

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

+ + + + +

BOARD OF ZONING ADJUSTMENT

+ + + + +

PUBLIC HEARING

+ + + + +

TUESDAY,

NOVEMBER 17, 2009

+ + + + +

The Public Hearing convened in Room 220 South, 441 4th Street, N.W., Washington, D.C. 20001, pursuant to notice at 10:00 a.m., Marc D. Loud, Chairman, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

MARC D. LOUD	Chairman
SHANE L. DETTMAN	Vice Chairman (NCPC)
MERIDITH MOLDENHAUER	Board Member

ZONING COMMISSION MEMBERS PRESENT:

MICHAEL G. TURNBULL, FAIA, Commissioner
(AOC)

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY	Secretary
BEVERLEY BAILEY	Sr. Zoning Spec.
JOHN NYARKU	Zoning Specialist

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Board of Zoning Adjustment
District of Columbia
CASE NO. Transcript
EXHIBIT NO. null

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

MARY NAGELHOUT, ESQ.

OFFICE OF PLANNING STAFF PRESENT:

PAUL GOLDSTEIN

ARTHUR JACKSON

KAREN THOMAS

STEPHEN VARGA

This transcript constitutes the
minutes from the Public Hearing held on
November 17, 2009.

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1 E-V-E-N-I-N-G S-E-S-S-I-O-N

2 4:46 p.m.

3 CHAIRMAN LOUD: Ms. Bailey, if we
4 can call the Koo Yuen case and do what we have
5 to do by way of continuing that?

6 MS. BAILEY: Application 17988,
7 Appeal of Koo L. Yuen, pursuant to 11 DCMR §
8 3100 and 3101, from an April 30, 2009 Notice
9 of Intent to Revoke Building Permit No. B85608
10 by the Zoning Administrator, Department of
11 Consumer and Regulatory Affairs, for gasoline
12 service station in the C-1 District at
13 premises 5010 Benning Road, S.E., Square 5340,
14 Lot 68.

15 CHAIRMAN LOUD: Thank you, Ms.
16 Bailey. And just for these purposes, I'm
17 going to waive reading of most of what I would
18 normally read for calling the afternoon
19 calendar, but do for purposes of quorum want
20 to indicate that I'm Marc Loud, Chair. And
21 joining me is Vice Chair, Shane Dettman
22 representing the National Capital Planning

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1 Commission, Mike Turnbull representing the
2 Zoning Commission, Mrs. Meridith Moldenhauer,
3 a Mayoral Appointee of the BZA and staff
4 present is Mr. Clifford Moy and Ms. Beverley
5 Bailey.

6 A quorum is present.

7 I think if you could call the Koo
8 Yuen case for us?

9 MS. BAILEY: Mr. Chairman, I just
10 called that case.

11 CHAIRMAN LOUD: I'm sorry. Thank
12 you very much for calling it.

13 With respect to that case, I think
14 that the ANC, the appellant and the appellee
15 are the only parties in that case. And two of
16 those have agreed to a December 1 continuance
17 date in the afternoon.

18 So we will continue it to the
19 afternoon calendar for December 1. Okay.

20 MS. BAILEY: Thank you, sir.

21 CHAIRMAN LOUD: Thank you. Is
22 there anything further that we need to do with

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1 that case?

2 MS. BAILEY: Not for this case,
3 sir.

4 CHAIRMAN LOUD: Thank you. Why
5 don't we adjourn then the afternoon hearing
6 calendar until we resume it a little bit
7 later?

8 Thank you. And we will now take
9 about a 10 minute break and we will resume
10 with the Philly case and then we will move on
11 to the Rosan case shortly thereafter. And
12 thank you for your patience.

13 (Whereupon, at 4:48 p.m. a recess
14 until 6:18 p.m.)

15 CHAIRMAN LOUD: Good evening and we
16 are going to resume the hearing calendar that
17 we got into very briefly earlier with the
18 continuation of the Koo Yuen case.

19 I didn't get a chance to read the
20 entire procedural remarks that I'm supposed to
21 read, so I'm going to spend just a few seconds
22 reading those and then we can go directly into

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1 calling the case, Ms. Bailey.

2 This hearing will, please, come to
3 order. Good afternoon, ladies and gentlemen.

4 This is the November 17th Public Hearing of
5 the Board of Zoning Adjustment.

6 For the third time today, I'm Marc
7 Loud, Chairperson. To my right is Mr. Shane
8 Dettman, Vice Chair, Mike Turnbull from the
9 Zoning Commission representing the Zoning
10 Commission. This is Meridith Moldenhauer to
11 my left, Mayoral Appointee to BZA, Mr.
12 Clifford Moy, Secretary of BZA, Ms. Mary
13 Nagelhout, Office of the Attorney General, and
14 on my far left all the way at the end, Ms.
15 Beverley Bailey, Zoning Specialist here in the
16 Office of Zoning.

17 Copies of today's hearing agenda
18 are available to you and are located to my
19 left in the wall bin near the door. Please,
20 be aware that this proceeding is being
21 recorded by a Court Reporter and is also
22 webcast live. Accordingly, we must ask you to

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1 refrain from any disruptive noises or actions
2 in the hearing room.

3 When presenting information to the
4 Board, please, turn on and speak into the
5 microphone, first, stating your name and home
6 address. When you are finished speaking,
7 please, turn your microphone off.

8 All persons planning to testify
9 either in favor or in opposition are to fill
10 out two witness cards. These cards are
11 located to my left on the table near the door
12 and on the witness tables. Upon coming
13 forward to speak to the Board, please, give
14 both cards to the reporter sitting to my
15 right.

16 The order of procedure for special
17 exceptions and variances is: Statement and
18 witnesses of the applicant; Government
19 reports, including the Office of Planning, the
20 Department of Public Works, etcetera; Report
21 of the Advisory Neighborhood Commission;
22 Parties or persons in support; Parties or

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1 persons in opposition; and then finally, we
2 would turn back to you for a closing
3 statement.

4 Pursuant to Sections 3117.4 and
5 3117.5, the following time constraints will be
6 maintained: The applicant, the appellant,
7 persons and parties 60 minutes collectively,
8 except an ANC in support. The appellee, the
9 persons and parties in opposition, including
10 witnesses, 60 minutes, except an ANC. And
11 finally, individuals 3 minutes, organizations
12 5 minutes.

13 These time restraints do not
14 include cross examination or Board questions.

15 The ANC is automatically a party and is
16 allowed to cross. Nothing prohibits the Board
17 from placing restrictions on cross
18 examination.

19 The record will be closed at the
20 conclusion of today's case, except for any
21 material specifically requested by the Board.

22 The Board and the staff will specify at the

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1 end, for clarity purposes, exactly what is
2 expected and the date when the parties must
3 submit any additional information to the
4 Office of Zoning. Once the record is closed,
5 no other information will be accepted by the
6 Board.

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

13 The Board will make every effort to
14 conclude the Public Hearing this evening by
15 7:00, maybe a little after 7:00. If for some
16 reason we are going to go over extensively, we
17 will reassess where we are and determine
18 whether or not we need to continue the case to
19 the first available date on the calendar.

20 At this time, the Board will
21 consider any preliminary matters. Preliminary
22 matters are those that relate to whether a

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1 case will or should be heard, such as requests
2 for postponement, continuance, withdrawal or
3 whether proper and adequate notice has been
4 given. If you are not prepared to go forward
5 today, please let the Board know, now is the
6 time to raise that matter.

7 And does the staff have any
8 preliminary matters?

9 MS. BAILEY: Mr. Chairman, the only
10 case of the afternoon is 17994 and I'm not
11 sure if the applicants have been sworn in.
12 That's the only preliminary matter that I
13 have, sir.

14 CHAIRMAN LOUD: Thank you, Ms.
15 Bailey. Well, why don't we do that and then
16 we can proceed to call that case and walk
17 through the relief requested.

18 MS. BAILEY: Have you been sworn
19 in? Okay. Please, stand to take the oath.

20 (Whereupon, the witnesses were
21 sworn.)

22 MS. BAILEY: Thank you.

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1 CHAIRMAN LOUD: Good afternoon.
2 Finally, I think I heard you say finally under
3 your breath. Why don't you state your name
4 for the record and then we will turn it over
5 to you and you can walk us through your
6 presentation and how you make the requirements
7 for relief and then we will turn to the Office
8 of Planning.

9 MR. HOUSEKNECHT: Sure. My name is
10 Theodore Houseknecht. I go by Ted. I reside
11 at 1336 T Street, which is the property in
12 question.

13 MS. KIM: My name is Kuk-Ja Kim. I
14 reside at same address, 1336 T Street, N.W.

15 MR. HOUSEKNECHT: We are a married
16 couple.

17 CHAIRMAN LOUD: Okay.

18 MR. HOUSEKNECHT: In case that's--

19 CHAIRMAN LOUD: Well, why don't you
20 go ahead then and walk the Board through your
21 presentation, your application and how your
22 application meets the criteria for relief.

