

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

+ + + + +

PUBLIC MEETING

+ + + + +

TUESDAY

FEBRUARY 7, 2006

+ + + + +

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

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

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

ZONING COMMISSION MEMBERS PRESENT:

MICHAEL G. TURNBULL	Commissioner (AOC)
KEVIN HILDEBRAND	Commissioner

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY	Secretary
BEVERLEY BAILEY	Sr. Zoning Specialist
JERRILY R. KRESS	Director (FAIA)
TRACEY W. ROSE	Sr. Zoning Specialist

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

SHERRY GLAZER, ESQ.
LORI MONROE, ESQ.

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The transcript constitutes the minutes
from the Special Public Meeting held on February 7,
2006.

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P R O C E E D I N G S

10:28 A.M.

CHAIRPERSON GRIFFIS: Good morning, ladies and gentlemen. Let me call to order our Public Meeting of February 7, 2006.

This is, of course, the Board of Zoning Adjustment for the District of Columbia and my name is Geoff Griffis, Chairperson. Joining me today is the Vice-Chair, Ms. Miller and Mr. Etherly, our other Member will be out in a brief second.

Representing the National Capital Planning Commission with us is Mr. Mann. And representing the Zoning Commission, Mr. Hildebrand, the first case. We will have other Zoning Commissioners on each of the cases depending on who actually participated in the hearing on the particular case.

Copies of today's hearing agenda are available for you. You can see where the decision is on the agenda that you are here and interested in.

I will make a quick note that, of course, this is our public meeting. We are in deliberative session. All the cases that we will go through this morning have already been heard. The

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1 record has been closed and we are here to make
2 decision on each of those based on the record that
3 has been previously created before us.

4 Therefore, obviously, we won't have any
5 other additional evidence taken into the record, nor
6 will be have any public publication in this process,
7 but we do welcome you all here and do appreciate
8 everyone's patience as we get through an awful lot
9 of work for this morning.

10 With that, let's move right into the
11 first case. Application 17316. We can call that
12 for decision.

13 MR. MOY: Yes sir, good morning, Mr.
14 Chairman and Members of the Board. First on the
15 agenda this morning is a Motion for Reconsideration
16 of Decision and Final Order, pursuant to Section
17 3126. This pertains to Application No. 17316 of
18 Randle Highlands Manor Limited Partnership. That
19 application was pursuant to 11 DCMR 3104.1 for a
20 special exception under 353 and 410, new residential
21 development, and pursuant to 11 DCMR 3103.2, for a
22 variance from the side yard requirements of Section
23 405, to allow the development of 10 single-family
24 dwellings on a single subdivided lot in the R-5-A
25 District at premises 2700 R Street, S.E. That's in

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1 Square 5585, Lot 812.

2 On December 22, 2005, the Board received
3 a motion from Mr. Kenneth Davis, representing ANC-7B
4 and that is identified in your case folder as
5 Exhibit 35.

6 On January 3, 2006, the Applicant filed
7 a response to the motion which is dated December 28,
8 2005 and that document is identified as Exhibit 36.
9 The Applicant is requesting that the Board, of
10 course, deny the ANC's motion. With that, the Staff
11 is going to conclude its briefing, Mr. Chairman.

12 CHAIRPERSON GRIFFIS: Thank you, Mr.
13 Moy, and forgive me, I did not say a very good
14 morning to you, Mr. Moy with the Office of Zoning.
15 Also, Ms. Bailey is with us with the Office of
16 Zoning. The Director, Ms. Kress, is joining us
17 briefly this morning on the dais. And we also have
18 representatives from the Office of Attorney General.

19 Thank you, Mr. Moy. I do appreciate
20 that.

21 Board Members, I think we ought to move
22 right into it. Of course, we did hear extensive
23 testimony and evidence in this case. We had
24 actually decided. The decision and the order has
25 been out. We are very appreciative of Mr.

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1 Hildebrand coming back to help deliberate on this
2 motion for reconsideration.

3 I would take note that, of course, a
4 motion can come to the Board by a party, a
5 participant in the case. The ANC, of course, in
6 which the property is located is automatically a
7 party in the case. And any motion or any action by
8 the ANC, of course, would have to have official
9 sanction or a follow-up from the ANC.

10 However, that being said, we do have a
11 motion before us for a reconsideration. And the
12 regulations in the zoning for us in terms of motions
13 for reconsideration 3126 are very clear. I can't
14 often say that about some regulations and sections
15 in the zoning regulations, however, this is very
16 clear. And I'll paraphrase and put it in my own
17 understanding.

18 In order for us to grant a re-hearing or
19 a reconsideration of our decision, there would have
20 to have been new evidence brought to us in this
21 motion that was not presented in the hearing of the
22 case or could not have been presented in the hearing
23 of the case. I think the motion, in fact, fails on
24 that level.

25 All the elements that we are being asked

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1 to are not new evidence to be considered, but rather
2 we are being asked to rethink our decision based on
3 what was already heard. The proper forum for that,
4 of course, if a party felt that we had made the
5 wrong decision or an error in the decision would be
6 to appeal us to the Courts. But a Motion for
7 Reconsideration, I think we lack the ability to hear
8 it, based on that submitted and therefore I would
9 move that we deny the Motion for Reconsideration of
10 Application 17316 and ask for a second.

11 MEMBER ETHERLY: Second, Mr. Chair.

12 CHAIRPERSON GRIFFIS: Thank you very
13 much, Mr. Etherly.

14 I'll open it up for any others that have
15 any further comments on that.

16 COMMISSIONER HILDEBRAND: Mr. Chair, I'd
17 just like to weigh in on your comments as well.

18 In concur with you completely. I felt
19 that there was an opportunity to bring evidence to
20 this appeal, but that that opportunity was missed,
21 and that instead, there was just a restatement of
22 the original testimony of the ANC as the basis for
23 their appeal which is not persuasive to me.

24 CHAIRPERSON GRIFFIS: Excellent, thank
25 you.

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1 Ms. Miller?

2 VICE-CHAIR MILLER: I would just like to
3 say that the way I read 3126.4 is that a party could
4 move for reconsideration on the grounds that a legal
5 conclusion that we drew was erroneous. But in this
6 case, that isn't the case. The movant has only
7 alleged certain facts and saying they're not
8 supportive by certain evidence or whatever, but he
9 hasn't really drawn any connection to how that would
10 change our legal conclusions.

11 So for that reason, I think that the
12 motion also fails and also, I just want to comment
13 briefly on the representation authorization issue
14 with respect to the ANC. The way I read -- I guess
15 it's Exhibit 32, where Mr. -- what's his name --
16 anyway, ANC Commissioner is authorized to represent
17 the ANC in the case. I think we could conceivably
18 conclude that he could be authorized to file a
19 Motion for Reconsideration, but it's not supported
20 by any ANC resolution to which we could give great
21 weight to know that that, in fact, was the sentiment
22 of the community.

23 CHAIRPERSON GRIFFIS: Excellent and well
24 said. And I agree with you that 3126.4, talking
25 about the claimant to be erroneous and I think

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1 there's a great distance between substantiating an
2 erroneous decision that we made and that of
3 nonagreement or rehashing of the elements and I
4 think we have rehashing in this case.

5 Lastly, 3126.10, of course, says that a
6 Motion for Reconsideration is not a prerequisite to
7 go to the Courts which I think is a very important
8 thing to understand. This is not one step in order
9 to appeal the decision. That appeal can happen
10 immediately and that can go right to the Courts for
11 judicial review.

12 Very well. Any others?

13 (No response.)

14 CHAIRPERSON GRIFFIS: Okay, we do have a
15 motion before us. It has been seconded.

16 I ask all those in favor signify by
17 saying aye.

18 (Chorus of ayes.)

19 Opposed?

20 (No response.)

21 Why don't we record the vote?

22 MR. MOY: Yes sir, the Staff would
23 record the vote as 5 to 0 to 0, this is on the
24 motion of the Chairman, Mr. Griffis, to deny the
25 Motion for Reconsideration; seconded by Mr. Etherly.

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1 Also in support of the motion, Ms. Miller, Mr.
2 Hildebrand and Mr. Mann.

3 CHAIRPERSON GRIFFIS: Excellent. Thank
4 you very much.

5 Mr. Hildebrand, thank you very much.
6 We'll see you on the Hill. Indeed.

7 Let's call the next case in and Mr.
8 Hildebrand, if you wouldn't mind having the other
9 Commissioner come out.

10 MR. MOY: The next case is Appeal No.
11 17356 of Bannum, Inc., pursuant to 11 DCMR Sections
12 3100 and 3101, from the administrative decision of
13 the Zoning Administrator, Department of Consumer and
14 Regulatory Affairs, to revoke Certificate of
15 Occupancy Permit No. C53679, dated May 2, 2003, for
16 a temporary correctional institution in the C-M-2
17 District at premises 2210 Adams Place, N.E., Square
18 4259, Parcel 154/81.

19 At a public hearing on Tuesday, December
20 20, 2005, the Board heard and concluded Bannum's
21 appeal of DCRA's revocation of Bannum's Certificate
22 of Occupancy and scheduled its decision on February
23 7, 2006. I think at this point Staff is going to
24 conclude its briefing, Mr. Chairman.

25 CHAIRPERSON GRIFFIS: Very well. I

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1 appreciate that Mr. Moy. I think that does actually
2 encapsulate where we are with this.

3 Appeals, of course, are always much more
4 one might say detailed or complex in terms of what
5 the Board is looking at. Not only do we look at the
6 arising of an error out of the Zoning regulations,
7 but that of procedure and outcome. This is no
8 different. In fact, it's quite complicated in this
9 as we had an appeal on this that we had upheld, this
10 being brought back, talking about the beginnings or
11 whether there was, in fact, some error in the
12 revocation of the Certificate of Occupancy.

13 I'll open it up to brief discussion on
14 this or any discussion on this. I think this will
15 break down fairly easily in terms of the elements
16 that we need to look towards.

