

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

+ + + + +

BOARD OF ZONING ADJUSTMENT

+ + + + +

PUBLIC HEARING

+ + + + +

TUESDAY,

NOVEMBER 15, 2005

+ + + + +

The Public Hearing convened in Room 220 South, 441 4th Street, N.W., Washington, D.C. 20001, pursuant to notice at 10:25 a.m., Geoffrey H. Griffis, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

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

ZONING COMMISSION MEMBERS PRESENT:

ANTHONY HOOD	Commissioner
KEVIN HILDEBRAND	Commissioner (AOC)

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY	Secretary (BZA)
BEVERLEY BAILEY	Zoning Specialist
TRACY ROSE	Zoning Specialist

D.C. OFFICE OF THE ATTORNEY GENERAL:

SHERRY GLAZER, ESQ.
LORI MONROE, ESQ.

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OFFICE OF PLANNING STAFF PRESENT:

MAXINE BROWN-ROBERTS
JOEL LAWSON
TRAVIS PARKER

This transcript constitutes the minutes
from the Public Hearing held on November 15, 2005.

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

10:24 a.m.

CHAIRPERSON GRIFFIS: I call to order our Public Hearing of the 15th of November 2005. My name is Geoff Griffis. I am Chairperson. Joining me today, of course, is the Vice Chair, Ms. Miller, and Mr. Etherly. Representing the National Capital Planning Commission with us is Mr. Mann and representing the Zoning Commission we are anticipating a commissioner to join us for our morning session and I will greet him when he comes.

UNIDENTIFIED SPEAKER: He's on the way.

CHAIRPERSON GRIFFIS: Excellent. Mr. Hood is anticipated and he will be here shortly.

Copies of today's hearing agenda are available for you. They are located -- there he is. A very good morning to you, Mr. Hood.

COMMISSIONER HOOD: Good morning.

CHAIRPERSON GRIFFIS: To the table where you entered into the hearing. You can pick it up and see where you are on the chronology of our session. I appreciate everyone's patience with us getting through our Special Public Meeting and we will pick up the speed and get through the entire schedule this morning with adequate time for everyone to give their

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1 presentations.

2 Let me make a quick note, first of all, to
3 again turn off all cell phones and beepers, so that we
4 don't have a disruption of those that are providing
5 testimony before the Board. It should be noted that
6 the Court Reporter, who is sitting to my right, is
7 creating the official transcript. Therefore,
8 attendant to that, there are several things you should
9 be aware of.

10 First of all, I would have everyone fill
11 out two witness cards prior to coming forward.
12 Witness cards are available for you at the table and
13 also the table in front of us where you will provide
14 testimony. Give those to the Court Reporter prior to
15 coming forward. When you are ready to address the
16 Board, you will need to speak into a microphone at all
17 times. I would ask that you state your name and
18 address for the record prior to making your initial
19 statements and you only need to do that once.

20 Let me just note that we are moving back
21 into this hearing room after extensive renovations.
22 Those of you that have been here before may note a few
23 changes. Those of you that haven't may be impressed
24 by the changes or none of the above. Be it as it may,
25 let me just make a very important point that normally

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1 we are transmitted live via our website. We are not
2 being transmitted today, but that doesn't mean
3 everything that you say isn't being recorded. So be
4 careful.

5 Very well. Let me say, first of all, for
6 special exceptions and variances the order of
7 procedure is as follows: We will hear from the
8 applicants, their case presentation, all their
9 witnesses and any documentation that needs to be
10 presented. Secondly, we will hear Government reports
11 attendant to the application. Third, we will hear
12 from the Advisory Neighborhood Commission within which
13 the property is located.

14 Fourth, we will have an opportunity for
15 testimony from persons that are in support of the
16 application or parties, if those are established.
17 Fifth would be persons in opposition. And sixth, we
18 will give an opportunity again to the applicant for
19 any closing remarks.

20 I am going to breeze through to pick up
21 some time on all of my openings, but it's very
22 important to understand that cross examination is
23 permitted by the applicant and parties within a case.
24 The ANC within which the property is located is
25 automatically a party in the case and, therefore, is

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1 able to conduct cross examination.

2 Nothing prohibits this Board from limiting
3 the direction, time and volume of cross examination.
4 I won't go into cite our regulations on that, but will
5 give direction if need be as we get into any cross
6 examination that might happen.

7 The Sunshine Act requires that this Board
8 conduct its hearings in the open and before the
9 public. This Board does enter into Executive Session,
10 both during and after hearings, on a case. That is
11 for purposes of reviewing the record on cases. It is
12 also for purposes of deliberating on cases. Our
13 Executive Sessions are in accordance with our rules,
14 regulations and procedures. They are also in
15 accordance with the Sunshine Act.

16 Decision of the Board in contested cases
17 must be based exclusively on the record that is
18 created before us today. All cases before this Board
19 in special exception and variances are set forth as
20 contested cases. Therefore, I ask that everyone
21 present today not engage Board Members in private
22 conversation today in the hearing room or around the
23 hearing room so we do not give the appearance of
24 receiving additional information outside of the
25 record.

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1 Let me ask, well, first, let me say again
2 a very good morning to Ms. Bailey, on my far left.
3 And Ms. Bailey with the Office of Zoning. I would ask
4 that all those people that are thinking of testifying
5 or will provide testimony before the Board, if you
6 would, please, stand and give your attention to Ms.
7 Bailey? Ms. Bailey is going to swear you in.

8 MS. BAILEY: Please, raise your right
9 hand.

10 (Whereupon, the witnesses were sworn.)

11 CHAIRPERSON GRIFFIS: Excellent. Thank
12 you all very much. With that, let's proceed to any
13 preliminary matters. Preliminary matters are those
14 which relate to whether a case should be heard today,
15 requests for postponements, withdrawals, whether
16 proper and adequate notice has been provided. These
17 are elements of preliminary matters. If you are not
18 prepared to go forward with a case that is on our
19 morning agenda or you believe a case should not
20 proceed that is on our morning agenda, I would ask
21 that you bring that to our attention right now.

22 Usually, I say come forward and have a
23 seat at the table as an indication of having a
24 preliminary matter, but all the seats are filled. So
25 with that, of course, we'll give an opportunity for

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1 anyone that's here with any other cases if they can
2 just raise their hand or give an indication of a
3 preliminary matter. Not seeing any indication of
4 that, why don't we call the first case of the morning,
5 Ms. Bailey?

6 MS. BAILEY: Mr. Chairman, and to
7 everyone, good morning. The first case is Application
8 No. 17388 of Taylor Property Development LLC, pursuant
9 to 11 DCMR 3103.2, for a variance from the
10 nonconforming structure provisions under subsection
11 2001.3, to permit the renovation and addition to an
12 existing apartment house, not meeting the lot
13 occupancy requirements of section 403 and open court
14 requirements of section 406. The property is zoned R-
15 4. It is located at 1360 Kenyon Street, N.W. It is
16 also known as Square 2848, Lot 44.

17 And, Mr. Chairman, if I can add that the
18 project was and then did and they found in the case
19 that the need for variance relief from the open court
20 requirement is no longer necessary for this
21 application, sir.

22 CHAIRPERSON GRIFFIS: Excellent. Thank
23 you very much. That would mean then, of course, we're
24 just looking at a variance from 2001.3. Is that
25 correct?

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1 MS. BAILEY: Based on what is in the file,
2 yes, Mr. Chairman.

3 CHAIRPERSON GRIFFIS: Okay.

4 MS. BAILEY: I don't know if that is
5 changing today.

6 CHAIRPERSON GRIFFIS: Okay. I will,
7 obviously, ask the applicant to address that and why
8 don't we do that? A very good morning to you.

9 MR. CHRISTOPHER COLLINS: Good morning,
10 Mr. Chairman and Members of the Board. My name is
11 Chris Collins with the Law Firm of Holland and Knight.
12 Seated to my left is Kyrus Freeman, my colleague from
13 Holland and Knight. Seated to my right is Robert
14 Taylor, representing the applicant, Taylor Property.
15 To my far right is Mr. Ronnie McGhee, a principal with
16 R. McGhee and Associates, an architecture firm here in
17 the District of Columbia. Also with us today is Mr.
18 Hans Wyeller. Mr. Wyeller is a real estate economics
19 witness, who will be giving testimony today. And
20 finally, Mr. Lindsley Williams will appear today as a
21 witness in rebuttal to the Office of Planning report.

22 This is an application for variance relief
23 from section 2001.3 of the Zoning Regulations for
24 additions to a nonconforming apartment house structure
25 in the R-4 Zone. The building exceeds the permitted

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1 R-4 lot occupancy of 40 percent. The building is at
2 57.96 percent lot occupancy and that includes the area
3 of the court on the side of the -- the open court on
4 the side of the building that is less than 5 feet in
5 width.

6 CHAIRPERSON GRIFFIS: It's included in the
7 lot occupancy calculation?

8 MR. CHRISTOPHER COLLINS: Yes, by
9 definition it's included in percentage of lot
10 occupancy. It's included in the building area,
11 therefore, it is included in the percentage of lot
12 occupancy.

13 CHAIRPERSON GRIFFIS: Excellent. And the
14 40 percent, of course, is based on the fact that this
15 isn't a flat, but rather an apartment building, all
16 under one structure.

17 MR. CHRISTOPHER COLLINS: All under --
18 correct.

19 CHAIRPERSON GRIFFIS: Okay.

20 MR. CHRISTOPHER COLLINS: That's correct.
21 The building now contains 9 units, 9 apartment units
22 ranging in size from 217 square feet to 589 square
23 feet in size. It was most recently rented on a weekly
24 basis as a transient use. To renovate the building in
25 order to meet the market demand for apartments, there

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1 is a need to add a total of 1,244 square feet of
2 building area on the second, third and fourth floors
3 and the architect will describe that in more detail.

4 And that will result in a decrease in the
5 number of units here from 9 units to 5 units. It will
6 not increase the lot occupancy over the current lot
7 occupancy. The building is a four story building. It
8 measures about 44 feet in height. It exceeds the 40
9 foot height limitation as well. This addition will
10 not increase the height or number of stories.

11 It will, however, extend the height to the
12 back. That same height will not go above the current
13 height or number of stories, but it will extend that
14 nonconforming aspect, that 4 feet additional height
15 and that additional story toward the back of the
16 building. So, therefore, we do need variance relief
17 from section 2001.3(a) for the lot occupancy, because
18 any addition to the building would require that
19 variance, and (b)(1) and (2) for the addition on the
20 fourth floor of the building.

21 Since the time of the filing, as Ms.
22 Bailey pointed out, there has been a change to the
23 plans to eliminate that nonconforming open court on
24 the side of the building by covering it at the highest
25 level. It is not a required open court. It is a non-

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1 required open court. It is included in the lot
2 occupancy. And, therefore, by covering it, it no
3 longer becomes an open court and, therefore, there is
4 no need for a variance to extend that open court under
5 section 2001.3(b)(1) and (2).

6 The site is just east of the Columbia
7 Heights redevelopment area along 14th Street. Kenyon
8 Street on which this site is located is also
9 undergoing a revitalization as well. We have
10 submitted a statement, a prehearing statement, which
11 you all have, and I would just like to review some of
12 the exhibits with you, if I may.

13 First is Exhibit A, which consists of
14 several sheets. The first of those sheets is the
15 Zoning Atlas Map with an arrow pointing to the
16 building. You can see that this building is about six
17 doors down from the 14th Street corridor from the
18 properties fronting on 14th Street that are part of
19 that revitalization, mass revitalization of the
20 Columbia Heights area. And the arrow on the various
21 plats shows the location of the building in relation
22 to that.

23 Exhibit B is from a publication issued by
24 the city. The initial publication for the preparation
25 of the new Comprehensive Plan, which shows in graphic

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1 detail looking south in kind of a bird's-eye view the
2 14th Street corridor and Columbia Heights. And you
3 can see the number of new buildings going up there
4 that are planned or under construction in that area.
5 This is a major, major undertaking by the District of
6 Columbia and it represents investment of millions and
7 millions of dollars by the District in the private
8 sector to make this a new revitalized area.

9 And specifically, you can see if you look
10 at Building No. 8, that is the building that is six
11 doors away from the building that is under
12 consideration here. And then Building 11 is the
13 building that is at the end of Kenyon Street where it
14 comes to a point where it creates an urban courtyard
15 there. The plats that you see in Exhibit A show
16 Kenyon Street going in an east/west direction and
17 going due west as it hits 14th Street. That has been
18 revised. That section of Kenyon Street has been
19 closed. It now goes to the northwest, triangular in
20 fashion.

21 CHAIRPERSON GRIFFIS: Building 8 and 11
22 are in different zoning, are they not?

23 MR. CHRISTOPHER COLLINS: They are in C-3-
24 A Zone. They abut. They are -- the zoning line
25 between C-3-A and R-4 is right behind in back of those

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1 buildings.

2 CHAIRPERSON GRIFFIS: C-3-A?

3 MR. CHRISTOPHER COLLINS: C-3-A, that's
4 correct.

5 CHAIRPERSON GRIFFIS: And R-4?

6 MR. CHRISTOPHER COLLINS: And R-4. We are
7 -- this building is in R-4 and the --

8 CHAIRPERSON GRIFFIS: Dramatic change.

9 MR. CHRISTOPHER COLLINS: -- area is C-3-
10 A. But the purpose is to show that this is just, as
11 I said six doors down from this revitalization area.
12 And Kenyon Street, itself, as you will hear, is
13 enjoying some of that ripple effect of the
14 revitalization, and that's what this case is all
15 about.

16 Exhibit C shows the Zoning Map and again
17 you can see that the arrow is showing where the
18 building is located in relation to the C-3-A Zone.
19 Exhibit D is subset plans. Exhibit E is a series of
20 Certificates of Occupancy, including the most recent
21 one, which is current C of O dated last month for the
22 apartment use of this building. Exhibit F -- for 9
23 units, I'm sorry. Exhibit F is the outline of
24 testimony of Mr. Taylor.

25 Exhibit G is the outline of testimony of

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1 Mr. McGhee. Exhibit H is the outline of testimony of
2 Mr. Wyeller. Exhibit I is the ANC's resolution. You
3 will note by looking at the date of that resolution,
4 comparing it to the date of the application, that what
5 Mr. Taylor did prior to filing the application. He
6 did his due diligence. He went around to the
7 community. He went around and talked to people to
8 make sure that this project was going to be one that
9 would enjoy the support of the community and, in fact,
10 it does. And he will talk about that in a little more
11 detail.

12 And Exhibit J is just a compilation of
13 responses on a listserv that goes back and forth in
14 that neighborhood giving comments on Mr. Taylor's
15 project. And he can talk about that in more detail.
16 And then Exhibit K is just a revised page 2 of the
17 self-certification form indicating, as Ms. Bailey
18 pointed out, that the lot occupancy -- I'm sorry, the
19 variance of the open court has been eliminated.

20 So having gone through those --

21 CHAIRPERSON GRIFFIS: Good. Quick
22 clarification on the exhibits.

23 MR. CHRISTOPHER COLLINS: Yes.

24 CHAIRPERSON GRIFFIS: First of all,
25 starting with the reverse. The ANC-1A hasn't

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1 submitted an actual report. Is that correct?

2 MR. CHRISTOPHER COLLINS: That is my
3 understanding.

4 CHAIRPERSON GRIFFIS: Okay.

5 MR. CHRISTOPHER COLLINS: And Mr. Taylor
6 will be able to talk about that issue.

7 CHAIRPERSON GRIFFIS: Yes. We'll get to
8 that. I just wanted to make sure.

9 MR. CHRISTOPHER COLLINS: They addressed
10 it. They do need to address it.

11 CHAIRPERSON GRIFFIS: Good. And then
12 going to your Exhibit E, which is the current C of O,
13 which is understandable, very legible, readable,
14 etcetera, but let's go back --

15 MR. CHRISTOPHER COLLINS: Yes.

16 CHAIRPERSON GRIFFIS: -- in time to 1965
17 that grand gold year on the block. It was a tenement
18 house.

19 MR. CHRISTOPHER COLLINS: Yes.

20 CHAIRPERSON GRIFFIS: And your initial
21 description of this was a weekly rental. This was
22 established as a tenement house. Is there a
23 difference in the regulation zoning now looking at a
24 tenement house and an apartment house?

25 MR. CHRISTOPHER COLLINS: Yes, the current

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1 regulation makes a distinction between a tenement
2 house and apartment house.

3 CHAIRPERSON GRIFFIS: Okay. And is there
4 any relevancy for us in this instant case to look at
5 the change in 1983 when it became an apartment house?

6 MR. CHRISTOPHER COLLINS: I don't believe
7 so. I think, my understanding and based upon the
8 configuration of the building and the nomenclature
9 used on these, you do know and I think you all can
10 take official notice that there was a time, and I
11 think it still continues to the present, that the
12 Permit Office types up whatever the applicant puts on
13 their Certificate of Occupancy application.

14 CHAIRPERSON GRIFFIS: Okay.

15 MR. CHRISTOPHER COLLINS: And what it was
16 each room, each unit did have a kitchen and a
17 bathroom, is my understanding, but they were in many
18 instances one room units, not one bedroom, but one
19 room units with a bathroom.

20 CHAIRPERSON GRIFFIS: That's an
21 interesting point, which I'm going to ask others as we
22 continue on. Okay. I don't have any other questions
23 or clarifications of the submission, Mr. Collins, I
24 turn it back over to you.

25 MR. CHRISTOPHER COLLINS: I would just

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1 like to state and you will hear the testimony of the
2 applicant and the witnesses that this application does
3 meet the three part test for variance relief, that
4 there is an exceptional situation or condition, that
5 the strict application of the regulations would impose
6 a practical difficulty on the applicant and that
7 relief can be granted without substantial detriment to
8 the public good.

9 The exceptional situation you will hear
10 the testimony indicating that the exceptional
11 situation or condition really goes to the building.
12 It is not limited as the Board is well-aware. The
13 test is not limited to the size, shape or topography
14 of the site itself. There are court cases that
15 indicate that the building on the property can be the
16 basis for the exceptional situation or condition.

17 There are several cases that I have
18 submitted for the record, the De Azcarate case, which
19 says that this test is evaluated on a case-by-case
20 basis, the Gil Martin case says that the exceptional
21 situation deals with circumstances not found in the
22 general condition of the neighborhood and it's really
23 dealt with on a case-by-case basis.

24 CHAIRPERSON GRIFFIS: Don't you mean the
25 point with Clerics though that the existing structure

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1 can be a uniqueness and practical difficulty?

2 MR. CHRISTOPHER COLLINS: You are way
3 ahead of me, sir. My next point was the Clerics of
4 St. Viator case that says that the building can be a
5 basis for an exceptional situation or condition and in
6 the Clerics' case, that was a multi-room, multi-
7 bedroom seminary. The court there found that the
8 nature of seminary education had changed and that was
9 the basis for the variance approval. And because the
10 building was outmoded.

11 Here, we have a 9 unit apartment house
12 which is primarily efficiency apartments ranging, as
13 I said earlier, from 217 square feet to 589 square
14 feet in size, rented out on a weekly basis in an R-4
15 Zone. Our position, Mr. Chairman, is that that is an
16 outmoded way of living in this neighborhood, similar
17 to the Clerics' case.

18 You will also find, based on the
19 testimony, that this is one of only three walk-up
20 rental apartment buildings in the block. The other
21 two are much larger apartment buildings built as
22 apartment buildings at the end of both Kenyon, the
23 west end of both Kenyon and Irving to the south where
24 they abut the C-3-A Zone. These are the two apartment
25 building that abut. They are much larger. They abut

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1 the C-3-A Zone. This is the only row building. There
2 is no other similar building in the square with such
3 a large number of rental units.

4 The practical difficulty you will hear
5 testimony about that from all the witnesses. In order
6 to make any additions, as we said before, we would
7 need to comply with the 40 percent lot occupancy here.
8 There is two ways to do that. One is to increase the
9 land area. The other is to chop off a portion of the
10 building. Both of which would be impractical. You
11 would have to eliminate 18 percent of the building
12 footprint in order to be able to make the small
13 addition on the back. Where you would likely chop off
14 would be the back of the building where the addition
15 is to go.

16 So it would really not make any sense at
17 all. The other would be to increase the land area, so
18 that you bring the lot occupancy down to 40 percent.
19 The building is bounded on two sides north and south
20 by public space and east and west by existing occupied
21 buildings, so that just is not an option.

22 The height, if this was limited to 40 feet
23 and three stories, we would not be able to -- the top
24 floor would have to be eliminated. And if the top
25 floor is allowed to stay, but the 40 foot height was

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1 respected, we wouldn't have any height more than 4 or
2 4.5 feet on the top floor.

3 You will hear finally from Mr. Wyeller the
4 economic analysis indicating that this -- that the
5 applicant cannot justify the cost and expense of
6 renovating within the existing walls of the building.
7 The applicant and the architect will discuss that as
8 well. Finally, there is no substantial detriment to
9 the public good. This is actually representing a
10 reduction in density from 9 units to 5 units. These
11 are 5 two-bedroom market size units which will
12 represent a more stable population from the weekly
13 rental that it was most recently to condo ownership.

14 There is no increase in height or lot
15 occupancy over what is currently there. No impact on
16 the rear yard. The nonconforming court is eliminated
17 and that, therefore, eliminates a degree of existing
18 nonconformity. The goal here and the applicant's
19 charge to the architect was to respect the spirit and
20 intention of the regulations by not increasing beyond
21 the lot occupancy and beyond the height. And that's
22 what this case represents, trying to renovate a
23 building in a practical way without going beyond the
24 footprint and beyond the height of the building. And
25 that's what you will see. You will hear about this.

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1 Most importantly or maybe most
2 importantly, there is no displacement of existing
3 residents. This is a vacant building. This is an
4 opportunity to take a vacant building and return it to
5 productive use within a stone's throw of the center of
6 economic revitalization in Columbia Heights. So
7 unless there are any questions on that summary, that
8 quick summary, I would like to turn to the first
9 witness, Mr. Robert Taylor, who represents the
10 applicant here.

11 I would offer Mr. Taylor as an expert
12 witness in multi-family residential renovations in
13 D.C. His resume has been given to Ms. Bailey.

14 CHAIRPERSON GRIFFIS: So we do have that
15 in front of us. Let me ask you very quickly. How
16 many parking spaces are being provided? And it's your
17 legal opinion that none are required based on the
18 prior density and existence of the building. Is that
19 correct?

20 MR. CHRISTOPHER COLLINS: That's correct.
21 There were no prior parking spaces there. There is a
22 reduction in density and, therefore, there is no
23 requirement for parking. But I believe that there
24 will be some parking provided.

25 CHAIRPERSON GRIFFIS: Okay.

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1 MR. CHRISTOPHER COLLINS: And the
2 architect will talk about that.

3 CHAIRPERSON GRIFFIS: Do Board Members
4 have any questions of Mr. Taylor? Any questions? Any
5 objections to establishing Mr. Taylor as an -- oh, I'm
6 sorry. Is the ANC represented today? Is anyone here
7 representing the ANC-1A? Not noting any indication of
8 the ANC present, does the Board have any objections to
9 establishing Mr. Taylor as an expert witness in real
10 estate development?

11 MR. CHRISTOPHER COLLINS: And multi-family
12 residential renovations in D.C.

13 CHAIRPERSON GRIFFIS: It's specific
14 expertise is it? It sounds good.

15 MR. CHRISTOPHER COLLINS: That's what
16 we're all about.

17 CHAIRPERSON GRIFFIS: Any objection?

18 UNIDENTIFIED SPEAKER: No objection, Mr.
19 Chair.

20 CHAIRPERSON GRIFFIS: Very well. Not
21 noting any objection from the Board, let's proceed.
22 Mr. Taylor?

23 MR. TAYLOR: Good morning, Board. I am
24 the applicant and the owner of Taylor Property
25 Development. I'm a real estate developer, as my

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1 counsel mentioned. I specialize in renovation of
2 multi-family dwellings in northwest Washington, D.C.
3 Some of the projects that I renovate are my own, some
4 of them I'm hired by other owners to do renovations on
5 multi-family dwellings that they own.