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1 MR. HOUSEKNECHT: My wife and I are
2 both registered architects in D.C. We have
3 lived in Washington, D.C. since we graduated
4 from school in 1988. We have lived in the
5 neighborhood since 1988. We purchased this
6 property in 1992.

7 It's a much different neighborhood
8 now than it was in 1992. We like it very
9 much. We are very interested in being able to
10 stay in the neighborhood and continue to live
11 in our house.

12 We now have two children, so we
13 have a growing family that is putting some
14 burdens on space constraints for us. We have
15 a daughter that is 6 years-old and a son that
16 is 12 years-old.

17 Our current house only has two
18 bedrooms and one full bathroom. So we were
19 looking at ways that we could increase the
20 useful space in our house.

21 In doing that, we determined that
22 the best possible outcome for us to do would

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1 be to restore our existing garage and add a
2 second floor with an artist studio on it.

3 While we are both employed outside
4 the home, we do do work in the house
5 frequently. We have a lot of sort of model
6 building furniture prototyping type tools and
7 uses that we use. And some of that stuff, I
8 have a drill press in my living room. We
9 sometimes use chemicals in our kitchen. It
10 would really be best, you know, outside the
11 house.

12 We devised this plan for renovating
13 our property to allow us to move some of the
14 mechanical equipment that is currently in the
15 house out to the garage, so that we can
16 renovate the house. Laundry equipment, things
17 like that.

18 We believe the property is unique
19 and is justified in asking for some of the
20 relief that is required to complete our
21 project.

22 First of all, the physical

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1 characteristics of the property are it is 120
2 feet deep, so it's considerably deeper than
3 most of the other properties in the R-4 Zone.

4 Many of the properties in the R-4 Zone are at
5 100 feet, which I think is the typical lot.
6 There is also several that are 80 feet deep.

7 So this extra depth on the property
8 allows to have two substantial structures on
9 the property, while still maintaining many of
10 the things that the Zoning Regulations
11 intended, in terms of open space and lot
12 coverage.

13 The second thing we want to point
14 out is, you know, I have some exhibits I'll go
15 through when I'm done with my verbal
16 presentation, that we are not intending to
17 increase our lot coverage in any meaningful
18 way with this plan.

19 Paul Goldstein, we have met twice
20 with Joel Lawson and Paul Goldstein and the
21 Office of Planning. Paul did a very good job
22 of summarizing a lot of the issues in his

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1 report here. I take some exception to the way
2 he was counting our lot coverage and our
3 existing condition with our garage and a
4 couple other little minor things, but, you
5 know, it was a thorough report.

6 I think my wife and I felt a little
7 blindsided by it, because there were many
8 things that were raised in here that did not
9 come up during our meetings with either Joel
10 or Paul, but either way we can talk through
11 those today.

12 The other things that are sort of
13 unique about the property are the way it has
14 been developed. The house, you know, our
15 house is a federal-styled row house. It is
16 only two stories tall. Most of the houses in
17 the R-4 Zone are four stories and are
18 considerably larger in terms of square footage
19 and, quite frankly, they are more efficient in
20 the use of space.

21 Because they are four stories, they
22 don't tend to be as deep, so we have quite a

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1 bit of lot coverage here simply because the
2 house is keep, because it's not tall.

3 We also do not have a basement, so
4 there is no place for mechanical equipment
5 below ground, you know, that's not in the
6 public space of the house, the use of the
7 house. So our laundry equipment is in the
8 house. Our furnace is in part of the house.
9 It just takes up a lot of space and we would
10 like to be able to clean up when we do the
11 renovation of the house.

12 CHAIRMAN LOUD: Just a quick
13 question. You mentioned the fact that it is
14 two stories is kind of unique, because many
15 houses, at least in the zone, are four
16 stories. But what about the fact that there
17 is no basement? Is that unique for that area?

18 MR. HOUSEKNECHT: I think it is
19 unique. If you look at almost all of the
20 townhouses there, they either have a
21 traditional basement or an English basement.
22 Many of the houses even have, you know, in-law

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1 suites in the basement, but they certainly all
2 have the mechanical equipment in the basement.

3 Our house does not have that
4 luxury. I certainly wish it did.

5 CHAIRMAN LOUD: And you are talking
6 about houses on that square? You're familiar
7 with the houses on the square and most of them
8 have basements?

9 MR. HOUSEKNECHT: I'm familiar with
10 the neighborhood and the zone itself.

11 CHAIRMAN LOUD: Okay. Thank you.

12 MR. HOUSEKNECHT: I can show you
13 many of these things in the drawing. We also
14 think the property is unique in that it backs
15 up on the alley. Across the alley there are
16 no other residential properties. It backs up
17 to D.C. Recreation Garage, basically. I think
18 their maintenance garage is for lawn mowers
19 and things like that.

20 And so unlike other properties on
21 the street that would share a common alley
22 with other residential properties, we don't

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1 have that. So anything we do back in the
2 alley is not in any way a detriment to other
3 residential properties.

4 Furthermore, the property is laid
5 out in Square 238, which we think is, in
6 itself, unique. The square is a fairly large
7 square. It is not bisected by what is
8 effectively half streets, in our case, that
9 would be Swann, does not come through this
10 block. So the blocks are deep. They are very
11 large.

12 And historically, there were alley
13 lots back there and other development in the
14 center of the square, which has now all been
15 removed. But that extra depth allows for deep
16 properties and I think some development of
17 those properties, it would be a little
18 different than you would get in other
19 sections.

20 So as I'll show you on this map in
21 a minute, because of that, you wind up -- I
22 don't know if -- this is a based Atlas from

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1 1932. It shows the depth of the properties,
2 the residential properties here along T Street
3 and here along 13th Street, which is the
4 residential section of this block.

5 All of this stuff, the school is no
6 longer been there. This is a parking lot for
7 D.C. These garages still remain. This is
8 also now just parking, too.

9 You get fairly substantial property
10 depths here. And there are quite a few of
11 these carriage houses that we are proposing to
12 do in this block. In fact, there are 14 --
13 excuse me, 13 free-standing garages in this
14 square here. Seven of them are substantial
15 two story carriage houses.

16 This one is directly to the east of
17 our property. Our property is right here.
18 This one is here in the corner. This one is a
19 very large house. These four along here are a
20 row. You can kind of see that in this aerial
21 photograph.

22 Here is one of the two story

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1 carriage houses directly to the east of us.
2 Here is one in our row. This is a very large
3 one here. There is four of them here that are
4 all two story carriage houses.

5 I'll show you some of the character
6 of those properties. This garage here is the
7 one directly to the east of ours which was
8 just restored in 2006. A little bit to our
9 frustration, it was done.

10 When meeting with Paul and Joel,
11 nobody could find any record of any work being
12 done on it. There were no permits. There was
13 no BZA action taken on his property, so
14 clearly the previous owners of this property,
15 although they informed us they were doing work
16 and they would need to go through the variance
17 process, just decided to do it.

18 So they have got, basically, more
19 than we are asking for here, but they did it
20 by hook or crook and not going through the
21 process.

22 This property here is a carriage

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1 house that is down the road. That was
2 recently permitted and in my letter I
3 referenced the Board to the BZA application
4 that approved this, this property here.

5 I have it somewhere in front of me.

6 It was Application 16081 dated July 10, 1996.

7 Both of these properties and another one that
8 I have referenced that was one of these
9 carriage houses down here, were asking for
10 much more than we are, because they needed use
11 variances, because they wanted to use them as
12 separate principal structures for residential
13 uses.

14 That is not what we are asking for.

15 We are not asking for a use variance here.
16 We simply want to use this property for our
17 own family use in terms of storage and studio
18 space. But both of those, I believe it was
19 either this one or this one and this property
20 here, were granted by BZA.

21 Neither of them got Office of
22 Planning support when they were approved and

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1 neither of them got ANC support when they were
2 approved. So here again, you can see the row
3 of four carriage houses down here.

4 So we believe that the square is
5 unique in that the deeper lots allow for that
6 type of development and, therefore, anything
7 that we propose to do would be in keeping with
8 the built structure of the square.

9 Next. We looked at other ways of
10 improving our property to gain some more
11 space. Several years back, we actually did
12 some test excavations in our crawl space. You
13 can hardly get down in there. I mean, those
14 joists sit maybe, at best, 18 inches above raw
15 dirt down there.

16 We got down there and we did some
17 test excavations to see if excavating some
18 sort of full basement or partial basement for
19 mechanical equipment would be possible. And
20 it really wasn't practical. We undermined the
21 foundations very quickly. Our structural
22 engineer advised us that the soil in this area

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1 is clay. It was very bad from a structural
2 standpoint. He advised us not to mess with
3 it, in a sense.

