documentation that
24 actually needs to be necessarily created. It could,
25 obviously, be taken by one of the drawings that has

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1 been submitted already and adding to it, whether it
2 be by hand or however they want to utilize that,
3 indicating the rest of that, that being the dimension
4 and that being either the existing or the new and put
5 it all in one place. We're looking for one sheet,
6 essentially, and so it actually could be very clear
7 and very easy with a couple of lines.

8 Okay. That means it's going to need to
9 be into the record by close of business Wednesday.
10 No, that's tomorrow, isn't it? Thursday?

11 MR. MOY: Thursday would be the 3rd of
12 February. Of course, if you want to extend it to
13 Friday, the Staff would have to --

14 CHAIRPERSON GRIFFIS: Okay. Is the
15 applicant here? Do you mind coming forward for a
16 brief second? I just need to ask you how long you
17 need to take to put this documentation in and whether
18 you're actually understanding what we're looking for,
19 and then we're going to erase everything you say on
20 the record, so that we don't actually take --

21 MR. TOGGAS: I don't know what you're
22 looking for, so if you could just explain.

23 CHAIRPERSON GRIFFIS: Okay.

24 MR. TOGGAS: I was listening to you, but
25 I --

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1 CHAIRPERSON GRIFFIS: Good. There is a
2 question that has been brought up from the Board just
3 needing clarification, and the clarification is this.

4 You had an existing porch of which you in your
5 testimony are proposing to add onto this building
6 directly in line with that previously existing porch.

7 MR. TOGGAS: Okay.

8 CHAIRPERSON GRIFFIS: We need one piece
9 of documentation that shows both of them together.

10 MR. TOGGAS: Oh, so the old drawing and
11 the new drawing over the top of it?

12 CHAIRPERSON GRIFFIS: Exactly.

13 MR. TOGGAS: Okay.

14 CHAIRPERSON GRIFFIS: Because what has
15 been brought up by the party in opposition and it has
16 been stated not clear to the Board, are those
17 actually in line?

18 MR. TOGGAS: Okay.

19 CHAIRPERSON GRIFFIS: I mean, that's one
20 of the aspects that has been brought to us. Now, in
21 addition to that, that dimension of where that
22 existing is from the property line also needs to be
23 documented.

24 MR. TOGGAS: Okay. So you want me to --

25 CHAIRPERSON GRIFFIS: Are you the

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1 architect? No, you're the attorney? Yes, indeed.
2 I'm sorry. You know, it's been --

3 MR. TOGGAS: She wanted to be an
4 architect.

5 CHAIRPERSON GRIFFIS: Right, right. We
6 can get you registered. Okay. Now, you have an
7 architect that's working with you. That document, I
8 think, ought to be at least attested to if not
9 certified.

10 MR. TOGGAS: When would you like that by?

11 CHAIRPERSON GRIFFIS: Well, that's now
12 what I'm asking you. I can set this for a Special
13 Public Meeting, which means we decide it next week
14 and try not to delay us and delay you.

15 MR. TOGGAS: To have it by Tuesday?

16 CHAIRPERSON GRIFFIS: No, it would have
17 to be in then this week sometime, so close of
18 business Thursday or I will set it off for two weeks
19 and allow you the time.

20 MR. TOGGAS: We can probably have it by
21 Thursday.

22 CHAIRPERSON GRIFFIS: You would have it
23 in Thursday?

24 MR. TOGGAS: Yes, we can have it by
25 Thursday.

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1 CHAIRPERSON GRIFFIS: Okay. Yes, we'll
2 do it then by 5:00 on Thursday. We can always get it
3 to the Board. It's going to be a single sheet.
4 We'll get it.

5 MR. MOY: Yes.

6 MR. TOGGAS: Yes, we can do that.

7 CHAIRPERSON GRIFFIS: As soon as possible
8 is better. I will tell you just to, you know, draw
9 back the curtains and unveil our system here. We
10 all, obviously, have other jobs, so anything that
11 comes in here is processed through and then needs to
12 get to us in order for us to review it before
13 Tuesdays, so as quickly as this is done.