17 First of all, there was a substantial
18 amount of discussion of whether we had jurisdiction
19 on this. And even that body that brought the appeal
20 has raised that question and so whether -- I know we
21 will address it, whether we are definitive or not,
22 we will see.

23 But let me open it up, Ms. Miller. I
24 believe you might have brief comments on this. And
25 we will proceed.

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1 VICE-CHAIR MILLER: I think what's been
2 a little bit confusing about this case is it's gone
3 in to so many different forums and I think at our
4 last hearing we were trying to sort out the
5 different elements to this case and whether or not
6 we had jurisdiction. And I think that that's true,
7 that the way Bannum brought the case before us, in
8 part because they weren't sure whether we had
9 jurisdiction and in order to protect any appeal
10 rights.

11 And in looking at this case, it appears
12 to me that it can be divided into two parts. One
13 part dealt with the appeal related to the civil
14 infraction process that's been taking place. And
15 Bannum was challenging a recision of -- let's see,
16 how can I explain it? But there's a certain track
17 that's going on in the civil infractions area. And
18 Bannum was appealing what was happening over there,
19 dealing with OAH. And then the second part deals
20 with a collateral estoppel issue related to the
21 revocation of a Certificate of Occupancy.

22 I think at the hearing, basically, we
23 were going in the direction, but we didn't maybe
24 state definitively and I think I would reach the
25 conclusion today that the part dealing with civil

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1 infractions is not within our jurisdiction, that we
2 deal only with zoning issues. And what was at issue
3 over there was proper procedures before OAH.

4 CHAIRPERSON GRIFFIS: But that seems to
5 be two -- I would say two substantive elements that
6 you've just stated. One is not dealing with civil
7 infractions which I may take some issue with, but
8 the other was the process of how it happened. Am I
9 understanding you correctly?

10 VICE-CHAIR MILLER: I mean the process,
11 basically. There is a question about whether it was
12 -- something was rescinded properly or whether an
13 ALJ's decision could have been stayed. And I think
14 that at the hearing we pretty much stayed away from
15 those issues finding that that really wasn't a
16 zoning question and that was before another agency.

17 CHAIRPERSON GRIFFIS: So in terms of the
18 procedural followings of DCRA, that is not something
19 that you are -- you are saying we do not have
20 jurisdiction over those elements, the procedural
21 aspects of DCRA?

22 VICE-CHAIR MILLER: Right, related to
23 the civil infraction.

24 CHAIRPERSON GRIFFIS: Right. Or
25 relating to the revocation of the C of O.

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1 VICE-CHAIR MILLER: That's how the civil
2 infraction was -- that's what that was related to,
3 yes.

4 CHAIRPERSON GRIFFIS: Okay.

5 VICE-CHAIR MILLER: So then we got to
6 the question well, there was a revocation of a
7 Certificate of Occupancy and is that, in fact, a
8 zoning issue that could be properly before this
9 Board? And I would say that, in general, that is,
10 that that involves zoning, a zoning issue, a
11 revocation. And that there is a right to appeal to
12 the Board.

13 But then when we started hearing the
14 case then, what it boiled down to was a case on
15 collateral estoppel, that the revocation of the
16 Certificate of Occupancy should be reversed because
17 of the elements of collateral estoppel that Bannum
18 had relied on DCRA in good faith and expended all
19 this money and weighing the equities, etcetera, to
20 meet the elements of equitable estoppel and
21 collateral estoppel.

22 So then the question is is that issue
23 properly before this Board? And in looking at the
24 pleadings afterwards, it appears to me that I would
25 say that it's not because it is actually being

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1 litigated now in the Court of Appeals in connection
2 with the appeal of our previous order from which all
3 of this stems, in which the -- which Bannum -- the
4 building permit was revoked and the Certificate of
5 Occupancy was then revoked as a result of that.

6 We looked at the question of res
7 judicata. They didn't exactly argue this kind of
8 estoppel before us, but it seems to me in looking at
9 the brief that was filed by Bannum in Court that
10 that issue is actually being argued in the Court of
11 Appeals.

12 CHAIRPERSON GRIFFIS: But on the two
13 issues, we don't necessarily need to reach a third.
14 Just based on the two issues, if I understand you
15 correctly, that you would dismiss this appeal based
16 on the fact that the provision that has been brought
17 to us, the provision in question, we do not have
18 jurisdiction over as it is a procedural question,
19 whether the notice of revocation first that was
20 issued and then was rescinded, and then a new one
21 was applied, all those elements are something that
22 we would not have the ability to hear appeal on. So
23 you would support a dismissal of this appeal based
24 on that issue?

25 VICE-CHAIR MILLER: To the extent what's

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1 before OAH now, I would dismiss the --

2 CHAIRPERSON GRIFFIS: Not just based on
3 the -- if I'm understanding you correctly, it's not
4 just based on the fact that there's a duplicative
5 process undergoing, whether it be the Court of
6 Appeals or OAH, but it's on the substance of what we
7 can and will hear in appeal, or is it just based on
8 the fact that it is doing a parallel process?

9 VICE-CHAIR MILLER: No, I separate the
10 two. I think that the part dealing with civil
11 infractions is not within our jurisdiction.

12 I would say that if there was not
13 necessarily -- if this case was not on appeal, our
14 underlying order was not on appeal at the Court of
15 Appeals and they were not arguing before the Court
16 of Appeals collateral estoppel, actually relating
17 not only to the building permit revocation, but to
18 the Certificate of Occupancy revocation, then maybe
19 we could hear it.

20 But I mean I look at their brief and
21 it's broader than just collateral estoppel with
22 respect to the building permits if they
23 characterized it as all the zoning decisions.

24 CHAIRPERSON GRIFFIS: Good. I think on
25 the second issue then, in terms of collateral

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1 estoppel, I think it's an excellent distinction that
2 you're making. You are not saying that we would not
3 have the jurisdiction to hear that element, but
4 rather, the fact that the decision is made to
5 already go to the Court of Appeals, there's no
6 necessity for us to be hearing that in a parallel
7 course as the Courts may well decide it or may well
8 remand it back to us. Our process may happen later,
9 but it is properly before the Court at this time.

10 VICE-CHAIR MILLER: Yes, and I'd also
11 say that it's not an issue that the Court of Appeals
12 needs our zoning expertise on. It's an equitable
13 issue that --

14 CHAIRPERSON GRIFFIS: Well, they can
15 always use our expertise up there.

16 (Laughter.)

17 CHAIRPERSON GRIFFIS: However --

18 VICE-CHAIR MILLER: Sometimes the Court
19 though will wait, you know, and let us reach some
20 kind of -- interpret our regulations or whatever.
21 And this is not that kind of a situation.

22 CHAIRPERSON GRIFFIS: I see. And that's
23 an excellent point and the fact that the Court is
24 not asking us to revisit certain elements for their
25 processing, but rather they have the ability to look

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1 at the estoppel argument without our further
2 processing of this.

3 VICE-CHAIR MILLER: Right. I think it's
4 already there, you know, which is unusual. And
5 certainly the Court is free to remand any element of
6 that case back to the Board if it wants our
7 expertise on any questions.

8 CHAIRPERSON GRIFFIS: Okay. Do you want
9 to put that in a motion and then we can hear further
10 deliberation on this?

11 VICE-CHAIR MILLER: I would move that we
12 would dismiss -- where is it? I want to get it
13 right.

14 I would move to dismiss Appeal No. 17356
15 of Bannum, Inc. on grounds of lack of jurisdiction.

16 The decision is to revoke Certificate of
17 Occupancy permit No. C53679, dated May 2, 2003, for
18 a temporary correctional institution in the C-M-2
19 District of premises 2210 Adams Place, N.E.

20 CHAIRPERSON GRIFFIS: Okay. Is there a
21 second?

22 MEMBER ETHERLY: Second, Mr. Chair.

23 CHAIRPERSON GRIFFIS: Thank you, Mr.
24 Etherly.

25 Further comments, deliberation?

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1 Clarifying the jurisdictional element that the
2 motion now is before us. Again, I would reiterate
3 the fact that it's the provision. It's the basis,
4 the substance of which was brought to us that we
5 find is a procedural or a question of authority of
6 DCRA, not something that arises out of the Zoning
7 regulations of which we would have the substantive
8 ability and the jurisdiction to hear an appeal on or
9 to decide whether there was an error or not.

10 VICE-CHAIR MILLER: Again, I think there
11 are two parts. I think on the part dealing with
12 civil infractions --

13 CHAIRPERSON GRIFFIS: We'll stick to the
14 one part and then we'll get to the second.

15 VICE-CHAIR MILLER: The second part --

16 CHAIRPERSON GRIFFIS: The estoppel is
17 the second part. Is that what you were going to?

18 VICE-CHAIR MILLER: Just the other part
19 is just, in general, revocation of a Certificate of
20 Occupancy, right, based on the estoppel theory which
21 is all that's left.

22 CHAIRPERSON GRIFFIS: Right, right.
23 Okay. Others?

24 Comments?

25 (No response.)

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1 Other further deliberation? The last
2 brief note on this because it is kind of interesting
3 to step back and to say even if we got into further,
4 this estoppel issue, it's what -- to put it into
5 context and the reality of the fact is that we heard
6 this appeal. We upheld the appeal. That appeal
7 gave the direction to DCRA to take action. That
8 action, based on the fact, as Ms. Miller has said,
9 that we found that there was an error in granting
10 the permit. Well, the C of O and in our own order,
11 the C of O flowed from the permit. So therefore the
12 revocation of the C of O is directly linked to our
13 own decision. And so it becomes a circular piece.
14 If you were able to appeal that decision or even
15 rely on estoppel. I'm not saying we're being
16 definitive on that, but just making -- putting into
17 context of how I think that we all have deliberated
18 on this, it seems to be substantively understood,
19 but would probably also fail.

20 Ms. Miller?

21 VICE-CHAIR MILLER: I just want to say
22 that we issued that decision and all these things
23 flowed from it, including the revocation of the
24 Certificate of Occupancy. And Bannum certainly has
25 a right to challenge that on the basis of equitable

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1 -- collateral estoppel or whatever grounds. And in
2 fact, it's being challenged in two Courts. It's in
3 the Court of Appeals. It's also in Superior Court
4 in the context of Office of Attorney General taking
5 an enforcement action against them. So they
6 certainly have the right to make that defense.
7 Just, I don't think it belongs here any more.