6 Currently, I'm working on six projects,
7 including the subject property that we're here to talk
8 about today, a 24 unit building on Irving Street, a 4
9 unit building on Logan Circle, two 4 unit buildings on
10 Shepherd Street in Columbia Heights and new
11 construction of a 4 unit building in Baltimore. About
12 90 percent of the units, if you sort of measured it by
13 units, my company is working on are located in the
14 Columbia Heights neighborhood. That is the sort of
15 focal point of my work and it's a neighborhood that I
16 really believe in. We have intentions on opening
17 office space in Columbia Heights hopefully very soon.

18 With respect to this particular project,
19 sort of how it came to be, which is relevant to
20 provide some background for Mr. Wyeller's testimony
21 and also to just give you some background about the
22 property and some of the issues with developing it, a
23 banker who I've done business with called me at some
24 point and indicated that this particular property was
25 going to be subject to foreclosure.

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1 And I had done a lot of business with him
2 in the past. He financed residential renovations for
3 projects for me in the past and he indicated that the
4 current owner of the property was, in his opinion, an
5 inexperienced developer. He was losing money on it.
6 He wasn't able to get the project done and wanted to
7 know -- thought that I would be able to turn it around
8 and get it done and wanted to know if I would be
9 interested in buying it.

10 So it was a win-win-win scenario. I would
11 get the property basically for the existing debt,
12 which is the cheapest price, you know, anyone could
13 get it for. So I wouldn't have to overpay for it at
14 all, even though it's in a very exciting location,
15 very exciting neighborhood. The banker would,
16 obviously, win, because he didn't have to foreclose
17 and then the borrower/owner would also win, because he
18 wouldn't be foreclosed upon. So this was a good
19 opportunity to get into this particular neighborhood
20 and try to make this work.

21 In conducting my due diligence I
22 discovered that the then owner, the person who sold
23 the property to me, had acquired the property out of
24 bankruptcy and that prior to bankruptcy the property
25 had been operated as a tenement house offering sort of

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1 weekly rentals of 9, as my counsel described, mostly
2 one room units, which are completely incompatible with
3 the current living in that neighborhood. And it had
4 been operated this way going back as long as people in
5 the neighborhood could remember.

6 And as I got to know a bit more about the
7 property in talking with people in the neighborhood,
8 apparently, the property, and I actually witnessed
9 this myself, drug use in front of the property, public
10 drunkenness in front of the property, as well as
11 violence. So it was a property that people in the
12 neighborhood sort of saw as a problem property, wanted
13 to see something happen with it.

14 Clearly from looking at the prior owners,
15 one who had gone into bankruptcy, the other who had
16 been -- was about to be foreclosed upon, it had been
17 a problem property from an economic perspective. So
18 it was kind of an interesting turn around opportunity,
19 but clearly something unique was going to be -- needed
20 to be done with the project.

21 That said, it's still a very attractive
22 property. It's located about 300 feet from the corner
23 of 14th and Kenyon Street. And right there, there is
24 the Tivoli Theater renovation, you know, which has the
25 new \$53,000 -- I mean, 53,000 square foot --

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1 CHAIRPERSON GRIFFIS: Actually, I'm going
2 to ask you to move ahead, as we have approved probably
3 everything in that area, I think the Board is very
4 familiar with all the projects and all its nuances and
5 difficulties.

6 MR. TAYLOR: Okay. All the projects. I
7 will skip that.

8 CHAIRPERSON GRIFFIS: Let's stick to your
9 property.

10 MR. TAYLOR: Okay. To move forward on my
11 property, in terms of the zoning analysis and trying
12 to understand what type of issues might arise here, I
13 arranged for a meeting with the then Zoning
14 Administrator, discussed this project with him,
15 discussed the facts that we were not increasing the
16 lot occupancy, were not increasing the height of the
17 building and we would be actually decreasing the
18 density of the property and wanted to see how an
19 addition might work as a way to sort of make this
20 project possible and bring this property back into use
21 in this neighborhood.

22 The Administrator indicated variance
23 relief would be required and recommended that I file
24 an application with this Board and was supportive of
25 the application indicating that, you know, from his

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1 review the property, you know, looked like it could
2 meet the standards of uniqueness, practical difficulty
3 and no harm to public good. And others will discuss
4 the meeting of those elements in more detail.

5 So the only way to move forward with this
6 project, based on my analysis having consulted with,
7 you know, Zoning Counsel, the Zoning Administrator, I
8 met with, you know, the ANC and neighbors before
9 filing this application, marketing experts, for this
10 property really to happen, it really needed to have
11 some additional square footage to make it possible for
12 any owner, whether I developed it or had to sell it to
13 someone else was the only way it was going to get
14 done.

15 In meeting with the neighbors, they were
16 very supportive of the project. A lot of them, I
17 think, were tired of seeing it as a weekly rental or
18 as a vacant sort of problem property. They were happy
19 about the decrease in density from 9 units. They were
20 happy that no residents would be displaced. They were
21 happy to eliminate the transient nature of it. They
22 were happy that I wasn't changing the facade and that
23 it would be bringing the property back into good use.

24 In addition, prior to filing this
25 application, I met with the ANC and the Office of

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1 Planning. The ANC indicated their support for the
2 project. They reviewed it in their community
3 development architectural committees, provided me with
4 a resolution that you have and that was unanimously
5 approved by the ANC Members.

6 Subsequently, I met with the Office of
7 Planning. The Office of Planning indicated that they
8 had adopted a policy of opposing these types of
9 renovations generally, but that, you know, I should do
10 what I felt like I needed to do, I guess. So I went
11 ahead and proceeded after having gathered information
12 from, you know, all of these different advisors and
13 spent a lot of time thinking about it myself. Because
14 I concluded that the only way to make this project
15 work was to add square footage to it. It just does
16 not happen without the additional square footage. And
17 I also concluded, based on the conversations I had
18 with various people, that the property did qualify,
19 the elements of the test, for a special variance, for
20 a variance.

21 And thank you for your consideration of
22 the project and I welcome any questions you might
23 have.

24 MR. CHRISTOPHER COLLINS: May I just for
25 clarification purposes, did you -- you submitted the

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1 resolution from back in May of the Advisory
2 Neighborhood Commission?

3 MR. TAYLOR: Yes.

4 MR. CHRISTOPHER COLLINS: Did you have any
5 subsequent discussions with the ANC?

6 MR. TAYLOR: I did. I spoke with the
7 secretary. Once I talked to you and realized that
8 what was expected was a different type of format, I
9 mean, they indicated that they had sort of provided me
10 with a resolution. If I wanted to go through the
11 whole process, which took me three months, I mean, I
12 showed up at one meeting to try to find out if I
13 wanted to do this, they said well, you've got to
14 submit something and present.

15 So a month later I came and presented.
16 Then the following month they actually heard it and
17 ruled on it. I mean, last week, I don't have -- I
18 don't have three months to go through that again, so
19 this is what I have.

20 CHAIRPERSON GRIFFIS: Good. All well and
21 good to come in without any opposition, it's more
22 important, of course, to come in without the note of
23 specific things that we should be concerned about. So
24 clearly, that doesn't happen. But let me ask you just
25 very succinctly, what do you find in your experience,

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1 as you've indicated 90 percent of your units are in
2 this neighborhood or something to that affect, so,
3 obviously, you're very familiar with that. What do
4 you see as the unique aspect of this property?

5 MR. TAYLOR: No other properties that I
6 have come across in this neighborhood are -- one, have
7 operated as sort of weekly rental like tenement,
8 tenement type properties, weekly rentals coming
9 through them.

10 CHAIRPERSON GRIFFIS: Okay. You have
11 never run across one like this in this neighborhood?

12 MR. TAYLOR: I have not.

13 CHAIRPERSON GRIFFIS: Okay.

14 MR. TAYLOR: Not me personally.

15 CHAIRPERSON GRIFFIS: That's okay.

16 MR. TAYLOR: And the second thing that was
17 unique is that, that I noticed when I looked at this
18 property, it is an apartment building, but it's inside
19 a row house.

20 CHAIRPERSON GRIFFIS: Yes.

21 MR. TAYLOR: I mean, there are two other
22 apartment buildings in the neighborhood, but they are
23 actually apartment buildings.

24 CHAIRPERSON GRIFFIS: And out of that
25 uniqueness, given that this is a 9 unit tenement

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1 apartment building or whatever it is, out of that
2 uniqueness what's the difficulty? What's the
3 practical difficulty in complying?

4 MR. TAYLOR: Well, there are architectural
5 difficulties that my architect will speak to.

6 CHAIRPERSON GRIFFIS: But based on the
7 density of this building, which is the unique aspect,
8 it is required you are saying it's somewhat you are
9 burdened in converting this to your contemporary use
10 without having an addition?

11 MR. TAYLOR: Right. I mean, the economics
12 of buying a 9 unit building and then turning it into
13 a small, you know, 3 unit building.

14 CHAIRPERSON GRIFFIS: Isn't a Board Member
15 up here going to say you paid too much for the
16 building then?

17 MR. TAYLOR: I don't -- I paid the lowest
18 price that could be paid for it. I just paid the
19 person's existing debt. I bought it out of
20 foreclosure. I mean, I don't know how anyone --

21 CHAIRPERSON GRIFFIS: But they were going
22 to foreclosure, which would mean that they probably
23 paid too much.

24 MR. TAYLOR: Well, but --

25 CHAIRPERSON GRIFFIS: We're going to get

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1 into this.

2 MR. TAYLOR: The thing is it's a 9 unit
3 apartment building.

4 CHAIRPERSON GRIFFIS: Sure.

5 MR. TAYLOR: An economic analysis expert
6 will get into this more. But it's a 9 unit apartment
7 building, so what's the, you know, capitalization
8 rate, you know, on a 9 unit building? If you look at
9 the kind of income you get from a 9 unit building, you
10 can price it at a fair market rate that would be much
11 higher than what a person would pay for that same
12 building were it a row house. Because the economics
13 are very different on a 9 unit apartment building,
14 which this was.

15 CHAIRPERSON GRIFFIS: So you're thinking
16 that someone did a pro forma out in Reston that didn't
17 realize that this was a row dwelling, but took it as
18 a 9 unit apartment building?

19 MR. TAYLOR: Well, that's what it's
20 described as.

21 CHAIRPERSON GRIFFIS: Indeed. Other
22 follow-up questions?

23 VICE CHAIR MILLER: I'm not sure if you're
24 the witness to answer this, but on page 9 of the
25 prehearing statement it says that applicant's proposal

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1 to renovate the building as shown on Exhibit D is the
2 only economically feasible alternative.

3 MR. CHRISTOPHER COLLINS: Yes.

4 VICE CHAIR MILLER: Well, can you explain
5 that, because that's a pretty broad general statement.
6 And if we're going to rely on that, I think we need to
7 have an understanding of that.

8 MR. CHRISTOPHER COLLINS: Ms. Miller, I
9 think we have an --

10 VICE CHAIR MILLER: I know you have a
11 detail exhibit.

12 MR. CHRISTOPHER COLLINS: Right.

13 VICE CHAIR MILLER: Is someone going to --

14 MR. CHRISTOPHER COLLINS: Yes, correct.

15 VICE CHAIR MILLER: Okay. Then we don't
16 have the right witness.

17 MR. CHRISTOPHER COLLINS: We have a
18 witness who will speak to that for you, Ms. Miller.

19 VICE CHAIR MILLER: Okay. Thank you.

20 MR. CHRISTOPHER COLLINS: No problem.

21 CHAIRPERSON GRIFFIS: Anything else at
22 this time? Anything else? Just following Mr.
23 Collins' opening statements, I think this is an
24 interesting application to have before us, because it
25 does show and reinforces the fact that each

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1 application is taken on its own and is the basis of
2 how it proceeds. We have had situations in
3 applications before us that may be similar, but I
4 think this is incredibly distinct in its own. But
5 that may be of more usefulness to the Board than
6 anyone else. So let's continue on. Next witness.

7 MR. CHRISTOPHER COLLINS: Mr. McGhee,
8 would you identify yourself and proceed with your
9 testimony? Oh, I'm sorry. Also, Mr. McGhee is here.
10 He is an architect with his own firm and has a long
11 distinguished career. He's not retiring, but a long
12 distinguished career and I would offer him as an
13 expert in architecture.

14 CHAIRPERSON GRIFFIS: Excellent. We won't
15 make this an award ceremony.

16 MR. CHRISTOPHER COLLINS: Thank you.

17 CHAIRPERSON GRIFFIS: For service that's
18 been long and endured. Any questions? Let's jump to
19 the chase here. Mr. Collins, Mr. Williams will be
20 offered as an expert in zoning. Is that correct?

21 MR. CHRISTOPHER COLLINS: That is correct.

22 CHAIRPERSON GRIFFIS: Why don't we take
23 them both up, at this time, if there are any questions
24 for Mr. McGhee or Mr. Williams? I know we have
25 established Mr. Williams previous. His dossier and

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1 resume is before us. Are there questions of Mr.
2 McGhee? Excellent. If there are, let me hear any
3 voiced oppositions. Not noting any objections nor
4 would I indicate that there were or should be any. Do
5 you note that you're on the Historic Preservation
6 Review Board, Mr. McGhee, in this?

7 MR. MCGHEE: Well, it's listed in front of
8 me, so I guess it must be true.

9 CHAIRPERSON GRIFFIS: The resume. I
10 didn't see it. I missed it here, but often why
11 wouldn't we want to make note of that? Oh, there it
12 is. Okay. The last page. Excellent. Absolutely is
13 a very important contributing member to that board.
14 If there is no opposition to Mr. McGhee or Mr.
15 Williams, I'll take any opposition, voiced opposition,
16 questions of Mr. Lindsley Williams? Not noting any
17 from the Board, let's move ahead and establish the
18 other two expert witnesses in this case and look
19 forward to hearing. The next one?

20 MR. CHRISTOPHER COLLINS: Excuse me for
21 interrupting, Mr. Chair.

22 CHAIRPERSON GRIFFIS: Yes.

23 MR. CHRISTOPHER COLLINS: We're also
24 intending to offer Mr. Wyeller as an expert in real
25 estate economics analysis.

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1 CHAIRPERSON GRIFFIS: Okay.

2 MR. CHRISTOPHER COLLINS: And you have his
3 resume as well.

4 CHAIRPERSON GRIFFIS: I sure did at one
5 point. Yes. Mr. Wyeller is a practicing broker, real
6 estate broker?

7 MR. WYELLER: Agent.

8 CHAIRPERSON GRIFFIS: Agent.

9 MR. WYELLER: Licensed agent.

10 CHAIRPERSON GRIFFIS: Okay. Which is you
11 have conducted, as you are saying here, a good amount
12 of real estate investment analysis.

13 MR. WYELLER: Yes.

14 CHAIRPERSON GRIFFIS: Okay. Any
15 questions, any follow-up questions of Mr. Wyeller?
16 May I ask you a quick question again. If you could
17 come up here at the mike and introduce yourself, so
18 you can do that last question. Is this a, one might
19 say, service that you provide all clients if they came
20 to you and was looking at a piece of property, you
21 would actually do an economic analysis or actually pro
22 forma of different options or economic feasibility of
23 what was being proposed?

24 MR. WYELLER: Well, my name is Hans
25 Wyeller, and yes, but to varying degrees. I don't

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1 necessarily do a full pro forma for all my clients.
2 Sometimes it's just an initial consultation talking
3 about, you know, risks, pros, risks and possible
4 upsides for various properties. And with home buyers,
5 actually, we talk about external factors that can
6 affect values of their properties as they go forward.
7 It's honestly one of the ways that I try to
8 differentiate my services from most of the agents out
9 there.

10 CHAIRPERSON GRIFFIS: Okay. And did you
11 ever list this property?

12 MR. WYELLER: No, I did not.

13 CHAIRPERSON GRIFFIS: Okay.

14 MR. WYELLER: But I will be the listing
15 agent, you know.

16 CHAIRPERSON GRIFFIS: On the unit?

17 MR. WYELLER: On the units.

18 CHAIRPERSON GRIFFIS: I understand that.
19 Okay. And you would give, of course, looking, I would
20 assume you would give comps of other sales and for
21 sales of buildings and an analysis. Is that correct?

22 MR. WYELLER: I've been -- I have --

23 CHAIRPERSON GRIFFIS: I know it's in here.

24 MR. WYELLER: Yes, there are comps.

25 CHAIRPERSON GRIFFIS: Yes, we have it.

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1 It's in here.

2 MR. WYELLER: There are comps for other
3 two bedrooms.

4 CHAIRPERSON GRIFFIS: But just in terms of
5 the basic services that you might give.

6 MR. WYELLER: Oh, absolutely.

7 CHAIRPERSON GRIFFIS: Sure. Sure.

8 MR. WYELLER: Absolutely.

9 CHAIRPERSON GRIFFIS: Do you do a lot of
10 business in the District?

11 MR. WYELLER: I do. About half of my
12 business is in the District.

13 CHAIRPERSON GRIFFIS: How familiar are you
14 with the zoning?

15 MR. WYELLER: Yes, I'm, you know, somewhat
16 familiar. This is my first zoning appeal experience,
17 but --

18 CHAIRPERSON GRIFFIS: Is it exciting so
19 far?

20 MR. WYELLER: Not yet.

21 CHAIRPERSON GRIFFIS: You can leave your
22 comments in the box on the way out. Okay. Very well
23 then. Any other questions then of Mr. Wyeller, at
24 this time? Mr. Wyeller is established as an expert
25 in, let me just get clarification of expert in?

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1 MR. CHRISTOPHER COLLINS: Real estate
2 economic analysis.

3 CHAIRPERSON GRIFFIS: Real estate economic
4 analysis. Interesting. Okay. Any difficulty? Any
5 objections? Not noting any objections, then we have
6 established four expert witnesses then in this case,
7 Mr. Collins?

8 MR. CHRISTOPHER COLLINS: Yes, that's
9 correct.

10 CHAIRPERSON GRIFFIS: If I'm not mistaken.
11 Excellent. Let's proceed.

12 MR. MCGHEE: Good morning, Mr. Chairman
13 and Board Members. My name is Ronnie McGhee, as
14 previously noted. I'm an architect, licensed
15 architect practicing in Washington, D.C. since 1983.
16 My specialty is existing building renovation, historic
17 preservation and other issues that you might see by my
18 resume. I also teach at Howard University. I teach
19 architecture. I'm a member of the Historic
20 Preservation Review Board, four years, also a member
21 of the National Trust Historic Preservation Advisory
22 Board.

23 Just an adjunct to what Mr. Wyeller and
24 Mr. Taylor said about the building, we basically
25 analyzed this building prior to his purchase of it to

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1 -- because of the sort of speculative nature of it.
2 The building was in disrepair. The issue of zoning
3 was on the table as to whether this building could be
4 renovated, could an addition be made, was it viable.
5 So we'll speak to that in a minute.

6 But the idea of we analyzed this building
7 prior to his purchase to try to find out and that's
8 kind of why Mr. Wyeller came in to analyze the
9 economic viability of this project. So, in fact, my
10 original testimony. A year ago, I was asked to
11 analyze this building. I walked through the building
12 to determine efficacy of renovating it into --
13 renovating the 9 unit building into a condominium use.
14 I walked the units. The building is located on 1360
15 Kenyon Street as indicated.

16 It's a four story building with a cellar.
17 I stood outside the building and I could see well, it
18 looks like it's over the height requirements for R-4.
19 It occupies a little more lot than a typical R-4
20 building. So I informed him that it potentially, at
21 that point, needed some zoning relief to do anything
22 of any structural nature on the building.

23 We walked in the building and the units
24 are very, very small. As you might note, they are --
25 one of the units is 217 square feet. The largest unit

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1 is 530 square feet and varying sizes in between.
2 Several of them don't have adequate light and air.
3 One of the smaller units didn't have any windows at
4 all. So it has a shared fire escape that is not
5 operating. The building next door -- the buildings
6 form a U-shape building. The building next door with
7 it to form a very narrow areaway.

8 The fire escape comes down on the fence in
9 between the two buildings. So it really has one means
10 of egress inside that is not a co-compliant stair.
11 The corridors that are inside the buildings are less
12 than 3 feet wide. So the building had a lot of issues
13 when you walked in the building. So the idea of
14 renovating it, it's 16 foot 8 inches wide to the
15 property line, which leaves me about 15 feet or so on
16 the inside, 15'4" to do a residential unit. And at
17 the rear it's 13 feet wide, which leaves me about
18 11'8" to 12 feet to do a residential unit.

19 So it has some difficulties in terms of or
20 challenges in terms of architecture to create a viable
21 unit size of this building. After we looked at the
22 building and we saw the issues, Mr. Wyeller, Mr.
23 Taylor and I went to visit several buildings around
24 the area, recently renovated buildings, to see what
25 our marketplace was. What we're up against. Is this

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1 building viable in relationship to those other
2 buildings?

3 Most of the units we found were two
4 bedroom units as you might -- as you realized probably
5 in your thousands of buildings you have gone over in
6 the last few years. And they average between 900 and
7 1,200 square feet for a condominium use. So when we
8 looked at what we could do in this building, the most
9 we could come up with, and this gets to sort of the
10 difficulty, the basement and the first floor can be
11 two bedroom units.

12 The second, third and fourth floor are cut
13 back, as you might imagine, typical row houses. And
14 you could probably get a small one bedroom on one of
15 the floors. The others would be efficiencies or one
16 bedrooms. So when we looked at the marketplace, these
17 units, as renovated in place, would not match up with
18 the marketplace, which, as one of your Board Members,
19 Ms. Miller, mentioned, why can't you do that? Well,
20 the problem is the cost of renovating the building is
21 the issue.

22 This building needed new utilities. It
23 needed structural work. It needed new stairs. It
24 needs all new mechanical plumbing, electrical systems,
25 life-safety systems. It basically had to be renovated

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1 from top to bottom. We could keep the floor decks is
2 really the only thing we could keep.

3 I'm on the Historic Preservation Review
4 Board, so I looked at the building as a beautiful
5 building and opportunity to bring it back. We didn't
6 want to change the front facade. I think the
7 neighbors have -- if you look at some of the listserv
8 comments, they want the front facade to stay the same.
9 We endeavored to do that. In analyzing the building,
10 we saw keeping the height the same, keeping the
11 footprint the same, all those were issues we wanted to
12 stay within to reduce our profile for any zoning
13 variance that we might have to apply for.

14 Doing subsequent analysis, we came up with
15 a way to reduce one of the elements of nonconformance
16 by putting a roof over the courtyard area, which is
17 included in our square footage. So now we're not in
18 variance in that particular area. We're not
19 requesting a variance in that particular area.

20 So as we went through the process, we
21 tried to reduce our profile in terms of nonconformity.
22 Obviously, the height couldn't be reduced as Mr.
23 Collins has mentioned and the footprint couldn't be
24 reduced without practical difficulty. So the idea is
25 now how do I make a building that the owner can viably

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1 finance and renovate? So we created units that
2 matched the marketplace at the mid-point level.

3 We have about, I think we have an average
4 of 1,200 square feet gross floor area. Because of the
5 thickness of the walls and the strange configurations
6 inside, we end up with about 1,000 square feet of
7 useful space per unit, which really makes it the lower
8 end of the market for this -- not the lowest, not the
9 middle lower part of the market to try to reach the
10 square footage necessary.

11 So that's what we sort of achieved in the
12 end design. I think that the other difficulties that
13 this building presents is getting units that have the
14 light and air with the long narrowness in the back and
15 getting units that have the amenities that people
16 desire that make this building viable for Mr. Taylor.
17 I think we have done that. I can show you that in the
18 plan. If I may, I can show you one difference in what
19 I'm presenting in the boards than what you have in
20 your packet.

21 You have a photosheet, which I don't think
22 was delivered in the original packet. And you have a
23 plan sheet which indicates a stair, which we have
24 reconfigured subsequent to submission, to reduce the
25 square footage of the stair from the first floor to

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1 grade and also it no longer blocks the light and air
2 of the rear unit.

