

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

+ + + + +

PUBLIC HEARING

+ + + + +

TUESDAY

NOVEMBER 8, 2005

+ + + + +

The Public Hearing convened in Room 220 South, 441 4th Street, N.W., Washington, D.C., 20001, pursuant to notice at 10:30 a.m., Geoffrey H. Griffis, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

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

ZONING COMMISSION MEMBER PRESENT:

GREGORY JEFFRIES	Commission Member
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OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY	Secretary
JOHN NYARKU	Zoning Specialist
BEVERLEY BAILEY	Zoning Specialist

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

SHERRY GLAZER, ESQ.

OFFICE OF PLANNING STAFF PRESENT:

TRAVIS PARKER

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STEVEN COCHRAN
KAREN THOMAS
JOEL LAWSON

This transcript constitutes the minutes
from the public hearing held on November 8, 2005.

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

10:25 a.m.

CHAIRMAN GRIFFIS: Let's call to order our Public Hearing of the 8th of November, 2005. Good morning, ladies and gentlemen, my name is Geoff Griffis, Chairperson.

Joining me today is the Vice Chair, Ms. Miller, and Mr. Etherly, our esteemed member of the Board. Representing National Capital Planning Commission, with us is Mr. Mann. And representing the Zoning Commission, with us this morning will be Mr. Jeffries and he will be joining us momentarily.

Copies of today's hearing agenda are available for you. They are located on the table where we entered into the hearing. I would ask you to pick it up and see where we are on our chronology and where you will be in terms of presentation of your case.

Normally, I would say that all procedures before the Board of Zoning Adjustments are broadcast in two fashions. We are usually broadcast live on our Office of Zoning's web site. We have, as you are now noticing, moved into a renovated hearing room, and all of our technical abilities have not been connected at this point.

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1 However, the most important piece is our
2 Court Reporter who is creating the official transcript
3 and they are sitting to my right on the floor.

4 We will ask that all of your patience, as
5 we get through some of our technical difficulties
6 today, as you've already noticed, a little bit this
7 morning, but it is important, obviously, for us to
8 create the official record.

9 With that, of course, anyone that's
10 entered into the hearing room and didn't hear me
11 previously, I would ask that you turn off your cell
12 phones so that we don't have a disruption of our
13 transmission and also don't have the disruption of any
14 testimony that's being provided for this individuals
15 that are here today.

16 The order of procedure for special
17 exceptions and variances will be as follows. First we
18 will hear the case presentation by the Applicant, all
19 their witnesses and any important information that
20 they need to provide. Second, we will hear from any
21 government agencies that are reporting to the
22 application.

23 Third, we will hear from the Advisory
24 Neighborhood Commission, within which the property is
25 located. Fourth, we will hear from the persons or

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1 parties in support of an application.

2 Fifth, would be persons or parties in
3 opposition to the application. And sixth, last, we
4 will give an opportunity to the Applicant, again, to
5 address the Board, either with rebuttal testimony or
6 just closing remarks and summations.

7 Cross examination is permitted by the
8 parties in a case. And we will establish the parties
9 in the case if there is a request for parties.

10 It is also the ability of the Applicant,
11 of course, and the ANC, within which the property is
12 located, to conduct cross examination. The record on
13 each case will be closed after the hearing on the
14 case.

15 So essentially today we will finish up our
16 hearings, the case, the record will be closed. What
17 does that mean? That means that we will not be able
18 to accept any additional information into the record,
19 meaning we will not be deliberating or deciding or
20 looking at any other information that isn't submitted
21 into the record.

22 So it's very important for you to be
23 clear, concise and make sure that the Board gets all
24 the information that you think is important for us to
25 take into consideration in our deliberation.

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1 The Sunshine Act requires that the Board
2 conduct all proceedings in the open and before the
3 public. We do enter into Executive Session
4 periodically, both during or after a hearing on a
5 case.

6 And that is for the purposes of reviewing
7 the record on a case and for limited deliberation on
8 a case. This Executive Session is in accordance with
9 our rules, regulations and procedures. It is also in
10 accordance with the Sunshine Act.