4 We also looked at maybe building a
5 third story, because we have plenty of height
6 to go on the property, but the problem with
7 that was that the house -- again, there was
8 much question about whether the existing
9 structure of the house could support an
10 additional load. The structural engineer
11 advised against it.

12 In talking with Steve Callcott at
13 HPRB, he said well, that would not have been
14 his favorite choice anyway, because anything
15 we would have done there, would clearly be
16 seen from public space on both T Street and
17 probably 14th Street as well, because you are
18 looking at the diagonal. There is nothing to
19 block the diagonal view to our property.

20 So we also looked at possibly
21 bumping out the back. Some of our neighbors
22 have done that. They have extended the

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1 houses. But the houses are already fairly
2 deep on our house and our neighbors. And by
3 doing that, we would actually be increasing
4 our lot coverage from what we have now,
5 decreasing the actual open space on the
6 property which we use regulatory.

7 Our kids play back there. We eat
8 back there all the time, bar-b-que. We use it
9 quite a bit and we didn't really want to give
10 up the open space on the property.

11 Furthermore, it would block light
12 and air into the interior of the house,
13 because it would just make those interior
14 rooms that much farther away.

15 In addition, by making the house
16 deeper, it would potentially have an effect on
17 the neighboring properties blocking light and
18 air to them. Whereas, by improving our garage
19 and putting a second floor on it, there is no
20 detriment to the public space. There is no
21 detriment to our neighbors, because both of
22 our neighbors already have substantial garages

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1 on either side of us. And the one to the east
2 has a two-story garage, which is essentially
3 exactly what we are trying to match.

4 We have broad support from the
5 community. We have support from our ANC. It
6 was unanimous support from the ANC. We met
7 several times with our Commissioner, an
8 architect that the Commissioner had engaged to
9 help review or the ANC to help review this
10 project. And during our hearing, we got
11 support from them.

12 We also have letters of support. I
13 think most, if all of them, should be on
14 record from seven or eight homeowners. A
15 couple came in even after Paul had finished
16 authoring his letter.

17 And as far as we know, we have had
18 no opposition to the project. I think unless
19 -- you know, we believe that if we were to --
20 if the Board was to grant the relief needed
21 for us to complete the project, that you would
22 not find the project to be inconsistent in any

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1 way with the general purpose of the Zoning
2 Regulations.

3 I mean, to the point where you
4 could walk off our whole garage and carriage
5 house. We would still have enough property
6 left that we would meet the rear yard, you
7 know, setbacks and it would be no worse than
8 any other property that was not as deep as
9 ours.

10 So we believe in terms of meeting
11 the intent of the Zoning Regulations, this
12 project even after complete, as we propose it,
13 will in no way be a detriment. We don't
14 believe anybody -- there is any party that is
15 any way diminished by us -- by granting the
16 relief we need to do this.

17 Our existing lot coverage will
18 remain, you know, the way we have calculated
19 it, essentially unchanged. We are not bumping
20 out any walls. All we are doing is taking
21 what we have now and going up. We're
22 restoring it and going straight up.

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1 We have one bay that we are
2 proposing to pop out. And, Paul, we had
3 included that little 56 square foot porch that
4 was in question in your report in that. But
5 you know, that's where we stand on that.

6 The construction will not be able
7 to be seen from any public street, either T
8 Street or 14th Street and it will substantially
9 match the built condition in the rest of the
10 square and what our neighbors are currently
11 doing.

12 So just in closing, unless my wife
13 has anything to add to it, we think there is
14 little controversy in our proposal here. We
15 understand that it runs up against the strict
16 interpretation of a couple of the zoning
17 issues.

18 In meeting with Joel and Paul,
19 there was some understanding that that's
20 exactly the purpose of this Board, that there
21 are situations that the zoning just wasn't
22 written to address perfectly. And we believe

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1 we are one of those cases.

2 We would really like to stay in
3 this neighborhood and the city. We feel very
4 connected with it. Our kids feel very
5 connected with it. We need a little help here
6 to be able to do that. Thank you very much.

7 CHAIRMAN LOUD: Thank you, Mr., is
8 it pronounced, Houseknecht?

9 MR. HOUSEKNECHT: Houseknecht, yes.

10 CHAIRMAN LOUD: Houseknecht. Thank
11 you, Mr. --

12 MR. HOUSEKNECHT: Houseknecht.

13 CHAIRMAN LOUD: -- Houseknecht.
14 Let's see if Board Members have any questions
15 for you.

16 VICE CHAIRMAN DETTMAN: Mr.
17 Houseknecht, three questions. One, you
18 mentioned that you differ slightly with the
19 way the Office of Planning calculated the lot
20 occupancy and the way you did.

21 MR. HOUSEKNECHT: Yes.

22 VICE CHAIRMAN DETTMAN: Can you

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1 just kind of describe why you kind of disagree
2 with the way they went about it?

3 MR. HOUSEKNECHT: This is a blow-up
4 of the site plan that you have in the set of
5 drawings that was included in the application.
6 We have a couple of things that we did when I
7 calculated the lot coverage.

8 I calculated the house that is
9 shaded in gray here, approximately, 990 square
10 feet. I calculated this covered porch, which
11 we inherited when we bought the property. It
12 is of no real use to us. I mean, it is there.

13 It's something, but obviously we have been
14 told that it counts as lot coverage, even
15 though it is not habitable space that is, you
16 know, hermetically enclosed or used for us,
17 that's, approximately, 56 square feet.

18 We have what we think is an
19 existing garage here that is partially roofed,
20 at this point, because it was destroyed, we
21 think, by fire quite some time ago. And I
22 have some photographs that I can talk about

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1 that a little bit more in detail.

2 But we believe that the existing
3 garage is 480 square feet, so we included the
4 480 square feet. It is essentially exactly
5 the same size as the one just to the east. We
6 have an existing wall here that is about 11
7 inches beyond his. And this one is
8 considerably further out, our neighbor.

9 I'm sorry, I'm not holding these up
10 very high, but our neighbor to the west has
11 one considerably deeper than ours. That was
12 counted in our lot coverage. And I also
13 counted this projecting bay that we have on
14 the second floor that overlooks our backyard.

15 I had counted it a 3 foot projection and in
16 subsequent design work, we're thinking
17 probably a lesser projection of 2 feet would
18 probably work better, but I included,
19 approximately, 51 square feet for that.

20 That gave us a lot coverage of,
21 approximately, somewhere between 73 and 74
22 percent. So I understand and I think this is

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1 all existing. This is nothing with the
2 exception to this bay on the second floor,
3 which is a minor amount of square footage.
4 It's nothing we don't think we are adding.

5 I think that when Paul went through
6 and looked at this, he also added the square
7 footage here for our dogleg, because it's a
8 nonconforming court. And so he threw that
9 square footage in that bumped up the
10 calculation.

11 I also think that they did not
12 calculate my existing garage fully or possibly
13 in any way.

14 I want to show you a few
15 photographs on -- it's a party wall situation.

16 This is -- I don't have all the photographs,
17 but this photograph here, there is a wall, two
18 story wall, which is the carriage house just
19 to the east, this one right here. So we are
20 looking at this wall right here.

21 This fence is our property right
22 here. You can also see we are sandwiched

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1 between this garage to the west and this
2 garage, this two story carriage house to the
3 east.

4 The roof used to come all the way
5 out. It used to come all the way out to the
6 property line, not even the full setback. We
7 know that, because there was evidence on this
8 wall here, this party wall here. There is
9 existing joist hangers that are obviously very
10 old that continue all the way out.

11 And you can come all the way out to
12 the property and you still see flashing, metal
13 flashing in this party wall from the roof that
14 was all the way out there.

15 So at one time, there was
16 significant lot coverage from this garage.
17 Part of it had to be done. When these people
18 went and did their work just three years ago
19 in 2006, their wall had crumbled
20 significantly. There was very little of their
21 wall left here adjacent to our property.

22 And so they took down all of the

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1 wall hangers and the relative stuff that was
2 left over there. So we believe that lot
3 coverage existed and that's why we counted it.

4 VICE CHAIRMAN DETTMAN: Okay.

5 MR. HOUSEKNECHT: Did you have
6 another question, Mr. Dettman?

7 VICE CHAIRMAN DETTMAN: I have two
8 other ones. One is could you speak
9 specifically about -- you kind of went through
10 the variance test. And could you speak
11 specifically about what you think the
12 exceptional condition is that makes it
13 difficult for you to meet the alley setback?

14 MR. HOUSEKNECHT: The alley
15 setback?

16 VICE CHAIRMAN DETTMAN: Is it 12?

17 MR. HOUSEKNECHT: Yes, it's 12
18 feet.

19 VICE CHAIRMAN DETTMAN: 12 feet.

20 MR. HOUSEKNECHT: It's just the
21 existing condition of our garage. And what we
22 are trying to maintain, it basically comes

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1 down to expedience isn't the right word, but
2 maybe cost and efficiency.

