

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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SPECIAL PUBLIC MEETING

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TUESDAY,

JULY 18, 2006

+ + + + +

The Special Public Meeting convened in Room 220 South, 441 4th Street, N.W., Washington, D.C. 20001, pursuant to notice at 9:51 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)

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY	Secretary
BEVERLY BAILEY	Sr. Zoning Specialist
JOHN NYARKU	Zoning Specialist
TRACEY W. ROSE	Sr. Zoning Specialist

D.C. OFFICE OF THE ATTORNEY GENERAL:

LORI MONROE, ESQ.

The transcript constitutes the minutes from the Special Public Meeting held on July 18, 2006.

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

9:51 a.m.

CHAIRPERSON GRIFFIS: Good morning, ladies and gentlemen. Let me call to order our Special Public Meeting of the 18th of July 2006. This is the Board of Zoning Adjustment of the District of Columbia. My name is Geoff Griffis, Chairperson. Joining me today is the Vice Chair, Ms. Miller, and Mr. Etherly. Representing the National Capital Planning Commission with us this morning is Mr. Mann. And with us all day actually, we're going to keep him on.

That being said, we do have one preliminary item of business, which is why I have called our Special Public Meeting to order. I'm going to dispense with any other major openings, as I'll leave that for the hearing opening.

With that, let me say a very good morning to Mr. Moy, who can call the case for decision.

MR. MOY: Yes, sir. Good morning, Mr. Chairman and Members of the Board. The first and only case for Special Public Meeting is Application No. 17495 of Douglas George Jefferies, pursuant to 11 DCMR 3103.2, for a variance from the penthouse setback provisions under subsection 400.7(b), a variance from

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1 the lot area requirements under section 401, a
2 variance from the lot occupancy requirements under
3 section 403, a variance from the rear yard
4 requirements under section 404, a variance from the
5 side yard requirements under section 405, a variance
6 from the open court requirements under section 406, a
7 variance from the nonconforming structure provisions
8 under subsection 2001.3, and variances from the alley
9 width and alley structure height provisions under
10 subsections 2507.2 and 2507.4, to allow the conversion
11 of two single-family dwellings into one single-family
12 dwelling in the R-3 District. That's at premises 1520
13 22nd Street, N.W., and 2210 Q Street, N.W., that's in
14 Square 2510, Lot 806 and 813.

15 The Board convened its Public Meeting
16 session on July 11, 2006 on this application and
17 rescheduled its decision to July the 18th. The
18 Board's only other action was to waive the Zoning
19 Regulations to accept the late filings into the
20 record. So with that staff will conclude that the
21 Board is back on the merits of the requested variance
22 reliefs.

23 CHAIRPERSON GRIFFIS: Excellent. Thank
24 you very much, Mr. Moy. I do appreciate it. And we
25 had moved this for today. I won't go into the details

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1 of that, but obviously I was hoping to have a full
2 Board to deliberate on this. We're going to move
3 forward with this today, with those that are here, as
4 I believe the record is full and there's no rationale
5 for extending out additional time.

6 Be that as it may, let me start off by
7 saying, one, there was an extensive amount of relief
8 requested of this and that doesn't really give any
9 indication of which way we would go or the strength of
10 an application. But I make note of that only because
11 there was some detailed focus of the Board in terms of
12 what relief was required.

13 I must say for myself and in this
14 deliberation that it was important to assess 2507
15 first, buildings on the alley lots, and get some
16 clarity on that. As you recall, it first came in
17 2507.2, which was not allowing one family dwellings to
18 be erected or constructed. That clearly didn't
19 address what was actually being proposed by the
20 applicant and we had changed that to 2507.3, which
21 went into conversion or adaptation of structures.

22 And then an additional kind of pushing of
23 the applicant in clarification of what was being
24 proposed, it became apparent and the evidence showed
25 that the relief from 2507.3 is not even required.

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1 Once that is removed, then what does that mean? Once
2 the whole premise of what was allowed to be proposed
3 in this alley structure was removed from the
4 requirements or removed from the need for relief of
5 the regulations, I think we went much quicker into, I
6 think, a fairly straightforward case.