3 MR. CHRISTOPHER COLLINS: And that sheet
4 is number?

5 MR. MCGHEE: This is sheet -- it's black
6 and white in your handout today.

7 CHAIRPERSON GRIFFIS: A-3.

8 MR. MCGHEE: It's A-3. It's an
9 alternative to A-3 and I have boards to show that if
10 you wish to see.

11 CHAIRPERSON GRIFFIS: Well, then the issue
12 with the stairs, it's just to reconfigure this only
13 from the first floor down. Is that correct?

14 MR. MCGHEE: Yes, it's just the first
15 floor access to grade.

16 CHAIRPERSON GRIFFIS: So it's actually not
17 really before us in terms of any zoning issues, except
18 for that which --

19 MR. MCGHEE: No, it's not.

20 CHAIRPERSON GRIFFIS: Okay.

21 MR. MCGHEE: No, it's not. It's just a
22 reconfiguration. We wanted to make sure you're aware
23 that --

24 CHAIRPERSON GRIFFIS: Sure.

25 MR. MCGHEE: -- that we have changed it

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1 from the original submission.

2 CHAIRPERSON GRIFFIS: Sure. Excellent.

3 MR. MCGHEE: If you will notice, and the
4 same difficulty in HPRB hearings getting -- talking to
5 what's on the boards.

6 CHAIRPERSON GRIFFIS: Yes, indeed.

7 MR. MCGHEE: But I brought my trusty dusty
8 laser pointer here. In your packet it may not appear
9 exactly what is being added to the building. This
10 green area is a little more illustrative of what is
11 happening to the building. That is the only relief
12 that we're asking right here. In your packet there is
13 some different coloration basically due to different
14 texture and finishing.

15 CHAIRPERSON GRIFFIS: Right.

16 MR. MCGHEE: But that's the addition part.

17 CHAIRPERSON GRIFFIS: I don't think there
18 is any problem in terms of reading what was being
19 proposed.

20 MR. MCGHEE: Okay.

21 CHAIRPERSON GRIFFIS: Unless the Board
22 Members have any questions on that, I think it was
23 well-done in terms of representation.

24 MR. MCGHEE: Thank you. 10,000 pound
25 board. Additional information as we walk through the

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1 building. This is the addition that is on the second
2 floor, about a 20 foot addition there, and this is the
3 addition on the third floor and finally --

4 CHAIRPERSON GRIFFIS: Let me ask you as
5 you're going through this, because I thought it was
6 well-done in terms of the existing and then the
7 proposed, but what is not shown in the existing is
8 what was laid out. Mr. Collins made an additional
9 comment. Mr. McGhee, in your walking through the
10 existing building, were there cooking facilities?
11 Were there kitchens in all the nine units?

12 MR. MCGHEE: They were in seven or eight
13 of the units. One unit did not have full cooking. I
14 mean, someone had set up a cooktop.

15 CHAIRPERSON GRIFFIS: Right.

16 MR. MCGHEE: But it was not a full
17 kitchen.

18 CHAIRPERSON GRIFFIS: Okay.

19 MR. MCGHEE: I think the unit in the
20 basement, I think, had just sort of a rear exit and
21 access points.

22 CHAIRPERSON GRIFFIS: Okay. And what
23 you're showing us in walking through these plans, if
24 I look at the existing building on your A-11, which is
25 the gray portion --

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1 MR. MCGHEE: Yes.

2 CHAIRPERSON GRIFFIS: -- not taking in the
3 green, one could say that you have a basement and
4 cellar level also, which isn't showing on that one,
5 right? One, two, three, four.

6 MR. MCGHEE: Yes, this is --

7 CHAIRPERSON GRIFFIS: Oh, it actually is.

8 MR. MCGHEE: This is here, yes.

9 CHAIRPERSON GRIFFIS: Yes.

10 MR. MCGHEE: Yes.

11 CHAIRPERSON GRIFFIS: All five levels are
12 shown.

13 MR. MCGHEE: I'm not showing grade, but
14 grade, this is the first floor right here.

15 CHAIRPERSON GRIFFIS: Perfect.

16 MR. MCGHEE: And the grade is right here.

17 CHAIRPERSON GRIFFIS: Perfect. So the
18 first floor was to split and have duplexes, so that
19 there would be a basement cellar level on the first
20 floor. You have 2 units there.

21 MR. MCGHEE: Yes.

22 CHAIRPERSON GRIFFIS: Another unit on the
23 third floor.

24 MR. MCGHEE: Yes.

25 CHAIRPERSON GRIFFIS: And a fourth unit on

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1 the fourth floor, which would have another step-out
2 space at the top.

3 MR. MCGHEE: Right.

4 CHAIRPERSON GRIFFIS: So you would get
5 four units. You're saying that that actually isn't
6 marketable in the volume of the building itself based
7 on the --

8 MR. MCGHEE: Well --

9 CHAIRPERSON GRIFFIS: -- purchase price
10 and the construction cost, so that you have to add one
11 unit and square footage to each of the units of the
12 building.

13 MR. MCGHEE: Yes, I think I can bring the
14 existing plans up. But if you look at the existing
15 plans, to get a corridor in the building it basically
16 takes up a good portion. So you have a 16 -- you have
17 a 15, 10 interior space. You take the corridor and
18 the stair out, you're down to 8, 9 feet at room width.
19 And then you have the upper floor level here.

20 What we're showing here is the roof slope.
21 We changed the roof slope slightly and we're sloping
22 the roof to the side because the roof slope, as you'll
23 notice, goes all the way back. Back in the back was
24 less than 6 feet tall on the top floor.

25 CHAIRPERSON GRIFFIS: Okay.

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1 MR. MCGHEE: So technically, you know, you
2 couldn't stand up in the back unit, so that was the
3 unit that they were calling the ninth unit.

4 CHAIRPERSON GRIFFIS: I see.

5 MR. MCGHEE: So what we have done is
6 actually this original slope in the back, if the roof
7 slopes to the side in the current configuration, we
8 have just mimicked that with the additions here now.

9 CHAIRPERSON GRIFFIS: I see. You're not
10 adding a second means of egress though. Is that
11 correct?

12 MR. MCGHEE: We're going to revitalize the
13 fire escape and put it back into service.

14 CHAIRPERSON GRIFFIS: Fine.

15 MR. MCGHEE: And this building actually
16 can suffice with one means of egress with sprinkling
17 and some other issues, some things we're doing, but
18 we're leaving that in place and putting it back in
19 service as a second means of egress.

20 CHAIRPERSON GRIFFIS: Interesting. Okay.
21 All right. Questions, Ms. Miller?

22 VICE CHAIR MILLER: Did you do an analysis
23 or a plan for renovating the building in conformance
24 with the lot area per family requirement that Office
25 of Planning addresses, which would limit the renovated

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1 building to 2 units as opposed to five?

2 MR. MCGHEE: No, we did not. We did not
3 look at that. With the use that was possible we
4 looked at, you know, what was possible within the --
5 we did a plan for what is possible within the current
6 configuration to see if it was economically viable and
7 it was not. We actually did the square footage
8 calculation and did a layout and we evolved to this
9 plan as a result of that.

10 VICE CHAIR MILLER: What do you mean
11 within the use that was possible?

12 MR. MCGHEE: Well, in other words, without
13 a variance, without a variance.

14 UNIDENTIFIED SPEAKER: A matter-of-right.

15 MR. MCGHEE: A matter-of-right use. We
16 did that initially but we did not do the -- the Office
17 of Planning was not consulted in the original purchase
18 of this building in regarding to what their goals were
19 for it. Obviously, going back to R-4, you're talking
20 about a flat basically.

21 CHAIRPERSON GRIFFIS: I think that's her
22 direct question is did you look at the flat which is--

23 MR. MCGHEE: No, we did not.

24 CHAIRPERSON GRIFFIS: Right.

25 MR. MCGHEE: We did not. It wouldn't have

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1 been viable to do anything with the building at that
2 point then. That was determined early on.

3 CHAIRPERSON GRIFFIS: I think she just
4 needs you to tell her why.

5 MR. MCGHEE: Well, I mean, the cost, the
6 cost of the building and the renovation cost to go
7 back to 2 units would not make it economically viable
8 to renovate that size of a building.

9 CHAIRPERSON GRIFFIS: So you pay a million
10 for the building, which is \$500,000 a unit and you
11 have to renovate it at what? Let's say it's another
12 300 P.

13 MR. MCGHEE: \$140.

14 CHAIRPERSON GRIFFIS: You have to sell
15 them for \$900,000 a piece and you're saying in your --
16 which your economics person will tell us is not a
17 viable market in the area.

18 MR. MCGHEE: Right. You end up with 2,000
19 plus square feet per unit of gross square footage, I
20 see, because 4,700 is the gross square footage, you
21 know, with 2,350 or 2,450, 2,400 square feet per unit
22 as a flat, which was not economically viable in terms
23 of the marketplace in that region. I mean, obviously,
24 someone might want a two story or a two and a half
25 story flat that way, but that was not even viable for

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1 our proposal.

2 CHAIRPERSON GRIFFIS: Okay.

3 MR. MCGHEE: Do you have another question?

4 CHAIRPERSON GRIFFIS: Right.

5 VICE CHAIR MILLER: No, I missed your last
6 few. It kind of --

7 MR. MCGHEE: Oh.

8 VICE CHAIR MILLER: So I would like to
9 know what you said.

10 MR. MCGHEE: Well, when you're looking at
11 -- ma'am, in doing these analyses for these buildings
12 that Mr. Wyeller can talk to more pointedly, it's what
13 you can sell to the marketplace and right now, I can
14 give you an example. A 1,500 square foot two bedroom
15 unit is not viable in the marketplace.

16 It just becomes -- the square foot cost
17 becomes too expensive with all the cost of buying the
18 real estate, renovating it and putting it on the
19 market for the average person. So the idea of
20 creating reasonable size units with a reasonable price
21 tag is what makes this project viable.

22 So when you look at it as a flat, you look
23 at it as a 2,400 square foot house, basically, two
24 houses. The market for that is not there. So, you
25 know, I imagine maybe in 10 years and this

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1 neighborhood completely is ripe maybe that marketplace
2 is there and people are renovating their houses in the
3 neighborhood.

4 CHAIRPERSON GRIFFIS: Right.

5 MR. MCGHEE: But to take a 9 unit building
6 and its pro forma and bring it down to a 2 unit was
7 not viable in the analysis that we looked at.

8 VICE CHAIR MILLER: Thank you.

9 CHAIRPERSON GRIFFIS: Okay.

10 MR. MCGHEE: Right.

11 CHAIRPERSON GRIFFIS: Any other questions,
12 follow-up questions? Anything else? You want to --

13 MR. MCGHEE: I have one closing statement.

14 CHAIRPERSON GRIFFIS: Good.

15 MR. MCGHEE: To conclude, the building
16 configuration as proposed stays within the spirit, but
17 not the technical or other regulations. We realize
18 that. The unit sizes are adequate but not generous
19 and are consistent with mid point of the market in
20 size and configuration.

21 Our proposed units are a high quality
22 product for their market position in cost and the
23 current configuration provides, we believe, the most
24 cost-effective, life safety compliant units for the
25 location and the existing conditions.

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1 The building efficiency factor now is 84
2 percent. The previous one was in the 70s, 71, 72
3 percent, so that's one of the goals we had from Mr.
4 Taylor. And as I have said, the design has been
5 modified to put in a court to eliminate the court
6 problem and the stair problem, which we thought might
7 be an issue for this Board.

8 Finally, I don't know if you need to see
9 the other boards in terms of existings or anything
10 like that. I have those here if you need them.
11 Otherwise, I conclude my statement. Thank you very
12 much.

13 CHAIRPERSON GRIFFIS: Excellent. Thank
14 you very much. I think we don't need it unless we
15 have specific questions from the Board --

16 COMMISSIONER HOOD: Mr. Chair?

17 CHAIRPERSON GRIFFIS: Yes, Mr. Hood?

18 COMMISSIONER HOOD: I just wanted to ask
19 Mr. McGhee about the new french balcony and I'm just
20 looking at it. Let me ask you. Is there any walkout
21 space or is that just more of a prop?

22 MR. MCGHEE: It's really just an opening,
23 another opening in the back for the tenants. So you
24 basically have a railing that runs right past the back
25 wall and you open inwards, so there is no walkout

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1 space.

2 COMMISSIONER HOOD: Okay. So there is no
3 additional space?

4 MR. MCGHEE: We do have walkout space in
5 the basement. You walk out to the areaway and the
6 first floor, the stair down. That is the revised
7 bubble you have there on your drawing.

8 COMMISSIONER HOOD: Okay.

9 MR. MCGHEE: Okay?

10 COMMISSIONER HOOD: All right.

11 MR. MCGHEE: No decks in the rear or
12 anything like that.

13 COMMISSIONER HOOD: Okay.

14 MR. MCGHEE: All right?

15 COMMISSIONER HOOD: All right. Thanks.

16 CHAIRPERSON GRIFFIS: Excellent. Anything
17 else? Excellent. I think, obviously, the graphic
18 representation is very clear and that is submitted,
19 and I think it's very well-done in terms of an
20 architectural adaptation of the existing structure.
21 Of course, we delve into more of the dry legal issues.
22 Let's move on with those. Mr. Collins, next witness?

23 MR. CHRISTOPHER COLLINS: Mr. Wyeller,
24 would you, please, identify yourself and then proceed
25 with your testimony.

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1 MR. WYELLER: Hello. My name is Hans
2 Wyeller. I am a real estate investor and advisor and
3 also a licensed real estate agent of Long and Foster.
4 I am here today to provide an economic analysis of the
5 proposed project. First, I thought I would make a few
6 comments about the Columbia Heights market and the
7 proposed project itself.

8 As you know, Columbia Heights is very much
9 becoming a destination site and when I first got into
10 the sales business four of five years ago and worked
11 with home buyers, first time home buyers, they rarely,
12 if ever, asked for me to show them properties in
13 Columbia Heights. Now, it's on the short list. It's
14 right up there with Dupont Circle, Adams Morgan, Logan
15 Circle, etcetera.

16 I am also seeing more and more buyers that
17 are looking to make a long-term commitment to the
18 area. You know, consequently, there has been very
19 strong demand for two bedroom condominiums in the
20 area. What is interesting though is at these price
21 points, buyers just don't want to stay in the area
22 longer. They are staying in the units longer.

23 This is also supported by the fact, as
24 Ronnie said, Mr. McGhee said, that the average for one
25 and two bedroom condominiums in Columbia Heights for

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1 2005 year to date is over 900 square feet, which
2 happens to be right in line with the unit sizes as
3 proposed by Mr. Taylor in this project.

4 That being said, and I think Mr. McGhee
5 spoke to this very well, to be successful these spaces
6 still have to be well-designed and comfortable living
7 spaces. They can't be cramped. They have to have
8 good light and airflow and flow in general.

9 The last revealing statistic that is
10 interesting that is also pertinent to this discussion
11 is there is virtually no market for efficiencies in
12 the Columbia Heights area and year to date, 2005, over
13 100 one and two bedroom condominiums have been sold.
14 Only four efficiencies have been sold. Those four
15 efficiencies also take much, much longer to sell.
16 They sit on average on the market four to five times
17 as long as the one and two bedrooms.

18 To give you a little bit of background, I
19 have been working with Robert, Mr. Taylor, on another
20 project in Columbia Heights. He asked me to take a
21 look at the Kenyon project probably nine months ago or
22 so, give or take. We talked about different scenarios
23 and configurations. What was clear from the beginning
24 is that the current configuration was not appropriate
25 for the current market. As Mr. McGhee said, some of

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1 these units are absolutely tiny. Some of them didn't
2 have windows. It was just, you know, just not -- a
3 non-starter.

4 We quickly focused in on two scenarios.
5 One is staying within the existing limits, confines of
6 the walls, and seeing what we could do and Mr. McGhee
7 sort of described how we could configure the space.
8 But it's basically, you know, two bedroom on the
9 ground level, a two bedroom on the first floor, most
10 likely a one bedroom on the second floor and then the
11 third and fourth floors you could either do a one
12 bedroom with an efficiency or, more likely, what you
13 would probably do is combine the top two floors and
14 make another two bedroom unit out of it.

15 And then the other option was to add a
16 small addition on the back with your blessing, of
17 course. What sort of came out in sort of three way
18 conversations with Mr. McGhee is a 1,200 square foot
19 addition, which is approximately, you know, 400 square
20 foot per floor on average, although it varies by
21 floor. And what that would enable us to do is to
22 create five units, two bedrooms each, under 1,000
23 square foot each, which is right in line with where
24 the current market is.

25 It also made for more efficient use of the

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1 core space, which is also critical as we get into the
2 numbers. Out of the gate before we even looked at the
3 numbers, we had three concerns. Without the addition,
4 we knew that we could only build four units. We knew
5 that the second floor unit would most likely be a one
6 bedroom unit which, A, would not command the same
7 price in the market for obvious reasons, and it was a
8 little bit smaller and cramped and, therefore, not as
9 desirable as the two bedroom unit. So the ultimate
10 buyer would suffer as well.

11 To determine if our concerns were well-
12 founded, we created a model. I created a model
13 comparing the two options, staying within the existing
14 confines of the walls or doing a small addition. And
15 we looked at that, those two scenarios, under three
16 market conditions. We did a pessimistic, a realistic
17 and an optimistic scenario which you should have in
18 front of you.

19 The only variable that changes in the
20 three versions is the sales price per square foot. We
21 did this model several weeks ago and I think the first
22 iteration was probably a little bit longer than that.
23 Everyone is reading the newspapers today. The market
24 is deteriorating as we speak, you know, the front page
25 of the Wall Street Journal today, the Washington Post

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1 Friday article. So I think our baseline realistic
2 model is starting to shift back left towards the
3 pessimistic scenario.

4 But when you look at the model what
5 becomes clear, a few things jump out at us. One,
6 renovating the building within the existing confines
7 of the space under all three scenarios is a money
8 losing proposition, quite significantly. The fixed
9 costs of the project are just simply too high to make
10 it economically feasible.

11 I calculated it. Over 60 percent of the
12 budget is fixed cost before you even get out of the
13 gate. Even with the addition of the small addition in
14 the back and the fifth unit, the project is still
15 very, very tight economically. We're not talking
16 about big, fat margins and all that.

17 The first take-away from that is the units
18 have to be -- the space, the way we configure the
19 space has to be as efficient as possible. That's why
20 Mr. McGhee's comment that the core factor was reduced
21 from 71 percent to 84 percent or thereabouts is
22 significant. That has a very real impact on the
23 feasibility of this project.

24 You know, it's also clear that the
25 additional square footage covers -- is needed to cover

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1 the cost of the renovation and, hopefully, provide a
2 modest return on the investment for the risk assumed.
3 Another way of saying that is the fifth unit, the
4 portion, the fifth unit is not about the profits so
5 much as the fifth unit is actually necessary to cover
6 the costs of the building costs.

7 If you look at the pessimistic scenario,
8 for example, with the addition you're only generating,
9 approximately, \$64,000 of profit. That means that 85
10 percent of the proceeds from the fifth unit are still
11 covering your underlying cost of the project. Even in
12 the best case scenario, which is looking more and more
13 like, you know, unrealistic, 40 percent of the
14 proceeds of the fifth unit would still go to covering
15 your base cost.

16 So quite simply put, you know, where we
17 are now, the proposed addition and inclusion of the
18 fifth unit is absolutely critical to make this a
19 viable economic project.

20 CHAIRPERSON GRIFFIS: Questions?

21 VICE CHAIR MILLER: Just to follow-up on
22 my previous question. You didn't do an analysis, I
23 assume now, based on matter-of-right use because your
24 losses would have been even greater than renovating it
25 without seeking a variance. Is that correct?

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1 MR. WYELLER: Yes. I mean, it's -- we are
2 already -- you know, in looking at this property and
3 figuring out what we could do to renovate it, and a 2
4 unit property is not going to command nearly enough
5 revenue to justify any renovations.

6 The place is really, in a non-technical
7 term, a mess. You know, it really has been. It looks
8 like it has been abandoned for years and it's an
9 eyesore and it's a substantial rehabilitation that is
10 required and just you wouldn't sell it. There is
11 nowhere you would come close to selling the units for
12 enough to justify that.

13 VICE CHAIR MILLER: Thank you.

14 CHAIRPERSON GRIFFIS: Anything else? That
15 seems to be important information. Mr. Taylor, was
16 this done in due diligence prior to closing on the
17 property?

18 MR. WYELLER: Yes, it was.

19 CHAIRPERSON GRIFFIS: So you had decided
20 that you would go ahead and close because you thought
21 there was a great possibility of being able to do an
22 addition on it?

23 MR. WYELLER: I felt positive about it.
24 I thought there was a strong possibility. I had
25 consulted with the Zoning Administrator at that point

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1 on economic analysis.

2 CHAIRPERSON GRIFFIS: Sure. Excellent.
3 Okay. Mr. Collins, anything else?

4 MR. CHRISTOPHER COLLINS: Yes, just a
5 couple of questions for Mr. Wyeller.

6 Mr. Wyeller, there was a question raised
7 earlier about the purchase price of the property, the
8 million five, the million and --

9 MR. WYELLER: 50,000.

10 MR. CHRISTOPHER COLLINS: 50, 1,050. Do
11 you have any comment on that?

12 MR. WYELLER: I think Mr. Taylor's comment
13 is right on the money. They were buying, you know,
14 buying -- he bought the property for the cost of the
15 existing debt and that is really the floor of what you
16 could hope to achieve.

17 This building, you know, the prospects for
18 getting the additional space were encouraging and, at
19 the time, you know, based on, you know, that sort of
20 calculated risk and we had -- you know, he had already
21 had early indications of support from the community in
22 initial discussions. We felt confident or hopefully
23 confident that this was going to be doable and, if we
24 do get the additional space, it is a very doable
25 project.

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1 MR. CHRISTOPHER COLLINS: A more direct
2 question. Did he overpay for the property?

3 MR. WYELLER: No. I think at that time a
4 unit that close to what is going on in the core of
5 Columbia Heights, that was the going rate for this
6 property or even for a shell.

7 MR. CHRISTOPHER COLLINS: All right. Your
8 models, your economic model that you have, there were
9 some comparable sales attached to that. These
10 comparable sales that you have attached, they are
11 within the range, generally within the range of the --
12 your three models, the pessimistic at \$500 a square
13 foot and the optimistic at \$550 a square foot?

14 MR. WYELLER: Yes. These are sales in
15 2005 year to date for two bedroom condos very close to
16 the subject property and, yes, they are right in
17 there. Some of them have sold in the high 4s. A lot
18 of them sold in the 5s. One or two have sold in the
19 high 500s on a per square foot basis.

20 But, you know, quite honestly, those are
21 the same prices that people are paying for condos in
22 the other neighborhoods we mentioned, Logan Circle,
23 Dupont Circle, Adams Morgan, and everyone is feeling
24 pressure on these price points. So, you know, we're
25 expecting these price points to be pushed back a bit.

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1 MR. CHRISTOPHER COLLINS: The construction
2 cost per square foot, you have plugged in \$140. Is
3 that a conservative or is that an aggressive number?

4 MR. WYELLER: Mr. Taylor and I looked at
5 our -- looked at the cost and thought that \$140 was an
6 aggressive assumption in the sense that, you know,
7 it's very possible that our -- your building costs
8 could be higher than that. And of course, if the per
9 square foot building costs creep up, that just makes
10 the economic argument that much more viable. Without
11 the additional space, you're just losing that much
12 more money.

13 MR. CHRISTOPHER COLLINS: And given what
14 Mr. McGhee said about what is needed in the building,
15 do you have an opinion on whether \$140 a square foot
16 would result in a luxury unit or something out of the
17 norm of what is necessary or is it market rate?

18 MR. WYELLER: These are not going to be
19 super luxurious, expansive units by any stretch.
20 These are nice units. I would say upper grade. You
21 know, the finishes we talked about are in line with
22 what the market is doing. It's hardwood in the main
23 areas, probably carpeting in the bedrooms, wood
24 cabinets in the kitchens, probably a stainless steel
25 baseline package and some style stone countertops is

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1 sort of the grade.

2 We're not talking extravagant, you know,
3 Italian marble kitchens or baths or anything like
4 that. It's just this is what the market is. This is
5 what the clients looking to buy these places are
6 asking for.