3 We have some existing walls in
4 place and the back wall of the garage. And we
5 don't really want to take that whole garage
6 and just shift it further into the property,
7 because it would reduce the open space between
8 our house and then -- the main house and the
9 garage.

10 Also, given the way the whole row
11 is developed there, the two properties, the
12 exhibit for that is -- I know this is a little
13 bit small, but we're talking about this row
14 right down here. The existing garage just to
15 the west is all the way out right to the
16 property line with no setback at all.

17 The existing garage on the far
18 eastern end of this row is -- has no setback
19 either. Everything else between those two has
20 a setback that equals, approximately, 3 feet.

21 Our neighboring garage here, which
22 is what we were matching our proposed to, has

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1 a setback, I think it is, around 3 feet,
2 maybe 3 foot 3 inches. There was a recent BZA
3 case maybe just a month or two ago for this
4 property here that also granted that setback
5 to the 3 foot.

6 There is a utility pole that sits
7 right in the middle of the alley right now.
8 There doesn't seem to be any practical reason
9 why we would need to setback the 12 feet.
10 There is no trash pickup back on our alley.
11 They pick the trash up on T Street. There is
12 no fire truck access or anything like that
13 back there now.

14 And so the based Atlas from '32
15 shows that the garage that we had was actually
16 out with a zero setback. So we actually think
17 we are making our proposal more conforming
18 than what the original condition was.

19 VICE CHAIRMAN DETTMAN: Okay. And
20 my last question is did you explore at all
21 what options were available to you? I'm
22 approaching this question using the way OP

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1 calculated lot occupancy. Did you explore
2 what your options were in terms of the garage
3 that you could get with 53 percent lot
4 occupancy by way of a special exception, which
5 basically you could get an additional 17
6 percent lot occupancy.

7 So did you explore that?

8 MR. HOUSEKNECHT: Not deeply. We
9 were working with our existing conditions.
10 And like I said, when we got this report this
11 week, that was the first time I had ever seen
12 anybody talk about a 53 percent lot coverage.

13 I mean, everybody, you know, in the
14 neighborhood just assumes that we have this
15 garage there and they keep asking us why
16 haven't you renovated your garage yet?

17 We have the wall in place. We have
18 the floor slab in place in the existing
19 condition. There is some efficiency and some
20 just, you know, cost benefit to being able to
21 maintain those in place and just building up
22 from there.

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1 In addition, the garage to our west
2 is considerably further into the property than
3 ours. And the garage to the east is
4 essentially aligned with us. We are -- our
5 existing wall is, approximately, 11 inches
6 beyond his.

7 So there didn't seem to be any real
8 benefit to try and pare that back or place it
9 differently than we had now.

10 VICE CHAIRMAN DETTMAN: Thank you.

11 MR. HOUSEKNECHT: Thank you.

12 VICE CHAIRMAN DETTMAN: Thank you.

13 COMMISSIONER TURNBULL: Mr.
14 Houseknecht, you had mentioned the existing
15 garage, which is primarily footings and a
16 slab?

17 MS. KIM: And the walls.

18 COMMISSIONER TURNBULL: Yes.

19 MS. KIM: And the roof partial.

20 COMMISSIONER TURNBULL: Yes.

21 MR. HOUSEKNECHT: The existing
22 garage was a wood frame structure that was

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1 party-walled with two masonry structures on
2 either side. We have an existing floor slab
3 and we have an existing wall footing. There
4 is even a footing that exists sort of under
5 the fence that we would need to move. But the
6 other one is an existing wall that is in place
7 that is interior to our property.

8 COMMISSIONER TURNBULL: Well, I'm
9 looking at the photos on Exhibit No. 6.

10 MR. HOUSEKNECHT: Six, is that --

11 COMMISSIONER TURNBULL: And it
12 shows this wonderful opening, this circle with
13 bricks. That was existing?

14 MR. HOUSEKNECHT: That is existing.
15 That is existing.

16 COMMISSIONER TURNBULL: So when you
17 bought it, that was there?

18 MR. HOUSEKNECHT: No question.

19 COMMISSIONER TURNBULL:
20 Interesting.

21 MR. HOUSEKNECHT: Yes.

22 COMMISSIONER TURNBULL: And the

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1 wall that I'm looking at on your plans on
2 Exhibit No. 7, the site plan, the wall there
3 is existing, but as you come back 3 foot 3,
4 you are going to be removing the existing
5 footings and slab outside there?

6 MR. HOUSEKNECHT: That's correct,
7 yes.

8 COMMISSIONER TURNBULL: You are
9 taking part of your arts and industrial type
10 things and putting them in the -- how does
11 that help you free up your house? I mean, you
12 said you've got two bedrooms and you've got --

13 MR. HOUSEKNECHT: Yes, there is two
14 things. One, our house is just very full
15 right now. Like I mentioned, we have a lot of
16 these things we use for work that are inside.

17 Our dining room is more a studio space right
18 now, than it is a dining room.

19 I have a work bench. I have a tool
20 cabinet in my dining room. I have a book
21 press, a several hundred pound cast iron book
22 press in my dining room that we use for book

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1 binding. There is a --

2 MS. KIM: A desk that I use as
3 basically my dining table, it's my work table.

4 MR. HOUSEKNECHT: Draft -- you
5 know, where the drafting table in there. We
6 have some computers in there. And we would
7 love to be able to just relocate that to above
8 our garage into a work studio, so that we
9 could then return our dining room to a dining
10 room use for our family.

11 The other thing that we are trying
12 to do is, we're trying to clean out some of
13 the space right now upstairs and under our
14 stairs that has some mechanical equipment in
15 it. I would like to relocate our hot water
16 heater and our laundry equipment to the garage
17 actually so that we could then build a third
18 bedroom up there, like our neighbors have
19 done. That would allow each of my children to
20 have a separate bedroom.

21 It would also allow us then to --

22 COMMISSIONER TURNBULL: That would

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1 be nice as they get older.

2 MR. HOUSEKNECHT: Yes, my son is 12
3 now and they have been sharing the room.

4 COMMISSIONER TURNBULL: Right.

5 MR. HOUSEKNECHT: And it hasn't
6 been a problem, but I suspect it is going to
7 be shortly.

8 COMMISSIONER TURNBULL: Sure.

9 MR. HOUSEKNECHT: We also only have
10 the one full bathroom. And we would love to
11 be able to renovate that, but that's a little
12 difficult to do now until we can relocate some
13 of the laundry facilities and stuff to the
14 garage.

15 So there is sort of the master plan
16 and doing the garage, the carriage house is
17 Phase 1 of the Master Plan.

18 COMMISSIONER TURNBULL: Phase 1.

19 MR. HOUSEKNECHT: Then Phase 2 of
20 the Master Plan, once we have got that up and
21 running, will allow us to do the house.

22 COMMISSIONER TURNBULL: Is the

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1 covered porch going to stay?

2 MR. HOUSEKNECHT: We have proposed
3 it to stay.

4 COMMISSIONER TURNBULL: Okay.

5 MR. HOUSEKNECHT: Just because it
6 is an existing condition.

7 COMMISSIONER TURNBULL: Yes.

8 MR. HOUSEKNECHT: It's there. We
9 didn't build it. If there is a large
10 objection from the Board, we are certainly
11 willing to enter some horse trading.

12 COMMISSIONER TURNBULL: No, I was
13 just curious. Okay. Thank you.

14 MR. HOUSEKNECHT: Thank you.

15 CHAIRMAN LOUD: Thank you, Mr.
16 Turnbull. Are there any further questions?
17 Okay. Why don't we turn to the Office of
18 Planning for its report?

19 MR. GOLDSTEIN: Good evening, Mr.
20 Chairman and Members of the Board. For the
21 record, my name is Paul Goldstein and I'm with
22 the Office of Planning.

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1 The Office of Planning cannot
2 recommend approval of the applicant's request
3 for an area variance relief from sections
4 403.2 and 2500.4. The subject property, as
5 you are aware, is Lot 823 in Square 238 and is
6 Zoned R-4.

7 The relief, as you have heard, is
8 needed to accommodate the applicant's proposal
9 to constructed a detached accessory garage
10 that exceeds both the permitted lot occupancy
11 and the height and story limitations.

12 Starting with that second
13 provision, the 2500.4, that provision
14 generally limits detached accessory buildings
15 to one story and 15 feet of height.

16 As you have heard, the applicant
17 wants a second story, 20 feet high. OP does
18 not believe that this property is unique. The
19 site is a typical shape. It is a typical size
20 of lots in the square. It is occupied by a
21 pre-1958 two story row dwelling, which is
22 common on this block.

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1 And as results since there is no
2 uniqueness, there can be no resulting
3 practical difficulty. OP agrees with the
4 applicant it would not appear to cause any
5 harm to the public good. There is certainly
6 plenty of evidence in the record of the ANC
7 and letters that support that.