11 Let me say again, for the record, a very
12 good morning to Ms. Bailey, with the Office of Zoning,
13 and also Mr. Moy. I'm going to ask all those people
14 present today, that are planning to testify or address
15 the Board, if you would stand and give your attention
16 to Ms. Bailey, she's going to swear you in.

17 (Participants are sworn.)

18 CHAIRMAN GRIFFIS: Excellent, thank you all
19 very much. At this point then, we are ready to take
20 and consider any preliminary matters. Preliminary
21 matters are those which relate to whether a case will,
22 or should be heard today.

23 Request of postponements, withdrawals,
24 whether proper and adequate notice has been provided.
25 These are types of preliminary matters that should be

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1 brought to the Board's attention.

2 So, with that, if you are not prepared to
3 go forward with a case this morning, or you believe
4 that a case should not proceed that is on our agenda
5 for this morning, I would ask that you come forward,
6 have a seat at the table, as an indication of having
7 a preliminary matter.

8 Let me ask Ms. Bailey if she's aware of
9 any preliminary matters for the Board's attention?

10 MS. BAILEY: Mr. Chairman, members of the
11 Board, staff does not have any preliminary matters at
12 this time. There are specific preliminary matters
13 associated with each case, but none at this point.

14 CHAIRMAN GRIFFIS: Very well. Does anyone
15 else have any preliminary matters attendant to the
16 Board?

17 (No response.)

18 CHAIRMAN GRIFFIS: Okay. The last piece
19 then that I need to indicate to you is that witness
20 cards should be filled out prior to coming forward to
21 address the Board.

22 Witness cards should be at the table where
23 you entered into the hearing room. They should also
24 be, and are, in front at the table where you will
25 provide testimony.

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1 Those two witness cards should be given to
2 the Court Reporter prior to coming forward. That
3 obviously allows us to spell your name correctly, but
4 also give you credit on the record and the testimony
5 that will be created with that then.

6 Let's move ahead and call the first case
7 for the morning.

8 MS. BAILEY: The first case of the morning
9 is Application Number 17378 of Jean Kamdem. I will
10 read the way it's advertised, but members of the
11 Board, keep in mind that there is a request for this
12 to be changed, for the relief to be changed on this
13 case.

14 And it's pursuant to 11 DCMR 3103.2, for
15 a use variance from Subsection 330.5, to allow a
16 three-unit apartment house by adding a rear addition
17 to an existing single-family row dwelling, and an area
18 variance from the lot occupancy provisions under
19 Section 43.

20 The property is zoned R-4, it's located at
21 821 Randolph Street, N.W., Square 3027, Lot 805. And,
22 as a reminder, members of the Board, there's also a
23 request for party status in this case.

24 CHAIRMAN GRIFFIS: Thank you. Good, as Ms.
25 Bailey has indicated, we do have a request for party

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1 status in this application. Ms. Patricia Roy, is Ms.
2 Roy present? Ms. Miller?

3 VICE CHAIR MILLER: If Ms. Roy is not
4 present then I don't think we should grant party
5 status because she wouldn't be able to participate.

6 CHAIRMAN GRIFFIS: Really.

7 VICE CHAIR MILLER: And we could accept her
8 party status application as testimony and put that in
9 the record.

10 CHAIRMAN GRIFFIS: I think that would
11 consistent with how the Board has dealt with this. Of
12 course, the official party status is a higher
13 threshold of participation in every case and one in
14 which we find to be the most important is to be here
15 and present a case in opposition, rather than just
16 providing testimony.

17 And the fact that one wouldn't be present
18 for the hearing is a good indication that they won't
19 be able to fully participate as a party. But, as Ms.
20 Miller has said, it would be appropriate to take it in
21 as written testimony.

22 And I know the Board will review and
23 deliberate on it. Let me have the Applicant introduce
24 themselves for the record. If you wouldn't mind, just
25 state your name and address for the record.

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1 MR. BUTLER: Good morning, Mr. Chairman,
2 and members of the Board. My name is Keith Butler.
3 I'm the Architect, actually, representing Mr. Kamdem
4 in his proposal to add to his existing dwelling.