8 CHAIRPERSON GRIFFIS: Right. Indeed.
9 Excellent. Very well, any others' comments,
10 deliberations?

11 If none, we do have a motion before us.
12 It has been seconded. I would ask all those in
13 favor signify by saying aye?

14 (Chorus of ayes.)

15 Opposed?

16 (No response.)

17 Abstaining?

18 (No response.)

19 Very well. Mr. Moy?

20 MR. MOY: Yes sir, the Staff would
21 record the vote as 5 to 0 to 0. This is on the
22 motion of Ms. Miller, the Vice-Chair to dismiss the
23 appeal on the grounds of lack of jurisdiction;
24 seconded by Mr. Miller. Also in support of the
25 motion, Mr. Griffis, Mr. Etherly and Mr. Turnbull.

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1 CHAIRPERSON GRIFFIS: Excellent. Thank
2 you very much.

3 Mr. Turnbull?

4 MEMBER ETHERLY: Mr. Chair, just very
5 briefly. I'm very happy to defer to Mr. Mann as a
6 seconder of Ms. Miller's motion, but I was the
7 seconder.

8 CHAIRPERSON GRIFFIS: Indeed.

9 MR. MOY: I stand corrected then.

10 CHAIRPERSON GRIFFIS: Thank you. There
11 was a brief tie.

12 MEMBER ETHERLY: Nothing personal, Mr.
13 Mann.

14 MEMBER MANN: No, I just think we said
15 it simultaneously and just heard it.

16 CHAIRPERSON GRIFFIS: Shall we flip a
17 coin. We can have a double seconder on that. Okay,
18 very well. The official record will reflect.

19 Mr. Turnbull, thank you. I think that's
20 the only case you're on this morning and we
21 appreciate you being here for that.

22 With that then, let's move on and call
23 the next case for the morning.

24 MR. MOY: The next case for decision is
25 Application No. 17416 of Nationwide Properties of

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1 1st Place, N.W., LLC, pursuant to 11 DCMR Sections
2 3104.1 and 3103.2 for a special exception and a
3 variance to extend the C-2-A District zoning
4 regulations by 40 feet onto a portion of the
5 premises zoned R-5-A, under subsections 2514.2 and
6 2514.2(a), and a variance from the court width
7 requirements under subsection 776.3, to allow the
8 construction of an apartment house in the R-5-A/C-2-
9 A District at premises 5414 through 5418 1st Place,
10 N.W. That's in Square 3393, Lot 858.

11 On January 17, 2006, the Board completed
12 public testimony on the application and scheduled
13 its decision on February 7, 2006. The Board
14 requested a number of post-hearing documents.
15 Suffice it to say the Staff will report that in
16 terms of filings to the Office, the Applicant
17 submitted a proposed order, as requested by the
18 Board, dated January 31, 2006 and that is identified
19 in your case folder as Exhibit 34, which also
20 includes in this exhibit a letter in support of the
21 Applicant's proposal, a letter from Mr. Richard
22 Deeds.

23 Second, the record was left open to
24 allow submission of letters of support. Those
25 letters are identified and consolidated under

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1 Exhibit 36.

2 And third and finally, there is a
3 submission from the ANC, dated January 27, 2006,
4 identified as -- in your case folders as Exhibit 35,
5 a letter in reference to -- a letter from the
6 Chairperson Whiting disclaiming authorization of a
7 previous letter entered into the record by a Ms.
8 Judi Jones.

9 That completes the Staff's briefing, Mr.
10 Chairman.

11 CHAIRPERSON GRIFFIS: Excellent. Thank
12 you very much.

13 Let's move right into this. We do have
14 the special exception that moves the zoned boundary
15 line, the 35 feet and what's at issue here is that
16 and also the variance to continue that boundary line
17 to move an additional five feet and of course, as
18 we're well aware, the relief from the court
19 requirements.

20 To make a quick statements in terms of
21 there has been some discussion and some different
22 interpretations of what moves when we move that
23 boundary line. I think the Board has been fairly
24 definitive in looking at the less restrictive zoned
25 portion of the site as that boundary line moves

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1 that, that also moves -- the designation
2 requirements move with it. You don't leave certain
3 aspects of it behind, although our nomenclature, the
4 words used in the regulations are very
5 interchangeable and I don't disagree that may, in
6 fact, raise the level of some confusion. I think
7 read in context with this section and others that we
8 would -- that at this point with the regulations as
9 they read, are correct in stating that, in fact, all
10 of the area requirements move with the C-2-A except
11 those that are actually enumerated specifically,
12 specially in the R-4. If there are leftover aspects
13 of an R-4 on a lot, there's a prescribed FAR that is
14 given.

15 That being said, I think we all are
16 together on the relief sought, and I'll open it up
17 for initial comments.

18 (Pause.)

19 Any comments?

20 (Pause.)

21 Okay, it is overall supported. Of
22 course, OP had some concerns that were listed. The
23 ANC was supporting the application. I think one of
24 the things that arose, let's get into the aspect of
25 the uniqueness and the practical difficulty of

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1 moving the boundary line to five feet. I think it's
2 fairly conclusive in the record that the special
3 exception was met, that there would be no detriment
4 and that certainly with the additional letters of
5 support, there have been no evidence that's been
6 brought to the Board's attention that it would
7 somehow negatively or adversely impact the adjoining
8 neighborhood.

9 I had some concern -- to digress on the
10 specifics -- some concern in terms of the massing
11 and actually the architecture of it, which goes not
12 necessarily to the special exception, but it
13 certainly goes directly to 2514.2 and specifically
14 that of C with the exception would have no adverse
15 effect to the present character or future
16 development of the neighborhood.

17 And also D, I mean in the intent of the
18 regulations itself, we're given entire control over
19 the design of this thing. It is not like this Board
20 to invoke that authority to a great extent and
21 redesign projects. And I don't think we've done
22 that here. I think that would have had and
23 certainly would have taken that opportunity if there
24 was something in the record or testimony that had
25 some concern. However, when asked directly, the ANC

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1 what and how they felt that it met that requirement,
2 they were very definitive in saying that they liked
3 the architecture and the massing of the building
4 which goes to show how subjective these exciting
5 things can be.

6 That being said, that would be something
7 I might talk about a little bit later, but I don't
8 need to go further into that. However, let's look
9 at what is, in fact, the uniqueness and practical
10 difficulty of not being able to extent the
11 additional five feet. It would -- well, let me open
12 it up to others in their understanding of what is
13 the case that is being made.

14 VICE-CHAIR MILLER: Well, okay, I'll
15 join in in the conversation a little bit. Just when
16 you get to the elements of a variance, first looking
17 at uniqueness, I think the basic uniqueness or
18 exceptional condition in this case is that the 1958
19 zoning line goes right down the middle of the
20 property. And I think that's an exceptional
21 condition. Even if the regs may have been drafted
22 to meet this kind of situation, I think that it's
23 not that common and it's unique and exceptional in
24 this neighborhood and in this context.

25 And then we get to the question of

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1 practical difficulty. If -- well, there are two
2 variances, I think being asked here. One is to
3 extend an additional five feet and the other is the
4 court width. With the addition of -- if they
5 weren't able to extend the additional feet, there
6 was a lot of testimony about how that would change
7 the building and what I understand is that there
8 would be a reduction of square footage which would
9 change the context of the apartments. It would
10 change the size, reducing some bedrooms to
11 substandard, and according to the Applicant, to a
12 substandard and unmarketable size; reducing some
13 one-bedrooms to efficiencies, and according to their
14 studies of what the market is looking for is the one
15 bedroom. And a loss of terrace space which would
16 create problems in meeting the residential
17 recreation requirements which might also lead them
18 to a need for a variance from those regulations.

19 And they also went into showing us what
20 would happen with the court widths if they were not
21 able to get a variance from that which also created
22 problems with the design of the building.

23 And I didn't hear any adverse impact as
24 a result of either of these variances, should they
25 be granted.

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1 CHAIRPERSON GRIFFIS: Okay.

2 VICE-CHAIR MILLER: Well, the other
3 thing is Office of Planning has raised in this case
4 again and raised before the question of FAR and bulk
5 and I know we have addressed it in other cases, but
6 when I look back at 2514.1(d) I just want to
7 reiterate that to me the way the regulation is set
8 up, it refers to FAR as a subset of bulk; (d) is
9 under 2514.1, so I'm not exactly sure why Office of
10 Planning has continued to take that position. But
11 that is my reason for not agreeing with Office of
12 Planning.

13 Also, Office of Planning raised an issue
14 about perhaps the Applicant should be seeking a
15 variance from the sideyard requirements instead of
16 the court width and I think that the Applicant made
17 a good presentation as to why it was more properly
18 court width.

19 CHAIRPERSON GRIFFIS: Right. I think
20 that's very definitive in terms of the
21 differentiation between a court and a sideyard and
22 the measuring points, of course, and what and where
23 it becomes open to the sky and it's unobstructed.

24 Okay.

25 (Pause.)

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1 VICE-CHAIR MILLER: Finally, I guess I
2 would also note that I think the application is
3 consistent with the Comprehensive Plan, in
4 particular, Ward Four housing objective, to
5 encourage private sector to provide new housing.

6 CHAIRPERSON GRIFFIS: Very well. Is
7 there a motion then?

8 MR. MOY: Mr. Chairman?

9 CHAIRPERSON GRIFFIS: Yes.

10 MR. MOY: If I may indulge, the Staff is
11 in receipt of an absentee ballot from Carol Mitten
12 with attached comments.