8 But OP believes that relief would
9 substantially impair the intent of the Zone
10 Plan.

11 Generally, the height and story
12 regulations sort of maintain the character of
13 a Zone District by prescribing the appearance
14 and development intensity for accessory
15 structures.

16 Considering lot occupancy relief
17 under 403.2, as noted before, we don't find
18 that there is any uniqueness and, therefore,
19 there is no practical difficulty. OP does
20 note that there is an avenue for expansion on
21 this property. It could be by special
22 exception up to about 70 percent, which is

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1 permitted under our regulations.

2 The applicant is right in that the
3 lot occupancy and my figure is a little higher
4 than I think we had talked about. When I was
5 going back in, I counted the closed court,
6 which I don't think was something that had
7 been counted before. It's not something I
8 noticed until the end, but that is, you know,
9 a percentage or two. I mean, it's not
10 changing necessarily the tenor of the case.

11 I do disagree that we did talk
12 about that, whether the garage counts as
13 existing or not. I believe that I had talked
14 about that issue. And I certainly feel bad if
15 that wasn't well-communicated, that was not my
16 intention.

17 But I put the percentage a little
18 bit lower than maybe the applicant would
19 suggest. Although there is the slab that is
20 down there and certainly a wall and a little
21 bit of a roof covering, which I'm not quite
22 sure the dimension of, but it is probably a

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1 couple feet.

2 I just wasn't able to count that
3 roof covering part, but I certainly did not
4 think that the whole garage could be counted
5 for lot occupancy at this time, just because
6 it's not substantially standing. So that
7 would explain the different percentages.

8 If the Board finds that the
9 applicant has satisfied those two provisions,
10 OP has no concern regarding the technical
11 relief issues of lot width, alley setback. We
12 think they meet it. I think requiring them to
13 go 7 feet back from the alley would just not
14 make sense under this circumstance.

15 And they certainly should be lot
16 width relief, otherwise, they wouldn't be able
17 to build on their property. I think the main
18 point of contention here is just how much
19 properties are allowed to expand on a
20 particular site?

21 I think we have a disagreement
22 about that. Certainly, we don't find their

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1 project to be outrageous or detrimental to the
2 public good, but we just find problems with it
3 as far as it satisfying the variance test. So
4 that's my summary and I'm certainly available
5 for any questions.

6 COMMISSIONER TURNBULL: Mr.
7 Goldstein, good evening.

8 MR. GOLDSTEIN: Good evening.

9 COMMISSIONER TURNBULL: It's like a
10 zoning hearing. The property to the west, I
11 didn't ask the applicant, there is no other
12 building on it, there is just this existing
13 one story carriage house?

14 MR. HOUSEKNECHT: That is correct.
15 Oh, I'm sorry.

16 MR. GOLDSTEIN: Oh, sure. I would
17 just actually agree with the applicant. That
18 is correct. You will get some old maps and it
19 looks like there once was some type of a house
20 on that property. It has got a very long one
21 story garage, really odd. Parking going on on
22 it, some kind of permitting also rather

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1 strange.

2 COMMISSIONER TURNBULL: Permitted
3 parking?

4 MR. GOLDSTEIN: I saw some sign up
5 that I think it says parking only by permit.

6 MR. HOUSEKNECHT: The property is
7 owned by a very interesting gentleman across
8 the street. He is -- his father was one of the
9 first African-American attorneys in the
10 District. And he bought up several properties
11 in the block after the riots in '68 or maybe
12 even before.

13 They own a house directly across
14 the street from us, plus they own at least one
15 or two other houses on the block, including
16 that property directly to the west.

17 They use that garage as sort of a
18 maintenance facility right now. There had
19 been, at one point in time, a wood frame house
20 on the property. I don't know how long ago
21 that was demolished.

22 COMMISSIONER TURNBULL: You know,

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1 the applicant has described part of his house
2 and again, there is no basement in this house.

3 But apparently there are basements on a lot
4 of the other homes on the block.

5 MR. HOUSEKNECHT: Almost all of
6 them.

7 COMMISSIONER TURNBULL: So is that
8 -- I mean, do you consider that a practical
9 difficulty? I mean, you've got to have your
10 furnace in a closet off your living room.

11 MR. GOLDSTEIN: I honestly don't
12 know if that is enough or not. Certainly, I
13 take the applicant at his word if the other
14 homes don't have a basement, then I --

15 MS. KIM: All the houses within our
16 -- from our alley, the alley next to west of,
17 you know, us to the seven or eight houses to
18 the next alley, these are the people who don't
19 have basement, the rest of the block have
20 basements.

21 MR. HOUSEKNECHT: Right.

22 MR. GOLDSTEIN: Yes, I guess I'm

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1 not sure based, on the testimony, whether the
2 homes on the block have basements or not. I
3 certainly don't know. I haven't gone in and
4 inspected them. I think it again just comes
5 down to there is an avenue to expand this
6 house under the regulations. That they want
7 more than the regulations permit.

8 And whether not having a basement
9 is itself a unique condition, I guess taking
10 that into account with other factors, I leave
11 it to the Board. But I have trouble with
12 using that too strongly in a uniqueness
13 argument.

14 COMMISSIONER TURNBULL: Well, I'm
15 trying to look at this in a lot of different
16 ways. And yes, you are right, they could
17 expand onto the house, but as the applicant
18 had said that by doing that, you start to make
19 the house darker and more -- I mean, it's
20 only, what is it, 17.9 wide, plus then you
21 have got this existing thing at the back you
22 have got to deal with.

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1 It just seems that working with
2 what he has existing and trying to tie it into
3 the existing structures that are there,
4 architecturally makes a lot of sense. And I'm
5 just -- you know, as a Zoning Commission
6 Member, I'm usually 100 percent with you guys
7 on this, except on certain instances.

8 And I seem to remember sitting on a
9 case a couple of years ago where we had a
10 residence that didn't have a basement and
11 there was some issues with space. And I think
12 we looked at it that time as a unique
13 condition, because a lot of the others had
14 basements.

15 And you're right, is that a
16 hardship? Well, I guess you could look at it
17 several ways. But I think the applicant is
18 making -- I came here 100 percent with your
19 viewpoint, but now I am a little bit, I think
20 I am, torn here on the best intent of the
21 Zoning Regs and the character of the
22 neighborhood.

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1 And I guess you are looking at they
2 have 78 percent, but it sounds like depending
3 upon how you actually count, it sounds like
4 you would have to go back and do a totally
5 more accurate tally. I mean, did you include
6 the covered porch in that?

7 MR. GOLDSTEIN: Yes, I did.

8 COMMISSIONER TURNBULL: With that?

9 MR. GOLDSTEIN: Yes. I did. To
10 the best I could, based on their plans, I
11 tried to go through it step-by-step.

12 COMMISSIONER TURNBULL: Yes.

13 MR. GOLDSTEIN: And see what
14 percentages they are. If you took off the
15 covered porch and did not count the covered
16 porch and you did not count the closed porch,
17 I put their proposal at about 72 percent.

18 COMMISSIONER TURNBULL: Well, let
19 me ask you. If, I mean, adding on to their
20 house, would they not have to continue that
21 courtyard? That nonconforming -- or I don't
22 know. I don't even know if it's conforming or

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1 not, the courtyard.

2 MR. GOLDSTEIN: I believe it is a
3 nonconforming courtyard.

4 COMMISSIONER TURNBULL: So would
5 they have to -- so the new structure going on,
6 would it have to continue the nonconforming or
7 would they have to tear down?

8 MR. GOLDSTEIN: I would think that
9 they would be able to fill in the courtyard if
10 they were so inclined. Whether that is
11 necessarily the best --

12 COMMISSIONER TURNBULL: Right.

13 MR. GOLDSTEIN: -- outcome is
14 questionable. Certainly, their neighbor may
15 not feel quite as happy with the proposal, if
16 that was the case.

17 COMMISSIONER TURNBULL: Right.
18 Yes, I guess I'm looking at this from the
19 standpoint of in the public good. Again,
20 looking at the neighbor, keeping the same, he
21 is respecting the house next door. Maybe I'm
22 just kind of torn right now.

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1 MR. GOLDSTEIN: Sure.

2 COMMISSIONER TURNBULL: Thank you.

3 MR. GOLDSTEIN: Of course.

4 CHAIRMAN LOUD: Thank you, Mr.
5 Turnbull. Are there any further questions
6 from the Board? Then do you have any
7 questions for the Office of Planning?

8 MR. HOUSEKNECHT: No, I think Paul
9 and I have discussed this quite a few times in
10 the past. We understand each other well.

11 CHAIRMAN LOUD: Okay. Then let's
12 turn to you for closing statement. I'll just
13 mention for the record that the ANC did submit
14 a report in support. It is our Exhibit 16.
15 There was a quorum. They properly noticed the
16 meeting and they were in support of the
17 application. And we would give that report
18 great weight in terms of our ultimate
19 deliberation decision on the case.