7 And I'll open it up to others for
8 discussion on all of the particulars. But in my mind,
9 there is a strong case here for a uniqueness on
10 several levels. One, just being somewhat the
11 situation of the property itself, the past views as a
12 residential building, it's a rental, I'm not sure if
13 that necessarily fits in or doesn't fit in. The
14 adjacency of the site that this will be accommodated
15 into.

16 The height of the structures, the
17 surrounding area, the differing uses off of the alley.
18 All of these fit into framing of the unique aspects of
19 this. And out of some of those, practical difficulty
20 comes, but let me open it up to others for
21 deliberation on this. Ms. Miller?

22 VICE CHAIR MILLER: The applicant is
23 applying for area variances and there are several as
24 you said and I think they can be divided into a few
25 different categories. One category was just to

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1 connect. There are two structures on the property,
2 just to connect the two structures required a certain
3 number of variances and then there are height
4 variances and then there are variances related to the
5 elevator.

6 The Office of Planning supported or did
7 not object to the variances related to connecting the
8 two buildings and opposed the others. I think that
9 the uniqueness of -- well, when we were dealing with
10 the variance tests, we were dealing with three prongs
11 and all three apply to all the variances. So when
12 we're looking at the first prong, which is uniqueness
13 or exceptional conditions, I think that is the same
14 for all the variances.

15 And you touched upon, basically, that
16 there are historic structures on this alley. And
17 actually, they are only separated by 4 feet 6 inches.
18 And I don't think there was anything in the record
19 that goes to their not being unique or being in an
20 exceptional condition. So I think we then move into
21 the practical difficulties elements of the variance
22 test.

23 And in listening to the Office of Planning
24 and then reviewing the report again, I think what they
25 did was they talk about hardship. And I think what

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1 they did was apply the wrong standard to the area
2 variance. The hardship standard goes to a use
3 variance and not to an area variance. And so
4 certainly when they looked at those two structures
5 combining, there wasn't any way that they could expand
6 on this property without a variance.

7 And so that's why they supported that
8 variance. In order to expand the house at all to make
9 it more liveable for a family, it's just a one bedroom
10 house right now, they would have had to demolish a
11 part of the building and they couldn't do that,
12 because of the historic quality. So Office of
13 Planning had no problem with connecting the two
14 structures.

15 And I think they had no concerns with no
16 substantial detriment to the public on that variance
17 as well. Everybody who came forward in the record,
18 the ANC, neighbors, all supported this application.
19 Now, but what happened was when we got to the height
20 variance, that's where Office of Planning diverged and
21 they said well, they don't have to build higher, they
22 can just expand and live in a smaller house.

23 And basically, I think that the test is
24 not that they don't have to, but that compliance with
25 area restriction, this is Gilmartin, would be

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1 unnecessarily burdensome. And Gilmartin also says the
2 practical difficulties of complying with the
3 regulations have to be unique to the particular
4 property. And in this case, there a lot of
5 difficulties that were caused by the exceptional
6 conditions of the property.

7 One being this has already been before
8 HPRB and HPRB required that the addition be setback
9 and, therefore, the building was restricted where it
10 could expand. It could only go up or to the side or
11 back where it needed variances. They said -- we did
12 question the applicant quite a bit about what's their
13 practical difficulty. They submitted a letter to
14 address that issue.

15 They also said that in any event, whatever
16 they did, even if they just converted the homes into
17 one by a connection, it would be very expensive and
18 they would need a construction bond. And that if they
19 didn't have a house that had that extra level with the
20 garages, that it might not be appraised high enough in
21 order to get that loan.

22 And then we also questioned the architect
23 about what would the ramifications be of designing a
24 building within the height limitations. And they
25 talked about ceilings of the existing building or

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1 existing buildings, that floors needed to be reduced
2 and everything needing to be reframed and you would
3 have a flat roof that resulted, which would result in
4 a structure that would be more architecturally out of
5 character with the current house.