13 CHAIRPERSON GRIFFIS: Excellent. Why
14 don't we have those comments under a motion.

15 MR. MOY: Before the motion or after the
16 motion?

17 CHAIRPERSON GRIFFIS: That's fine.

18 MR. MOY: It's up to you.

19 CHAIRPERSON GRIFFIS: Why don't you read
20 them into the record then?

21 MR. MOY: Carol Mitten's comments will
22 read as follows: "I support the Applicant's request
23 for a special exception to extend the C-2-A zoned
24 district regulations into the R-5-A zone by 35 feet.
25 And I support the Applicant's request for a variance

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1 from the court width requirements. However, I do
2 not support the variance to extend the C-2-A zone
3 district regulations into the R-5-A by an additional
4 five feet. In describing their burden of proof for
5 the variance related to the additional five feet,
6 the Applicants cited various physical constraints
7 that would attend the resulting improvement where
8 they precluded from developing the additional five
9 feet under the C-2-A rules. In fact, the Applicant
10 proposes not to extend the improvement into the
11 five-foot area and only intends to use the
12 additional density gained by extending the zone line
13 another five feet. The Applicant has given no
14 compelling evidence as to how the lack of access to
15 this additional density will create a practical
16 difficulty (apart from the fact that the building
17 will need to be reduced in size from that proposed).
18 The fact that the developer has limited flexibility
19 because of the modular construction option that they
20 have elected to use for this development is not
21 inherent in the property. Further, the cases that
22 they provided in support of past decisions of the
23 BZA are either not relevant to this point or our
24 summary order is lacking in any detail so as to
25 understand how the individual circumstances of the

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1 site cases relate to the instant case."

2 CHAIRPERSON GRIFFIS: Excellent.

3 Comments?

4 MEMBER ETHERLY: No comments, Mr. Chair,
5 but I'm prepared to move forward with the motion, if
6 that's appropriate at this time.

7 CHAIRPERSON GRIFFIS: Excellent.

8 MEMBER ETHERLY: It would be my motion
9 to approve Application No. 17416 of Nationwide
10 Properties of 1st Place, N.W., LLC, pursuant to 11
11 DCMR 3104.1 and 3103.2 for a special exception and
12 variance to extend the C-2-A district zoning
13 regulations by 40 feet on to a portion of the
14 premises zoned R-5-A and under subsections 2514.2,
15 2514.2(a) and variance from the court width
16 requirements under subsection 776.3 to allow the
17 construction of an apartment house, so forth and so
18 on.

19 And I would invite a second, Mr. Chair.

20 CHAIRPERSON GRIFFIS: Is there a second?

21 VICE-CHAIR MILLER: Second.

22 CHAIRPERSON GRIFFIS: Thank you, Ms.

23 Miller.

24 Mr. Etherly?

25 MEMBER ETHERLY: Thank you very much,

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1 Mr. Chair. I will associate myself in their
2 entirety with the comments of my esteemed colleague,
3 Ms. Miller, for the purposes of the motion.

4 I understand precisely where our
5 colleague, Ms. Mitten, is coming from with respect
6 to the issue of the five-foot extension of the zoned
7 line, under the variance portion of this particular
8 application, but I found the record to be supported
9 and the testimony to support the granting of the
10 variance in this instance as it relates to the issue
11 of five-foot extension.

12 As was referenced by Ms. Miller, the
13 zoning line as it impacts this particular property
14 is indeed a circumstance and I think it's quite
15 unique and extraordinary in this particular
16 instance. Granted, it is something that occurs in
17 other parts of the city, of course, but I think in
18 this particular instance, as we look at this
19 application, it does have -- does play a very
20 significant role in terms of the types of
21 considerations that apply to the proposed project.

22 As is indicated in the written submittal
23 here and in particular I'm referencing Exhibit 23,
24 there is quite a bit of discussion, rightfully
25 emphasized by the Applicant as it relates to their

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1 efforts to create an efficient, if you will, use of
2 space and design with respect to the creation of
3 these apartment dwellings. And I think with respect
4 to the five-foot extension, although the Office of
5 Planning was not, shall we say, convinced by the
6 argument regarding the issue of the so-called narrow
7 area on the south side of the building, I think the
8 additional five-foot extension, as is noted in the
9 Applicant's submittal will one, not have a
10 substantial detriment to the public good, nor
11 substantial impairment to the intent, purpose and
12 integrity of the zone plan, but I think with regard
13 to the overall issue of design and orientation and
14 placement of the building, the five-foot extension
15 will allow a more uniform design for the development
16 of this application as it's proposed.

17 CHAIRPERSON GRIFFIS: Excellent. Thank
18 you very much.

19 Ms. Miller, any follow up?

20 VICE-CHAIR MILLER: Well, I would just
21 like to try to address one of Ms. Mitten's basic
22 concerns. Basically, it's the practical difficulty
23 test. She makes the statement and I have it in
24 front of me as well, that "the Applicant is given no
25 evidence as to how the lack of access to this

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1 additional density will create a practical
2 difficulty" and then in parens "(apart from the fact
3 that the building will need to be reduced in size
4 from that proposed)."

5 So it sounds like that she thinks the
6 only result will be a reduction in size with no
7 ramifications that we might consider under the test
8 unduly burdensome and I just want to reiterate that
9 what I'm relying on is that I think that the
10 Applicant showed -- and I may be repeating myself,
11 but that they did show serious ramifications that
12 being loss of square footage, reducing some bedrooms
13 to a substandard and unmarketable size and the
14 reduction from one bedrooms to efficiencies to not
15 what the market may support and loss of terrace
16 space. So to me, that meets the practical
17 difficulties test under variance law, as I
18 understand it.

19 CHAIRPERSON GRIFFIS: Okay.

20 MEMBER ETHERLY: And Mr. Chair, as we
21 continue deliberations, I'll just note for the
22 record that I will for expedience sake divide my
23 motion into two separate portions, so that will be a
24 motion for the security clearance and a motion for
25 the variance relief as requested, in order to

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1 facilitate the handling of specific arguments that
2 have been submitted under both issues.

3 CHAIRPERSON GRIFFIS: Excellent. So if
4 I understand correctly, Board Members, I believe Mr.
5 Etherly has separated his motion out in order to
6 respond essentially to the comments of the Zoning
7 Commissioner.

8 So there is a motion before us to
9 approve the special exception and the variance for
10 the courts and then there is also a motion on the
11 table -- Ms. Miller, you can second both, it's up to
12 you -- the second motion is for the variance to
13 extend the zoned boundary line, the additional five
14 feet.

15 Okay.

16 VICE-CHAIR MILLER: I'll second both.

17 CHAIRPERSON GRIFFIS: Excellent. Then
18 taking the first, I think we've talked substantially
19 about the special exception and the courts.

20 Is there other discussion on either of
21 the motions then at this point?

22 (No response.)

23 Any other comments on that? I think it
24 has all been excellent discussion and I think the
25 one, the clarity of moving the zoned boundary line

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1 also the clarity of the fact of what is -- what the
2 impact is if that additional six percent of that
3 site, I think Ms. Miller has set it up very well.

4 The fact that you move it, the
5 uniqueness of the zoning history, one that was
6 subject under the zoned boundary lines setting in
7 that, the burdensome nature and the practical
8 difficulty of having that residue left over that
9 needs to be dealt with differently. One doesn't
10 look at a development project on a single site and
11 have to segregate out those pieces and parts. Even
12 if you've ever tried to do those calculations, I
13 think the zoning regulations don't facilitate that
14 type of calculation. And how you put one building
15 with two different zoned boundaries, how you balance
16 all of that, there is also additional testimony
17 which we hasn't touched on the fact the impact of
18 the open space residential recreation requirements
19 related to, of course, the court variance, but also
20 relates to the massing and the amount of square
21 footage that's put on.

22 Ms. Mitten has some difficulty and I
23 don't disagree with the fact that there's a wanting
24 of taking on additional density from moving that
25 boundary line, that additional five feet. If we

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1 were being asked to move it, which we have never in
2 my experience been asked to move 35 in special
3 exception and a variance another 35, it would start
4 to not make sense in terms of scale pattern and in
5 terms of the intent of the regulations, but the de
6 minimis nature, I guess, is where I'm going to, the
7 fact of the de minimis nature that they didn't just
8 peg the 35, that when they split this down the
9 middle with an existing building before, which was
10 in existence before the regulations, there was now
11 created a practical difficulty in looking at
12 building one project that would connect throughout.

13 I hold on to my concern and perhaps it's
14 my own feeling that I didn't come at it more
15 strongly during the hearing in regards to the
16 special exception and now as to the variance and
17 that is the design, the lighting, the entrance, the
18 massing of this building that could have, I think,
19 and the fenestration and the patterns of the detail
20 around. I think it could have - -and maybe it still
21 has the opportunity to really be a spectacular
22 project for the neighborhood and I think in my mind
23 and in my opinion it was starting to actually have
24 an adverse impact.

25 However, not being able to rely

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1 substantively on evidence or of testimony, or
2 further evidence in the record, I don't think I
3 would withhold my support of the motion for the
4 relief based on those elements in the special
5 exception. That being said are there other
6 comments?

7 I will call the first motion and then
8 I'll have additional last deliberative comments on
9 the first motion which would be from Mr. Etherly,
10 seconded by Ms. Miller and that is for the approval
11 of the special exception and also the variance for
12 the court dimensions.

13 Any additional discussion on that? If
14 there's no further testimony on that, I ask all
15 those in favor of the motion signify by saying aye.

16 (Chorus of ayes.)

17 Opposed?

18 (No response.)

19 Very well, why don't we record the vote
20 on that?

21 MR. MOY: Yes sir, the Staff would
22 record the vote as 4 to 0 to 0 on the motion of Mr.
23 Etherly to approve the special exception and the
24 variance for the court width dimensions; seconded by
25 Ms. Miller. With the absentee ballot of Carol

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1 Mitten, that would give a resulting total vote of 5
2 to 0 to 0.

3 CHAIRPERSON GRIFFIS: Excellent.

4 MR. MOY: Also in support of the motion,
5 Mr. Mann and Mr. Griffis.

6 CHAIRPERSON GRIFFIS: Fabulous. In
7 which case we have a second motion before us. The
8 second motion, of course, has been seconded and it
9 is for the approval of the variance to move the
10 zoned boundary line, the additional feet to
11 encompass the entire site, that is, approximately
12 five feet and I would open it up for any further
13 comments, last deliberations on that?