14 I mean, if this afternoon you can get it
15 done, then get it in here and we'll have it all fine,
16 but this is the situation. If it's not in by
17 Thursday at 5:00, there's two ways the Board could
18 go. It will go without it and decide it or we'll set
19 this off again until we get it.

20 MR. TOGGAS: Yes, I can have it.

21 CHAIRPERSON GRIFFIS: But don't count on
22 us setting it off to get it.

23 MR. TOGGAS: I can have it by Thursday.

24 CHAIRPERSON GRIFFIS: Okay.

25 MR. TOGGAS: I mean, I have to talk to

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1 the architect.

2 CHAIRPERSON GRIFFIS: Right, right, and
3 that's what I'm trying to adapt to is everyone's
4 schedule. Everyone is busy these days. Yes?

5 MS. BALDWIN: You want the 15 foot as
6 well?

7 CHAIRPERSON GRIFFIS: Your mike.

8 MS. BALDWIN: You want the 15 foot
9 restriction building line as well?

10 CHAIRPERSON GRIFFIS: Oh, yes, I'm sorry
11 I didn't say that, right.

12 MS. BALDWIN: Yes.

13 CHAIRPERSON GRIFFIS: If you could have
14 that indicated also on the document, that would be
15 good. Okay. Now, can I just have you state your
16 name and also your name, and are you here for this
17 case also? Indeed. I'm sorry. Believe me, I'm not
18 recognizing anybody this morning. So come on up and
19 have a seat. You need to serve this on everybody,
20 too. Okay.

21 MS. BALDWIN: Do you want to take their
22 names first?

23 CHAIRPERSON GRIFFIS: Yes, they are
24 saying that while you're getting ready to state your
25 name.

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1 MR. TOGGAS: Tom Toggas.

2 MS. BALDWIN: Stephanie Baldwin,
3 Greenstein, DeLorme and Luchs.

4 CHAIRPERSON GRIFFIS: Indeed.

5 MS. NOLAN: I am Samantha Nolan from the
6 ANC.

7 CHAIRPERSON GRIFFIS: Yes.

8 MS. NOLAN: We have an architect who is
9 on our ANC who drew up plans for the ANC to look at
10 when we were considering this.

11 CHAIRPERSON GRIFFIS: Is the ANC looking
12 to add on?

13 MS. NOLAN: And he testified. Excuse me?

14 CHAIRPERSON GRIFFIS: Is the ANC looking
15 to do an addition?

16 MS. NOLAN: No. We were looking at
17 whether this went beyond the 5 foot and where the
18 original porch was, so our architect took a look at
19 the drawings during the hearing and then went back
20 and did his own drawing just to see whether we were
21 really making the correct decision in this. And he
22 came up with his own plan. I was wondering on
23 Thursday, will we also be able to submit a plan?

24 CHAIRPERSON GRIFFIS: I fully understand
25 what you have done and it doesn't seem valuable for

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1 the Board to see that document, because actually what
2 the architect has done is done a drawing based on
3 their drawings.

4 What we're asking for is the applicant to
5 produce exactly what, conceivably, that should also
6 show, but theirs is going to be authoritative as
7 opposed to the information that your architect
8 actually based all his drawings or her drawings on is
9 theirs. Does that make sense?

10 MS. NOLAN: Yes, we --

11 CHAIRPERSON GRIFFIS: It's almost going
12 through another interpretive process.

13 MS. NOLAN: We were presented with
14 evidence at the hearing that we had not seen at the
15 ANC meeting.

16 CHAIRPERSON GRIFFIS: Yes.

17 MS. NOLAN: So that is why we wanted to -
18 - at the time, it appeared to us and the discussion
19 during the hearing was that it was more than an
20 addition, that the scope went beyond just an
21 addition. So that is why the drawing was done.

22 CHAIRPERSON GRIFFIS: Okay. We're not
23 really sure what that means, but I think we're trying
24 to establish the same idea.

25 MS. NOLAN: Okay. That's fine. I just

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1 wanted to let you know that we had that.

2 CHAIRPERSON GRIFFIS: Right. Good. No,
3 I appreciate that unless others have a different
4 opinion.

5 VICE CHAIR MILLER: I don't know. Does
6 the ANC want their architect to look at what is going
7 to be submitted by the applicant?