7 CHAIRPERSON GRIFFIS: Good. Anything
8 else?

9 VICE CHAIR MILLER: So what kind of client
10 are these units being built for?

11 MR. WYELLER: I'm working with, you know,
12 the -- probably what you would expect to hear is a lot
13 of professionals, young professionals trying to buy
14 their first home. What is interesting though is I am
15 starting to see a shift in the market and people that,
16 because the prices have crept up in the last couple
17 years, you're finding people that are actually looking
18 as their second home to buy into these neighborhoods
19 and make longer term commitments.

20 Just yesterday I was showing property
21 around Columbia Heights for a newly married couple.
22 They both own their places and they are looking to buy
23 a condo together to make a longer term commitment to
24 the area. I had an open house this past -- we had two
25 open houses this past weekend. I had a number of

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1 clients, customers, come in looking with children,
2 looking at two bedroom condos because, you know,
3 that's how the market is shifting today.

4 CHAIRPERSON GRIFFIS: Good. Okay.
5 Anything else, Mr. Collins?

6 MR. CHRISTOPHER COLLINS: No.

7 CHAIRPERSON GRIFFIS: Very well. Let's
8 move quickly ahead then to Office of Planning. Mr.
9 Lawson is with us to present the report.

10 MR. LAWSON: Good morning, Mr. Chair,
11 thank you, and Members of the Board. My name is Joel
12 Lawson. I am with the D.C. Office of Planning.

13 As noted by the applicant, the owner of
14 this building on Kenyon Street in Columbia Heights
15 wishes to construct an extensive addition as part of
16 a renovation of the existing structure. The additions
17 would increase the size of the building from about
18 4,722 square feet to 5,966 square feet.

19 The square is in a split zone, C-3-A along
20 14th Street and R-4 for the remainder of the square.
21 The subject site is developed with a three story plus
22 basement row house, which is being used as a 9 unit
23 apartment building. The site is zoned R-4.

24 Although the Zoning Regulations
25 acknowledge that the R-4 District includes existing

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1 conversions of row dwellings into small apartment
2 buildings, the zone specifically states that the R-4
3 District shall not be an apartment house district
4 since the conversion of existing structures shall be
5 controlled by a minimum lot area per family
6 requirement. As this lot is 2,471 square feet in
7 area, the R-4 Zone would permit 2 units rather than
8 the 5 units proposed, although regulations permit the
9 retention of the existing apartment use.

10 The applicant had originally requested
11 relief from open court width and to permit additions
12 to a nonconforming structure. The applicant has since
13 amended the proposal to eliminate the court width
14 variance by proposing to roof over the existing
15 courtyard area. OP would actually have had no
16 concerns with that specific aspect of the relief and
17 would recommend that the courtyard remain open to the
18 sky to allow light and air.

19 On the other hand, it is the opinion of
20 the Office of Planning somewhat for the record that
21 the upper story additions extend and, therefore,
22 increase the existing nonconformities related to
23 height and number of stories and variances to these
24 regulations may also be required. However, the
25 applicant has not requested these and OP analysis is

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1 based on the single variance requested by the
2 applicant.

3 Section 2001.3 of the Zoning Regulations
4 prohibits additions to an existing structure if it is
5 already nonconforming to lot occupancy, if the
6 addition is for a nonconforming use or if the addition
7 either increases an existing nonconforming aspect of
8 the structure or creates a new nonconformity.

9 In this case, the existing structure does
10 not conform to lot occupancy as 40 percent is
11 permitted and the lot occupancy is 58 percent, and the
12 addition extends existing nonconformities related to
13 height and number of stories. Although the
14 regulations allow the continued use of existing
15 nonconforming structures, they are intended to prevent
16 already too large structures from becoming even larger
17 and more out of scale with the intent of the R-4
18 District.

19 This application does not meet the test
20 required for the approval of this variance. The
21 property itself is not exceptional and the applicant
22 has not demonstrated any exceptional conditions with
23 regard to the building. Rather, the exceptional
24 condition does not rest with the property or with the
25 building, but with the applicant's preference to

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1 construct the nonconforming addition.

2 The presence of an existing nonconformity
3 cannot be used as an exceptional circumstance to
4 permit increased and additional nonconformities,
5 particularly when they would be contrary to the intent
6 of the zone itself as existing buildings that are
7 already too big for this zone are not intended to be
8 made physically larger. As there is no unique
9 circumstance associated with this lot, there is no
10 practical difficulty that is burdensome to the
11 applicant.

12 The application of the Zoning Regulations,
13 even section 2001.3, does not and cannot present a
14 practical difficulty as contended by the applicant.
15 Moreover, the intent of the provision is to limit the
16 construction of additional volume. So rather than
17 constituting an unnecessary burden, the regulation is
18 specifically intended to ensure preservation of the
19 character of lower density residential areas.

20 As such, the relief requested would impair
21 the intent, purpose and integrity of the Zoning
22 Regulations and Map as the variances are clearly
23 contrary to the intent of the R-4 District and to the
24 intent of section 2001.3.

25 Subsequent to filing the OP report, OP

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1 received written comments from WASA indicating that
2 new water and sewer connections will not be required,
3 although some upgrading may be required. I have
4 copies of the WASA comments for the applicant and for
5 the Board if you wish them.

6 Email comments were also received from the
7 Metropolitan Police Department noting that it did not
8 appear that there will be any significant effect on
9 the flow of traffic. Adequate precautions to ensure
10 safeguarding of construction equipment and proper
11 fencing to protect pedestrians are recommended. OP
12 did not receive comments from any other District
13 department or agency.

14 In summary, the Office of Planning
15 strongly supports the applicant in his efforts to
16 renovate this property as a more habitable and
17 marketable apartment building. However, the Office of
18 Planning does not believe that the variance test has
19 been met and believes that the proposal would
20 undermine the intent and integrity of the Zoning
21 Regulations and is not consistent with the
22 Comprehensive Plan.

23 As such, the Office of Planning recommends
24 that this application be denied. Contrary to the
25 testimony of the owner, this recommendation is not

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1 based on an Office of Planning policy, but it is based
2 on our interpretation of the clear intent of the
3 Zoning Regulations.

4 That concludes my testimony. I am
5 available for questions. Thank you.

6 CHAIRPERSON GRIFFIS: Thank you very much,
7 Mr. Lawson, very clear and decisive. Any questions
8 from the Board? Ms. Miller?

9 VICE CHAIR MILLER: Yes. Would you
10 comment on applicant's argument that it's not
11 economically feasible to renovate the building without
12 a variance?

13 MR. LAWSON: Well, despite what we heard
14 from the applicant today, this economic analysis was
15 done prior to closing. This was not available, made
16 available to the Office of Planning or to the Board
17 until today. I would -- I can't really comment on the
18 economic viability because I haven't had a chance to
19 really look at it.

20 CHAIRPERSON GRIFFIS: Any other questions
21 from the Board?

22 VICE CHAIR MILLER: No, thank you.

23 CHAIRPERSON GRIFFIS: Any cross?

24 COMMISSIONER HOOD: Mr. Lawson?

25 CHAIRPERSON GRIFFIS: Oh, I'm sorry.

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1 COMMISSIONER HOOD: Okay. Mr. Lawson, if
2 you noticed, Mr. Collins mentioned Tab B and he is
3 talking about this new, I guess, renaissance which is
4 taking place in Columbia Heights and I know that the
5 Comprehensive Plan Task Force Part 2 is in the process
6 of -- I don't know if they are making changes or what
7 they are even offering, but from a planning
8 perspective, and I know Office of Planning is
9 basically leading the effort, and I know that I have
10 heard in the past that some of the things that the
11 Mayor and others are trying to do is make sure that
12 situations like this or sites like this are able to
13 expand.

14 Is there anything in the pipeline? And I
15 know it hasn't been approved, but I'm just curious for
16 the sake of discussion. Is there anything in the
17 pipeline that may later on come in front of the Zoning
18 Commission and the BZA that may change, I guess, your
19 analysis of being in harmony with the intent and
20 integrity of the Zone Plan?

21 MR. LAWSON: I understand your question,
22 Commissioner Hood. Thank you.

23 COMMISSIONER HOOD: Good. I didn't know
24 if you did or not.

25 MR. LAWSON: Yes.

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1 COMMISSIONER HOOD: Because I don't know
2 if I got it across.

3 MR. LAWSON: No, it was a clear question.

4 COMMISSIONER HOOD: Okay.

5 MR. LAWSON: It was a good question.

6 COMMISSIONER HOOD: Okay.

7 MR. LAWSON: My understanding of what is
8 going on with the Comprehensive Plan is that at least
9 right now there are no revisions to the single-family
10 areas being proposed. Quite the contrary. I think
11 that we have heard repeated calls from the
12 neighborhoods, not necessarily this particular
13 neighborhood but the single-family neighborhoods, for
14 protection of the single-family, this lower density
15 residential character of those zones.

16 So I haven't heard of any plans to up-
17 zone, for example, these areas from R-4 to some other
18 use. I'm not saying that's not going to happen.

19 COMMISSIONER HOOD: Right.

20 MR. LAWSON: I'm just saying I haven't
21 heard of anything. Now, you know, I just want to make
22 it really clear because I think there was some
23 confusion about this. The Office of Planning
24 recognizes that an apartment use is a permitted use in
25 this zone, because this use is grandfathered.

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1 There were 9 units in the building, so a
2 by right use would be up to 9 units in this building.
3 We have not proposed to the applicant that they revert
4 it to a flat. That would be fine if they wished to do
5 that. That is their decision. They also have the
6 ability to renovate it for up to, you know, 3 units,
7 4 units, 5 units, up to 9 units.

8 Our concern is that the addition itself is
9 nonconforming, is contrary to the intent of the Zoning
10 Regulations, not that the use of the building as an
11 apartment building is nonconforming to the Zoning
12 Regulations, because it's clearly anticipated that
13 apartments would be allowed to continue to operate in
14 this zone.

15 COMMISSIONER HOOD: Okay. All right.
16 Thank you. Thank you, Mr. Chair.

17 CHAIRPERSON GRIFFIS: Good question, Mr.
18 Hood, appreciate it and Mr. Lawson's answer. Is there
19 any other further questions from the Board? Does the
20 applicant have any cross examination of the Office of
21 Planning?

22 MR. CHRISTOPHER COLLINS: No, sir.

23 CHAIRPERSON GRIFFIS: Indeed. Let's move
24 ahead then and go to -- I have asked if the ANC was
25 present. I don't know if any ANC member from 1-C --

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1 A, rather, has come in. I do not see any
2 representative from ANC 1-A.

3 We'll note that, of course, in the
4 applicant's submission there is a tab that has the
5 resolution from the ANC and the testimony that has
6 been provided on that. We don't have any other
7 Government reports attendant to the application
8 outside those that Mr. Lawson has indicated, the
9 Office of Planning and the ANC.

10 Let me ask for all those persons present
11 to give testimony in Application 17388 to come forward
12 at this time either in support or opposition. Not
13 noting anyone here to provide persons testimony, let's
14 move ahead, Mr. Collins, for your rebuttal witness and
15 closing remarks.

16 MR. CHRISTOPHER COLLINS: I call Mr.
17 Lindsley Williams, who has previously been qualified
18 as an expert witness. I'm going to ask him just to
19 present his comments on the Office of Planning's
20 position.

21 MR. WILLIAMS: Good morning, Members of
22 the Board. My name is Lindsley Williams and the short
23 statement is that I disagree with the report of the
24 Office of Planning and its conclusions.

25 CHAIRPERSON GRIFFIS: Thank you very much.

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1 Any questions? Go ahead.

2 MR. WILLIAMS: In point of fact, I have
3 gone through each of the tests myself with the
4 standards that I believe you would be using and should
5 be using, and I conclude that there is ample evidence
6 that there is a practical difficulty au contraire to
7 the Office of Planning.

8 I find the site to be very unusual, if not
9 unique. I have provided you in the materials that you
10 have a diagram, which illustrates on the first page
11 where the applicant's site is located on the entire
12 square and I have analyzed all of the records out of
13 the Assessment Office for each of the properties on
14 the square, and it is the only building that is in a
15 row house type of structure, which itself is called a
16 walk-up apartment unit.

17 The other two buildings that are declared
18 as apartments is a four story building known as the
19 Kenyon to the immediate west of the site, you see it
20 highlighted in yellow, and a comparable building that
21 is now a 16 unit condominium unit which is located on
22 Irving Street to the south. If you're being real
23 careful in reading my remarks, under 4-D you will see
24 I have declared that to be Lamont Street. That is
25 incorrect.

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1 But the point is that it is the only such
2 property in this square. If I fanned out wider
3 throughout all of that area, I could probably find
4 something else, but I looked at this area very
5 carefully. I think that is an adequate reach to find
6 the exceptional circumstance that is required for test
7 one and that is what I would like you to take away
8 from my test one of discussion.

9 CHAIRPERSON GRIFFIS: Okay. So your
10 testimony is that existing right now as you're
11 surveying today, you couldn't find anything that was
12 analogous to --

13 MR. WILLIAMS: Absolutely. And to me it
14 just was a walk directly into what St. Viator stood
15 for. Here is the condition that's in the building.
16 Next case on that test. You have heard from the
17 applicant and others on practical difficulty. They
18 are reducing the density to 50 percent, about 50
19 percent. My contribution here really runs more into
20 the third test, is it out of line with what the plans
21 are, the Zone Plan and the like?

22 And I would just have you note that
23 adjacent buildings in the group of nine row houses,
24 there are about nine houses there right now that are
25 of this four story exceeding the height limit type

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1 thing, about four of them have already been converted
2 into condominiums and those that are converted, where
3 I could establish the records, three of them have 5
4 units and one has 4 units. There are no other such
5 structures along the entire frontage along the street,
6 Kenyon Street frontage, whatsoever.

7 The final test that I was going to talk
8 about is the relationship to the Comprehensive Plan,
9 and I have provided a diagram for you which tries to
10 show the way in which OP has characterized on maps
11 that it has released the current uses. It shows the
12 applicant's site as being in a residential low density
13 use category. I'm not sure I would have classified it
14 that way, but that's what their map shows and I wanted
15 to show you what they did.

16 You can see a slightly higher density in
17 the orange in the upper part, which is the two
18 apartment buildings. You can see the -- and I have
19 added the Metro Portal site, which is reflected in
20 page -- in the first diagram where you can see it
21 under construction, but there it is very nearby. And
22 what's called for in the Comprehensive Plan, such as
23 it is, is a mixed-use of zone to the immediate west of
24 the site but coming closer again with the Metro.

25 And then finally, the Office of Planning

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1 through the Comprehensive Plan study process has
2 identified much of the 14th Street corridor from
3 Columbia Heights all the way down to Rhode Island
4 Avenue as being an area where there is considerable
5 uncertainty about change.

6 To me as a planner, when you have a site
7 such as this which is close to Metro, wasn't there
8 before but it is now very much there, and you have the
9 kind of opportunity for urban transportation that that
10 provides, that is not a place where the city as a
11 matter of policy should be proposing lower density
12 than what's there right now.

13 What is there right now to my way of
14 thinking along the entire frontage of that street is
15 basically what in 1958 would have been R-5-B. In the
16 mid '90s the Zoning Commission created an R-5-C Zone.
17 That is absolutely appropriate for what is there in
18 the 9 units at the western end of Kenyon. And then
19 when you get to the apartment buildings themselves,
20 they might be R-5-C. They might even be R-5-D if you
21 were trying to have something that established what
22 would work and keep them from being nonconforming.

23 It's not a great idea, in my professional
24 opinion, to have huge percentages of properties
25 laboring under the burden of being a nonconforming

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1 building or a nonconforming structure. It can make it
2 work, but it's not ideal. That is why we're here
3 today. This building has a situation where it is
4 extended over and it is at 58 percent of lot
5 occupancy.

6 We're not adding one square inch of lot
7 occupancy in this proposal nor are we adding an
8 additional foot or floor to the number of feet or
9 floor that is in this building. To me there is no
10 adverse impact and no inconsistency with the
11 Comprehensive Plan, no inconsistency with the intent
12 and purpose of the Zoning Regulations.

13 CHAIRPERSON GRIFFIS: Thank you very much.
14 Any questions from the Board, clarifications?

15 VICE CHAIR MILLER: Could you just tie
16 together what aspect of the uniqueness in this case
17 leads to the practical difficulty of complying with
18 the regulations?

19 MR. WILLIAMS: To me the difficulty is
20 that you have a building that is made up of 9 units
21 and if you have a situation like this, as is there
22 right now, but you find the conditions are in such
23 deplorable condition as they have been described as
24 being, then what you have is a rather substantial
25 renovation problem in front of you.

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1 And once you go over a certain threshold,
2 Mr. McGhee can speak to this more expertly than I in
3 terms of renovations, you have to bring it up to
4 current code. Once you have more than 5 units in a
5 building, it's my understanding that you then have to
6 have a second set of stairs.

7 So immediately your core costs, which have
8 been expressed earlier as a percentage, become double
9 whatever they were and out goes some of the units as
10 a process of trying to do the right thing. That is a
11 practical problem.

12 VICE CHAIR MILLER: So just to clarify
13 here, it sounds to me like an economic hardship
14 argument based on the condition of the building and
15 what it would take to renovate it. Is that correct?

16 MR. WILLIAMS: I think it is both an
17 economic difficulty and spatially, since we are
18 limited to 60 percent lot occupancy, at least I would
19 contend that it would be difficult to say we need to
20 enlarge even further. I would see that it would be
21 even difficult to maintain nine apartments.

22 I would suspect that you might have to
23 blow away three of the nine units just to get the
24 second stair in. Again, I would let Mr. McGhee speak
25 to that, but to me that's more than just economics.

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1 It's what this case is all about.

2 VICE CHAIR MILLER: Thank you.

3 CHAIRPERSON GRIFFIS: You have a second
4 stair. I mean, it's having to --

5 MR. WILLIAMS: It's outside.

6 CHAIRPERSON GRIFFIS: Understood. Okay.

7 MR. WILLIAMS: But if you had a second
8 unit, two units on a floor, there would be no means of
9 second egress even down the fire stair that Mr. McGhee
10 has spoken of. So that is why I am under the theory
11 that you would need a second full blown stair which
12 creates the problem that I have just described.

13 CHAIRPERSON GRIFFIS: Excellent. Okay.
14 Anything else? Follow-up? Mr. Collins, redirect?

15 MR. CHRISTOPHER COLLINS: Nothing, just
16 concluding remarks if I may.

17 CHAIRPERSON GRIFFIS: Absolutely.

18 MR. CHRISTOPHER COLLINS: In conclusion,
19 you have heard now from our expert witnesses and
20 taking their testimony together and, you know,
21 considering it all as a part of the one case here,
22 they have demonstrated that we have an exceptional
23 situation or condition, that the strict application of
24 the regulations impose a practical difficulty and that
25 relief can be granted without substantial detriment to

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1 the public good.

2 I would point out that this is not a
3 conversion of an existing building to an apartment
4 house where the 900 square foot rule would apply.
5 This is an existing apartment house with 9 units. Mr.
6 Lawson mentioned that their review was that we would
7 need to add a variance from height under section 400
8 of the regulations and that the analysis that OP did
9 did not include that, our request for that.

10 Our statement to you today, our position
11 to you today, our case, we did ask for or point out
12 the variance for the height under section 2001.3. If
13 we added the other section number, our case would not
14 have changed. The case is what it is. We have
15 demonstrated the exceptional situation and the
16 practical difficulty and no adverse impact with the
17 height.

18 The building, the exceptional situation or
19 condition is the building itself, as Mr. Williams and
20 the other witnesses testified, and its history of use.
21 There is no other similar building in the square, as
22 Mr. Williams testified, one of only three walk-up
23 rental units in the square. The other two are larger,
24 much larger units.

25 So this is an exceptional situation or

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1 condition. As the case law said, it's not a condition
2 that is generally found in the neighborhood at large.
3 It is exceptional. It is an unusual condition and
4 this is one of only three and the only one like it.
5 There is no other building like it in the square.

6 The practical difficulty. The witnesses
7 and the exhibits demonstrated that you could not
8 acquire the land to reduce the lot occupancy to 40
9 percent. You couldn't practically chop of 18 percent
10 of the building to make the additions, because the
11 area where the additions would be would go away.

12 And also the economics. Consistent with
13 the goal of trying to comply with the spirit of the
14 regulations by not increasing the lot occupancy, not
15 increasing the height over what it is and with all
16 these constraints, the proposed 5 unit building, as
17 Mr. Wyeller demonstrated in his analysis and Mr.
18 McGhee talked about as well, the proposed 5 unit
19 building is the only economically feasible alternative
20 for renovation of this.

21 You couldn't make those 5 units smaller,
22 you know, with less footprint of the addition on the
23 back than what the existing building is. You couldn't
24 pull them in from the back. You couldn't make them
25 lower than the top, because they just would not

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1 generate the kind of revenue necessary to justify the
2 cost of the renovation itself.

3 Under the as-is configuration, as Mr.
4 Wyeller pointed out, none of the analyses, even the
5 most optimistic analysis, would generate sufficient
6 revenue to justify even proceeding with the project
7 itself. I think he made a very good point there very
8 graphically with the analysis that he did.

9 The optimistic analysis and all three
10 proposed, the pessimistic, reasonable and optimistic,
11 for the addition to the building it shows that the
12 revenue from the fifth unit is in one instance half
13 going to pay the cost. In the other instance 80
14 percent is going to pay the cost of the renovation
15 itself.

16 The margin for a profit here is very
17 small, so the fifth unit is necessary for that reason.
18 Otherwise, the project doesn't make economic sense.
19 The only other option is to leave the building as-is,
20 do maybe a paint and patch and reopen it as some kind
21 of a tenement type unit. Because it was established
22 an apartment unit well before the transient
23 regulations had changed, they are allowed to do that,
24 which would be inconsistent with the surrounding
25 neighborhood.

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1 Mr. McGhee mentioned that the 5 unit
2 building is the safest and most code efficient and
3 most code compliant configuration.

4 Finally, no adverse impact on the public
5 good. The building, this project, is consistent with
6 the Comprehensive Plan. I would like to point out
7 that in reading page 2 of the Office of Planning's
8 report toward the bottom where they said that the
9 proposal is explicitly contrary to the language of the
10 Comp Plan, I believe that if you read it I think it's
11 consistent with the Comp Plan in that respect, because
12 if you look at section 1231.1(d), it says "To
13 implement land use objectives is to protect the
14 character of residential use zone row house
15 neighborhoods by limiting the density of development."

16 We're going down from 9 units to 4 units
17 and we're preventing the intensification of the use
18 through the subdivision of structures. We're not
19 making more units. We're making less units. Again
20 under section (d)(1) there, we are allowing more space
21 per occupant per room with this addition. By limiting
22 the number of units from 9 to 4 and putting these
23 modest additions on, we're making two bedroom units
24 that meet the market, that have more space per
25 occupant per room than this 9 unit tenement building.

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1 Similarly, we're preventing overcrowding
2 within the structure by decreasing the number of units
3 and we're preventing the intensive unit subdivision of
4 row houses, as shown on numbers 4 and 5 on page 3 of
5 the Office of Planning's report. So we think we are
6 consistent with the Comprehensive Plan and Mr.
7 Williams has mentioned that in other respects as well
8 on the map.

9 This is supported by the neighborhood.
10 It's supported by the ANC. It's consistent with other
11 uses in the square and in close proximity. It's near
12 the Columbia Heights Revitalization at 14th and
13 Kenyon. We are not in that zone. We are not in the
14 C-3-A Zone, but the ripple effect here is such that
15 the rising tide is lifting at least this boat if you
16 approve this application.

17 This will go from a rundown building with
18 tenements, transient units that has been an area for--
19 a haven for vandals and vagrants and drug activity,
20 that type of thing, that is being turned back into a
21 productive use in the neighborhood with two bedroom
22 units.

23 The Office of Planning has recommended in
24 their report that the cover over the court not be
25 included, the one that we used to eliminate the

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1 nonconforming court. If this Board sees fit to
2 approve this application, you could condition your
3 approval such that we would take that off, that we
4 would not include that, if you so desire, consistent
5 with what the Office of Planning has said and we would
6 be pleased to amend our application as such if that's
7 what you desire.