6 And then they also talked about HPRB
7 requiring a retention of a coreness and that reducing
8 ceiling heights of one building would result in a wall
9 of another building being, an interior wall, 5 feet
10 instead of 3 feet and obstructing light and views. So
11 the other practical difficulty they talked about was
12 that they would lose the garage for the two cars
13 parking and they would then be -- they could park on
14 the alley, but without it, they could park -- with the
15 variance they could park on the property.

16 So I think that there were a lot of
17 practical difficulties from not being able to go up.
18 And we questioned Office of Planning also about, you
19 know, would it be out of character to have this taller
20 structure. Office of Planning said yes, it's out of
21 character with alley dwellings, in general, but there
22 are no other alley dwellings on this property and it's
23 not out of character with the buildings around this
24 property. In fact, the buildings around this property
25 are much higher.

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1 So I think that it makes the test for all
2 of these variances with respect to the height and
3 connecting the two properties. I have difficulty
4 finding that it meets the test for the elevator,
5 which, I guess, is related to the open court
6 variances, and the roof setback, structure setback
7 variance, because the elevator doesn't seem to --
8 building the elevator doesn't seem to arise out of the
9 uniqueness of the property in any way.

10 It just seemed like they wanted an
11 elevator for the same reasons that anybody might want
12 an elevator anywhere else. He said, you know, he has
13 aging parents or he is going to get older, so I don't
14 think that's really the practical difficulty test. If
15 there was something related to the property or the way
16 the building was built because of the property that
17 required an elevator, that then required the
18 variances, I could go in that direction, but I don't
19 see it for those.

20 CHAIRPERSON GRIFFIS: Okay. I guess I
21 don't understand the argument of having to show a
22 requirement to do something. There has to be a
23 requirement to provide an elevator. What I look at is
24 there is a practical difficulty in, one, meeting the
25 setback requirement of the structure. And as I look

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1 at that practical difficulty of meeting that
2 regulation of setback, I look at the plan. And I say
3 well, you could locate the elevator anywhere, just
4 move it back equal to its height.

5 But then as you start setting that up, I
6 realize well, there is some practical logic in
7 locating the elevator, one, in the corridor, two,
8 close to the circulation and stair, which are all
9 located together. As I pull up the plans and I look
10 at the first and the second floor on the site plan,
11 I'm not sure where you would put it that, in fact,
12 wouldn't need relief from the setback requirements.

13 You know, we have this space in between
14 the two structures that you mentioned, it's 4 feet 6
15 inches. An elevator might tuck in nicely there. You
16 could slide it all the way down and then I realized
17 well, you're sliding it right up into the stairs and
18 you can't exit an elevator into the mid-span of a
19 stair.

20 And so to me, the practical difficulties
21 arise in the fact that there is no location in the
22 plan, based on the existing structures, and then in
23 terms of even the reconfiguration of the interior, not
24 to mention added on to that setback required for the
25 addition of HPRB, so that whole front portion, you may

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1 see could feed the front portion, but not for the top
2 level. So the elevator wouldn't reach every level.

3 I mean, all of a sudden, it becomes, in my
4 mind chasing this through, even more and more
5 cumbersome or practically difficult in this. That's
6 what I see the threshold and the rationale, but also
7 the rest that's required to be met.

8 VICE CHAIR MILLER: Well, you know, we
9 didn't have a lot of testimony on this, but I'm under
10 the impression, and I could be wrong, that an elevator
11 wouldn't be allowed for any structure on an alley.
12 And therefore, and maybe that's a wrong assumption, if
13 it's going to be allowed in this particular structure,
14 like what is it about the uniqueness of this property
15 or this structure that says. in this case, you need to
16 get the variance for an elevator, even though you
17 wouldn't do it in other.

18 CHAIRPERSON GRIFFIS: Let me ask you this
19 quick. I didn't understand your statement. What
20 would not allow an elevator in any structure?

21 VICE CHAIR MILLER: I mean that because I
22 don't know what -- I don't know the dimensions of the
23 roof structure that would be required or the setback
24 that would be required for an elevator, in general, or
25 if it's like this, because of this particular

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1 property. I think they just didn't make an
2 explanation, at least to me. Maybe you can get it
3 from the plans.