8 MS. NOLAN: We would to see whether it
9 was consistent with what --

10 CHAIRPERSON GRIFFIS: You're going to
11 need to say that up here.

12 MS. NOLAN: I believe we would, because
13 our interpretation of what the documents show, you
14 know, I'm sure our architect would like to look at
15 that and just have a chance to review that, and it's
16 Samantha Nolan.

17 CHAIRPERSON GRIFFIS: Okay. Ms. Miller
18 and actually the OAG is also indicating an aspect
19 that is not lost on me, and 3121 lays out perfectly
20 well what we are in our process before closing the
21 record.

22 As we have reopened the record, it does
23 read that each party would serve any proposed
24 findings of facts, conclusions on other parties at
25 the same time that the proposed findings and

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1 conclusions are filed with the Board. We have gone
2 through a lot of that. You have to serve everybody.

3 And the Board shall allow all parties into a case an
4 opportunity to file written responses to any
5 exhibits, information or briefs submitted after the
6 close of the hearing.

7 Looking at, in fact, asking for what is,
8 conceivably, additional information and keeping the
9 record open, Ms. Miller is raising the aspect of
10 well, shouldn't we allow you to file responses to
11 that information. At first indication, I said no,
12 because we're not asking for any new information.
13 We're asking for a consolidation of the existing
14 documentation that's already in the record.

15 It has been in the record from the
16 hearing and was open to cross examination and
17 evaluation, but I'm open for the Board's opinion on
18 this. This will set it off at least three weeks,
19 which, you know, is fine by me or actually, if we're
20 going that far, it's obviously appropriate to set it
21 for our next decision making, which is the 1st of
22 March, Tuesday. Wow, we're hitting the first of the
23 month. It's kind of symmetrical. I like that.
24 Okay. Mr. Mann?

25 BOARD MEMBER MANN: Well, I don't have

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1 any problem with that. I mean, I think that we
2 should probably err on the side of caution in
3 following procedure, but I just want to make sure
4 that we don't get yet another round of new
5 information.

6 CHAIRPERSON GRIFFIS: Right.

7 BOARD MEMBER MANN: I think we just have
8 to make sure that the submissions are focused on the
9 information that we need and not new issues.

10 CHAIRPERSON GRIFFIS: Good. I think
11 that's absolutely right. What we'll do is we'll keep
12 the record open and we are keeping the record open
13 for this one specific issue and the one specific
14 documentation that is showing this. This is not
15 creating new information and, in fact, the Board will
16 reject and not deliberate or consider anything of new
17 no matter who it's responded by, the applicant or any
18 of the parties that are involved. I think we have
19 addressed all the issues that are sufficient for us
20 to deliberate on this.

21 Now, it goes down to time. Do we want to
22 set this off for an entire month or should we try and
23 get this done in two weeks? So before you go too
24 far, Mr. Keys, I'm going to ask you to address this
25 also. If this was to be filed in this week, could

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1 everyone turn around their responses by the following
2 week, which would set this off for two weeks?

3 MS. NOLAN: I'm not sure where
4 Commissioner Fromboluti is right now. He was
5 traveling and that is why he couldn't be here today.
6 So I'm not sure if he can get the drawing and to
7 look at the drawing in order to --

8 CHAIRPERSON GRIFFIS: But you're not sure
9 if he can make the March 1st either then.

10 MS. NOLAN: Oh, I'm sure he can make the
11 March 1st.

12 CHAIRPERSON GRIFFIS: Why are you sure of
13 that?

14 MS. NOLAN: He could produce what we need
15 by March 1st, I mean, before the March 1st, but I'm not
16 sure that he could get the drawings and review the
17 drawings by Thursday if you're keeping with the
18 Thursday.

19 CHAIRPERSON GRIFFIS: No. What would
20 happen is here is the first proposed schedule, is
21 that the applicant submits their documentation by
22 close of business this Thursday, which means you
23 would get it Thursday. You would be allowed until
24 next Thursday to respond to that.

25 MS. NOLAN: Okay.

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1 CHAIRPERSON GRIFFIS: And we would decide
2 it on the following Tuesday. So that would put us to
3 not the 1st, not the 8th, but the 15th.