8 So in conclusion, I think that you have
9 heard the testimony, the evidence that we do meet the
10 three parts of the variance test and we would
11 respectfully request your approval of this application
12 at your earliest convenience.

13 CHAIRPERSON GRIFFIS: Excellent. Thank
14 you very much. This Board is not in the general
15 position to redesign things or tweak it. I guess if
16 you were asking for an opportunity to amend your
17 application, I think we would be open to that, but I
18 don't think you're going to find from the Board's
19 perspective that we would condition a removal or have
20 to provide, but rather just the application that is
21 before us.

22 So let's get to that. I think with the
23 time and the amount of substance and the new testimony
24 that has been brought in today, we'll set this for
25 decision making on the 6th of December. That is our

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1 normal Public Meeting.

2 I would like to provide the Office of
3 Planning two of the evidentiary aspects that were put
4 into the record today. One, Mr. Williams' testimony
5 and graphic and, two, the economic analysis. We'll
6 keep the record open if Office of Planning is so
7 inclined to supplement their report, and that can be
8 done and put into the record by the 23rd of November
9 '05.

10 We would have a response by the applicant
11 by the 30th of November at 3:00 and decision then
12 would be done on the 6th unless there is any other
13 information that I'm missing that Board Members have
14 in their notes that we would request. Anything else?
15 Very well. We'll reiterate that.

16 Mr. Collins, is that acceptable or
17 understandable? I think we keep the record open
18 actually. I'll let the -- well, there it is. Why
19 don't we redo the dates and then I'll ask if there's
20 any other final clarifications.

21 Do you need me to restate it, Ms. Bailey?
22 Oh, you're ready.

23 MS. BAILEY: Mr. Chairman, you asked that
24 Mr. Williams' testimony be presented and be filed in
25 the record and also the pro forma analysis that was

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1 conducted by, prepared by, the applicant and that is
2 to come in by November 23rd. The Office of Planning
3 has until November 30th to respond and a decision is
4 scheduled for your Public Meeting, December the 6th.

5 CHAIRPERSON GRIFFIS: Excellent. I'm
6 going to add a little bit of detail note to that. Of
7 course, we're going to provide the Office of Planning
8 with the last two evidentiary submissions today. The
9 record will be open for their supplemental report, as
10 you have indicated, which would be due into the record
11 by the 23rd of November.

12 The 30th at 3:00 we'll close the entire
13 record. It would only be left open for any
14 submissions from the applicant in response to the
15 Office of Planning's supplemental report, and that
16 would put us in timely fashion to review all that
17 information for the 6th of December.

18 MR. CHRISTOPHER COLLINS: Could I, Mr.
19 Chair?

20 CHAIRPERSON GRIFFIS: Yes.

21 MR. CHRISTOPHER COLLINS: Given that the
22 23rd is the day before the holiday --

23 CHAIRPERSON GRIFFIS: So they get their
24 homework done before they went on vacation.

25 MR. CHRISTOPHER COLLINS: Right. But what

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1 we find is that, and this is nothing against Mr.
2 Lawson, because he is very good about this, but if we
3 could get that, if the condition is that we could get
4 that served on us by email.

5 CHAIRPERSON GRIFFIS: Oh, yes.

6 MR. CHRISTOPHER COLLINS: I would be happy
7 to give Mr. Lawson -- I think he does have our email
8 address.

9 CHAIRPERSON GRIFFIS: I have no difficulty
10 with that. Mr. Lawson, it might well be easier if
11 you're anticipating doing a supplemental report. I'm
12 not sure. Do you want to comment?

13 MR. LAWSON: I would be happy to email it
14 to the applicant. I would ask perhaps the applicant
15 could then email the information that I am supposed to
16 review to me today, so I have it as well.

17 CHAIRPERSON GRIFFIS: Excellent.

18 MR. CHRISTOPHER COLLINS: Sure. I'm happy
19 to do that.

20 CHAIRPERSON GRIFFIS: Excellent. Okay.
21 So we'll get all that around, back and forth and we'll
22 look for it if it comes in. Okay. Anything else?
23 Any clarifications? Is everyone clear? Very well.
24 As you well know, you can call into the Office of
25 Zoning for clarifications on the schedule or

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1 submission times.

2 If not, we will see you on the 6th of
3 December. We have three other cases for deciding.
4 This will be the fourth. I'm not sure where you're
5 going to be in that order. You're welcome to be here.
6 Of course, no other additional testimony will be
7 provided, at that time, outside of that which we have
8 requested to be put into the record.

9 Thank you very much. We appreciate it.
10 An excellent and very detailed presentation today, an
11 awful lot for the Board to factor in.

12 With that then, as they are moving off,
13 let us call the next application, 17389, and I'm sure
14 everybody will move ahead and get the morning session
15 completed very soon. Yes? We're going to take a one
16 minute recess for the recorder and let the transition
17 under --

18 (Whereupon, at 12:02 p.m. a recess until
19 12:12 p.m.)

20 MS. BAILEY: Mr. Chairman, the next case
21 is Application No. 17389 of Carol Anderson, pursuant
22 to 11 DCMR section 3104.1, for a special exception to
23 allow a second story addition to an existing single-
24 family detached dwelling under section 223, not
25 meeting the lot occupancy requirements, that's section

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1 403, and nonconforming structure provisions,
2 subsection 2001.3. The property is located in the R-
3 1-B District at 4659 Massachusetts Avenue, N.W.,
4 Square 1556, Lot 58.

5 CHAIRPERSON GRIFFIS: Excellent. Thank
6 you very much. I'm going to have you both introduce
7 yourselves for the record. Just state your name and
8 address. If you wouldn't mind, just turn the
9 microphone on. There is a button right on the base.
10 Excellent. Okay.

11 MS. ANDERSON: I am Carol Anderson and I
12 reside at 4659 Massachusetts Avenue, N.W.

13 CHAIRPERSON GRIFFIS: Excellent. Thank
14 you very much.

15 MR. LEVINAS: My name is Salo Levinas from
16 Shinberg-Levinas Architects. The address is 4733
17 Bethesda Avenue.

18 CHAIRPERSON GRIFFIS: Excellent. Thank
19 you very much. Ms. Anderson, of course, you are able
20 to stand on the record with this. We don't have any
21 opposition. The sufficiency of the application is
22 evident. Section 223 is, I think, one of my favorite
23 sections of the Zoning Regulations. It's clear,
24 straightforward. We know exactly what to look at.

25 Would you like to stand on the record?

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1 MS. ANDERSON: Sure.

2 CHAIRPERSON GRIFFIS: Excellent. I will
3 give you an opportunity to make an opening statement
4 if you need.

5 MS. ANDERSON: No.

6 CHAIRPERSON GRIFFIS: Very well. I think
7 I'm going to ask you just a couple of quick questions
8 just to verify the facts that you have already based
9 your submission on. In looking at 223 and in talking
10 to the neighbors and in working with your architect,
11 have you had any evidence from any of surrounding
12 sources that this would in some way impair the light
13 or air or unduly impact the use and enjoyment of the
14 adjoining neighbors?

15 MS. ANDERSON: No. I have letters of
16 support, which I submitted, from nine of the immediate
17 neighbors to my property and I have --

18 CHAIRPERSON GRIFFIS: Excellent.

19 MS. ANDERSON: -- come across no support--
20 opposition.

21 CHAIRPERSON GRIFFIS: Indeed you do. We
22 actually have 10 on the record.

23 MS. ANDERSON: Okay.

24 CHAIRPERSON GRIFFIS: Exhibits 21 through
25 23. Obviously, most of those are attached and within

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1 those exhibits, 10 letters that are verifying support
2 for the application.

3 Are you aware of any design aspects that
4 would remove this from the character of the
5 surrounding area?

6 MS. ANDERSON: No.

7 CHAIRPERSON GRIFFIS: Okay. I don't have
8 any other questions for the applicant unless any other
9 Board Members do. Mr. Hood? Very well. Not noting
10 any others, let's move ahead to the Office of Planning
11 and wish them a very good afternoon and wish we could
12 say good morning.

13 MS. BROWN-ROBERTS: Good afternoon, Mr.
14 Chairman and Members of the Board. I am Maxine Brown-
15 Roberts from the Office of Planning. I will also
16 stand on the record and say that, as outlined in our
17 report, the applicant has met all the criteria
18 outlined in section 223 and the Office of Planning
19 recommends approval of the application.

20 CHAIRPERSON GRIFFIS: Excellent.

21 MS. BROWN-ROBERTS: Thank you, Mr.
22 Chairman.

23 CHAIRPERSON GRIFFIS: Thank you very much.
24 Does the Board have any questions of the Office of
25 Planning? Does the applicant have the Office of

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1 Planning's report?

2 MS. ANDERSON: I don't, no.

3 CHAIRPERSON GRIFFIS: Have you been able
4 to review it at all?

5 MR. LEVINAS: No.

6 MS. ANDERSON: No.

7 CHAIRPERSON GRIFFIS: That's okay. Before
8 you leave you should get it.

9 MS. ANDERSON: Okay.

10 CHAIRPERSON GRIFFIS: Let me just
11 summarize it for you as she has done well and aptly
12 indicated what they were recommending. They are
13 recommending approval of this application. They have
14 gone through a thorough analysis of the tests that are
15 required, of course, for the Board's deliberation and
16 they also have, I think, some excellent documentation.
17 It's well worth taking a look at.

18 I would note that they make one comment
19 and that is regarding the entrance canopy or cover on
20 the front. There was an issue of whether it was
21 something that we should look at and I think it's the
22 Board's position that, one, it projects over the
23 property line, which removes it from our jurisdiction.
24 I don't see any reason why we would actually need to
25 address it, but it is important that the Office of

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1 Planning has brought that to our attention. I think
2 be that as it is, you should do with it what you would
3 like.

4 MS. ANDERSON: Okay.

5 CHAIRPERSON GRIFFIS: I don't have any
6 other Government reports attendant to the application
7 unless the Board or the applicant is aware of any
8 others. Is ANC 3-E represented today? Not noticing
9 ANC 3-E present, I would note that Exhibit No. 22 is
10 their submission and the ANC voted not to oppose the
11 application.

12 I would at this time then move to any
13 persons present to provide testimony in the
14 application of 17389, which is a special exception
15 under 223 in support or in opposition. Not noting any
16 other persons present to provide testimony, I would
17 turn it over to you for any closing remarks you might
18 have.

19 MS. ANDERSON: The only remark I will
20 mention is that we are not intending to do the canopy.
21 I'm not going to do it.

22 CHAIRPERSON GRIFFIS: Well, that changes
23 the whole dynamic here.

24 MS. ANDERSON: I know, that's not your
25 jurisdiction. Just cost.

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1 CHAIRPERSON GRIFFIS: Aren't going to get
2 wet when you walk up to the front door?

3 MS. ANDERSON: Yes.

4 CHAIRPERSON GRIFFIS: The trick or
5 treaters are going to be wet.

6 MS. ANDERSON: I'm going to get wet.

7 CHAIRPERSON GRIFFIS: Is there a
8 difficulty? I don't know.

9 MS. ANDERSON: No, it's just a cost issue.

10 CHAIRPERSON GRIFFIS: I see. That's fine.

11 MS. ANDERSON: I mean, this has taken a
12 lot longer than I thought it would.

13 CHAIRPERSON GRIFFIS: Indeed, indeed.
14 Well, don't lose the plans.

15 MS. ANDERSON: Okay.

16 CHAIRPERSON GRIFFIS: It may be well worth
17 doing at some point, but there it is. Okay. Anything
18 further?

19 MS. ANDERSON: No.

20 MR LEVINAS: No.

21 CHAIRPERSON GRIFFIS: Nothing else? Very
22 well. Board Members, I would move approval of
23 Application 17389 of Carol Anderson under section 223
24 for the special exception at 4659 Massachusetts
25 Avenue, N.W., and ask for a second.

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1 VICE CHAIR MILLER: Second.

2 CHAIRPERSON GRIFFIS: Thank you very much.
3 I think it's very clear. The record is entirely full.
4 I won't continue in a long deliberation, but the test
5 of the 223, the special exception, have been
6 adequately met.

7 We haven't actually noted for the public
8 record the documentation that is required to have been
9 submitted for ease of understanding, essentially, for
10 the Board and I would make note that the architect is
11 present here to answer any questions, of course, that
12 we might have had, but has also submitted all the
13 documentation and plans that made it very clear and
14 evident of what was being proposed.

15 And I believe that they have met the
16 entire test of this special exception and there has
17 been, in fact, no evidence offered to the contrary
18 that they would not or that there might be elements of
19 which the Board should look at in terms of screening
20 or redesign or lighting or any other aspects that
21 might be of a condition and, therefore, obviously I
22 would support the application.

23 I will let it open for any others if they
24 have any other comments or deliberation. Not noting
25 any, I would ask for all those in favor to signify by

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1 saying aye.

2 ALL: Aye.

3 CHAIRPERSON GRIFFIS: And opposed?
4 Abstaining? Very well. If you wouldn't mind
5 recording the vote, Ms. Bailey?

6 MS. BAILEY: Mr. Chairman, Mr. Etherly is
7 not beside you is he? I just want to make sure I'm
8 not -- okay. All right. Thank you, sir. The vote is
9 4-0-1 to approve the application. Mr. Griffis made
10 the motion, Mrs. Miller second, Mr. Mann and Mr. Hood
11 are in agreement and Mr. Etherly is not on the dias at
12 this time.

13 CHAIRPERSON GRIFFIS: Excellent. Thank
14 you very much. I think unless there is any opposition
15 from the Board, we could waive our rules and
16 regulations and issue a summary order on this.

17 MS. BAILEY: Thank you, sir.

18 CHAIRPERSON GRIFFIS: Not noting any
19 opposition, thank you very much. We appreciate your
20 patience.

21 MR. LEVINAS: Thank you.

22 CHAIRPERSON GRIFFIS: Good luck with that.
23 Let's move ahead then and call the last case for the
24 morning.

25 MS. BAILEY: Application No. 17390 of 15th

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1 and H Street Associates LLP, pursuant to 11 DCMR
2 3104.1, for a special exception from subsection 770.6
3 and section 411 to permit more than one roof
4 structure, a mechanical equipment penthouse that does
5 not meet the setback requirements, and enclosing roof
6 structure walls of unequal height. The property is
7 zoned C-4. It is located at 1426 H Street, N.W.,
8 Square 222, Lot 22.

9 CHAIRPERSON GRIFFIS: Excellent. Thank
10 you very much. Has everyone been sworn in?

11 UNIDENTIFIED SPEAKER: I have not.

12 CHAIRPERSON GRIFFIS: Why don't we stand
13 and give your attention to Ms. Bailey. She is going
14 to swear you all in.

15 (Whereupon, the witnesses were sworn.)

16 CHAIRPERSON GRIFFIS: Excellent. Thank
17 you very much. I'm going to do a preliminary matter
18 first and then I'll have everyone introduce themselves
19 for the record. The Office of Planning has two
20 reports in the record. I just want to clarify what we
21 are looking at and most importantly directly there was
22 not necessarily, well, there was a comment of
23 postponing this until further HPRB approval. So let's
24 just get clarification of where the Office of Planning
25 is with that.

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1 MR. PARKER: Good afternoon.
2 Unfortunately, our bosses are as overworked as we are
3 and two planners were assigned to this case
4 separately. I think that's the --

5 CHAIRPERSON GRIFFIS: That's it.

6 MR. PARKER: That's the reason for the two
7 reports. The issue of postponement came out because
8 there are some outstanding issues with this roof
9 structure with Historic Preservation and I just wanted
10 to call that to the Board's attention.

11 CHAIRPERSON GRIFFIS: Okay.

12 MR. PARKER: And how the Board handles
13 that, I don't know that we have a strong
14 recommendation.

15 CHAIRPERSON GRIFFIS: Right.

16 MR. PARKER: We have laid out the
17 possibility of postponement if those changes would
18 provide some substantive change to the design. It
19 doesn't look like they will, but we haven't seen those
20 changes yet.

21 CHAIRPERSON GRIFFIS: Okay. And which
22 report shall we be looking at then?

23 MR. PARKER: You're free to look at either
24 one. The one that I wrote is the one dated November
25 1st.

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1 CHAIRPERSON GRIFFIS: Excellent. Okay.
2 And so you think that the building was built in 1911
3 as opposed to the other that thinks it was 1912.

4 MR. PARKER: It was probably started in
5 1911 and finished in 1912.

6 CHAIRPERSON GRIFFIS: That being said --
7 exactly. I don't see any reason unless the applicant
8 can bring any reasoning for the postponement, and they
9 haven't brought a motion of postponement, so I don't
10 see anything rising to the level of setting this off.
11 If and obviously the Historic Preservation will review
12 this for massing and materiality of which we could
13 also, but I think we always defer to the Design Review
14 Board in that aspect. I think we can move ahead with
15 the zoning aspects to this under 411 and 770, unless
16 there are comments from the Board Members on that.

17 Is everyone ready to proceed?

18 VICE CHAIR MILLER: I was just wondering
19 if there was a comment from the applicant.

20 CHAIRPERSON GRIFFIS: Well, that's where
21 I'm going to next.

22 VICE CHAIR MILLER: Okay.

23 CHAIRPERSON GRIFFIS: How about from you?

24 VICE CHAIR MILLER: No.

25 CHAIRPERSON GRIFFIS: Okay. Very well.

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1 Then I'm going to have you introduce yourselves for
2 the record, please.

3 MR. SHER: Mr. Chairman, Members of the
4 Board, for the record my name is Steven E. Sher, the
5 Director of Zoning and Land Use Services with the Law
6 Firm of Holland and Knight. Seated to my right is
7 Ashley Gerstenfeld, the representative of the owner,
8 and to her right, Gary Martinez, the architect.

9 I'm just a little confused because I
10 haven't seen two reports. I only saw one report and
11 that was fine. But we have been to the Historic
12 Preservation Review Board. They have approved the
13 project and delegated to staff the final details when
14 we come back for permits. So we --

15 CHAIRPERSON GRIFFIS: That's right.

16 MR. SHER: We are prepared to go ahead and
17 we think we're going ahead and we don't think there
18 are any issues left.

19 CHAIRPERSON GRIFFIS: There aren't.

20 MR. SHER: Okay.

21 CHAIRPERSON GRIFFIS: But we just got to
22 say them.

23 MR. SHER: Okay.

24 CHAIRPERSON GRIFFIS: Okay. Let's
25 introduce everybody else.

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1 MS. GERSTENFELD: Ashley Gerstenfeld with
2 SJG Properties, owners of the 15th and H Street
3 Associates.

4 MR. MARTINEZ: Mr. Chair, Members of the
5 Board, my name is Gary Martinez with the architectural
6 firm Martinez and Johnson.

7 CHAIRPERSON GRIFFIS: Good. We appreciate
8 all your patience and I'm not sure how our special
9 exceptions got scheduled later in the morning and our
10 variance in the first, but here we are. Let's get
11 through this. Of course, this is under 411 and 770.6.
12 Why don't I open it up for just brief opening remarks.

13 MR. SHER: Again, Mr. Chairman, Members of
14 the Board, we are here today on a special exception to
15 add to the roof of the building at the corner, the
16 southeast corner of 15th and H Streets known as the
17 Woodward Building. It's a building that was built in
18 either 1911 or 1912, depending on when you figure out
19 when it started and when it finished. It is a
20 building that is going to be converted from its
21 existing office and retail use to residential use and
22 as a result of that conversion, we require additional
23 space on the roof of the building.

24 I think our statement lays out in
25 sufficient detail what the justification for that is.

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1 We know there is an Office of Planning report dated
2 November 15th, which -- it's not dated November 15th,
3 but there is an Office of Planning report that I think
4 John Moore prepared that recommends in favor of the
5 application. That was the only report that I saw. We
6 know there is also a report from ANC-2F, which
7 recommends in favor of the application.

8 We are prepared to stand on the record,
9 unless the Board has any questions of us or we're
10 prepared to make a very short presentation, if the
11 Board would like that.

12 CHAIRPERSON GRIFFIS: I think that that
13 can stand on the record, unless Board Members feel
14 differently and oppose that. Let me just get some
15 quick clarification, Mr. Sher, of a couple of things.
16 First of all, do we have a signed letter from the ANC?

17 MR. SHER: I thought there was a signed
18 letter in the record.

19 CHAIRPERSON GRIFFIS: Okay.

20 MR. SHER: The copy they sent us was not
21 signed.

22 CHAIRPERSON GRIFFIS: We'll look at that.

23 MR. SHER: The one that is included in our
24 statement is not a signed copy.

25 CHAIRPERSON GRIFFIS: Right. Indeed.

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1 MR. SHER: But there were --

2 CHAIRPERSON GRIFFIS: We'll figure that
3 out as we get down the chronology then. I don't have
4 any difficulty in continuing. But let me just
5 summarize to make sure that I understand this
6 application correctly. We have, of course, under 411
7 and 770.6 certain requirements. 770.6 lays out, if
8 I'm not mistaken, that you have to comply with all of
9 411. We're talking about this penthouse structure and
10 there is two aspects to this.

11 One is the setback, because you are
12 aligning it with the existing and the other is the one
13 in back that doesn't -- well, there is three aspects
14 actually. It won't connect to the main penthouse or
15 roof structure, so you have two separate. The
16 existing is of 19.52 feet high, which is beyond
17 allowable, even conceivable in this city, and 18.6, of
18 course, would be the allowable height for the
19 penthouse.

20 And rather than ask for the height
21 increase to comply and make sure that it is all of one
22 height, which is in the other aspect of 411, you have
23 asked for two differing levels, relief from the
24 setback of one to one and relief from one single
25 enclosure. Is that correct?

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1 MR. SHER: That's correct.

2 CHAIRPERSON GRIFFIS: Okay. And really it
3 lays out not only just the special exception, but it
4 lays out almost the variance case. But are we talking
5 about the section, the stair enclosure which won't
6 connect to the main penthouse in front as I'm seeing
7 this is because, one, the prior use to this --
8 actually, it's an incredibly gorgeous building that is
9 going to be reconverted into a new use.

10 So it was office and now we have
11 residential buildings that require the means of egress
12 and the secondary stair going to the roof, which
13 wasn't required before. And so that pops it up
14 through and creates a second penthouse. Is that
15 correct?

16 MR. SHER: Yes, sir.

17 CHAIRPERSON GRIFFIS: Okay. And then the
18 setback is the other aspect in the front and then
19 that's connecting to the existing. If you look at
20 A201, I have one question. You are actually showing
21 a measurement on the documents of 18.6.

22 MR. SHER: Yes, sir.

23 CHAIRPERSON GRIFFIS: Of the existing
24 penthouse. But the submission calls it out as 19.52,
25 I believe, something of that nature, a nonconforming

1 height.

2 MR. MARTINEZ: Gary Martinez, Martinez and
3 Johnson. The 18.6 is really the measurement of the
4 proposed addition, which is the block on that sheet
5 that you see to the left of the existing penthouse.
6 And the existing penthouse is the 19.5 feet to its
7 roof.

8 CHAIRPERSON GRIFFIS: Okay.

9 MR. MARTINEZ: So the existing penthouse
10 is higher than we could actually build.

11 CHAIRPERSON GRIFFIS: But am I seeing
12 something strange then in terms of the graphics?
13 Because the 18.6 aligns with the top of the existing
14 penthouse.

15 MR. MARTINEZ: Yes, that actually has been
16 corrected on our submission that we have here today.

17 CHAIRPERSON GRIFFIS: Okay. But just --

18 MR. MARTINEZ: You are correct in that.

19 CHAIRPERSON GRIFFIS: The existing is as
20 written, not as drawn?

21 MR. MARTINEZ: That is correct.

22 CHAIRPERSON GRIFFIS: Okay. So there it
23 is. Very well. I don't have any other initial
24 questions of the applicant at this time. Does other
25 Board Members have any questions? Anything else we

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1 want to --

2 MR. SHER: No, sir.

3 CHAIRPERSON GRIFFIS: Okay. Let's move
4 ahead then and go to the Exhibit No. 25, is what we
5 are looking at, the Office of Planning's report.
6 Let's provide the applicant with an additional copy,
7 if we have. Do we have an additional copy? Do we
8 have any others? Do you have?