4 But because of the exceptional condition
5 of this property, we need to allow the roof structure,
6 the setback, etcetera, for this elevator. I don't see
7 it. I know that what you are saying is well, it would
8 be difficult to put the elevator anywhere else. I
9 don't think that's the test.

10 CHAIRPERSON GRIFFIS: Isn't it?

11 VICE CHAIR MILLER: I don't think it is.

12 CHAIRPERSON GRIFFIS: Isn't that --

13 VICE CHAIR MILLER: I think the test --

14 CHAIRPERSON GRIFFIS: -- directly what the
15 practical difficulty in complying with the regulation
16 is, if you have a setback requirement? Isn't the
17 direct test that you can't meet that and why can't you
18 meet it? Because the placement can't be done, such
19 that it would comply with the regulation.

20 VICE CHAIR MILLER: I think that's part of
21 the test, but the other part is, and the reason it
22 can't be done is, because of the exceptional
23 conditions in this property.

24 CHAIRPERSON GRIFFIS: Right.

25 VICE CHAIR MILLER: That differentiate it

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1 from any other property, so that if some other
2 property wanted to do the same thing, you would be
3 able to distinguish it and say well, you know, it was
4 different here, because of this exceptional condition.
5 And maybe I'm missing -- I think they didn't spend
6 much time on that and maybe you can explain it better.

7 CHAIRPERSON GRIFFIS: Not any better than
8 I already have. Anyone else?

9 BOARD MEMBER MANN: I would only add that
10 I support what the Chairman says in regard to the way
11 that we apply the test for this particular variance.
12 We have never asked an applicant to justify why they
13 wanted to add an addition on to their home or why they
14 wanted to enlarge a kitchen or why they wanted to do
15 something. So I don't understand what makes this any
16 different in your mind than any other applicant coming
17 before us asking to do something to their homes. We
18 don't make them justify why they need to do an
19 addition to their home.

20 VICE CHAIR MILLER: I guess -- I don't
21 know. I mean, we did start off with the premise that
22 they wanted to do an addition here to stay in the city
23 and be able to grow as a family and stay in the city.
24 And then from there, it went to what happens when you
25 are building this home? What's unduly burdensome, I

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1 guess? And I found it was unduly burdensome not to
2 say allow -- not to allow them to have a third floor
3 to have the additional light and space and parking and
4 whatever. And I guess you all -- I don't find it
5 unduly burdensome.

6 CHAIRPERSON GRIFFIS: To walk the stairs?

7 VICE CHAIR MILLER: To walk the stairs.

8 You know, or that that's related to the configuration
9 of the property or what HPRB did. I don't know. It's
10 a judgment call and so, you know, you may find one
11 thing and I may find another.

12 CHAIRPERSON GRIFFIS: Very well. Mr.
13 Etherly?

14 BOARD MEMBER ETHERLY: Thank you very
15 much, Mr. Chair. I came to our deliberation last week
16 in somewhat the same way that I came to the
17 deliberation this week, although the outcome is
18 perhaps a little different. This was most certainly
19 a very, very difficult case. There was very
20 persuasive argument, philosophically, about the
21 evolution, if you will, of alley dwellings and what
22 we're seeing in terms of the treatment throughout the
23 country and to an extent here in the District of
24 Columbia.

25 At my initial pass on this case, I was

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1 very concerned, because I felt that the Zoning Regs
2 were fairly clear, if not unequivocal to the extent
3 they can ever be unequivocal, about alley dwellings
4 and building on alley lots. However, Mrs. Miller's
5 discussion of the variances as they related to that
6 third floor, and that was my biggest issue, the third
7 floor piece. I shared the Office of Planning's
8 posture at the initial cut. But, Mrs. Miller, you
9 sold me. You sold me in terms of running through the
10 analysis on the variance piece.

11 And I didn't think it was an easy sell.
12 And I literally sat down prepared to kind of go in
13 another direction. On that issue of the elevator, I'm
14 not necessarily sure if I hear Mrs. Miller saying it's
15 a question of why you need the elevator. I'm, to an
16 extent, somewhat aligned with her in terms of asking
17 the question why can't it be built consistent with the
18 Zoning Regulations. I think that's the question that
19 she is getting at.