4 MS. NOLAN: The 15th of March?

5 CHAIRPERSON GRIFFIS: Yes, but don't
6 worry about that date. That's our date.

7 MS. NOLAN: The 15th of February, sorry.
8 Okay. So we would get it on Thursday. He would have
9 a week to review it and to prepare any documents and
10 submit them.

11 CHAIRPERSON GRIFFIS: Right.

12 MS. NOLAN: I think we can make that.

13 CHAIRPERSON GRIFFIS: By the following
14 Thursday.

15 MS. NOLAN: I think we can make that.

16 CHAIRPERSON GRIFFIS: What is the date on
17 that Thursday? Does anyone have a calendar in front
18 of them?

19 MR. MOY: I'm assuming it's February the
20 10th.

21 CHAIRPERSON GRIFFIS: 10th, so all your
22 information needs to be served and submitted by the
23 10th of February. That's doable?

24 MS. NOLAN: That sounds doable.

25 CHAIRPERSON GRIFFIS: Mr. Keys?

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1 MR. KEYS: George Keys representing the
2 party opponent, the Dempseys. Yes, that schedule is
3 fine with me.

4 CHAIRPERSON GRIFFIS: Excellent.
5 Applicant, any concern with that schedule?

6 MS. BALDWIN: No.

7 CHAIRPERSON GRIFFIS: Then we're done.
8 Thank you all very much. We'll look forward to
9 receiving that information. That being done, is
10 there anything else regarding this case for
11 clarification that we need? Thanks.

12 MR. MOY: No, sir. I think that covers
13 it.

14 CHAIRPERSON GRIFFIS: Okay. So we have
15 actually continued the decision on this until the 15th
16 of February. Is that the correct date, Mr. Moy?

17 MR. MOY: Yes. Going backwards again,
18 Special Public Meeting, February the 15th, submissions
19 due this Thursday, February 3rd. Replies to the
20 submissions due next week, next Thursday, February
21 the 10th.

22 CHAIRPERSON GRIFFIS: Good. Thank you
23 very much. What else do we have for this morning?

24 MR. MOY: The last case for decision, Mr.
25 Chairman, is Application No. 17290 of IDS-DC, Inc.,

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1 pursuant to 11 DCMR section 3129.1, for a
2 modification of plans approved under BZA Order No.
3 16860, dated May 1, 2002, and a request for waiver of
4 the six-month filing for a modification to allow a
5 second-story addition, approximately 150 square feet,
6 to an existing row dwelling in the R-4 District at
7 premises 274 Kentucky Avenue, S.E, that's in Square
8 1039, Lot 81.

9 On December 29, 2004, the applicant filed
10 plans to modify approved plans that would allow a
11 second-story addition to an existing dwelling. This
12 minor modification of plans would allow the,
13 approximately, 150 square foot addition instead of a
14 previously approved roof deck that is shown in your
15 case folders under Exhibit 8. The previous plans
16 were approved by the Board at its Public Hearing on
17 April 23, 2002 where the Board granted the
18 application in a Bench Decision under Application No.
19 16860.

20 Finally, which also would be a
21 preliminary matter, is the applicant has requested a
22 waiver of the six-month filing period under 3129,
23 which is after the date of the final order approving
24 the application. And that completes the Staff's
25 briefing, sir. We have sitting on this case

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1 application, case file, Mr. Griffis, Mr. Etherly and
2 Mr. Hood.

3 CHAIRPERSON GRIFFIS: Good. Thank you
4 very much, Mr. Moy. It's absolutely clear that this
5 has come before us for a minor modification. What's
6 fascinating is they actually put together a full
7 application for this, but it fits within our
8 parameters, except for one aspect and that is the
9 time. And let me just hear any objection to the
10 Board waiving the time requirement, which would
11 preclude us from looking at this minor modification.

12 BOARD MEMBER ETHERLY: No objection, Mr.
13 Chair. And I would also just simply note for the
14 record, as I believe I did when this case first came
15 before us, that the case is located in my ANC. If I
16 recall correctly, I believe that there were no
17 concerns expressed by any of the parties at that
18 particular time regarding my continued participation.