9 MR. PARKER: I don't, but you can have
10 this one.

11 CHAIRPERSON GRIFFIS: Why don't you run
12 through it and then we'll get them a copy?

13 MR. PARKER: Both reports of the Office of
14 Planning recommend approval. I'm happy to stand
15 behind either one. We can use the November 15th one,
16 if that --

17 CHAIRPERSON GRIFFIS: Let's use your's,
18 you wrote it.

19 MR. PARKER: November 1st, Office of
20 Planning recommends approval. We found that the
21 proposed design met the standards of 411.3, 411.5, met
22 the special exception tests and we continue to
23 recommend approval.

24 CHAIRPERSON GRIFFIS: Excellent. Now,
25 it's my understanding, obviously, under 411 we have

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1 full design jurisdiction and we can pick materials, we
2 can pick details. Don't be afraid, we won't do it.
3 And in most instances, I mean, the importance of that,
4 of course, in 411 the intent of the regulations was to
5 make these somewhat visually accommodating to the rest
6 of the building.

7 I would note that we always defer to the
8 Historic Preservation in Historic Districts in terms
9 of design. My understanding is that this has now been
10 through conceptual design. So you have a design for
11 this penthouse. Is that correct?

12 MR. MARTINEZ: That is correct.

13 CHAIRPERSON GRIFFIS: And the materials
14 are?

15 MR. MARTINEZ: The materials for the
16 addition to the penthouse is a metallic louver, which
17 would create the entire enclosure.

18 CHAIRPERSON GRIFFIS: Oh, I see. Okay.
19 And they have gone through all that and you are
20 working with staff to get the final details ironed
21 out, if I'm correct?

22 MR. MARTINEZ: That is correct.

23 CHAIRPERSON GRIFFIS: Okay. Good.
24 Anything else then? Any other questions? Does the
25 Board have any questions of the Office of Planning?

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1 Mr. Sher, you were just given that report. Is that
2 correct?

3 MR. SHER: Yes, sir.

4 CHAIRPERSON GRIFFIS: Of November. And do
5 you have any questions of the Office of Planning's
6 report, either the 15th or the 1st?

7 MR. SHER: No questions.

8 CHAIRPERSON GRIFFIS: Okay. Then I don't
9 have any other Government reports attendant to the
10 application. We have already indicated that it is
11 going through Historic Preservation Review and is with
12 ANC-2F. Exhibit 23, Tab F, is the only thing I show
13 which is the applicant's submission, unless others are
14 aware of a submission of the ANC? Very well. We will
15 at least note the fact of their resolution in the
16 record and will be part of our deliberation.

17 I don't have any other Government reports
18 attendant to the application, unless the Board is
19 aware of any. Is the applicant aware of any other
20 submissions that I have not noted?

21 MR. SHER: No, sir.

22 CHAIRPERSON GRIFFIS: Okay. Very well.
23 Then at this time, we would ask for anyone here
24 present to provide testimony either in support or in
25 opposition to Application 17390, that they can come

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1 forward and have a seat in a single line fashion,
2 utilizing all the chairs in front. Did we lock the
3 door? Okay. Very well. Not noting any other persons
4 present to provide testimony, let's turn it over to
5 you for any closing remarks that you might have.

6 MR. SHER: Mr. Chairman, we believe that
7 the record has been made with respect to the special
8 exception on the three areas of relief that you
9 identified earlier and we would request that the Board
10 approve the application and issue a summary order.

11 CHAIRPERSON GRIFFIS: Excellent. Thank
12 you very much. Any last questions from the Board,
13 noticing remarks or anything submitted in the
14 application? Okay. I wish this was in some respect
15 a more complicated case, it would have been fun to get
16 into some of the details of this just looking at the
17 plans and the complications that went through in terms
18 of an annotation of a building like this. It actually
19 reminds me of a building -- well, we won't go that
20 far. Let's just get to it and go have lunch.

21 It is actually a fascinating project and
22 it's very straightforward before us, however. And
23 411, of course, 770 lays out quite an extensive array
24 of things that have to come into compliance with our
25 roof structures and penthouse structures. And it is

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1 a special exception for a good reason, I believe, as
2 written. And that is that it is a full understanding
3 that things are going to have to be accommodated and
4 this is a perfect example of that.

5 The record is entirely full on this in
6 meeting all those requirements from the particular
7 difficulty in location and use and how the building
8 would be utilized if required to fully comply with
9 411. I see no reason to object to the approval of
10 this and, therefore, would move approval of
11 Application 17390, 15th and H Street Associates LLP,
12 for premises at 1426 H Street, N.W.

13 BOARD MEMBER ETHERLY: Second, Mr. Chair.

14 CHAIRPERSON GRIFFIS: Thank you very much,
15 Mr. Etherly. I believe that I do not need to go any
16 further into the requirements of the special
17 exception. Let me let it open for others, other
18 comments on the motion? Very well. Not noting any
19 other comments to the motion, we have a motion before
20 us, it has been seconded. I would ask for all those
21 in favor to signify by saying aye.

22 ALL: Aye.

23 CHAIRPERSON GRIFFIS: And opposed?
24 Abstaining? Very well. Ms. Bailey?

25 MS. BAILEY: Mr. Chairman, the Board has

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1 voted 5-0-0 to approve the application. Mr. Griffis
2 made the motion, Mr. Etherly seconded, Mr. Mann, Ms.
3 Miller and Mr. Hood are in agreement. And did you say
4 issuance of a summary order, Mr. Chairman?

5 CHAIRPERSON GRIFFIS: I didn't yet.
6 However, unless there is any issue with the Board, we
7 can waive our rules and our entire regulations, that
8 big document that we have, and issue a summary order
9 on this, unless the applicant is opposing that.

10 MR. SHER: We do not oppose.

11 CHAIRPERSON GRIFFIS: Indeed. Then very
12 well, let's follow through and issue a summary order
13 on this application. We thank you very much. We
14 appreciate your patience. Sorry it took so long to
15 get through the morning session. Good luck with this.
16 It looks absolutely fascinating. Before we -- well,
17 the record is closed, but is the retail staying in the
18 building? So the retail will be there, residential
19 above. Exciting stuff. Okay. Very well. Have a
20 great day.

21 MR. SHER: Thank you.

22 CHAIRPERSON GRIFFIS: Appreciate it. Ms.
23 Bailey, Mr. Moy, is there any other business for the
24 Board in the morning session?

25 MS. BAILEY: Mr. Chairman, we would just

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1 like to have the revised plans before the applicant
2 leaves and that's it, sir.

3 CHAIRPERSON GRIFFIS: Excellent. Exactly.
4 We need the revised plans that would be put into the
5 record. Of course, that would be part of the
6 condition on the order. If there is nothing further
7 then, let's adjourn our morning session.

8 (Whereupon, the Public Hearing was
9 recessed at 12:33 p.m. to reconvene at 2:08 p.m. this
10 same day.)
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A-F-T-E-R-N-O-O-N S-E-S-S-I-O-N

2:08 p.m.

CHAIRPERSON GRIFFIS: My name is Geoff Griffis, Chairperson. Joining me today is the Vice Chair, Ms. Miller, and also with us is Mr. Etherly. Representing the National Capital Planning Commission is Mr. Mann and representing the Zoning Commission with us this afternoon is Mr. Hildebrand.

Copies of today's hearing agenda are available for you. They are located at the table where you entered into the hearing room. You can pick it up and see where you are on the chronology of our agenda this afternoon.

Several important things I will state in my opening, I will try and do it quickly, so we make up a little time and we appreciate everyone's patience as our morning session went a little bit over, but we're going to get right into our agenda this afternoon.

First of all, I would ask that people, please, turn off all cell phones and beepers and any other noise making transmitting devices, so that we don't disrupt the testimony that is being provided before us, but importantly don't disrupt the recording of that testimony.

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1 Attendant to that, we do ask that people
2 fill out two witness cards. Witness cards are
3 available at the table where you entered into and also
4 at the table in front where you will provide testimony
5 to the Board. Those two cards go to the recorder
6 sitting on the floor to my right prior to coming
7 forward. When you do come forward to speak to the
8 Board, I would ask that you just state your name and
9 address for the record, and that will, of course,
10 ensure that anything in the transcript of which the
11 Court Reporter is creating, anything in the transcript
12 that you say is given to your credit and it also
13 allows us to spell your name correctly.

14 The order of procedure for special
15 exceptions and variances is as follows: First, we
16 hear the statement of the applicant and the case
17 presentation, essentially. Secondly, we will hear any
18 Government reports attendant to the application,
19 Office of Planning, Department of Transportation,
20 etcetera. Third, we will hear from the Advisory
21 Neighborhood Commission within which the property is
22 located.

23 Fourth, we will go to persons and parties
24 in support of the application. Fifth would be persons
25 and parties in opposition to the application. Sixth,

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1 finally, we will hear from the applicant again and any
2 closing, rebuttal witnesses testimony or any closing
3 remarks. We do have an appeal on the schedule for
4 this afternoon. When we get to that appeal, I'll go
5 through our order of procedure for that specifically,
6 so I don't take everyone's time to walk through that.

7 Cross examination of witnesses is
8 permitted by the applicant and parties in a case. The
9 ANC within which a property is located is
10 automatically a party in a case. Of course, being a
11 party is a higher level of participation in a case and
12 we will explain all of that if and when we get to a
13 point of which we establish parties in any particular
14 case. Once they are established and cross examination
15 is well underway, there is nothing that prohibits this
16 Board from curtailing the direction, the time or the
17 substance of cross examination, so that we stay on
18 point and stay within jurisdictions of the Board.
19 Again, I will be very specific in that direction as we
20 find the need that arises.

21 Our cases will be closed at the conclusion
22 of our hearings today, unless we have additional
23 information that is required by the Board or unless we
24 have postponements, continuances or rescheduling of
25 those. If we do require additional information in a

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1 hearing on a case, we will be very specific as to what
2 information should be provided and when it should be
3 provided into the Office of Zoning. Again, at the end
4 of cases, I will be very specific as to our procedure
5 moving towards any sort of deliberation.

6 The Sunshine Act requires that this Board
7 conduct all of its proceedings in the open and before
8 the public. This Board does enter into Executive
9 Session periodically in order to review records or
10 deliberate on cases. This Executive Session time is
11 in accordance with our rules, regulations and
12 procedures. It is also in accordance with the
13 Sunshine Act.

14 Let me ask all those who are present
15 today, well, first, before I do that, let me say a
16 very good afternoon to Ms. Bailey, who is sitting on
17 my very far right, representing the Office of Zoning,
18 Ms. Rose, next to her, also of the Office of Zoning.
19 Ms. Monroe with the Office of the Attorney General and
20 Mr. Moy with the Office of Zoning.

21 I'm going to ask all those who are present
22 today that are going to address the Board, provide
23 testimony or any sort of evidence if you would,
24 please, stand and give your attention to Ms. Bailey,
25 she is going to swear you in.

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1 MS. BAILEY: Please, raise your right
2 hand.

3 (Whereupon, the witnesses were sworn.)

4 CHAIRPERSON GRIFFIS: Thank you all very
5 much. With that, now, you have all been sworn in.
6 I'm going to ask if anyone has preliminary matters.
7 Preliminary matters are those which relate to whether
8 a case will or should be heard today, requests for
9 postponements, continuances, withdrawals, whether
10 proper and adequate notice has been provided. These
11 are elements of preliminary matters.

12 These guys are all going to fight for the
13 first seat to see who addresses what. We're going to
14 take in chronological order, but just to make sure
15 anyone that has preliminary matters can bring them up,
16 at this time. And, obviously, we have several in this
17 afternoon's case.

18 Why don't we look at 17315, which is the
19 Todd Collins variance, Ms. Bailey, unless you are
20 aware of anything else?

21 MS. BAILEY: Mr. Chairman, there are three
22 cases on the docket this afternoon and there is a
23 request for postponement for all three of the cases.

24 CHAIRPERSON GRIFFIS: Okay.

25 MS. BAILEY: The first of which is, as you

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1 indicated, Todd Collins. Is that the one?

2 CHAIRPERSON GRIFFIS: Yes.

3 MS. BAILEY: That you would call first?

4 CHAIRPERSON GRIFFIS: Excellent.

5 MS. BAILEY: Would you like for me to call
6 that or is that sufficient?

7 CHAIRPERSON GRIFFIS: I think we can take
8 it up as a preliminary matter. We don't need to do it
9 within the case, we'll save a little time. Why don't
10 we take it up now, at this point. Please, have a
11 seat. Very well. I know you are aware that we had a
12 hearing date set on the 10th of May, the 14th of June
13 and now the 15th of November. Did you want to
14 introduce yourselves for the record and then also
15 address why we're here again for the third time?

16 MR. McRAE: Yes, good afternoon. My name
17 is David McRae. I'm with the Law Firm of Griffin and
18 Murphy. I'm a co-agent along with Ms. Gerson, who
19 couldn't be with us today, because she just had her
20 first child yesterday.

21 CHAIRPERSON GRIFFIS: Oh, good.

22 MR. McRAE: And with me is Todd Collins,
23 who is the applicant in this case. Ms. Gerson, before
24 she went on maternity leave, had written a letter
25 addressed to the Board explaining that Mr. Collins'

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1 prior counsel in these matters had submitted a letter
2 of resignation.

3 CHAIRPERSON GRIFFIS: Right.

4 MR. McRAE: He had retained our firm to
5 represent him and that being newly aboard, we were
6 trying to work within what we found in the files to
7 further the application and also because Mr. Collins
8 had been awaiting the opportunity to assemble the
9 rights to develop this project as has been submitted,
10 the original time, I guess, in the last hearing, it
11 was estimated September of 2005 with the CHD. That
12 has still not happened. Mr. Collins could articulate
13 further, I think, as far as where that process is.

14 CHAIRPERSON GRIFFIS: Yes. Let's see if
15 we can get at least a little detail, because, quite
16 frankly, looking at this, it looks like it is where we
17 have been months ago and I'm not sure why we wouldn't
18 move to dismiss this now. Just to give you full out,
19 so you can address all these issues, I'm not even sure
20 what relief you are seeking nor I'm not sure how you
21 could know, because you haven't retained site control
22 of the additional site. So help me understand.

23 MR. TODD COLLINS: Sure. The lots in
24 question are homestead lots and the DHCD has had
25 ownership right, ownership issues regarding those

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1 homestead lots and Jay Greene as well as Bob O'Derrick
2 are the two principals within DHCD who are helping to
3 resolve this issue.

4 Because they have been vacant for so long,
5 there were tax liens, there were a number of issues
6 involving the lots that are being unwound and being
7 resolved and that process is taking much longer than
8 anticipated.

9 The ironic thing about this is these lots
10 will produce low to moderate income housing and they
11 are the lots that are taking the longest to get
12 settled. The lots that are producing market rate
13 housing, they are fine and we're ready to build but
14 until Jay Greene and Bob O'Derrick finish the job that
15 they are doing, we can't get started.

16 I just spoke to Bob O'Derrick on Friday
17 and he has said that he should have all issues
18 resolved and the lots should be transferable by
19 February, at the latest February '06.

20 CHAIRPERSON GRIFFIS: Okay. Any other
21 questions?

22 VICE CHAIR MILLER: Was there a reason why
23 this was brought forward as an application before it
24 was ready?

25 MR. TODD COLLINS: Yes, there is a reason.

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1 Originally, these lots were purchased from a community
2 development association and, at the time of purchase,
3 it was understood that that community development
4 association had authority to develop on those lots.
5 Well, a month after the purchase, that community
6 development association disbanded and ran out of
7 funds. So, consequently, it made this whole process
8 drag on a bit longer than anticipated.

9 CHAIRPERSON GRIFFIS: Anything else? Any
10 other questions? Is there anyone else here attendant
11 to 17315?

12 MS. MICHELS: I am.

13 CHAIRPERSON GRIFFIS: And you are? Are
14 you representing the ANC?

15 MS. MICHELS: No. I'm Martha Michels. I
16 own the property that adjoins one of the vacant lots.

17 CHAIRPERSON GRIFFIS: Okay. And you were
18 anticipating giving testimony today as a person?

19 MS. MICHELS: Yes.

20 CHAIRPERSON GRIFFIS: And you were going
21 to be in opposition or support?

22 MS. MICHELS: Opposition.

23 CHAIRPERSON GRIFFIS: Okay. Any other
24 clarifications. You're in opposition to the project
25 then as a whole. Is that correct?

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1 MS. MICHELS: No. I'm in opposition of a
2 house being built against my backyard that is two
3 stories tall.

4 CHAIRPERSON GRIFFIS: Okay.

5 MS. MICHELS: They are building a building
6 against my property.

7 CHAIRPERSON GRIFFIS: Indeed. So I would
8 be correct in saying that you are in opposition to the
9 project? Yes? I'm sorry. I will try and be clear.
10 Are you in opposition to postponing this case today?

11 MS. MICHELS: No.

12 CHAIRPERSON GRIFFIS: Are you here to
13 speak to the motion?

14 MS. MICHELS: No, no, I'm -- the project.

15 CHAIRPERSON GRIFFIS: Right. Okay.
16 Indeed. All right. Others, comments?

17 BOARD MEMBER ETHERLY: Well, it would
18 seem, Mr. Chair, that, I mean, we essentially have two
19 choices. Part of the challenge is, you know,
20 obviously we were presented with two requests for
21 postponements previously and I think we understood
22 then and do now the challenge in assembling the
23 appropriate state of readiness, if you will.

24 So one option would be to continue to move
25 forward with a postponement, Mr. Chair, or of course

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1 the other perspective would be a dismissal.
2 Essentially, I think where we find ourselves is we're
3 kind of holding a date in stasis, if you will, while
4 this gets sorted out which is a somewhat awkward
5 position for us to be in.

6 I definitely understand and I think
7 perhaps not being too presumptuous and speaking for my
8 colleagues, I think we all do but I think, Mr. Chair,
9 that is kind of the challenge in terms of how do we
10 proceed forward. My concern is what if we're back at
11 this same position in February and that is something
12 that, of course, is completely outside of your control
13 and not owed to any fault of your own, Mr. Collins.

14 So with that, Mr. Chair, perhaps all I
15 have done for the last one minute is just kind of lay
16 out where we are.

17 CHAIRPERSON GRIFFIS: No, I think -- and
18 succinctly done and I think the difference here with
19 this, and you said it well, I mean, it's difficult for
20 us to schedule things so far in advance as we have to
21 do and then not be able to utilize the time, late or
22 not starting in the afternoons.

23 BOARD MEMBER ETHERLY: Sure.

24 CHAIRPERSON GRIFFIS: But this is clearly
25 an example of something that is beyond the applicant's

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1 control.

2 Do you anticipate that the plans would
3 change dramatically as this comes back?

4 MR. TODD COLLINS: No, the plans --

5 CHAIRPERSON GRIFFIS: You're ready to go,
6 to build as soon as you get the --

7 MR. TODD COLLINS: Yes.

8 CHAIRPERSON GRIFFIS: -- homestead title
9 cleared and all of that issue?

10 MR. TODD COLLINS: Correct.

11 CHAIRPERSON GRIFFIS: And that is, I
12 guess, where it's somewhat persuasive in setting this
13 off and not moving to dismiss or pushing you hard to
14 withdraw the application. There seems to be a
15 substantial amount of detailed information that has
16 happened on this. After all, the Office of Planning
17 has reviewed this already and submitted into the
18 application, the councilmember which the property is
19 located has also and the ANC has acted on this.

20 And am I correct that the Mount Vernon
21 Historic District has also taken an account on this?

22 MR. TODD COLLINS: Yes.

23 CHAIRPERSON GRIFFIS: Has HPRB staff?

24 MR. TODD COLLINS: They have. The Mount
25 Vernon Neighborhood Association has reviewed the plans

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1 and has submitted a letter of support as well, as well
2 as the ANC and a few others.

3 CHAIRPERSON GRIFFIS: Okay.

4 MR. McRAE: We also wish to add in
5 response to one of the things that you just mentioned
6 a moment ago that there were two Office of Planning
7 reports, an original one in May, I think, and a
8 supplementary one in June, if I have my dates correct,
9 I apologize if I'm wrong about that, that reflected
10 general support but took exception to Mr. Collins'
11 request for a 3 unit construction for part of this
12 project.

13 One of our firm's responsibilities as we
14 come on will be to amend that application in
15 conformity to what the Office of Planning has
16 recommended.

17 CHAIRPERSON GRIFFIS: Okay.

18 MR. McRAE: So to that extent, it would
19 change it. They would all be 2 unit flats.

20 CHAIRPERSON GRIFFIS: Okay. Right. And
21 Exhibit 48 and 42 is the Office of Planning's report
22 in the case.

23 BOARD MEMBER ETHERLY: Mr. Chair?

24 CHAIRPERSON GRIFFIS: Yes?

25 BOARD MEMBER ETHERLY: I would have no

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1 objection to moving in the direction that you have
2 started to kind of outline for this and I think,
3 clearly, also with the change in legal counsel, this
4 affords the applicant an opportunity to have his legal
5 counsel get fully up to speed on the direction in
6 which you want to move. So I'm comfortable with
7 looking forward, Mr. Chair.

8 CHAIRPERSON GRIFFIS: Excellent. I
9 appreciate that. I think we should probably then look
10 at -- if Ms. Bailey and Mr. Moy can assist me in our
11 schedule. We have advertised well out into March.

12 BOARD MEMBER ETHERLY: Okay.

13 CHAIRPERSON GRIFFIS: I don't know where
14 we could put this in, but let's look for that now.

15 VICE CHAIR MILLER: Why don't we put it at
16 the end?

17 MS. BAILEY: Mr. Chairman, while the date
18 is being contemplated, I just wanted to make sure that
19 the record is clear that this project is located on
20 4th Street, N.W. The public hearing notice indicates
21 that it's 14th Street, but that's not correct. It's
22 4th Street, N.W.

23 MR. MOY: Mr. Chairman?

24 CHAIRPERSON GRIFFIS: Yes, Mr. Moy? We
25 have got the afternoon of April 25th open. You guys

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1 don't seem too concerned about that far out.

2 MR. TODD COLLINS: No, that's fine. I
3 have been waiting a year on this, so 30 days won't
4 kill me.

5 CHAIRPERSON GRIFFIS: That's 60 days from
6 February.

7 MR. TODD COLLINS: Well, I was
8 anticipating March.

9 CHAIRPERSON GRIFFIS: Oh, I see.

10 MR. TODD COLLINS: So if it's in April
11 then it's fine.

12 CHAIRPERSON GRIFFIS: Okay. Mr. Moy,
13 difficulty with that date?

14 MR. MOY: Not at all, sir.

15 CHAIRPERSON GRIFFIS: Okay. Then let's do
16 it.

17 MR. MOY: Okay.

18 CHAIRPERSON GRIFFIS: We'll set this for
19 the afternoon. Hopefully, all that will get set up.
20 Obviously, the Board doesn't look highly on two or
21 three continuances.

22 This is obviously a very particular and
23 unique situation that you have found yourself in and
24 we'll look forward to addressing an awful lot of
25 concerns and also some of the other issues that have

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1 been brought up in the last application for some
2 amendments to the existing application. We'll set
3 this then for the first case in the afternoon on the
4 25th of April.

5 MR. TODD COLLINS: Okay.

6 CHAIRPERSON GRIFFIS: Very well.

7 MR. TODD COLLINS: Thank you.

8 CHAIRPERSON GRIFFIS: Thank you very much.
9 Let's move ahead then. We have another request in
10 17360.

11 MS. BAILEY: Yes, Mr. Chairman, and it's
12 from Yosief Maharaie. Please, excuse the
13 pronunciation. That's Application No. 17360.

14 CHAIRPERSON GRIFFIS: Mr. Gell?

15 MR. GELL: Mr. Chairman, my name is
16 Stephen N. Gell. I am a zoning attorney and I
17 represent Yosief Maharaie and his project, which is a
18 48 unit project that is 24 flats over on Talbert
19 Street, S.E. For a number of reasons we're asking for
20 a postponement, one of which is that I came into the
21 case fairly late and realized that a good bit of the
22 groundwork with the community had not been done.