14 If there are no other comments or
15 deliberation, I would ask all in favor of the motion
16 signify by saying aye.

17 (Chorus of Ayes.)

18 Opposed?

19 (No response.)

20 Abstaining?

21 (No response.)

22 Very well, Mr. Moy, if you would record
23 the vote?

24 MR. MOY: Yes, sir. Staff would record
25 that motion for the variance to extend the zone line

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1 as 4 to 0 to 0 on the motion of Mr. Etherly;
2 seconded by Ms. Miller. Also in support of the
3 motion, Mr. Griffis and Mr. Mann, with Carol
4 Mitten's absentee ballot, that would give a
5 resulting vote of 4 to 1 to 0.

6 CHAIRPERSON GRIFFIS: Excellent. Thank
7 you very much.

8 Any other comments on that, then? Very
9 well.

10 MR. MOY: Yes sir. Staff -- for a full
11 order or a summary order? We have, I believe, ANC
12 support, Office of Planning opposed.

13 VICE-CHAIR MILLER: Mr. Chairman, if I'm
14 correct, I think that the Applicant asked for a
15 summary order in this case.

16 CHAIRPERSON GRIFFIS: Indeed. Do you
17 have an opinion on that?

18 Is there any objection to issuing a
19 summary order?

20 MEMBER ETHERLY: I have no objection,
21 Mr. Chair.

22 VICE-CHAIR MILLER: No objection.

23 CHAIRPERSON GRIFFIS: Very well, we will
24 waive our rules and regulations and issue a summary
25 order on this case to move it ahead, being

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1 expeditious as we try and be.

2 Very well, Mr. Moy, thank you very much
3 for that clarification.

4 Let's call the next case.

5 MR. MOY: The next case for decision is
6 Application No. 17417 of 1425 Belmont Street, N.W.,
7 LLC., pursuant to 11 DCMR 3104.1, for a special
8 exception to allow a group of dwellings all having
9 front entrances abutting a side yard, and to allow a
10 group of eight single-family dwellings to be erected
11 as a single building under subsection 410.13, in the
12 R-5-B District at premises 1425 Belmont Street,
13 N.W., Square 2661, Lot 50.

14 On January 17, 2006, the Board completed
15 all the testimony on the application and scheduled
16 its decision on February 7th. The Board requested a
17 number of post-hearing documents. With respect to
18 filings, the Board has received the Applicant's
19 response of request for documents from the Board,
20 dated January 31, 2006 and it's identified in your
21 case folder as Exhibit 31.

22 Second, the Board has also received a
23 supplemental report from the ANC, dated January 31,
24 2006 and that filing is identified as Exhibit 30.

25 And third and last, Mr. Chairman, the

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1 Board has received a letter dated January 23, 2006
2 from a Sidney Jones, a letter opposing the approval
3 of the application. And this is identified as
4 Exhibit 29. The Staff would note that the record
5 had been closed and the Board should take this
6 matter up as a preliminary matter.

7 That completes the Staff's briefing, Mr.
8 Chairman.

9 CHAIRPERSON GRIFFIS: Excellent, thank
10 you very much, Mr. Moy. If I understand you
11 correctly, Exhibit 29 is not a timely filing, is
12 that correct?

13 MR. MOY: Yes sir.

14 CHAIRPERSON GRIFFIS: Okay, I would
15 suggest then, Board Members, we don't accept that
16 into the record as it is not what we kept the record
17 open for. It is, I believe, a letter from an
18 adjacent resident or property owner, but that, of
19 course, if it was brought, would need to be opened
20 up for any cross examination. And I think the
21 record was complete and unless there's any
22 objections. Not noting any objections from the
23 Board, we can move ahead.

24 Let me just make one quick
25 clarification. I see you put a witness card in and

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1 you're sitting at the table. Of course, we don't
2 have any opportunity for additional testimony this
3 morning. The record has been closed. And so what
4 we will now be doing is proceeding with the
5 deliberation on the facts of the case that were
6 already established.

7 With that, let us move ahead. Of
8 course, one of the aspects of the requirements for
9 the approval, we had asked for the -- that the
10 application be referenced and also any report from
11 the Fire Marshall or the Metropolitan Police. The
12 ANC had brought up substantial amount of concern in
13 that respect, but also in terms of the respect of
14 the design aspects of the building and how it was --
15 how it dealt with the street frontage and access and
16 functioning.

17 We had asked again to find any other
18 similar projects and as Mr. Moy has indicated,
19 Exhibit 31 did reference 1309 Clifton, 1354-56
20 Euclid and 1776 Linear Place, all three in N.W.
21 There are attendant site plans and also photographs
22 of each of these projects.

23 I think that we have what we need to
24 proceed. I'll open it up for initial discussion.

25 (Pause.)

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1 410.13, of course, is a critical section
2 of the regulations that we're looking at, but also I
3 would add 410.16 which rises to the level of some of
4 the concerns of the ANC. 410.16 indicated that the
5 erection of a group of buildings shall not affect
6 adversely the present character or future
7 development of the neighborhood.

8 Obviously, that's why we had asked for,
9 as was indicated by the Applicant, that there were
10 several others in the vicinity, in the area, that
11 were of character to what was being proposed and
12 therefore it met the requirements to be granted
13 relief under 410.16. It's interesting, when you
14 start looking at 1309 Clifton, 5456 and I would add
15 1776, if I'm not mistaken, with that number, 1776
16 Linear Place, it is actually in a different
17 neighborhood, not that that has any impact. Looking
18 at these, it is my strong opinion that these
19 actually deter from the character of the
20 neighborhood and actually in many ways critically
21 wound the street frontage as it takes people away
22 inward on a lot.

23 Some of the concerns of the ANC I think
24 were well said, whether they were articulated fully
25 as they might have been, they were well stated in

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1 terms of how urban in-fill buildings need to
2 maintain the full frontage and define that sidewalk
3 at allowing for eyes on the street and also for
4 public scrutiny of entrances and exits for public
5 safety and private safety.

6 I don't think that it is necessarily an
7 absolute requirement, however, the aspect of this
8 building seems to replicate those that I don't think
9 are a very positive contributing force to the
10 character present and therefore I would state that
11 they would, in fact, impact the future development
12 of the neighborhood, based on the fabric that's
13 created, but also based on the adjacency of the
14 other buildings and how it would be impacted with
15 area ways that are set up for ingress and egress and
16 travel through to the alley. I think it would have,
17 in fact, an impact to the adjacent properties.

18 I think to reinforce the fact that
19 actually in 410.13 which this is coming in for
20 relief from, that one of the specific enumerated
21 aspects of 1410.13 is that all front entrances of a
22 group shall abut a street, a front yard or a front
23 court. I mean I think there's real intent there.
24 And I think 410.16 underscores that again what the
25 importance is. I don't think the regulations need

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1 to go further than to state that. I think it's a
2 high threshold to find.

3 I think you can mitigate that aspect and
4 have relief from it. In fact, we have seen that and
5 have seen successful projects to it. But this one I
6 don't think rises to that level. I think it was
7 well prepared by the ANC to articulate those
8 elements that 410.13(b) go directly to.

9 Others?

10 VICE-CHAIR MILLER: I would concur with
11 your characterization, basically, and really go to
12 the ANC which knows the neighborhood and which is
13 the voice of the community and what they say about
14 these examples is they represent basically poor
15 design, the examples that have been submitted to us
16 as how the case that's being considered would be in
17 character with other developments. The developments
18 that are being shown to us are the ones that are of
19 poor design and out of character with the rest of
20 the neighborhood. And to the extent also that they
21 may even be a little different, they're different in
22 that they represent a suburban townhouse home design
23 which is even more out of character with the
24 neighborhood.

25 So I think that this application does

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1 fail, for me at least, on 410.16 because I think it
2 would adversely impact the character of the
3 neighborhood.

4 On a secondary note, we also asked for
5 written comments from the Police Department and the
6 Fire Marshall and they are not in the record.

7 CHAIRPERSON GRIFFIS: Okay, others?

8 MEMBER MANN: I'd also agree. It's
9 difficulty, I think, sometimes to get at the
10 character issues of these developments and I do
11 think as Ms. Miller points out, it's very helpful to
12 have the input from the ANC on this particular case
13 because I think they do help us define or establish
14 what character is in regards to 410.16 in this
15 particular case.

16 CHAIRPERSON GRIFFIS: Well said.

17 Ms. Miller?

18 VICE-CHAIR MILLER: Well, I just -- you
19 know, I think we do look to the ANC for that and I
20 said that -- obviously, they're not the only voice.
21 If there were other voices in the community that
22 would come out and say no, it's wonderful. I think
23 we were talking in the last case that we also didn't
24 hear that they didn't like the design or anything.
25 We didn't hear a voice from the community saying

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1 they didn't like the design, so in this case we have
2 it pretty loud and clear.

3 CHAIRPERSON GRIFFIS: Good. I think
4 that's an important point. Of course, it isn't who
5 screams the loudest or what have you. I don't think
6 that's what you're saying. I think in the last case
7 if we were going to make that differential, the
8 massing was consistent. It was actually the
9 specific architecture that I was speaking of that
10 had some difficulty.

11 This is the -- this goes directly to the
12 character and in the hearing, I might say I think I
13 noted the exhibits that was the Applicant's exhibit,
14 actually, in the photographs, number 5, that showed
15 across the street and the eclectic nature of it.
16 There is not one particular character, but one
17 consistent character with this is a full block
18 attached building and if not attached, there is the
19 front entrance that would not comply with 410.13.
20 And that's what, for me, again and reinforces the
21 position of the high threshold of 410.13 as the
22 specific elements are said. And then it's almost
23 redundant to come back and say in 410.16 and do you
24 know what, make sure you comply with all those and
25 make sure you comply with any of the other general

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1 characteristics of the neighborhood, because a
2 project like this is to be given flexibility.
3 However, it is to be done so that it has a positive
4 impact of present character and the future character
5 in the neighborhood.