20 So with that said, I'll turn back
21 to you.

22 MR. HOUSEKNECHT: All right. Well,

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1 thank you very much for hearing our case
2 today. Like I said, my wife and I and our
3 family would very much like to be able to
4 obtain the relief we need to develop the
5 house. We have looked at several different
6 development opportunities for this property
7 and we really believe that this is the best
8 one.

9 While it does come up against a
10 couple of the Zoning Regulations that Paul has
11 pointed out, we think both for our purposes,
12 for the neighborhood and in keeping with the
13 intent of the Zoning Regulations and the built
14 structure of the square, our proposed
15 development is the best solution.

16 We really think -- we really hope
17 the Board will agree with us and grant the
18 relief we need, so that we can maintain use of
19 our property. Thank you very much.

20 CHAIRMAN LOUD: Thank you. I think
21 that we have a full record and I think we are
22 prepared to talk it out and hash it out and

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1 see if we can render a decision on it today.
2 Let me check and make sure everyone is on the
3 same page though. Is that the consensus that
4 we have a full record on it and we're ready to
5 deliberate today?

6 Okay. Then let me ask, colleagues,
7 if there is one of you that would like to
8 start us off? We can certainly all join in as
9 appropriate.

10 VICE CHAIRMAN DETTMAN: Mr.
11 Chairman, I would be happy to start us off. I
12 want to start by just thanking the applicant.
13 I thought the record and the filings were
14 very well put together as well as the
15 testimony and the presentation and appreciate
16 the attention to detail.

17 We have four areas of relief. One
18 is a variance from lot width. It's a series
19 of four variances. It is from minimum lot
20 width under 401.3, maximum percentage of lot
21 occupancy, 403.2, the minimum setback for
22 accessory buildings from the alley center

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1 line, that's 2300.2 and finally the maximum
2 height and stories of accessory buildings
3 under 2500.4, and it's for a proposal to
4 construct a two story accessory building with
5 an artist studio on the second floor.

6 I think that it kind of goes
7 without saying that the variance test for the
8 minimum lot width has been established. You
9 know, it's an existing condition. I'm
10 certainly sure that it predates the Zoning
11 Regulations.

12 It would be practically difficult
13 for the property owner to somehow widen this
14 particular property. There is a vacant lot
15 next door. In order to acquire that, would
16 potentially be a -- the cost would be
17 practically difficult. So I think that that's
18 met.

19 I'll address the maximum height and
20 stories for accessory buildings next. I think
21 that the test has been made there as well for
22 the following reasons: The applicant

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1 testified that this is a fairly small house.
2 I wouldn't say that it is one of a kind on the
3 block, in the city, in the square, however, it
4 doesn't have a basement.

5 And I'm persuaded that really in
6 order to excavate underneath the house in
7 order to provide some livable space down there
8 is, though it is being done more and more
9 these days, still a very, very difficult thing
10 to do. Especially when, as the applicant
11 testified to, they did explore that option,
12 they found that the footings of the house were
13 a little bit -- they were very shallow,
14 potentially a little bit unstable, which I
15 assume would even further add to the cost of
16 actually going in that direction.

17 The footings actually play into the
18 applicant's ability to put on a third story as
19 well, which we have seen several times.
20 However, it's the applicant's testimony that
21 according to their structural engineer, the
22 footings and the structural integrity of the

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1 footings, potentially, could cause some
2 problems and perhaps preclude that option.

3 In addition, the applicant briefly
4 noted about conversations with the Historic
5 Preservation Office. And although this
6 particular property is not individually
7 landmarked, it is located inside a Historic
8 District. And so an addition on the top floor
9 certainly would probably require some
10 discussion with HPO staff and potentially
11 require some setbacks from the front and the
12 back. And so it's a difficult thing to do, I
13 think.

14 For those reasons, I think that
15 their desire to stay in the District, they are
16 long-time District residents. They want to
17 provide a comfortable place for their family.

18 I think that the first prong has been met
19 with respect to an exceptional condition that
20 makes it practically difficult for them to do
21 what they want to do with this property and
22 meet the Zoning Regulations.

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1 I think it is logical that the two
2 story accessory structure and what they are
3 looking to do with that structure leads me to
4 say that I think the three prong test has been
5 made for that.

6 And given the great amount of
7 community support and the ANC support and the
8 existing conditions on either side of the
9 property, with the large structure, the large
10 carriage structure on one side, I think that
11 supports the making of the third prong.

12 I'll take up the lot occupancy and
13 the setback from the alley center line
14 together. And I don't think that the case has
15 been made there, particularly because I see --
16 I agree with the Office of Planning that I see
17 an opportunity -- I see options available to
18 the applicant to do what they want to do with
19 the property under the right of a special
20 exception under 223.

21 I think that they can retain what
22 currently exists of the old garage. They can

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1 build a garage the full width of the property.

2 And I don't exactly know what depth of garage
3 that would be. I think maybe 16 to 19 feet.
4 And come in under 70 percent lot occupancy and
5 still have a two story accessory garage where
6 they could have an artist studio on the top.

7 And I don't believe they have a
8 parking requirement for this property, so they
9 really don't need to be consumed with
10 designing a first floor that would meet the
11 parking requirements, the 9 x 19 requirement.

12 And in addition to that, I don't
13 see a particularly unique aspect of this
14 particular property that makes it practically
15 difficult for the applicant to meet the 12
16 foot alley setback from the center line.

17 We have had a few cases like this
18 where we said well, if we make the applicant
19 setback, they would be the furthest from the
20 center line of the alley than the other
21 garages adjacent or along that particular
22 alley.

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1 But I think that's the spirit of
2 the reg. I think the reg says we have some
3 narrow alleys and in order to provide adequate
4 circulation and whatnot, we need to have them
5 setback 12 feet from the center line, even if
6 that entails taking up a little bit of the
7 open space in the rear yard.

8 In this particular case, I think
9 the 12 foot alley center line setback
10 requirement can be met without triggering any
11 additional relief, meaning rear yard relief.
12 There is plenty of rear yard there.

13 So with respect to the alley
14 setback, me not seeing a particular unique or
15 exceptional situation that gives rise to a
16 practical difficulty, I don't need to get to
17 the first prong.

18 And again, with the lot occupancy,
19 I agree with the Office of Planning in that
20 there are options for the applicant to explore
21 that can accomplish what they want to
22 accomplish without necessitating a variance

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1 from lot occupancy.

2 CHAIRMAN LOUD: Thank you, Mr.
3 Dettman. So you see a case being made for
4 minimum lot width, height and stories, but not
5 for lot occupancy or alley setback? Okay.
6 Others?

7 COMMISSIONER TURNBULL: So, Mr.
8 Dettman, you are saying that they would go
9 into their rear yard another 3 foot 9 inches?
10 They would pull everything back? The same
11 size, just pull it all back?

12 VICE CHAIRMAN DETTMAN: That sounds
13 about right, 3.9. I'm not exactly sure.

14 COMMISSIONER TURNBULL: Well, I'm
15 looking it's 8 foot 3. 3 foot 9 would be 12
16 feet.

17 VICE CHAIRMAN DETTMAN: Okay.

18 COMMISSIONER TURNBULL: So there is
19 more excavation work cause to rip up.

20 MR. HOUSEKNECHT: There is a
21 requirement for parking on this property.

22 CHAIRMAN LOUD: Let me just say,

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1 normally, once we enter deliberation, there is
2 no additional testimony. But if any of the
3 Board Members find that helpful, we can ask
4 for some clarification on that.

5 VICE CHAIRMAN DETTMAN: Well,
6 perhaps I misspoke. I could be wrong on the
7 parking requirement. Nonetheless, if there is
8 a parking requirement, a slight reduction in
9 the width of the particular -- of the new
10 accessory structure in order to necessitate
11 the greater depth required for the minimum
12 parking requirement, still you could come in
13 at 70 percent with a two story structure and
14 do what you want to do.

15 MEMBER MOLDENHAUER: Well --

16 VICE CHAIRMAN DETTMAN: It only
17 means have an accessory structure that doesn't
18 span the entire width of it.

19 MEMBER MOLDENHAUER: I guess, I
20 agree with your analysis, but when you get to
21 the issue of the setback of the alley, I have
22 a couple of concerns.

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1 One, if you were to -- you kind of
2 proposed two options. One, you know, push it
3 back an additional, you know, 3.9 feet, you
4 know, from the alley. Is that correct? And
5 if you do that, then the question is are you
6 then going to also push it further into the
7 center of the, I guess, patio area?

8 And if you do that, you may
9 eventually cause the applicant to either
10 totally demolish that existing wall, which I
11 think has some sort of historic, not
12 historical, but it has a nice aspect to it to
13 maintain in the area.