20 So perhaps it would be helpful again to
21 invite that excellent explanation that the Chair tried
22 to walk us through on the elevator, just so I'm clear
23 I understand it. I think I get a piece of what you're
24 talking about as you look at all of the other
25 different aspects of connecting these two properties.

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1 The difficulties that are inherent in that. I think
2 there is some commonality between the observations
3 that were made by Mrs. Miller with regard to the other
4 variances and the elevator. But I just need a little
5 bit of help to kind of see it and just make sure I
6 understand it a little better. Thank you.

7 CHAIRPERSON GRIFFIS: Excellent. Thank
8 you very much. I will get to that, but I want to go
9 back to where you began, because I was in the same
10 situation, quite frankly. This was fairly
11 straightforward in terms of factual basis, but a very
12 difficult case. And I think it was important to
13 ascertain the regulations of building on alley lots
14 and the clarity of that, once we dispense with that,
15 and what do I mean by that?

16 First of all, alley lots and residential
17 dwellings on alley lots, we can generalize and lump
18 them all together, but it's very different in terms of
19 how the regulations look at it. The new construction
20 of residential on alley lots is totally different than
21 the reconfiguration of existing structures and the
22 reconfiguration of existing residential.

23 We have here residential dwellings in
24 existence and have been for a long time and now it's
25 an assemblage into one, rather than two, which makes

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1 a large difference for me. But I still think that
2 there was a very complicated case to be made here,
3 even with all the support of the neighbors, because,
4 obviously, we go to the regulations. So I appreciate
5 what you were saying.

6 I think Ms. Miller has done an excellent
7 job in framing all of those and bringing them
8 together. So to that, looking at the elevator. As I
9 look at this, one could say yes, why not put this
10 elevator in the middle of the existing structure that
11 is being proposed? It would meet the setback
12 requirements. It would be able to be accessed from
13 the building. And then what I do is go into the
14 specifics, because we don't generally and specifically
15 very often get into redesigning these pieces or
16 things.

17 But, obviously, if there is something
18 rational or logical that looks like it could be an
19 alternative that could meet the regulations, I think
20 that's something that has to be factored in. The
21 first issue that I look at is the fact of one of the
22 uniquenesses that was put forth that HPRB did not want
23 the addition to be seen from the front. So it moved
24 all the massing to the back of the property.

25 Okay. So if we look at the first floor as

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1 it rises from the alley area, you could conceivably
2 move the elevator straight in the center of that. It
3 probably wouldn't create any difficulty. The second
4 floor, again, seems to be fine. You will lose some
5 usable space and kind of a bedroom and sitting area in
6 that, but it's still in the center and it's part of
7 the circulation. It's where we go up further. Then
8 it kind of destroys the third floor plan, because you
9 have an elevator in the middle of a room, right?

10 And then the roof has to all be
11 reconfigured and the stair would have to be
12 reconfigured. So the point is that you're creating,
13 you know, the core of a building, the circulation of
14 the building, which would have to be, I think,
15 substantially moved and perhaps doesn't even
16 facilitate the top floor being there. You know,
17 because it basically makes the entire third floor kind
18 of the elevator lobby, is what it comes down to, just
19 based on the space that's there.

20 As you see what's happened here, I'll just
21 show it to you from the third floor, there is just
22 that little connection here, right? So it's just a
23 little connection here for the stair. Moving it into
24 the center and again not designing it or whatever it
25 is, but it takes over the entire area. You know, even

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1 if you put it right here, you still have to have that
2 circulation connection to the stair.

3 You know, what room is that that's made,
4 you know, as this object is in the center of it?
5 Again, that's just a quick kind of look. Maybe there
6 is, you know, a way to design around it, you know.
7 What's being shown here is one that doesn't work.

8 BOARD MEMBER ETHERLY: Okay. I definitely
9 appreciate that explanation, that helps me understand
10 that variance need. I'll just indicate as we move
11 forward in this, that I really appreciated your
12 discussion of kind of what's different about this
13 case, because I definitely want to walk very gingerly
14 in this area. It is a very complex case with a very
15 complex set of circumstances that surround not only
16 what the applicant is trying to do, but also the
17 existing landscape, if you will, of this particular
18 alley lot and the development that's already in
19 existence there.