6 Very well. Other comments?

7 MEMBER ETHERLY: Mr. Chair?

8 CHAIRPERSON GRIFFIS: Yes.

9 MEMBER ETHERLY: I tend to be in
10 agreement with my colleagues on this particular
11 application, perhaps a little more so because of
12 some of the gaps in information that have already
13 been addressed in the wake or the aftermath of our
14 hearing on this issue.

15 What I'm perhaps just interested in
16 inviting a little further discussion on is the issue
17 of 410.13 as it relates to what would perhaps be --
18 I'm hesitating because to an extent I don't want to
19 invite a hypothetical discussion, but as we talk
20 about the articulation of the street frontage, along
21 Belmont, and I'm drawn back to the renderings that
22 were supplied by the Applicant at -- I am looking at
23 Exhibit No. 22 at Sheet A13. What I'm just curious
24 about is what conceivably would be or would have
25 been a better articulation of the front elevation or

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1 what's referred to as the south elevation here for
2 this particular project.

3 I understand the concern that we have a
4 majority of the units that are not fronting on
5 Belmont, but are going to be accessed from another
6 direction, but I'm just kind of curious as to what,
7 perhaps, would have been a better articulation for
8 the purposes of the street frontage?

9 CHAIRPERSON GRIFFIS: Does anyone want
10 to tackle that?

11 It's an excellent question, Mr. Etherly,
12 and I think it's twofold. In answering that, I
13 think, one, I'm very hesitant in any application in
14 redesigning from the Board. However, it goes
15 directly to the elements that we're talking about
16 and I think reliance on the ANC's comments and the
17 community comment.

18 One of the alternatives would have been
19 to make this a T-shaped building, but the front of
20 the building actually went from property line to
21 property line and then a court was set up that was
22 compliant or an L-shaped building that would take on
23 all of the property line, face on line wall and then
24 again connect from property line to property line.

25 What would have been required? It would

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1 have required a single entrance off of the street
2 into the units or perhaps there was -- maybe there
3 were differing ways to be able to do that, to secure
4 that. Maybe it was kind of the old, oftentimes you
5 see on Capitol Hill in the smaller houses, maybe it
6 was almost like an open gate extension that you walk
7 through into an open area. I think there was a lot
8 of different ways to mass this, having the same
9 density.

10 You know, it brings up an excellent
11 point that we need to hit on and the fact that the
12 ANC was not against the redevelopment. They were
13 very supportive of the redevelopment. There is no
14 question of the density as might be in other cases
15 or the number of units. There was some question, of
16 course, of five-bedroom townhouses, who is in what
17 applicability or what is the market for that?
18 That's not our issue.

19 But it all had to do with the
20 requirements under 410, as I see it, and that what
21 is the impact on the character. If you start
22 sending this, a totally detached structure on this
23 lot, one, it raises levels of creating potential
24 adverse impacts to the surrounding area, the safety
25 and such. And the other is just how it would in-

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1 fill for the rest of the block.

2 MEMBER ETHERLY: And I appreciate that
3 that kind of clarification because I will agree with
4 you that the submittal at Exhibit 31 definitely was
5 not a helpful one in that those pictures didn't
6 perhaps endear this design to me in any greater way.
7 But as we are also faced with the issue of bringing
8 long fallow lots and otherwise nonproductive
9 properties back into use, we're going to continue to
10 encounter this argument about how do you best do
11 that in a manner that allows the return that a
12 developer seeks. Obviously, that's not part of the
13 discussion here and I'm not suggesting it should be.

14 CHAIRPERSON GRIFFIS: That's a good
15 point to bring up. We're not looking to limit the
16 density or the maximization of the lots themselves.
17 You know what probably would have been more
18 appropriate then for us to ask is that find a
19 similar and find us different in order to have a
20 comparison. Because, I mean, we've seen enough in
21 this particular neighborhood and in other
22 neighborhoods that show good in-fill and the
23 possibility of doing it. And perhaps there are
24 others that are out there that didn't come forth,
25 that were actually matter of right that I think

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1 could be massed out fairly well.

2 MEMBER ETHERLY: Okay, thank you, Mr.
3 Chair.

4 CHAIRPERSON GRIFFIS: Certainly.
5 Others.

6 VICE-CHAIR MILLER: I just want to
7 comment on the regulations because I'm looking at
8 410.14 which refers back to 410.13 and it says if
9 you can't meet the requirements in 410.13, which
10 they can't because they don't have front entrances
11 abutting a street, then you have to be sure to
12 comply with 410.15 and 410.16. They seem to become
13 even more important and 410.15 deals with safety and
14 the Applicant fail to make the case that access
15 would be safe, that they didn't get the report from
16 the Police Department. They didn't get the report
17 from the Fire Marshall, and then we have very strong
18 concerns about 410.16. So I just don't think it
19 makes these regulations.

20 CHAIRPERSON GRIFFIS: And I think
21 without the ability to get the reports or the
22 references from the other agencies, one could have
23 made the case of how one would look to addressing
24 those issues that were brought up. And there was
25 some addressed to those issues. One is the lighting

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1 on each of the entrances. However, what I'm hearing
2 from the Board is that there could have been more
3 persuasive evidence or testimony provided in that
4 respect.

5 Lastly, we should probably just address
6 the Office of Planning's Report which is
7 recommending approval of this and looking at 410.13
8 and 410.16. I think we've acknowledged that .13 --
9 if we go to .16 -- I find it -- the Office of
10 Planning's Reports are always excellent in their
11 analysis and review, but I find 410.16 lacking in
12 this recommendation.

13 It says that -- maybe it's not lacking,
14 but the way they viewed complying with .16, the
15 character of future development, was the fact that
16 this is a multi-family residential building and that
17 conforms to the character typical of the R-5-A or R-
18 5-B zoned districts. However, I think as Ms.
19 Miller's now said again, 410.16 has more requirement
20 in it, especially as you surpass 410.13 and look at
21 those specific issues. It is not just are you
22 looking at the appropriate density for the R-5, but
23 rather it goes into the specifics as we've been into
24 the massing and the access and utilization of all of
25 the units.

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1 And therefore, I don't find it a
2 persuasive analysis of Office of Planning in both
3 respects to the .13, but also in terms of .16.

4 VICE-CHAIR MILLER: I would note also
5 that OP says in their report that -- they're
6 assuming that the plans will be reviewed by the D.C.
7 Fire Marshall for fire and safety concerns prior to
8 the Board hearing because based on Applicant's
9 representation, so it wasn't done before the Board
10 hearing and it hasn't been done before our decision.

11 CHAIRPERSON GRIFFIS: Right, I would
12 caution us, because I think we're well aware that it
13 would be required to be built, fire and life safety
14 requirements by the building code and that's not
15 something that we're trying to measure. But to take
16 up on the specifics, which I hear the Board talking
17 about, we had testimony about this alley and the
18 other buildings around and the activity and the
19 concern of having the access from the alley to the
20 street, the noncontrol of that and what that would
21 do in terms of the impact on the rest of the block
22 and to the adjacent properties and the future
23 development. That's where it arose. And so I think
24 that having -- I think there's enough evidence in
25 the record, even without those agency referrals.

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1 Anything else then?

2 (No response.)

3 Is there a motion then?

4 MEMBER MANN: Yes, I make a motion that
5 we approve Application 17417, 1425 Belmont Street
6 for the special exception under subsection -- let's
7 see. Am I reading it correct, the summary here? .

8 CHAIRPERSON GRIFFIS: I'm sorry, your
9 motion is in the affirmative to approve 17417?

10 MEMBER MANN: No, I'm looking at the
11 wrong thing, so I've misstated my motion.

12 CHAIRPERSON GRIFFIS: Okay.

13 (Laughter.)

14 MEMBER MANN: I'm going to withdraw that
15 and start over again.

16 MEMBER ETHERLY: Second, Mr. Chair.

17 CHAIRPERSON GRIFFIS: Okay.

18 MEMBER MANN: Would you like me to
19 restate the motion correctly?

20 CHAIRPERSON GRIFFIS: That would be
21 good.

22 MEMBER MANN: I'm going to move that we
23 deny Application 17417 of 1425 Belmont Street,
24 pursuant to 3104 for the special exception to allow
25 a group of dwellings that have frontage abutting the

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1 side yard, etcetera.

2 CHAIRPERSON GRIFFIS: Excellent.

3 MEMBER ETHERLY: Second, Mr. Chair.

4 CHAIRPERSON GRIFFIS: Good, we have a
5 motion before us and it's been seconded. Mr. Mann,
6 I appreciate that. It is under subsection 410.13
7 which also invokes the 410.16 in the requirements
8 and I appreciate that being set up.

9 Is there further deliberation or
10 comments?

11 (No response.)

12 Very well. I think we have gone through
13 all of the elements of the application that need to
14 be addressed at this time in full deliberation and
15 therefore I would ask for all those in favor of the
16 motion signify by saying aye.

17 (Chorus of ayes.)

18 Opposed?

19 (No response.)

20 Abstaining?

21 (No response.)

22 Very well. Mr. Moy?

23 MR. MOY: Yes, sir. Staff would record
24 the vote as 4 to 0 to 0. This is on the motion of
25 Mr. Mann to deny the application; seconded by Mr.

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1 Etherly. Also in support of the motion, Mr. Griffis
2 and Ms. Miller. We have -- as a resulting vote,
3 actually 4 to 0 to 1 because Carol Mitten is
4 participating, but not present and not voting.

5 CHAIRPERSON GRIFFIS: Thank you, Mr.
6 Moy, appreciate that.

7 Why don't we move directly ahead then to
8 the next application?

9 MR. MOY: This will be Application No.
10 17404 of Wilbur Mondie, pursuant to 11 DCMR 3103.2,
11 for a variance from the lot width and lot area
12 requirements under section 401.3, to allow the
13 construction of four flats (two-family dwellings) in
14 the R-4 District at premises 410, 412, 414, and 416
15 Richardson Place, N.W. That's in Square 507, Lots
16 810, 812, 8414 and 816.