23 We have moved very quickly to try to
24 correct that. We have a meeting coming up on Tuesday
25 night with the community. We have also talked with a

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1 great many people and we understand they have concerns
2 that we're going to try to meet if we can or at least
3 explain why it won't be possible.

4 In addition to which, in relooking at the
5 Zoning Regulations on this, it looks as if we're going
6 to need a variance under 410 to permit the entrance
7 not to face the street, which will be Talbert Street,
8 but rather to face to the side yard and we'll be
9 asking for that variance in due time.

10 I might add the project itself will look
11 very much the same. We are going to squeeze it
12 together. There was a break in the buildings, which
13 we realize now we could not do and still stay within
14 the Zoning Regulations for 410. Therefore, we're
15 eliminating that break but the project will
16 essentially look the same. There may be a trim here
17 or a trim there, but substantially it will be what we
18 had presented previously.

19 CHAIRPERSON GRIFFIS: But, Mr. Gell,
20 understanding that there is community work as you
21 indicate, obviously we're looking for an application
22 that meets the test and if it comes in with great
23 support, that is all the better, but we heard this
24 last in September. Is that correct, the 20th?

25 MR. GELL: I was not on board at the time.

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1 There was one postponement, as far as I know. I might
2 add that the Advisory Neighborhood Commission met on
3 this and they did vote to support the request for the
4 postponement.

5 CHAIRPERSON GRIFFIS: Okay. There it is.
6 What are you looking for in terms of dates?

7 MR. GELL: I would -- well, we would be
8 ready to go I believe in one or two months. I hope we
9 don't have to wait until March. I had hoped in
10 January but, of course, that's really up to your own
11 schedule.

12 CHAIRPERSON GRIFFIS: You don't think this
13 is substantively changing. Is that correct?

14 MR. GELL: My thought was that it's not.

15 CHAIRPERSON GRIFFIS: For the variance.

16 MR. GELL: But it is adding a variance to
17 what otherwise would be simply a special exception, so
18 one might say that whenever you do that -- but the
19 change in terms of the effect on the community is not
20 substantial. It's only a change in the part of the
21 Zoning Code that we're looking to --

22 CHAIRPERSON GRIFFIS: Right. We're going
23 to have to set this out for at least the
24 announcements. Is that correct? You're going to have
25 to repost it at minimum and probably --

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1 MR. GELL: We would be happy to repost.
2 Do you think you need time to advertise and so forth?

3 CHAIRPERSON GRIFFIS: Fair enough. Ms.
4 Glazer, your opinion?

5 MS. GLAZER: Well, Mr. Chair, it's my
6 thought that it sounds like a substantive change that
7 would require additional notice.

8 MR. GELL: Perhaps two months would be
9 enough time if there is a slot to devote.

10 CHAIRPERSON GRIFFIS: Anybody see any free
11 afternoons?

12 MR. GELL: When I talked to staff earlier,
13 a few days ago, it appeared that there may have been
14 an opening on January 17th. I don't know if that's
15 still available.

16 CHAIRPERSON GRIFFIS: Not that I see. Mr.
17 Moy, do you see that? Do you see any other dates?

18 MR. MOY: Not in January, sir. There is
19 one. I kind of hesitated. I mean, there is an
20 opening in the afternoon of February the 14th.

21 CHAIRPERSON GRIFFIS: Yes. Very well.
22 Let's set this for, Mr. Gell, the 14th of February
23 2006. Is that accommodating? Are you available?

24 MR. GELL: That will be fine. Thank you.

25 CHAIRPERSON GRIFFIS: Okay. It's going to

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1 be the second case in the afternoon on the 14th of
2 February.

3 MR. GELL: Thank you very much.

4 CHAIRPERSON GRIFFIS: Certainly. We will
5 see you then.

6 MS. BAILEY: Mr. Chairman, is it
7 appropriate for me to ask Mr. Gell to get us the
8 write-up of the relief that is needed as soon as
9 possible, so it can be readvertised?

10 CHAIRPERSON GRIFFIS: Absolutely.

11 MR. GELL: Yes, I do hope to have that to
12 you very shortly. May I just add one other thing?
13 The name of the owner is spelled in the notice as --
14 it's M-A-H-A-R-A-I period. There is no additional A-
15 I. So perhaps in the new notice, that -- that makes
16 it a little easier to pronounce. Thank you.

17 CHAIRPERSON GRIFFIS: Very well, Mr. Gell.
18 We fully anticipate on the 14th, as we have carved
19 that afternoon out which will change our schedule
20 dramatically, that you will be ready to go with the
21 application and we don't anticipate there to be any
22 sort of request for a postponement, continuances, at
23 that time as it would be very difficult for the Board,
24 I think, to review that. Good. Thank you very much.
25 Then let's move ahead to the next.

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1 MS. BAILEY: Mr. Chairman, there is a
2 request concerning Appeal No. 17356 of Bannum, Inc.
3 for a postponement of this application.

4 CHAIRPERSON GRIFFIS: Yes? A full table.

5 MR. GORDON: I am Michael Gordon.

6 CHAIRPERSON GRIFFIS: If you wouldn't
7 mind, just touch that.

8 MR. GORDON: Sorry.

9 CHAIRPERSON GRIFFIS: Excellent.

10 MR. GORDON: Yes. I'm Michael Gordon. I
11 represent Bannum, Inc. This is the first time I have
12 had an opportunity to be before the Board.

13 CHAIRPERSON GRIFFIS: Have you read
14 anything about us?

15 MR. GORDON: I think so.

16 CHAIRPERSON GRIFFIS: All good, I'm sure.

17 MR. GORDON: But I know you have also
18 watched me at the Court of Appeals now that I --

19 CHAIRPERSON GRIFFIS: In detail.

20 MR. GORDON: I appreciate the fact that we
21 had one postponement granted on religious grounds in
22 October. We're asking for another postponement now.
23 Basically after the first postponement, my co-counsel
24 contacted the Board and he said that he could not
25 appear in November because of conflicts and he was

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1 told that it would probably go into December.

2 That was the information I had, so I told
3 him the week of December 6th is out for me. Other
4 than that, I'm available. So, basically, I just found
5 out on the 10th that this hearing had been scheduled
6 for today and I was planning on calling my principal
7 of the company, David Lowery, to testify and he was
8 already not available. He was out of town and he
9 would be out of town all this week.

10 So what I'm requesting to have -- I guess
11 DCRA's counsel only learned of it from my request for
12 postponement and my call to him, so I guess we were --
13 you know, I certainly wasn't ready to go and I don't
14 have my case ready to go today and I would request
15 some sort of a postponement. Frankly, whenever you
16 could fit us in. It doesn't really matter to me.
17 Other than December 6th, I'm available.

18 CHAIRPERSON GRIFFIS: And we do have a
19 DCRA representative here and actually is opposing this
20 delay or a postponement.

21 MR. RUSHKOFF: No, we are not opposing the
22 delay or postponement. We were opposing a stay of the
23 case. We wanted the case to proceed. This is just
24 over whether it proceeds today or whether we set a
25 date in December and we would not oppose that.

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1 CHAIRPERSON GRIFFIS: Okay. But just to
2 be clear, your Exhibit No. 25 is titled DCRA's
3 opposition to Bannum, Inc's request to delay hearing.

4 MR. RUSHKOFF: Oh, that was an earlier
5 motion they made, they said to delay the hearing or
6 stay it. That predates this issue by a couple of
7 months.

8 CHAIRPERSON GRIFFIS: Okay. I don't know
9 that that's correct, but we'll move ahead and not get
10 into the details. So here we are third in the
11 afternoon again asking for a continuance. Understand
12 in terms of not being prepared and not being able to
13 go forward today, and I'm not sure why there would
14 have been miscommunication even down to DCRA and we
15 did announce in public our next date and filing. But
16 that being said, this is where we are.

17 We also have a motion to intervene and I
18 wonder if the Board wants to take that up as a
19 preliminary matter and then take up the motion. We
20 have the participants that are here that can speak to
21 that issue or we could just move ahead to taking up
22 this motion that's before us. Let me hear any quick
23 opinions on that.

24 MR. GORDON: Chairman Griffis?

25 CHAIRPERSON GRIFFIS: Yes?

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1 MR. GORDON: Is this a motion to intervene
2 in Bannum, because I'm not aware of one?

3 CHAIRPERSON GRIFFIS: Yes, Regina James'
4 motion to intervene, Exhibit No. 24. Do you have
5 that?

6 MR. GORDON: When was it filed?

7 CHAIRPERSON GRIFFIS: I would have to get
8 the original out.

9 VICE CHAIR MILLER: September 30th.

10 CHAIRPERSON GRIFFIS: September 30th is
11 what Board Members are saying.

12 MR. GORDON: Of 2005?

13 CHAIRPERSON GRIFFIS: Yes.

14 MR. GORDON: Yes, I don't think I received
15 that. Do you have it?

16 UNIDENTIFIED SPEAKER: I don't have it.
17 Not everything is served in this proceeding.

18 CHAIRPERSON GRIFFIS: It was submitted by
19 Donald Temple. A certificate of service follows. It
20 was served on Shawn Whittaker in Jefferson Street and
21 also Mr. Rushkoff at the Office of Corporate Counsel.
22 When was this stamped in? Indeed, the Board Members
23 were correct, the 30th of September. Well, let's get
24 you copies, hey? Good. We're going to delay just to
25 get copies so you have it. It will be a quick read.

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1 It's a page. Let me ask, is Ms. James present? Not
2 noting her presence. Okay.

3 MR. BOND: Mr. Chairman?

4 CHAIRPERSON GRIFFIS: Yes?

5 MR. BOND: I am Johnnie Bond. I am
6 standing in on behalf of Donald Temple. He is
7 actually in trial right now.

8 CHAIRPERSON GRIFFIS: Good. Excellent.

9 MR. BOND: So I'm standing in. We'll
10 request the indulgence of the Board. I would like to
11 also review the submitted file. I have the file with
12 me. I don't have that actual document among the
13 documents that I have.

14 CHAIRPERSON GRIFFIS: Okay. Well, we'll
15 make three copies then. Are you prepared to address
16 questions on it then? We'll let you read it first
17 before you answer that.

18 MR. BOND: Yes, I would like to have a
19 look at it.

20 CHAIRPERSON GRIFFIS: Okay. Well, this is
21 the time we usually turn on the Muzak, but our wiring
22 is not complete yet. I think we probably ought to use
23 this time. If we were to make this go today, we
24 probably wouldn't finish and might need another time.

25 MR. RUSHKOFF: I just want to note for the

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1 record that, this is Bennett Rushkoff, the certificate
2 of service has "Ms. James hereby certifies that she
3 mailed it." It's not signed by her, but by Donald
4 Temple.

5 MR. GORDON: Yes. I think also looking
6 at, it's addressed to Shawn Whittaker at my firm's
7 address. I know I didn't receive it. Shawn Whittaker
8 is in another firm, so I don't know where it got
9 crossed. It may have been sent back for all I know.

10 CHAIRPERSON GRIFFIS: All right. Well,
11 let's take a read. Very well. Everyone had an
12 opportunity to read it?

13 MR. BOND: Yes.

14 CHAIRPERSON GRIFFIS: We'll take quick
15 comments because I would like to decide this today, so
16 that as we set forth -- first of all, the motion for
17 a continuance we'll have to decide today and then any
18 sort of continued proceedings, we'll know who the
19 players are.

20 Just note that our regulations indicate
21 the standard of judgment of granting party status or,
22 as it's iterated here in appeal, an intervenor is how
23 that person would be clearly and distinctly impacted
24 by the decision of a board. How are they different
25 than the general public is how I have always been able

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1 to grasp.

2 So why don't we allow you an opportunity
3 to address that at this point. We do have the written
4 submission, Exhibit No. 24. The Board has read it and
5 I would caution at this point it doesn't tend to rise
6 to the level of being granted intervenor status, in my
7 opinion, at this point.

8 MR. BOND: Okay. I find myself in a
9 particularly interesting position for the Board. As
10 I was in agreement to represent this matter in my
11 colleague's or principal of the law firm's absence, I
12 am also now faced with a particular issue that I'm not
13 that educated about. So I do apologize to the Board
14 and to the applicant and co-opponent in this matter.

15 CHAIRPERSON GRIFFIS: Well, let me do this
16 then. I'm going to ask. It would be more appropriate
17 and, frankly, we're more interested in getting to the
18 substance and not rushing into things that we don't
19 need to. Then at this point we could take up the
20 motion to postpone. That would exempt you from that
21 discussion. Are you prepared to not participate in
22 that?

23 MR. BOND: No, that's fine with me.

24 CHAIRPERSON GRIFFIS: Okay. In that case
25 then if we were, in fact, to postpone this we would

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1 then take up any intervenor or request for intervenor
2 at that later date. If we denied a motion for
3 continuance, then we're back to where it is.

4 MR. BOND: Sure.

5 CHAIRPERSON GRIFFIS: And we'll have to
6 deal with it as we would.

7 MR. BOND: Sure.

8 CHAIRPERSON GRIFFIS: Is there any
9 objection to doing that? Very well. Let's get to the
10 heart and substance of why we're here today. Well,
11 no. But first the preliminary matter and we do have
12 a scheduling issue and the date that was set. Let's
13 look then to do we have proposed dates? I understand
14 that you're available anytime after December or in
15 December.

16 MR. GORDON: Except the week of December
17 6th through 11th.

18 CHAIRPERSON GRIFFIS: The 6th, which I can
19 guarantee you you're not getting. So there it is.
20 What else do we have? Mr. Moy, are you aware? Oh,
21 yes. Ms. Miller?

22 VICE CHAIR MILLER: I was wondering if
23 both of you might be able to give an opinion as to how
24 much time this would take, so when we're looking at
25 our schedule we can be able to assess better where we

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1 might fit the case.

2 MR. GORDON: Well, I can't see Mr.
3 Lowery's testimony taking over an hour including cross
4 examination, maybe two hours at the most, depending on
5 how many questions are received from the Board. There
6 would be some evidentiary submissions also but I don't
7 see it being, you know, a three day hearing or
8 anything like that.

9 CHAIRPERSON GRIFFIS: Nor do we.

10 MR. GORDON: Yes.

11 CHAIRPERSON GRIFFIS: In fact, here is
12 where we were coming from. I was looking at allowing
13 15 minutes for each participant to brief the issues,
14 that all the issues would be submitted in writing
15 prior to the date that we set. They should be clear,
16 concise.

17 The Board will obviously have fully read
18 it as we have for today's proceeding. We would allow
19 that time just to highlight the issues, lend you that
20 time to do that. We would take Board questions which
21 wouldn't count towards that time, and then have the
22 participants deal with the appeal as they would.

23 MR. GORDON: Okay. My only reason for
24 suggesting that much time was based on reading the
25 prior transcript and how long it seemed to take to --

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1 CHAIRPERSON GRIFFIS: Right.

2 MR. GORDON: -- get through things and I
3 was just trying to give you a realistic estimate.

4 CHAIRPERSON GRIFFIS: Right, and I
5 absolutely understand. And I think this is -- it is
6 not my anticipation, and especially with the
7 submissions that we have already had, that this will
8 not be as lengthy or substantive or require as many
9 witnesses as previous. And frankly, based on the
10 elements that the appeal is being brought, I don't
11 think it can.

12 MR. GORDON: Well, I would say, too, that
13 this is a new matter in the sense that, you know,
14 their other counsel that represented Bannum at the
15 prior hearing, they did what they did and I would like
16 to have the opportunity to do what I can do as well.

17 CHAIRPERSON GRIFFIS: Right. But the
18 issue for this appeal is going to have to be made
19 fairly clear as to why this isn't the same issue that
20 we have heard previously. Otherwise, there wouldn't
21 be a basis of hearing this appeal.

22 MR. GORDON: Right.

23 CHAIRPERSON GRIFFIS: In fact, that will
24 be one of the first questions that comes from the
25 Board prior to you leaving today, a clarification of

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1 what is actually being appealed so that we can assess,
2 because there may well be -- there will be, I'm sure,
3 discussion preliminary and very expeditious of whether
4 this is a redundant element and, therefore, not right
5 for appeal before the Board as it has already been
6 heard and decided.

7 MR. GORDON: Okay. I don't understand the
8 redundancy. I mean, I can understand there being an
9 issue that has been raised previously as being, you
10 know, happened before, you have already had your shot
11 at it. This involves sort of a culmination, I would
12 say, of DCRA decisions.

13 Our factual issues that we brief here
14 would be -- one would be the estoppel issue. That
15 would be the factual issue. And the prior appeal, I
16 think the Board really said the appellant is the ANC
17 here and the appellant can't be estopped from bringing
18 an appeal. Okay.

19 This case is we're the appellant and
20 we're saying that DCRA that issued a decision against
21 us is the one that can be estopped. So this involves
22 a consideration I would say and also, now we have the
23 advantage of some of the Board's rulings.

24 For example, the Board ruled that these
25 decisions, right, by DCRA early on which said that we

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1 had zoning there were, in fact, decisions. Now, the
2 Board did deny that there was a time limit that went
3 off from these decisions, but they did find that they
4 were administrative decisions under that act. Okay.

5 CHAIRPERSON GRIFFIS: You're taking the
6 estoppel back to -- you're talking about the
7 interpretive letters?

8 MR. GORDON: Yes, because I think --

9 CHAIRPERSON GRIFFIS: Is that
10 administrative?

11 MR. GORDON: I don't think that the
12 Certificate of Occupancy can be considered in a vacuum
13 in terms of our reliance. You know, the letters
14 started out, then comes the building permit and then
15 comes the Certificate of Occupancy after an appeal has
16 been filed, but the preliminary matters that took
17 place there really put us in a position where there
18 was no way out and there was really no way out, and we
19 had relied to our detriment going through this.

20 And I think the other thing the Board
21 criticized during its decision was where are the
22 specific expenses that are associated on the time
23 line, and I think I can better clarify that for the
24 Board, as well, because that was an issue that came up
25 also in the briefs at the Court of Appeals in terms of

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1 expenses and damages and I think I can clarify that
2 also.

3 CHAIRPERSON GRIFFIS: Okay. So we'll have
4 an element of estoppel?

5 MR. GORDON: Yes.

6 CHAIRPERSON GRIFFIS: Are there other
7 elements?

8 MR. GORDON: The other element that I
9 think really needs to be addressed and I would like to
10 see, you know, I have a feeling how the Board may come
11 out based on prior motions for stay, but the
12 revocation notice that we received in this case said
13 you have a right to appeal under 12(a) DCMR 110.6.
14 Okay.

15 That regulation says your right to appeal
16 comes out of a D.C. statute that involves a use
17 violation, 641.09. That statute says that -- says any
18 adjudications of civil matters, and this is a civil
19 matter here, have to be done under Chapter 2, Title
20 18. The only BZA appeal that exists under Chapter 2,
21 Title 18 is one in which the BZA is reviewing a
22 decision of a hearing examiner.

23 We requested a decision from a hearing
24 examiner and we have a pending case at the Office of
25 Administrative Hearings, because those hearing

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1 examiners have now been transferred there by a statute
2 that took effect in October 2004.

3 CHAIRPERSON GRIFFIS: So the other element
4 you're going to bring to the Board is whether we
5 should stay the revocation based on your reading of --

6 MR. GORDON: Right.

7 CHAIRPERSON GRIFFIS: -- the civil
8 infractions process, we'll say it that way.

9 MR. GORDON: Right.

10 CHAIRPERSON GRIFFIS: Under 641.

11 MR. GORDON: Right, based on the notice
12 that we received which said --

13 CHAIRPERSON GRIFFIS: Right.

14 MR. GORDON: -- what the appeal right was
15 through the civil infractions process.

16 CHAIRPERSON GRIFFIS: Are you familiar
17 with the processing of Choharis in front of this
18 Board?

19 MR. GORDON: The --

20 CHAIRPERSON GRIFFIS: The case, a civil
21 infraction case, Choharis?

22 MR. GORDON: No.

23 CHAIRPERSON GRIFFIS: Okay. Mr. Rushkoff,
24 are you familiar with that?

25 MR. RUSHKOFF: Not at this moment.

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1 CHAIRPERSON GRIFFIS: Okay. I am not
2 trying to put anyone on the spot but it seems to me --

3 MR. GORDON: You did.

4 CHAIRPERSON GRIFFIS: Looking at 641.09
5 and the other statutes, it seems to me that the Board
6 was decisive in taking up that issue of whether that
7 was appropriate to be before the Board. I am not sure
8 that we have the same factual matters, but I think it
9 would be important for everyone to look at that prior
10 to going forward although --

11 MR. GORDON: What year is it?

12 CHAIRPERSON GRIFFIS: Ms. Miller has it in
13 front her.

14 VICE CHAIR MILLER: I have it in front of
15 me. There were two decisions that we ruled on that
16 sounds like what you're talking about, so I think it
17 would be useful for both parties to look at these
18 cases. One is Choharis, decision date, April 20,
19 2004, Appeal No. 03-0001. The other case is Robinson,
20 decided September 28, 2004 and that number is Appeal
21 No. 04-0001.

22 MR. GORDON: Are those decisions on the
23 website?

24 VICE CHAIR MILLER: They deal with -- yes.

25 CHAIRPERSON GRIFFIS: They should be

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1 posted, yes.

2 VICE CHAIR MILLER: And they deal with
3 certain civil infractions under that statute not being
4 within our jurisdiction. And yours may or may not be,
5 but this differentiates those that are appropriate and
6 those that aren't for coming before this Board.

7 MR. RUSHKOFF: Could you provide -- would
8 you spell the name of the first case that starts with,
9 it sounded like, a K?

10 VICE CHAIR MILLER: Oh, yes.

11 CHAIRPERSON GRIFFIS: C.

12 MR. RUSHKOFF: C.

13 VICE CHAIR MILLER: It's C-H-O-H-A-R-I-S,
14 Peter Choharis, C-H.

15 MR. RUSHKOFF: C-H-O?

16 VICE CHAIR MILLER: H.

17 MR. RUSHKOFF: H-A-R-I-S?

18 VICE CHAIR MILLER: Yes.

19 CHAIRPERSON GRIFFIS: Very well. Other
20 issues?

21 MR. GORDON: No.

22 CHAIRPERSON GRIFFIS: Okay.

23 MR. RUSHKOFF: I was going to suggest that
24 perhaps we could have the appellant present these
25 legal issues and address these cases in a written

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1 submission and perhaps even set forth the estoppel
2 case in a written submission, maybe with an affidavit
3 from Mr. Lowery, and that might allow us to see okay,
4 you know, let's just see what the appeal is about and
5 that might shorten a great deal our hearing.

6 And perhaps Mr. Lowery would do a very
7 small amount of direct examination on the key points
8 in his affidavit. I could do some cross examination
9 if necessary. I mean, it might be that after their
10 written submission, I might then respond that even if
11 we accept everything here, the estoppel case has not
12 been made out in which case, you know, the Board would
13 have an opportunity to resolve the case either on the
14 papers or on the basis of the kind of short argument
15 you had envisioned.

16 MR. GORDON: I think that's what the Board
17 was anticipating, correct?

18 CHAIRPERSON GRIFFIS: Absolutely.

19 MR. GORDON: Right.

20 CHAIRPERSON GRIFFIS: Right. I think
21 we'll offer an opportunity and I think we'll have
22 ample time that we'll have your submission. I mean,
23 it could well be what is in already and you have
24 addressed both of those aspects, but we can keep the
25 record open for additional filing on that. We would

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1 have response and then re-response and then we would
2 be ready to roll.

3 That should happen very quickly. That's
4 the difficulty because I would like to have the
5 intervenor have been established now, so that you
6 could be participating in this, because as we go
7 forward now you wouldn't be served and the record
8 wouldn't be open, I guess, unless we --

9 MR. RUSHKOFF: Is the ANC already a party
10 to this appeal or automatically a party, because I
11 noticed that Regina James identifies herself in the
12 papers being, I believe, an ANC commissioner. And if
13 what she is trying to do is get the ANC involved, they
14 may already be involved. It may be possible to rule
15 on her motion and not allow her to appear personally,
16 but yet allow the ANC to participate.