20 So I definitely would -- I'm comfortable
21 moving forward, but definitely do it very gingerly as
22 we continue to look at these cases and the evolution.
23 That is not to say that I want to destroy my chance of
24 ever getting on HGTV and holding forth about alley
25 lots. But in all seriousness, I think, definitely

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1 there is a need to be very careful as we look at
2 developments. But as you indicated, there is an
3 existing development here that already has a certain
4 look and feel to it, that for the most part is still
5 kept to in a very consistent manner with the plans
6 that we have in front of us.

7 CHAIRPERSON GRIFFIS: Right.

8 BOARD MEMBER ETHERLY: Thank you, Mr.
9 Chair.

10 CHAIRPERSON GRIFFIS: Excellent. Thank
11 you very much. Ms. Miller?

12 VICE CHAIR MILLER: Yes, I would like to
13 thank you, Mr. Chairman, for that explanation, because
14 I don't think that was in the record. And if I follow
15 your explanation simply stated, it's that the property
16 could have this elevator, but because of the HPRB
17 requirements and because of the constraints, specific
18 conditions unique to that property, they had to move
19 it to where it is, which required a variance, which to
20 me would then meet the practical difficulty test.

21 And it just wasn't really explained at all
22 in the record, so I appreciate your explanation.

23 CHAIRPERSON GRIFFIS: Excellent. Yes, I
24 would add, it's a dimensional constraint. I mean,
25 really, if you look at it, you have 25 feet in the

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1 back roughly for that room and you have to put an
2 elevator in with its enclosure, which is 5 x 5, maybe
3 6 x 6. Okay. Very well.

4 Then is there direction and intention from
5 the Board on this case?

6 BOARD MEMBER ETHERLY: Mr. Chair, it would
7 be -- I would like to move a motion to approve
8 Application 17495 of Douglas George Jefferies,
9 pursuant to 11 DCMR 3103.2, for a variance from the
10 penthouse setback provisions under subsection
11 400.7(b), a variance from the lot area requirements,
12 a variance from the lot occupancy requirements, a
13 variance from the rear yard, a variance from the side
14 yard, a variance from the open court requirements, a
15 variance from the nonconforming structure provisions
16 and variances from the alley width and alley structure
17 height provisions, to allow the conversion of two
18 existing single-family dwellings into one single-
19 family dwelling at premises 1520 22nd Street, N.W.,
20 and 2210 Q Street, N.W., and I would invite a second,
21 if that covers everything as I look to the Office of
22 Attorney General.

23 CHAIRPERSON GRIFFIS: Right. It has
24 covered everything, except we're going to remove one
25 of those, which was the alley width requirement.

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1 BOARD MEMBER ETHERLY: Thank you.

2 CHAIRPERSON GRIFFIS: It was noted under
3 2507.2 or 3, that it, in fact, wasn't required.

4 BOARD MEMBER ETHERLY: Excellent.

5 CHAIRPERSON GRIFFIS: Is there a second?

6 VICE CHAIR MILLER: Second.

7 CHAIRPERSON GRIFFIS: Excellent.

8 BOARD MEMBER ETHERLY: Thank you very
9 much, Mr. Chair and Mrs. Miller. I think the
10 discussion in the record are very full on the
11 underlying grounds for the granting of these
12 variances. Again, I will just definitely emphasize a
13 very complicated set of facts, a very complicated
14 project and a very complicated landscape in the alley.
15 But ultimately as we take in the fullness of the
16 record and, indeed, the testimony that was brought
17 forth by the neighbors to adjacent properties here, I
18 think all of the relevant aspects of the variance test
19 have been met in my comfort level.

20 I'll state this in a very dicta type of
21 way, which is to mean that this is not a grounds for
22 my decision, but just as one opinion here. It's such
23 a complicated set of facts that I think I'm very
24 comfortable moving forward with it, because I don't
25 know if we're going to see it again or see a number of

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1 other similar circumstances. But I think the case has
2 been made. I think the record is complete as it
3 relates to all of the relevant prongs and components
4 of the variance test. Thank you, Mr. Chair.