17 Staff would note here that the Applicant
18 has amended his application to request relief under
19 Section 410 and has revised plans to construct a
20 single building of four single-family dwelling units
21 on a consolidated lot, to include Lot 811 to Lots
22 812, 813, 814 and 815.

23 On January 24, 2006, the Board completed
24 public testimony on the application and scheduled
25 its decision on February 7, 2006. The Board

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1 requested a number of post-hearing documents. With
2 respect to filings, the Board has received a filing
3 from the Applicant, dated January 31, 2006, in
4 response to the Board's request for additional
5 information. That is identified in your case folder
6 as Exhibit 39.

7 Secondly, the Board has also received,
8 as requested, a filing from Mr. LaCour on behalf of
9 Richardson Place Focus Group. That's dated February
10 1, 2006. This document is identified as Exhibit 40.
11 Following, there is a series of filings from Mr.
12 LaCour that segue from his earlier filing,
13 identified as Exhibit 38 which is a letter dated
14 January 27, 2006 where he requested the Board
15 postpone a decision in the case.

16 The following filings, Staff would just
17 identify as Exhibit Nos. 34, 35 and 37. Staff notes
18 that this original filing which is Exhibit 38 is a
19 preliminary matter.

20 And that concludes the Staff's briefing,
21 Mr. Chairman.

22 CHAIRPERSON GRIFFIS: Good. Thank you
23 very much, Mr. Moy. Mr. Moy, I appreciate you going
24 through all of the -- the summation of the record,
25 but also those additional submissions that we do

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1 have into the record, some which, I must say, were
2 quite complexing in their statements. And I don't
3 think we'll delve too far into some of those, but
4 let's go directly into the heart and fact of the
5 case in this.

6 As we are well aware, there was some
7 changing of the application and what we were looking
8 at. However, I think we're fairly definitive on
9 what is being proposed in terms of the development,
10 but also in terms of the relief sought.

11 Some of the pieces that I think were of
12 concern or confusion to the Board is whether this is
13 properly before us for relief under 410. I want to
14 speak essentially to that first, but then I think we
15 can continue on in deliberation on this case and the
16 other elements.

17 Ms. Mitten just brought up that perhaps
18 we take on the first request for postponement of
19 this decision until a text amendment is taken up by
20 the Zoning Commission. And forgive me for breezing
21 by that because I think this is going to be very
22 quick to say that I would not support a postponement
23 of the decision on the principal fact that this
24 application is vested under our current regulations.
25 There would be nothing that would require it, unless

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1 the Zoning Commission did not allow previously
2 applied for applications to run, meaning they'd have
3 to step back in a history if they were to take up
4 and change the regulations and say that all those
5 that have come before this need to now change.

6 I don't see that happening in this
7 specific case, based on that aspect. Nor do I
8 understand when that would actually come to the
9 Zoning Commission. Well, there it is.

10 Others have comment on that?

11 VICE-CHAIR MILLER: Well, I would just
12 say that I'm not in favor of postponing it either
13 because that wouldn't affect my decision in this
14 case.

15 CHAIRPERSON GRIFFIS: Okay, very well.
16 Any further discussion on that then? On any other
17 elements of the case?

18 Moving ahead then and looking at 410 and
19 again in the same section that we're very familiar
20 with in today's deliberation, but also in previous
21 deliberations. I think we have seen it in numerous
22 cases. There was some concern and confusion of
23 whether this was applicable and I dare say that I do
24 not believe the intend of 410 was written to
25 undertake such an application. That being numerous

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1 lots that would need to be subdivided into a single
2 lot and then our review would then be re-subdivided
3 out. I think the intent -- whether it be in the R-4
4 or the R-5, I will not reach at this point. But the
5 intent was to look at providing a flexibility in
6 larger lots that would be able to come into the
7 density and dimension requirements of the overall
8 zone that was put in and I don't think it's
9 applicable in this case.

10 However, if it was to proceed in this
11 case, to go through the application of that and the
12 relief sought under 410 as the Applicant was given
13 the opportunity to address or to further change, to
14 address this, I think that, in effect, will fail on
15 several other levels under 410 requirements and let
16 me set the stage at that point and I'll take further
17 deliberation from others or I will take it back up.

18 VICE-CHAIR MILLER: That's why I really,
19 I said that the text amendment doesn't affect my
20 decision because I think that this provision, in
21 general, isn't intended to apply to more than one
22 lot which we have in this case. So I concur with
23 you on that, if I understood you correctly and also
24 I think that it doesn't meet the lot occupancy
25 requirements. I think that if -- we discussed this

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1 -- or we explored this at length at the hearing,
2 which lot occupancy standard applied and I think
3 it's the one that applies to all other structures,
4 having to be a certain percentage and it didn't meet
5 that.

6 CHAIRPERSON GRIFFIS: Interesting. No,
7 I understand your point. I'm not sure I agree with
8 it, but others?

9 (No response.)

10 I think I agree with perhaps the
11 outcome, but I don't agree with the specifics and
12 that is under 1410.01, this section allows for our
13 review that several principal structures be viewed
14 as a single building. It says specifically for the
15 purposes of this title. We're creating essentially,
16 for 410, we're creating a theoretical building.
17 It's a theoretical building and it's interesting
18 that then that we would go back to then looking at a
19 single building what other requirements -- I'm not
20 sure I -- I'm not sure that I am persuaded that that
21 is what you're supposed to do in 410, but rather,
22 look at the principle structure and then all of the
23 parameters that are limitations or requirements on
24 that, principal structure. Those should be complied
25 with.

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1 What it comes down to is on a larger
2 site, if you are trying to do all those at once, all
3 these row dwellings on a single site, it would be
4 precluded with our regulations because they would be
5 principal structures on a single lot and that's
6 where 410 would then take that up, take that
7 theoretical building under its -- under 410, and
8 then prescribe certain things directly to it which
9 is where we get to.

10 It's interesting that you've fallen on
11 the density which is one of the area requirements
12 and which I think is interesting.

13 I go to some of the other area
14 requirements in it and I think that this again,
15 starts -- well, that this fails in terms of 410.16
16 and that is if you look at the surrounding area and
17 there were numerous questions from the parties in
18 opposition and also from the Board of that is how is
19 this within character to the surrounding area and
20 this is even more a concern of this specific area
21 because of how this block is serviced through the
22 alleys and such and we have some similarities in
23 materials and I don't disagree there. We have
24 similarities in the frontage on the property line,
25 but the similarities there end. And I think that

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1 the impact is not necessarily catastrophic because
2 it doesn't match exactly what's happening in the
3 adjacencies. But rather, I think it was
4 persuasively shown that if the size of this and the
5 density of this is allowed to proceed that it would
6 be detrimental to the surrounding area, based on all
7 of the specific elements which I can get into if
8 need be, that were brought to the Board's attention
9 in part of the record.

10 Those are the ones that impact the
11 present character and the future development of the
12 neighborhood.

13 Ms. Miller?

14 VICE-CHAIR MILLER: Okay, I want to be
15 more specific because I have located my source, at
16 least. I'm looking at page 4 of Office of Planning
17 report where they talk about lot occupancy and I'm
18 referring to the lot occupancy for the structure
19 that's going to be built on all the lots as a whole.
20 Okay?

21 CHAIRPERSON GRIFFIS: The theoretical
22 one building.

23 VICE-CHAIR MILLER: The theoretical one
24 building. And what is it? It has to comply with
25 lot occupancy requirements in an R-4 zone and so we

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1 were looking at well, what is it? And so my
2 conclusion is it falls in the category of all other
3 structures which has the maximum percentage of lot
4 occupancy at 40 percent and the lot occupancy of
5 this building is supposed to be 59.4 percent.

6 CHAIRPERSON GRIFFIS: But if you built
7 one of them at a time, what would the lot occupancy
8 be?

9 VICE-CHAIR MILLER: I don't know. We're
10 looking at it as a whole.

11 CHAIRPERSON GRIFFIS: Under 410.

12 VICE-CHAIR MILLER: Under 410.

13 CHAIRPERSON GRIFFIS: So 410 creates
14 this theoretical building.

15 VICE-CHAIR MILLER: Right.

16 CHAIRPERSON GRIFFIS: Which is a
17 combination of single principal structures. For me,
18 and my reading of 410, it's another animal. It
19 isn't all of the structures. It doesn't fall into
20 those characterizations. It did in its principal
21 nature and then as you combine those, in order to
22 combine them to develop it, all at once and having
23 its frontage to the street, in order to do that,
24 then we have additional requirements in 410.

25 VICE-CHAIR MILLER: It has to be

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1 something and it's not a row dwelling.

2 CHAIRPERSON GRIFFIS: It is.

3 VICE-CHAIR MILLER: It is?

4 CHAIRPERSON GRIFFIS: Yes. Several row
5 dwellings.

6 VICE-CHAIR MILLER: The whole thing is a
7 row dwelling?

8 CHAIRPERSON GRIFFIS: No, there are
9 several row dwellings that are combined into a
10 single building in order to construct it on a single
11 lot of record under 410.

12 VICE-CHAIR MILLER: It may be comprised
13 of single row dwellings, but it becomes something
14 other than that when they're put together. That's
15 why I think it falls in the category of all other
16 structures.

17 CHAIRPERSON GRIFFIS: Right, but see, I
18 don't think it does because 410 created that
19 theoretical building -- that ability to have a
20 theoretical single building. And the requirements
21 in order for you to look at it as a single building,
22 those requirements are then stated under 410. 410
23 doesn't say okay, now that you have a single
24 structure, go back and recalculate all those other
25 aspects that are required for whatever you're making

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1 here.

2 No. 410 says for our purposes on a
3 single lot of record, this will be deemed as a
4 single building, but in order for that to happen,
5 all the buildings in the group of buildings have to
6 be constructed simultaneously. All the front
7 entrances of the group have to address the street, a
8 front yard or a front court, right? No rear or
9 service entrance shall abut a street.