14 And because of that, I would rather
15 keep that current existing wall and build back
16 from there. And this wasn't actually brought
17 up as a point from the applicant, but if you
18 start setting this back and you are creating
19 almost an unsafe environment where you have a
20 little lip between where one garage ends and
21 then another garage starts and then you have
22 another structure, right now it's an open air

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1 structure, which has a little more of a public
2 safety issue.

3 But if you create a walled
4 structure that is two stories high and it is
5 setback further than everything else and it's
6 not to the same line as the existing structure
7 at 1334 T Street, I just would be concerned
8 about a public alley issue there, since there
9 is already an existing structure to its right.

10 VICE CHAIRMAN DETTMAN: I think you
11 raise a couple of very, very good points. One
12 is the wall. I agree with you. When I saw
13 that wall, I considered it an interesting and
14 perhaps an exceptional condition. However,
15 the applicant is not proposing to save that
16 wall. If you look at the rear elevation, they
17 are replacing that wall.

18 Secondly, you had mentioned that I
19 am proposing moving it back. And I'm
20 definitely not proposing anything. I'm just
21 saying that I think that I don't see any kind
22 of exceptional situation that makes it

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1 practically difficult for the property owner
2 to meet that setback requirement.

3 The applicant mentioned a recent
4 case that we had right down the alley from
5 them and that's actually the Lincoln Leibner
6 case. In that case, the reason why they
7 couldn't meet the alley setback requirement is
8 because of an existing tree that the applicant
9 had planted. It has been there for 20 years.

10 Wanted to save it. OP agreed with that
11 analysis.

12 And to your point about creating a
13 little niche, that perhaps creates a little
14 bit of a safety concern. That has been
15 raised, too, for seeking this type of relief.

16 However, safety concerns along the
17 alley really doesn't go to this particular
18 property. I guess you could say well, it's
19 kind of creating it at this property, but
20 safety concerns along the alley or whatnot
21 really those were addressed in a previous case
22 that we had, the Deborah Miles case and the

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1 Board found that safety concerns along the
2 alley really don't go to a particular
3 property.

4 But nonetheless, the regulation was
5 put in place, presumably, in 1958. And it
6 created all of these nonconforming conditions
7 with existing garages that predate the
8 regulations. And to suggest that well, if we
9 make the applicant setback, they are going to
10 be the only one along the alley that is
11 properly set back.

12 There needs to be a first in order
13 to start assembling that condition where we
14 have a series of carriage houses or garages
15 that are properly setback, so that we have
16 adequate circulation through the alley.

17 There was mention of a utility pole
18 in this alley, which is about 10 feet, I
19 think. I think the existence of that utility
20 pole is one of the exact reasons why this
21 regulation exists. Because there are
22 encumbrances in alleys, such as utility poles

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1 or other types of barriers that as we get --
2 as new accessory structures come on line and
3 we get them to properly set back, we can start
4 to improve the circulation.

5 CHAIRMAN LOUD: Well, I think I
6 agree with Mr. Dettman on most of what was set
7 out, but not on the lot occupancy issue. I
8 think on the alley setback, I'm open to
9 persuasion and hope to hear something actually
10 that could be helpful.

11 But I think that the applicant has
12 made a case for the minimum lot width, the
13 maximum height and stories and the lot
14 occupancy.

15 For me, the lot occupancy, I think
16 the practical difficulty, as I would see it,
17 the applicant testified to and this is a lower
18 standard of practical difficulty, not the
19 higher as I know you know, of undue hardship.

20 And he has talked about being able to tie
21 into the existing conditions in a way that is
22 going to be, I think, significantly less

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1 expensive for him than going the special
2 exception route and having to sort of create
3 that infrastructure and foundational support.

4 I think that that's all the
5 practical difficulty speaks to is is it
6 inconvenient? Is there some reasonable basis
7 for not doing it, given the constraints on the
8 property? I think the uniqueness, for me,
9 continues to be the basement, the lack of a
10 basement.

11 And I would even say I think the
12 clay soil and the structural integrity of the
13 property, I'm drawing the inference that that
14 is somehow unique as well in the sense that
15 perhaps these other properties don't have that
16 same condition or they would not have been
17 able to go under and create these basements in
18 the first place. So I'm seeing some
19 uniqueness there.

20 On that alley setback though,
21 that's, you know, a bit of a pickle for me
22 more so than the other areas of relief, but

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1 I'm hopeful that others have some additional
2 thoughts on that that may be persuasive.

3 COMMISSIONER TURNBULL: Mr. Chair,
4 yes, I am struggling with this. If the garage
5 is still there, it would be probably coming
6 before us just to add up on it. And I agree
7 with Mr. Dettman's analysis of the alley
8 situation, but I just -- I mean, with the
9 existing foundations and the walls there, it
10 seems like such a rationale thing to continue
11 on with that it would be a hardship to tear it
12 all down and push it back in and, basically,
13 gut the whole area and redo it.

14 And I just think that it's maybe
15 asking too much. I mean, yes, we can do it.
16 I mean, cost is no object. It's not our
17 concern in one way. Meet the regulations,
18 it's your problem. But I think it could be a
19 practical difficulty for, especially in these
20 economic times, people to look at trying to
21 make their house work, especially with no
22 basement and all the mechanical and trying to

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1 work with the existing structure that they
2 have.

3 So I think you are right. I mean,
4 I think there is a practical difficulty in
5 doing that. But how much do you say that he
6 has to do to meet it? I mean, we can be very
7 hard nosed and say, yes, you can get your
8 special exception and go back 12 feet and do
9 what you have to do.

10 I mean, I don't know how many other
11 -- and like, Mr. Dettman, I mean, very
12 rationale way. I mean, someone has got to be
13 the first to go back the 12 feet.

14 I just guess I'm just struggling as
15 to how you really want to interpret that. And
16 how you interpret the fact that there is
17 existing structure there. And like you were
18 saying, is that not a practical difficulty in
19 itself trying to work with the existing
20 conditions of your site?

21 CHAIRMAN LOUD: Well, Mr.
22 Goldstein, you -- okay. I'm sensing that

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1 given the number we have up here, that we may
2 not be able to reach a conclusion on this
3 today. And I'm wondering if we might want to
4 consider postponing the decision either until
5 we get potentially a fifth Member that could
6 make it, you know, a final -- make the
7 decision dispositive or simply allow a little
8 more time to deliberate on some of what is
9 before us?

10 Any thoughts on that, Mrs.
11 Moldenhauer?

12 MEMBER MOLDENHAUER: I mean, what I
13 would recommend is to -- because I feel as
14 though they satisfied the different prongs and
15 while it is definitely a very, you know, weak
16 case and that there are some arguments for and
17 against it, I feel that they kind of streaked
18 through just, you know, barely based on some
19 of the unique aspects that they have
20 presented.

21 And you know, but I think that, you
22 know, it seems that -- I'm not sure if

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1 everybody else is ready to kind of deliberate
2 on that point.

3 CHAIRMAN LOUD: You know, I'm in
4 agreement with you totally. And I think the
5 applicant has made a case. On the other hand,
6 having come this close to making the case and
7 there being a total of four of us here and the
8 applicant needs three votes to prevail, I'm
9 just wondering if, just a suggestion, prudence
10 might warrant perhaps having a fifth Member
11 read this record or if we are ready to, you
12 know, move forward today and have our ducks
13 lined up, we can certainly consider doing
14 that.

15 VICE CHAIRMAN DETTMAN: Mr.
16 Chairman, if I could make maybe a request?
17 I'm pretty set on my approach to the alley
18 setback. Now, with respect to lot occupancy,
19 though the applicant had testified that they
20 didn't look into the special exception
21 opportunity too much, they barely looked at
22 it, however, I'm open to being persuaded on

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1 lot occupancy.

2 But what I would need is perhaps
3 yourself or another Board Member to kind of
4 walk me through their approach to the variance
5 test. Because to me, where I get hung up on
6 the lot occupancy is I think that they have --
7 they certainly meet the first prong. It's the
8 practical difficulty part that I'm trying to
9 get over here.

10 And so, you know, with the help of
11 my colleagues, perhaps I can see it.

12 CHAIRMAN LOUD: Well, the way I
13 have interpreted the testimony from the
14 applicant is that in order to meet the lot
15 occupancy, the applicant would essentially
16 have to forego tying into the existing
17 conditions and create a separate sort of
18 foundational support for what he would like to
19 do. And that would necessitate higher costs
20 for the applicant.

21 He has talked about having a good
22 solid slab present now that could be tied into

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1 as well as the wall. I'm not certain that the
2 wall necessarily would, that figures so much
3 in the analysis, but certainly the slab. And
4 just the extra cost of having to recreate part
5 of that foundation and slab to tie into for
6 the improvement, I think is an inconvenience.
7 It's a financial inconvenience.

8 There is no direct testimony on the
9 price differential between the one option
10 versus the second option, but I think we know
11 that going into an existing condition versus
12 doing some level of site remediation and
13 preparing additional foundational support is
14 going to have a cost impact.