17 CHAIRPERSON GRIFFIS: That's an
18 interesting point which the Board has taken up before,
19 but we're going to get the Office of Attorney
20 General's opinion on whether they are automatically an
21 intervenor in this.

22 MS. MONROE: I can tell you that, under
23 the regulations, the definition of party includes the
24 ANC for the area within which the property that is the
25 subject of the appeal is located on an appeal. So

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1 yes, the ANC would be a party.

2 My question is I can't tell from Regina
3 James' motion here --

4 CHAIRPERSON GRIFFIS: Right.

5 MS. MONROE: -- whether she is appearing
6 as an intervenor or attempting to intervene personally
7 or on behalf of the ANC. I don't think it's clear
8 from the motion and that needs to be established
9 first.

10 MR. GORDON: I actually have been serving
11 the ANC throughout the proceeding, so I didn't -- I
12 thought maybe Ms. James was filing a separate
13 intervention.

14 CHAIRPERSON GRIFFIS: And, quite frankly,
15 I think that the way it's titled, the Board looked at
16 it the same. Okay. So we'll look for that
17 clarification. What I'm going to do is ask everyone's
18 indulgence that all of those filings that are coming
19 in of which we don't anticipate these are huge
20 filings, but would be served on Ms. James and you guys
21 can figure out where that should go, as well as the
22 ANC.

23 I mean, I don't see any difficulty in
24 having that. Worst case, we come, we haven't had it,
25 we don't have another intervenor on this and we have

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1 wasted a few reams of paper. Is that acceptable?

2 MR. BOND: Yes, that's fine. Our law
3 offices can receive any --

4 CHAIRPERSON GRIFFIS: Okay.

5 MR. RUSHKOFF: Okay. So we'll serve Mr.
6 Temple's office and we'll continue to send something
7 to the ANC address.

8 CHAIRPERSON GRIFFIS: Absolutely.

9 MR. RUSHKOFF: Okay.

10 CHAIRPERSON GRIFFIS: Absolutely. Very
11 well. Then let's move on. I don't see any reason why
12 we would -- let me take any opposition to granting a
13 postponement today from the Board. We have heard a
14 little bit of the discussion, I think, actually in
15 this case, not that that's a basis for granting
16 continuances but it may, in fact, focus us and utilize
17 our time better the next we meet by going through this
18 exercise.

19 Let's look at dates then if there is no
20 opposition from the Board. Mr. Moy, you have our
21 calendar out?

22 MR. MOY: Yes, sir. Before getting to the
23 calendar, I just wanted to clarify for the Board Mr.
24 Etherly has handed me his absentee ballot to grant any
25 motion to postpone, so that the Board is aware of

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1 that.

2 CHAIRPERSON GRIFFIS: Excellent. Thank
3 you.

4 MR. MOY: From what I'm hearing, the
5 Bannum, Inc., looking at the month of December, the
6 staff is looking at the possibility of a possible time
7 in the afternoon of either December the 13th or
8 December 20th.

9 They are both problematic because we have
10 other cases assigned, but it has the potential of
11 adding a second case in the afternoon of the 13th or
12 the third case in the afternoon of the 20th.
13 Otherwise, we're looking into January.

14 MR. GORDON: I would have a preference for
15 the 20th only because I know I'm out of town and I'll
16 be flying back from the west on the like 11th or
17 something or 12th. But, I mean, if the 13th is the
18 date I will be there.

19 CHAIRPERSON GRIFFIS: No, it's not going
20 to be the 13th. That would be one heck of a
21 combination. Okay. I think we can try and do it on
22 the 20th then. Let's make sure we have enough time by
23 all those present to get all the filings in. That
24 puts it pretty quick in terms of turnaround.

25 If we're at the 15th now, I'm not sure we

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1 have enough time by the -- okay. Let's look at two
2 weeks then for the first submission. We would look at
3 -- two weeks would put us in -- then we would look at
4 two weeks for response. We would have the last week
5 for any final responses, everything is in, and let's
6 see if we have enough time within that. That's about
7 five weeks. We'll need six prior to the 20th. Yes,
8 that will just do it. Okay.

9 MR. RUSHKOFF: So the two dates would be
10 November 29th?

11 CHAIRPERSON GRIFFIS: Ms. Bailey is
12 calculating --

13 MR. RUSHKOFF: Okay.

14 CHAIRPERSON GRIFFIS: -- the days as we
15 set up here. While Ms. Bailey gets to the dates on
16 that, and I will reiterate those, which I was doing,
17 let me ask a very quick question.

18 In your opinion, legal opinion, right now
19 there is a revocation order of the C of O from DCRA.
20 Is that correct?

21 MR. RUSHKOFF: Yes.

22 CHAIRPERSON GRIFFIS: Okay. This
23 postponement doesn't impact the execution of that,
24 does it?

25 MR. RUSHKOFF: It should not.

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1 CHAIRPERSON GRIFFIS: Okay.

2 MR. RUSHKOFF: I mean, in our view we are
3 free to proceed the best we can in the Superior Court
4 and nothing that happens here should prevent the
5 Superior Court from proceeding with the case. If
6 there were a decision here, you know, if there were a
7 decision, if the appellant were successful here, that
8 would obviously have an effect.

9 CHAIRPERSON GRIFFIS: That's a different--

10 MR. RUSHKOFF: But specifically postponing
11 the case --

12 CHAIRPERSON GRIFFIS: For the record --

13 MR. RUSHKOFF: -- should not prevent us
14 from moving forward with our case.

15 CHAIRPERSON GRIFFIS: And other actions.
16 I just wanted to make that clear for the record.

17 MR. RUSHKOFF: Right.

18 CHAIRPERSON GRIFFIS: Very well. What we
19 indicated is two weeks from -- let's see if it works
20 on the Wednesdays at 3:00 filings. Does that work for
21 you, Ms. Bailey? So two weeks Wednesday would be the
22 first filing from the appellant.

23 MS. BAILEY: Two weeks Wednesday from
24 today is the 30th, Mr. Chairman.

25 CHAIRPERSON GRIFFIS: Okay.

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1 MS. BAILEY: One, two.

2 MR. GORDON: The 29th or 30th?

3 MR. RUSHKOFF: Wednesday, November 30th?

4 MS. BAILEY: November 30th. So that the
5 submissions would be due then, sir?

6 CHAIRPERSON GRIFFIS: The first
7 submission, yes.

8 MS. BAILEY: The first submission.

9 CHAIRPERSON GRIFFIS: Then we would need
10 two weeks from the 30th.

11 MS. BAILEY: And then two weeks from the
12 30th would be the 14th, December 14th. And then the
13 parties will be able to respond. Is that another week
14 or two weeks?

15 UNIDENTIFIED SPEAKER: It's one week.

16 CHAIRPERSON GRIFFIS: It's not going to
17 make it. Week and a half submission? We need to --

18 MR. GORDON: I mean, I think if I receive
19 their stuff on the 14th then, if we're having the
20 hearing the 20th, that would leave me less than a
21 week.

22 CHAIRPERSON GRIFFIS: Right. No, I want
23 to push it back as far as possible, but you're the
24 first. You're the first pin to drop.

25 MR. GORDON: Okay.

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1 CHAIRPERSON GRIFFIS: It's your
2 submission. If you can get it in in a week, then we
3 buy two weeks at the end.

4 MR. GORDON: You mean my submission now in
5 a week?

6 CHAIRPERSON GRIFFIS: That's correct.

7 MR. GORDON: Lowery won't be back until
8 the end of this week, so that only gives me the start
9 of next week to work with him. I would like to --
10 maybe I can cut back on the reply if you want to get
11 that in earlier.

12 MR. RUSHKOFF: I don't mind sharing the
13 cutting in time. I mean, I don't mind a one and half
14 weeks, one and a half week type deal. So he would
15 have a week and a half and then I would have a week
16 and a half and then, I guess, he would have a brief
17 period for a quick reply.

18 CHAIRPERSON GRIFFIS: So we would have the
19 first, the appellant's submission on the 30th. It's
20 either the 30th or the 23rd and the 23rd is next week.

21 MS. BAILEY: And it's the day before
22 Thanksgiving.

23 CHAIRPERSON GRIFFIS: Right. Like I said,
24 you got to get your reports in before the holiday
25 break. I think we'll have the first submission on the

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1 30th. That is going to be the bulk of what we're here
2 for. I mean, there is more time required in that one
3 than --

4 MR. GORDON: I agree.

5 CHAIRPERSON GRIFFIS: -- the responses to
6 those submissions. The responses can pick up
7 sometime, but we all need to know what we're here for.
8 So once the 30th is done, let's use a week response
9 then from the other participants as they are
10 established.

11 MS. BAILEY: So December 7th, Mr.
12 Chairman?

13 MR. RUSHKOFF: How about the 9th, December
14 9th?

15 CHAIRPERSON GRIFFIS: Okay.

16 MR. RUSHKOFF: For our response.

17 CHAIRPERSON GRIFFIS: We'll go to the
18 Thursday or is that Friday?

19 MR. RUSHKOFF: Friday.

20 CHAIRPERSON GRIFFIS: Okay.

21 MR. RUSHKOFF: Is that okay, Friday the
22 9th?

23 CHAIRPERSON GRIFFIS: Friday the 9th.
24 Note that all these dates will be a 3:00 submission,
25 so that we can have time to get them in, catalogued in

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1 the record that day and, conceivably, especially, at
2 that time, maybe after the Board.

3 UNIDENTIFIED SPEAKER: Can you deliver
4 yourself the day it is due? As long as you come in
5 here and give us a copy, rather than mail it, so we
6 can get going?

7 CHAIRPERSON GRIFFIS: The 9th.

8 MR. GORDON: I'm hoping we have that
9 faxable. Okay. I'm hoping these will be faxable.

10 MS. BAILEY: And the final responses, Mr.
11 Chairman, would that be on the 14th then, because we
12 do need it for your packages that Thursday.

13 CHAIRPERSON GRIFFIS: Exactly.

14 MS. BAILEY: So the 14th.

15 CHAIRPERSON GRIFFIS: 14th, 3:00, of
16 December is the final which is, basically, relooking
17 and touching a few little points to clarify, to get
18 ready for the next, the Tuesday.

19 MR. RUSHKOFF: Okay. And the parties have
20 been side barring and saying that we will fax
21 everything around so there isn't any mail delays, but,
22 you know.

23 CHAIRPERSON GRIFFIS: Right. Let's not
24 mail it. We don't have time. I think it's perfectly
25 appropriately to do emails, faxes, however you want to

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1 make a quick transmission.

2 MR. RUSHKOFF: Right.

3 CHAIRPERSON GRIFFIS: Of course, we'll get
4 them into the record in hard copy so that we have it
5 for anyone else to get to it. And we would note that
6 we're going to be serving Mr. Temple's office and also
7 the ANC. You guys have made arrangements of how else
8 to do it. Okay.

9 What else do we then need to address in
10 this?

11 MR. GORDON: Is there a time on the 20th,
12 a time?

13 CHAIRPERSON GRIFFIS: For the hearing?
14 Okay. First of all, we're going to go late on the
15 20th in order to finish this. We have two other cases
16 prior to you. Our afternoon sessions start at 1:00.
17 As you see today, they don't always start at 1:00.
18 However, I don't see why we wouldn't on the 20th begin
19 timely. The first two cases will take no less than an
20 hour and a half.

21 I think it would be fairly safe to say
22 that we would start this at 3:00 on the 20th noting
23 that that will give us -- and let me reiterate the
24 time again of what we're looking at. That will give
25 us ample time, I do believe, from 3:00 to 6:00 to get

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1 through the entire proceedings here. I think that the
2 Board will have definitive questions, but they will be
3 direct and succinct based on the filings that we have
4 and that is what we are fully anticipating.

5 Okay. So I'm going to review everything
6 and I'm going to start with the day of, the 20th, and
7 then we're going to walk back. I will take any
8 questions of procedure, submissions and note, please,
9 that the Office of Zoning staff is fully available and
10 is well-aware of when and what should be filed if
11 there are questions as we leave the proceedings today.

12 But when we get again in the 20th, I will
13 look to establish a 15 minute time limit on each of
14 the participants. That will be for establishing
15 highlights of the submissions that have been
16 previously put into the record. The Board will be
17 fully prepared to address any of the issues that they
18 feel it is outstanding. We will go to Board
19 questions, cross, as is required not in that time.
20 What I imagine is we would probably -- well, it
21 doesn't matter.

22 Then stepping back to the very beginning
23 of the filing. We will have the first filing on the
24 30th of November, which is the appellant's filing. It
25 will be very clear on the elements and the arguments

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1 of the appeal. We will then have responses to that
2 and, essentially, the case presentation of DCRA and
3 any intervenors and the ANC by the 9th.

4 The final submissions in response to all
5 of those, the culmination of everyone's cases will be
6 full and into the Board's record by the 14th at 3:00
7 of December or the 14th of December, 3:00. Okay. Any
8 questions, clarifications needed? Is that pretty
9 clear?

10 MR. GORDON: I think it's clear.

11 CHAIRPERSON GRIFFIS: Okay.

12 MR. RUSHKOFF: With these 15 minute
13 submissions, would that include testimony or are we
14 assuming there is not going to be testimony, there
15 will just be argument or on the 20th?

16 CHAIRPERSON GRIFFIS: Well, that's an
17 interesting point. Are you anticipating to have
18 witnesses?

19 MR. RUSHKOFF: I would rather not, but I
20 would rather --

21 CHAIRPERSON GRIFFIS: Do you anticipate?

22 MR. GORDON: I would anticipate calling my
23 client and I am batting around the idea of calling
24 someone from DCRA.

25 CHAIRPERSON GRIFFIS: Are they willing

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1 witnesses, DCRA?

2 MR. GORDON: We'll have to find out.

3 CHAIRPERSON GRIFFIS: Okay.

4 MR. GORDON: My client is willing.

5 CHAIRPERSON GRIFFIS: I'm going to do it
6 this way. I'm going to have 15 minutes for oral
7 presentation of the argument and we'll set up a
8 parameter of witness time. I would anticipate that it
9 would be about five minutes per witness for their
10 testimony, again not having any cross and certainly no
11 questions from the Board in that time.

12 So we would be looking at anywhere from a
13 presentation of a case of one witness to add 20
14 minutes, two witnesses at 15 plus 10 and go about it
15 that way. I think the clarity, what the Board needs
16 and I think all appeals line up very well this way and
17 everyone is served, is to be concise and to the point
18 and we'll get through it. Yes?

19 MS. MONROE: Can I ask you a question?

20 CHAIRPERSON GRIFFIS: Sure.

21 MS. MONROE: Or everybody a question.
22 Since we haven't determined whether or not Regina
23 James is intervening, is she submitting? Is she going
24 to have a chance to reply? She is not really an
25 intervenor party. The ANC is, but she isn't, so do

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1 you want to allow that? I don't know. I'm just
2 pointing that out.

3 CHAIRPERSON GRIFFIS: No. I don't think
4 we're keeping the record open for those submissions
5 but they are being served on every --

6 MS. MONROE: Just served.

7 CHAIRPERSON GRIFFIS: Served everything.

8 MS. MONROE: Okay. So she wouldn't --

9 CHAIRPERSON GRIFFIS: We will determine if
10 they are an intervenor. That will be the only
11 surprise of the day. If intervenor status is
12 established, then we will hear, we will hear the case
13 presentation at that point. You know, I will hear
14 from others if you think that that prejudices either
15 of the other participants.

16 MR. GORDON: Just, I mean, Regina James is
17 represented by Donald Temple. My understanding is the
18 ANC is represented by Donald Temple. So if I fax
19 something over, if I fax twice, I mean, other than
20 that, I mean, it seems to me that I think --

21 CHAIRPERSON GRIFFIS: Do you know? Is
22 that the ANC?

23 MR. BOND: I'm sorry?

24 CHAIRPERSON GRIFFIS: Is it the ANC that
25 you're representing or is it an individual?

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1 MR. BOND: No, we actually represent
2 Regina James. I would assume by the way this is
3 written that we are representing her on an individual
4 basis, and I guess we'll have to submit the reasons
5 and basis for supporting her status as an intervenor.

6 CHAIRPERSON GRIFFIS: Wow. Can we take
7 that up in other session prior to?

8 UNIDENTIFIED SPEAKER: No, we already --

9 CHAIRPERSON GRIFFIS: No, I'm saying prior
10 to. I mean, what --

11 MS. MONROE: You can if you want to. All
12 I'm trying to figure out is if she is an intervenor.

13 CHAIRPERSON GRIFFIS: No, exactly.

14 MS. MONROE: She should be involved.

15 CHAIRPERSON GRIFFIS: It shouldn't take
16 that long.

17 MS. MONROE: And, yet, the ANC is
18 automatically a party so it can be served, but then
19 she shouldn't be served, and I don't -- you cannot
20 tell from this. I agree with you. It looks like she
21 is trying to intervene personally, but you can't tell
22 and I'm not sure how to treat it.

23 CHAIRPERSON GRIFFIS: Would there be any
24 difficulty in us taking that up as a preliminary
25 matter in the case on this 22nd in the afternoon? We

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1 would have written submissions.

2 MS. MONROE: The 22nd of November?

3 CHAIRPERSON GRIFFIS: Yes.

4 MS. MONROE: You could take it up whenever
5 you would like I think if --

6 CHAIRPERSON GRIFFIS: Any disagreement
7 with that?

8 MS. MONROE: Who's available.

9 CHAIRPERSON GRIFFIS: Let's get this
10 clarified before we move too far along. I was
11 thinking of setting it for next week, that we would
12 have it as a preliminary matter on the record in the
13 public. Participants wouldn't need to be here
14 physically, but we would have a letter in by 3:00
15 tomorrow, Thursday, clarifying representation
16 outlining additional information as needed, served all
17 around. We'll have it all ready to roll by Tuesday
18 next in the afternoon.

19 MR. BOND: That shouldn't be a problem.

20 CHAIRPERSON GRIFFIS: Okay. Let's make it
21 not a problem then. Any difficulty with that, Ms.
22 Monroe? We would have no oral testimony or briefing
23 on it. No one will speak to it. It would come in in
24 written submissions only.

25 MS. MONROE: That's fine. So by tomorrow

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1 we're going to have a letter from Ms. James' attorney
2 and responses to?

3 CHAIRPERSON GRIFFIS: And responses we
4 would have by 3:00 Friday.

5 MS. MONROE: I mean, as long as everybody
6 agrees to that.

7 CHAIRPERSON GRIFFIS: Right.

8 MS. MONROE: I think that's okay.

9 CHAIRPERSON GRIFFIS: Right.

10 MS. MONROE: I mean, it's a party status
11 so you can do it on paper.

12 CHAIRPERSON GRIFFIS: That's right.

13 MS. MONROE: So whatever they have to say.

14 CHAIRPERSON GRIFFIS: Okay. So what we're
15 going to do is we're going to have clarification by
16 Mr. Temple's office into the Office of Zoning by 3:00
17 tomorrow. We'll leave the record open for us to see
18 any submissions. Actually, we'll do it by -- this is
19 going to be a one page.

20 This is going to have to be faxable.
21 Otherwise, the Board is not going to see these things,
22 because we go off and do other things. So let's do
23 that by -- I'm willing to take it by Monday if need
24 be. Can you respond by Friday at 3:00?

25 MR. GORDON: I can as long as I get it

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1 faxed to me.

2 CHAIRPERSON GRIFFIS: Okay.

3 MR. BOND: Are we saying by tomorrow?

4 CHAIRPERSON GRIFFIS: Tomorrow.

5 MR. BOND: Or by Thursday?

6 CHAIRPERSON GRIFFIS: Tomorrow. Oh, I'm
7 sorry. Yes, I missed a day, didn't I?

8 MR. BOND: Yes.

9 CHAIRPERSON GRIFFIS: I'm already at
10 Thursday. Your tomorrow, Wednesday, so Friday is
11 easy. Let's do that, tomorrow, Wednesday 3:00, your
12 clarification, Friday 3:00 for the DCRA and the
13 appellant and then it comes back to us and we'll
14 decide it first thing as a preliminary matter on the
15 22nd. That will clarify everybody that needs to be
16 served and who is participating. That way there won't
17 be any unknowns. Okay.

18 MR. GORDON: When you say 3:00
19 submissions, these are physical submissions to the
20 Board by 3:00 or faxed submissions? I'm in Maryland
21 and that's the only reason I'm asking, because that
22 changes the dynamic.

23 CHAIRPERSON GRIFFIS: No, exactly. On the
24 submissions that we have had previously talked about,
25 it is a physical submission at 3:00.

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1 MR. GORDON: Okay.

2 CHAIRPERSON GRIFFIS: For this small piece
3 we'll allow the faxes to come in in that manner,
4 because that's the way it should be transmitted to
5 everybody.

6 MR. GORDON: Okay.

7 CHAIRPERSON GRIFFIS: Is that clear?

8 MR. GORDON: Yes.

9 CHAIRPERSON GRIFFIS: Okay. Yes, Mr. Moy?

10 MR. MOY: Mr. Chair, just for the staff's
11 clarification on hearing all these faxes and emails
12 among all the parties, that's fine, but insofar as
13 staff's concern in terms of maintaining the official
14 record --

15 CHAIRPERSON GRIFFIS: Right.

16 MR. MOY: -- we still require the signed
17 hard copy in our records. Okay?

18 MR. GORDON: Okay. Which means you need
19 my signed, hard copy of the request for postponement
20 as well, because I know I faxed it and I --

21 CHAIRPERSON GRIFFIS: Yes, that's correct.
22 Anything that is faxed in, obviously, we have taken
23 that up today, but you're going to follow it up with
24 a hard copy.

25 MR. GORDON: Yes.

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1 CHAIRPERSON GRIFFIS: As is the submission
2 by Friday at 3:00. The others I think it's timely
3 enough to get it in here in physical form by those due
4 dates.

5 MR. GORDON: Okay.

6 CHAIRPERSON GRIFFIS: Okay. Very well.
7 I'm sure this is now becoming more complicated than it
8 needs to be. However, it may get us to where we need
9 to go. Yes, a question?

10 VICE CHAIR MILLER: I just have some
11 comments or guidance to the parties. With respect to
12 this briefing schedule, I mean, I think it's a good
13 thing. It can really cause you to focus on what the
14 issues are and I was going to say because this has a
15 long history and, in my review of the file, I think it
16 would be beneficial if the appellant could
17 specifically identify what errors they are appealing
18 of the ZA or DCRA, because some of it gets all mixed
19 up together and that doesn't help anybody.

20 And with respect to witnesses, I mean, the
21 bottom line is appeals involve legal issues and so I
22 think Mr. Rushkoff was going in this direction. If
23 you identify certain factual issues or facts that you
24 can agree upon or stipulate to or whatever, we won't
25 have to have a lot of hearing time devoted to cross

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1 examination of witnesses and stuff. You can zero in
2 on what exactly is the legal argument.

3 MR. RUSHKOFF: Okay.

4 VICE CHAIR MILLER: Right, and if you
5 haven't practiced before this Board before, we don't
6 follow exactly the same standards of evidence, so you
7 don't have to worry about setting the witnesses up and
8 entering evidence.

9 MR. GORDON: Okay.

10 CHAIRPERSON GRIFFIS: Good. Okay.
11 Anything else? Clarifications?

12 (No response)

13 CHAIRPERSON GRIFFIS: Should we run
14 through dates again? Everyone is clear?

15 (No response)

16 CHAIRPERSON GRIFFIS: Okay. Very well.
17 Is there anything else that I can answer in this case?

18 (No response)

19 CHAIRPERSON GRIFFIS: Not having anything
20 else, very well. Thank you all very much.

21 MR. GORDON: Thank you very much.

22 CHAIRPERSON GRIFFIS: We appreciate you
23 being able to get to this point and clarify all that.
24 Very well.

25 Anything else from the Board, rather the

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1 staff? Is there anything for the Board's attention in
2 the afternoon session?

3 MS. BAILEY: No.

4 CHAIRPERSON GRIFFIS: Not nothing any
5 other business, let's adjourn the afternoon session.
6 Thank you all.

7 (Whereupon, the Public Hearing was
8 concluded at 3:21 p.m.)

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