19 I, of course, have had no discussions
20 with the ANC or anybody associated with the case
21 about the case itself, but just wanted to continue to
22 note that disclosure, that the subject property is
23 located within my personal ANC.

24 CHAIRPERSON GRIFFIS: Excellent. Thank
25 you.

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1 BOARD MEMBER ETHERLY: But no objection
2 to the waiver, Mr. Chairman.

3 CHAIRPERSON GRIFFIS: I appreciate both
4 aspects and, of course, as we didn't have objections
5 during the case proceeding, there was no submission
6 regarding any objections to your continuation. I
7 think we should just move right ahead and look at
8 this.

9 As I indicated, they had put together an
10 entire application. This is a modification from the
11 previous. In fact, this enclosing area in many
12 respects, if not all, would not kick in any further
13 relief requirement, except if it came under 223 or
14 something of that aspect.

15 But not going into it, I think it's very
16 straightforward in terms of the modification of what
17 was previously approved, and I have no objection nor
18 have I seen any evidence that would rise to a level
19 of concern or necessity to object to this
20 modification.

21 BOARD MEMBER ETHERLY: I would agree, Mr.
22 Chair, and if you may recall, my recollection of this
23 case, we had a number of interesting lots that the
24 particular developer had to deal with with respect to
25 getting the number of units that they were

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1 endeavoring to build in this particular location. So
2 perhaps there is no surprise that as the project has
3 begun to move forward, that they have encountered an
4 instance where some additional minor modifications,
5 as you emphasize, not invoking any additional relief,
6 but that some additional minor modifications would
7 need to be made in order to make the project work, so
8 I continue to be in support.

9 CHAIRPERSON GRIFFIS: Excellent. That
10 being said then, I would move approval of the minor
11 modification attendant to the previous application.

12 BOARD MEMBER ETHERLY: Seconded, Mr.
13 Chair.

14 CHAIRPERSON GRIFFIS: Thank you very
15 much. Further deliberation, discussion? If not,
16 there is a motion before us. It has been seconded.
17 I would ask for all those favor to signify by saying
18 aye.

19 BOARD MEMBER ETHERLY: Aye.

20 CHAIRPERSON GRIFFIS: Aye. And opposed?
21 Abstaining? Mr. Moy, if you wouldn't mind recording
22 the vote.

23 MR. MOY: Yes, sir. The Staff would
24 record the vote as 2-0-2 on the motion of the Chair
25 to approve, seconded by Mr. Etherly. We have two

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1 Board Members not participating on this case. We
2 also have an absentee ballot from Mr. Hood in favor
3 of the motion, so that would give a final vote as 3-
4 0-2.

5 CHAIRPERSON GRIFFIS: Excellent. Thank
6 you very much, Mr. Moy. How come my switch isn't
7 working today? I'm too quick in the draw maybe. My
8 question then was is there anything further for the
9 Board in the Public Meeting this morning?

10 MR. MOY: To my knowledge, that completes
11 the morning session, sir.

12 CHAIRPERSON GRIFFIS: Excellent. Very
13 well. I don't have anything else attendant on the
14 schedule or before us. Therefore, let's adjourn the
15 morning session of the 1st of February 2005. Thank
16 you all very much.

17 (Whereupon, off the record for a recess.)

18 CHAIRPERSON GRIFFIS: Thank you. It was
19 premature to adjourn the morning session, so I would
20 reopen the morning session with the only aspect left
21 for us, to waive our rules and regulations that there
22 is no objections of participating Members of the
23 Board to issue a summary order on our last case,
24 which was the minor modification. I'm opening the
25 record for any objections to that.

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1 BOARD MEMBER ETHERLY: No objection, Mr.
2 Chair.

3 CHAIRPERSON GRIFFIS: Excellent. Having
4 no objection, then I say just that we waive our
5 regulations and requirements and issue a summary
6 order on the minor modification. Thank you.

7 MR. MOY: Yes, sir. Well done. Thank
8 you.

9 CHAIRPERSON GRIFFIS: Good. Then let's
10 finally adjourn the morning session of the 1st.

11 (Whereupon, the Public Meeting was
12 concluded at 11:42 a.m.)
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