15 And I think that alone for the
16 lower standard of the area variance would help
17 this applicant meet the second prong under lot
18 occupancy. At least, I'm seeing that kind of
19 clearly from what the applicant testified to.

20 MEMBER MOLDENHAUER: I think in
21 addition to that, you have an issue of
22 economies of scale. If you are going to build

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1 this structure and you're going to pay the
2 money to go ahead and build a garage, you are
3 really not doing -- you are not creating that
4 structure for the benefit of having a covered
5 garage. You are creating the structure to
6 have the benefit of a second story, so that
7 they can have a more useful space for their
8 entire house.

9 They testified to issues of being
10 able to move different equipment, you know,
11 out into this location, to be able to have an
12 office space. So the cost of constructing
13 this at a smaller total square footage, when
14 we are talking about just 8 percent, I think,
15 you know, that's a small amount.

16 I mean, it's not like they are
17 looking for like 88 percent total lot
18 occupancy. I think the benefit of
19 constructing a project at 70 percent versus
20 the benefit of constructing it at 78 percent
21 when you weigh the two of those, there is more
22 practical difficulty in constructing a smaller

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1 structure and getting less of a benefit out of
2 it than there would be in providing this
3 approval.

4 VICE CHAIRMAN DETTMAN: It's a
5 difficult discussion for me, because to see
6 the lot occupancy argument necessitates having
7 to pull in the alley setback. If one of the
8 key conditions in the first prong is the
9 desire to reuse the foundations and the
10 footings, they are where they are.

11 I'm not completely convinced that
12 it would be so, you know, practically
13 difficult for the applicant to put in a new
14 footer to support the alley side of the
15 garage, which would slightly reduce the lot
16 occupancy. I'm not saying 70 percent, but it
17 would slightly reduce it, but it would meet
18 the alley setback.

19 But to choose, for lack of a better
20 way of putting it, your battles on what case
21 to require, absolutely require the alley
22 setback, perhaps this is the one that has, you

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1 know, the existing footings, the fact that
2 there used to be a garage there, the desire to
3 reuse those footings, perhaps this is the one
4 that passes the variance test for me, but ever
5 so slightly.

6 If there wasn't any footing there,
7 if there was just basically that wall there or
8 nothing, it wouldn't be a question.

9 So I guess that's kind of the long
10 way of saying that I can see it. I can see
11 the variance test the way that you have
12 applied it and Ms. Moldenhauer has applied it.

13 I can reach a level of comfort for
14 the lot occupancy and the alley setback in
15 order for us to move past deliberations and
16 into a vote.

17 COMMISSIONER TURNBULL: Let me just
18 ask the applicant. The property adjacent,
19 does that have a basement?

20 MR. HOUSEKNECHT: Excuse me?

21 COMMISSIONER TURNBULL: Does the
22 property adjacent to you have a --

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1 MR. HOUSEKNECHT: They do not have
2 a basement, but they have a substantial crawl
3 space. I think the grade tapered dramatically
4 as it went up the block. And whereas our
5 joists are set, I don't know, maybe 18 inches
6 or so above the dirt. Every other property
7 down there has standing room beneath there.
8 And a lot of people have been able to run and
9 put equipment down there.

10 COMMISSIONER TURNBULL: Do they
11 have their heating equipment, furnaces down
12 there?

13 MR. HOUSEKNECHT: I can't answer
14 that for every property.

15 COMMISSIONER TURNBULL: Yes.

16 MR. HOUSEKNECHT: I know that some
17 of them definitely do. I know there was a
18 property developed recently at 1332 T Street--
19 excuse me, 1324 T Street that recently did a
20 lot of work and they did put some -- they did
21 put quite a bit of equipment down there.

22 I know that there was a house that

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1 was built, approximately, 20 years ago in an
2 empty lot that was in this zone that when they
3 went to do their excavation, although they
4 didn't pour a full basement, they had
5 probably, I don't know, 10 feet of head room
6 down there, which they used.

7 We can't even crawl under there. I
8 mean, they call it a crawl space, but we tried
9 to run some phone wire just recently and we
10 couldn't even get back in the parts of the
11 house to run the phone wire.

12 COMMISSIONER TURNBULL: I'm just
13 trying to look -- we talk about uniqueness,
14 trying to get through the three prong test and
15 the uniqueness of this property. Is the
16 uniqueness not having a basement an issue to
17 having a family, a residence in this area?

18 If they had a basement, they
19 wouldn't be before us. You know, they are
20 probably -- they could be here to build a
21 garage, but that would be about it. And they
22 could definitely put it back 12 feet or

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1 whatever.

2 I guess I'm struggling that this is
3 unique. And we have had cases like this
4 before and we struggled with the same thing.
5 Is not having a basement unique? I think in
6 certain circumstances it is. I mean,
7 depending upon the block. As he said, you
8 know, it's the topography of the site as you
9 go further up the block, they can put a
10 basement up.

11 I'm just going to throw that out
12 that the houses from lot occupancy, this not
13 having a basement does make it unique. And
14 does it -- is it a practical difficulty for
15 them? Yes. I mean, I'm not exactly sure
16 where your hot water heater and your furnace
17 are now. I can't tell by the plan. But does
18 it take up how much room? Does it take up --
19 is it that closet space here I'm looking at in
20 the middle?

21 MR. HOUSEKNECHT: Yes, and there is
22 a hot water heater, you know, in the bathroom

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1 and there is some stuff, some mechanical stuff
2 in an area between the kitchen and the
3 bathroom, the first floor. There is sort of
4 distributed throughout the house.

5 MEMBER MOLDENHAUER: Just to throw
6 out one more thing and then I think what we
7 should do is maybe I'll make a motion.

8 I think that there is also
9 uniqueness in the fact that there was mention
10 that, you know, if they actually tried to put
11 on another third floor, because you're talking
12 about the basement, is there a basement, you
13 know, things to that effect, this is in an
14 historical area and that there would be
15 questions as to whether or not they could put
16 on a third floor to that effect or the cost of
17 having to go through Historical Preservation
18 or the cost of having to make sure that the
19 appearances, you know, to that historical --
20 to meeting the historical aspect maybe on the
21 street.

22 So I think that's just another

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1 factor to throw out there.

2 But if we are ready to make a
3 motion, I will.

4 CHAIRMAN LOUD: And on that note
5 then, is there a motion?

6 MEMBER MOLDENHAUER: I believe so.

7 There is a motion for Application 17994 for a
8 request for an area variance under 401.3,
9 403.2, 2300.2 and 2500.4, to construct a two
10 story detached accessory building at 1336 T
11 Street, N.W. It is an area variance from
12 maximum lot occupancy, an area variance for
13 the light -- sorry, maximum height and storage
14 on the accessory structure and a 403 lot
15 occupancy variance and the section 2300.2, as
16 I mentioned previously, is a setback from the
17 alley.

18 And I would make a motion to
19 approve all of the above.

20 CHAIRMAN LOUD: The motion has been
21 made. Is there a second?

22 COMMISSIONER TURNBULL: Second.

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1 CHAIRMAN LOUD: The motion has been
2 made and seconded. Is there further
3 deliberation? I just wanted to add in
4 addition to what you have set forth, and I
5 think you have helped lead us through a very
6 robust deliberation along with Mr. Dettman and
7 Mr. Turnbull, that there is a report from the
8 ANC, I think I noted it earlier, in support of
9 the application, which would be supportive of
10 the motion that you have made and a number of
11 support letters from neighbors in the area.

12 The motion has been made and
13 seconded. Further deliberation?

14 Hearing none, all those in favor
15 say aye.

16 ALL: Aye.

17 CHAIRMAN LOUD: All those who
18 oppose? And are there any abstentions? And
19 can you read back the vote, Ms. Bailey?

20 MS. BAILEY: Mr. Chairman, the
21 Board has voted to grant the application as
22 amended. Mrs. Moldenhauer made the motion,

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1 Mr. Turnbull seconded. Mr. Dettman and Mr.
2 Loud support the motion. The vote is 4-0-1.
3 Is that a summary order, Mr. Chairman?

4 CHAIRMAN LOUD: Thank you, Ms.
5 Bailey, that will be a summary order, I'm
6 assuming, even though the OP did not recommend
7 approval, that we can still do a summary
8 order. Is that correct?

9 MS. BAILEY: Yes, sir.

10 CHAIRMAN LOUD: Okay. Then a
11 summary order. Congratulations to you for your
12 persistence.

13 MR. HOUSEKNECHT: Thank you very
14 much. It means a lot to us. You can't
15 imagine. It's been a long time.

16 CHAIRMAN LOUD: Well, again,
17 congratulations and I would recommend that you
18 hurry up and get out of here before anybody
19 has some additional time to think about this.

20 And on that note, today's calendar
21 is adjourned.

22 (Whereupon, the Public Hearing was

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1 concluded at 7:39 p.m.)

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