5 CHAIRPERSON GRIFFIS: Excellent. Thank
6 you. Ms. Miller?

7 VICE CHAIR MILLER: I don't think I have
8 additional comments.

9 CHAIRPERSON GRIFFIS: Okay.

10 VICE CHAIR MILLER: Well, I guess, I mean,
11 I will say this. When I first approached this case
12 also, it looked like, you know, this was unique and
13 this was no substantial detriment to the public, but
14 where is the practical difficulty. And when we really
15 go to pull it out, there were many practical
16 difficulties here. And so anyway, I'm happy to
17 support this.

18 CHAIRPERSON GRIFFIS: Good. Others? Yes,
19 Mr. Mann?

20 BOARD MEMBER MANN: The only thing I would
21 add is that my initial concern had to do with the
22 height of the buildings, but any concerns that I had
23 were really assuaged by the additional filings and
24 precisely the argument that Ms. Miller gave earlier,
25 which really I thought very clearly laid it out.

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1 CHAIRPERSON GRIFFIS: Excellent. Thank
2 you all very much. I think we were all looking at the
3 same case in terms of its precariousness and the
4 difficulty in presenting it in a concise manner of
5 which, or not even concise, but in a manner of which
6 we then can make a substantial judgment in what we
7 have jurisdiction to do, and that's, you know, through
8 this dry three prong test for the variance.

9 And in some respects, it was great to see
10 so much support, but again that doesn't get us to the
11 threshold of an approval or denial. Even that threat
12 of HGTV, it doesn't reach to the level of which we are
13 charged and I appreciate everyone's diligence in
14 pulling this together and I think it was well done and
15 worth the time to take an extra week. And I would
16 also agree with Mr. Mann the last filings were of
17 great assistance in framing all of the facts in the
18 case into the argument that we need to look at in
19 terms of meeting the variances that were set forth.

20 Very well. Is there anything else then?
21 If there's nothing further, we do have a motion before
22 us. It has been seconded. I would ask for all those
23 in favor to signify by saying aye.

24 ALL: Aye.

25 CHAIRPERSON GRIFFIS: And opposed?

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1 Abstaining? Mr. Mann, if you wouldn't mind? Or
2 rather, I'm sorry, Mr. Moy, if you wouldn't mind?

3 MR. MOY: Yes, that's very good. We're
4 sitting side-by-side this morning. The staff would
5 record the vote as 4-0-0. This on the motion of Mr.
6 Etherly to approve the application with the exception
7 of removing the requested relief from 2507.2, because
8 it's no longer needed. It was seconded by Ms. Miller.
9 Also in support of the motion Mr. Griffis, the Chair,
10 and Mr. Mann.

11 Finally, staff would also like to note for
12 the Board that Carol Mitten is participating on the
13 case. Staff understands -- has no formal
14 documentation with regards to an absentee ballot, so
15 unless the Chair disagrees, the vote would be 4-0-1.

16 CHAIRPERSON GRIFFIS: I have no
17 disagreement with that. Okay. Anything else then?
18 Any other business for the morning session?

19 MR. MOY: No, sir.

20 CHAIRPERSON GRIFFIS: Yes, Ms. Monroe?

21 MS. MONROE: Summary?

22 CHAIRPERSON GRIFFIS: Oh.

23 MR. MOY: Summary or a full?

24 CHAIRPERSON GRIFFIS: Yes, I don't see any
25 reason why we wouldn't issue a summary order in this,

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1 unless Board Members have any concerns or objections?
2 Very well. We can waive our rules and regulations and
3 issue a summary order on this.

4 MR. MOY: Very good. Thank you, sir.

5 CHAIRPERSON GRIFFIS: Excellent. If
6 there's no other business for the Special Public
7 Meeting, then let's adjourn the Special Public
8 Meeting.

9 (Whereupon, the Special Public Meeting was
10 concluded at 10:28 a.m.)

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