10 It sets out the parameters at which to
11 look at this theoretical one building.

12 I think -- and this isn't perhaps the
13 case to make this definitive or to make it clear,
14 because this application doesn't fit the parameters
15 of which I think 410 was anticipating, if it is even
16 specifically able to come under 410. I mean 410, if
17 you look at it, to make it maybe an easier example,
18 look at a several acre lot that you're putting roads
19 into, streets and it's all private property and
20 those aren't public rights of way. They are ingress
21 and egress out of a public site. And you start
22 putting houses on those pieces, well, that's what
23 410 would allow you to do, to look at all those
24 together and say -- now would you look at each of
25 those as -- if it was a hundred buildings, is that a

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1 multi-family building for other requirements, for
2 parking for, for anything else? I don't think so.
3 We wouldn't invoke other aspects, I don't think of
4 the regulations.

5 MEMBER ETHERLY: So then under the
6 discussion that Ms. Miller was just suggesting, what
7 would be an "all other structures" scenario?

8 CHAIRPERSON GRIFFIS: Oh, in an R-4?

9 MEMBER ETHERLY: Yes.

10 CHAIRPERSON GRIFFIS: Not under 410?

11 MEMBER ETHERLY: Yes.

12 CHAIRPERSON GRIFFIS: Oh yeah. All
13 other structures. That's simple. A conversion of
14 an existing building that had a lot that allowed
15 more than two units on it. So if you had an
16 existing apartment building and you wanted to add on
17 to it or you were reconfiguring it, all other
18 structures would be in R-4 and others would be -- I
19 don't know. That's the first that comes to mind.

20 VICE-CHAIR MILLER: Well, I would
21 suggest we may not even have to reach this question,
22 if we're unsure about it. If we agree that this
23 provision applies to just one lot as opposed to more
24 than one lot or if we want to go on and address the
25 substance of the application.

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1 CHAIRPERSON GRIFFIS: Good, let's do.
2 Did you want to address further? Are there any
3 others that want to talk further on the substantive
4 issues of the case?
5 While you're gathering your thoughts and
6 your notes on that which I know you will be, I want
7 to address one thing that's a bit of a digression
8 into the specifics, but Exhibit 39 was submitted by
9 the Applicant and a lot of this stuff I found kind
10 of distressing to be looking at this kind of
11 bantering back and forth and the accusatory nature,
12 some of this stuff I actually didn't even understand
13 why we were getting it. But one specific thing I
14 did want to make clear for the record is the
15 Applicant indicated that documentation of ownership
16 of lots and -- but why does Karl La Cour want to
17 know, question, it is customary for the BZA to
18 inquire if a developer owns the land when a
19 developer submits an application -- or rather,
20 that's a question. Is it customary? And the answer
21 to that is no. It's not customary for the Board
22 inquire. It's actually a requirement of an
23 application to be before us that the owner is --
24 brings the application. So it goes well beyond
25 whether we want it or not want or whether it's

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1 somebody who is irate about the application bringing
2 this up, it's actually a very serious point and
3 first threshold element of having a full and
4 complete application to come forth.

5 In fact, we've had numerous applications or
6 not numerous, but several, that have been removed
7 from our docket based on the fact that proper
8 ownership was not evidenced before us.

9 Then going to Exhibit 40, which is from
10 the party in opposition, the focus group. I just
11 take a note and maybe I shouldn't, but I have to
12 address it. There's some bantering back and forth
13 about how the Applicant's attorney was a former BZA
14 chair and they certainly hope they don't get special
15 treatment. I'm not really sure what that means at
16 all, nor do I think it had any impact or relevancy
17 to what we were looking at here. And I think the
18 point of bringing both of those up is to show that
19 what we look at and always strive to find or require
20 is the substantive facts that go directly to the
21 relief that's required and therefore we're able to
22 properly deliberate a lot of these other aspects, I
23 think, are frankly, perhaps a waste of time to
24 actually put together and submit into the record.

25 Now that isn't to disregard both sides,

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1 the Applicant's and the party in opposition in terms
2 of their other substantive aspects in addressing the
3 application and I would note that there is a good
4 legal analysis, by the party in opposition, one
5 addressing 410.06 and other aspects of 410, the
6 safety, the distance, the fire hydrants, all of
7 that, I think, is appropriate to look at and also in
8 terms of the character and the impact of the size
9 and the density of what is being proposed.

10 That being said, I'll let others
11 comment.

12 MEMBER MANN: Mr. Chairman?

13 CHAIRPERSON GRIFFIS: Yes.

14 MEMBER MANN: If I could go back for
15 just one moment to an item that you addressed a
16 moment ago and that was regarding those ownership
17 issues.

18 CHAIRPERSON GRIFFIS: Yes.

19 MEMBER MANN: Based on the evidence that
20 was submitted in Exhibits 39 or 40, is the Chair
21 satisfied that the ownership issue has been
22 resolved?

23 CHAIRPERSON GRIFFIS: No, absolutely
24 not.

25 MEMBER MANN: Okay.

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1 CHAIRPERSON GRIFFIS: I mean I think it
2 could have easily been resolved and I don't think
3 the owner, the actual owner of each of the lots
4 needs to be present or bringing the application, but
5 some allocation of that needs to be brought to the
6 Applicant.

7 So, for instance, if there was a letter
8 of intent to purchase a property, well, that letter
9 of intent could also be joined with the current
10 owner saying that they're granting the authority to
11 be represented by the potential future purchaser.

12 (Pause.)

13 Anything further?

14 VICE-CHAIR MILLER: Yes. I think there
15 was a -- there is a question of ownership with
16 respect to one of the lots and it looks like Exhibit
17 39 was submitted, in part, to address that and in
18 that package is a letter of understanding and it's
19 marked Exhibit 5 and I'm just taking a look at it.
20 I'm not sure it really reaches our requirements to
21 be authorized to participate in these proceedings on
22 the owner's behalf.

23 CHAIRPERSON GRIFFIS: Okay, what else?

24 (Pause.)

25 Okay, a couple of other things. The

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1 party in opposition, they talked a lot about the
2 precedent, the precedential value of this and I
3 don't think that it's persuasive, their argument
4 that if we were to approve it, that it would have
5 some precedential effect to further 410 applications
6 or further development in this area on Richardson
7 Place or otherwise. So I think that actually was a
8 failing argument.

9 In terms of the Applicant's submission,
10 it is noted the Board had asked whether all the
11 parking behind each of the units in the potential or
12 proposed subdivision met the dimensional
13 requirements of 9 by 19. I would note that in
14 Exhibit 39 submitted in our exhibit number and also
15 in the written statement, it indicates that they
16 have angled the parking off of the 10-foot public
17 alley and allowed for 12 feet, 6 inches on the
18 entrance to those. I don't know -- and I think
19 that's good address, however, I'm still wondering
20 whether it meets the dimensional requirements
21 because it bottlenecks on that last one and not that
22 this is a scaled drawing, but actually last night I
23 scaled off a 12'6" and looked and I can't tell, but
24 it certainly diminishes the low 12'6". It may make
25 it. It may not. I don't think that's the most

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1 critical piece of the application, but it does rise
2 to the additional questions that I have of all the
3 detail of what is being proposed.

4 Others? Anything else?

5 VICE-CHAIR MILLER: Well, I guess with
6 respect to the substance of it is the question of
7 whether it's in character with the neighborhood and
8 would impair the intent and purpose of the zone
9 plan.

10 I would tend to concur with Office of
11 Planning on this one, that it's not in character and
12 impairs the intent and purpose of the zone plan. It
13 does appear to be more like an apartment house.

14 CHAIRPERSON GRIFFIS: Okay. Others? I
15 think it fails in terms of maintaining the
16 character, not because it's an apartment house. It
17 doesn't read as an apartment house. It has four
18 front doors. It has stairs. But what we end up
19 having is a cellar and three levels above and the
20 Applicant's testimony in the record was that he was
21 making twins of the others. And it was good and
22 persuasive testimony, the fact that the materiality
23 was similar, some of the fenestration pattern or the
24 articulation, although we don't have a lot of the
25 detail on that. But beyond that, although there are

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1 some similar that have the height, beyond that, I
2 don't think it makes it in terms of the character
3 because one, the density that is substantially
4 increased in comparison to the others and the number
5 of levels, not that the cellar is a story, but the
6 story and level seem to be totally out of the
7 context of what is surrounding.

8 And context isn't just find an example
9 to this specific that supports, but context is the
10 overall and I think that was shown to be a smaller
11 size in nature and utilization in the Richardson
12 Place and in the square itself.

13 Okay. Others?

14 (Pause.)

15 Anything else on that then? Is there a
16 motion?

17 (Pause.)

18 MEMBER MANN: I'll make a motion that we
19 deny Application 17404 of Wilbur Mondie for variance
20 from lot width and lot area requirements under
21 section 401.3, for 410, 412, 414, 416 Richardson
22 Place.

23 CHAIRPERSON GRIFFIS: Excellent. I'll
24 second the motion.

25 (Applicant withdraws application.)

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1 CHAIRPERSON GRIFFIS:

2 Indeed. We appreciate that and I do not
3 disagree that you are able to withdraw at any time
4 and I believe that we can accept that withdrawal of
5 the application and therefore would move to -- the
6 motion that's on the table at this point. Unless
7 our attorney sees different, Ms. Monroe?

8 MS. MONROE: I'm somewhat at a loss,
9 although I feel there's been a vote yet. We don't
10 have a definitive vote. I suppose it's simply
11 withdrawn. I'm going to look at the regulations.

12 CHAIRPERSON GRIFFIS: I think you'll
13 find when you review those regulations at any time
14 in the processing of this, the Applicant would be
15 able to withdraw the application and therefore
16 there's no official action required by the Board at
17 this point as we've heard that Mrs. Mondie has
18 withdrawn his Application 17404.

19 So thank you very much.

20 Mr. Moy, is there anything else for the
21 Board's attention in the morning session and meeting
22 at this time?

23 MR. MOY: No sir, that concludes the
24 meeting session.

25 CHAIRPERSON GRIFFIS: Excellent, very

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1 well. Not noting any other additional business for
2 the Board this morning, let's adjourn the meeting.

3 (Whereupon, at 12:09 p.m., the meeting
4 was concluded.)
5

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