5 CHAIRMAN GRIFFIS: Okay.

6 MR. BUTLER: My address is 14701 Danton
7 Court, that's in Bowie, Maryland 20721.

8 CHAIRMAN GRIFFIS: Okay. Good. Are you
9 prepared to speak very briefly but quickly to the
10 amended application?

11 MR. BUTLER: Yes, Mr. Chairman.

12 CHAIRMAN GRIFFIS: Okay, could you do that?

13 MR. BUTLER: Several months ago when I made
14 the application on behalf of Mr. Kamdem to add to his
15 existing dwelling, the proposed plans shows adding to
16 additional units to the rear of his existing single-
17 family dwelling, which then would have been converted
18 into an apartment unit.

19 Am I being heard?

20 CHAIRMAN GRIFFIS: Yes.

21 MR. BUTLER: Okay, because I'm not hearing
22 myself. Okay, that's fine. Well, after speaking with
23 the Office of Zoning, I believe it was a Mr. Parker,
24 we went through and looked at the proposed project,
25 and it was decided that three units would not be

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1 allowed according to zoning in the R-4 Zoning Regs.

2 So what we did was we modified the
3 existing plan. We're only going to add a single unit
4 on the rear. And what we're proposing to do is to
5 modify the existing basement plan, to make the
6 basement and the addition at the rear all one, single
7 unit with the existing building remaining as it is.

8 We would only have the two units instead
9 of the three units. Also, by allowing the entire
10 basement to function as one, single unit, we would
11 make an entrance into the new addition from off of
12 Randolph Street.

13 Again, that too was a concern from the
14 Office of Zoning.

15 CHAIRMAN GRIFFIS: Good, let me just
16 interrupt you there because you said Mr. Parker you
17 met with the Office of Zoning. I believe it was the
18 Office of Planning, who is here, now.

19 MR. BUTLER: Okay.

20 CHAIRMAN GRIFFIS: The last thing, I've got
21 to get clarification here, because we need just a
22 concise, what's the relief you're now seeking? And,
23 more importantly, you have a unit in the basement
24 that's proposed or is existing, is that correct?

25 MR. BUTLER: It's existing.

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1 CHAIRMAN GRIFFIS: Okay, you have an
2 existing unit in the basement, you have the main
3 house, correct?

4 MR. BUTLER: Right.

5 CHAIRMAN GRIFFIS: And then you're adding
6 a unit in the back?

7 MR. BUTLER: Right.

8 CHAIRMAN GRIFFIS: I see.

9 MR. BUTLER: Right.

10 CHAIRMAN GRIFFIS: And you find that that's
11 allowable for a matter of right in the R-4 Zone?

12 MR. BUTLER: Yes, sir.

13 CHAIRMAN GRIFFIS: Okay, so you're going to
14 provide, of course, then your square footage of the
15 lot.

16 MR. BUTLER: Yes, sir. Now --

17 CHAIRMAN GRIFFIS: Okay, can you clarify
18 also, there's another aspect in the application that
19 talks about this is two lots that would need to be
20 combined. Is this two lots that we're looking at?

21 MR. BUTLER: No, it's one single lot.

22 CHAIRMAN GRIFFIS: It is?

23 MR. BUTLER: Yes, it is.

24 CHAIRMAN GRIFFIS: Okay. Do you know what
25 the lot number is? Is it 805, which is a tax lot

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1 indication?

2 MR. BUTLER: I'm not sure, right off hand.

3 CHAIRMAN GRIFFIS: Okay, let's move ahead
4 then.

5 MR. BUTLER: In the original proposal, we
6 had, well according to R-4, with the addition of the
7 two units in the rear, we were going to add two
8 additional parking spaces.

9 And I think the Code allows, you need 900
10 square feet of area to put up a single unit. So we
11 had, we were going to add the two units and two
12 additional parking spaces.

13 Now, we're only going to be adding one
14 unit, but we'd still like to keep the two parking
15 spaces. This is why I need to have a, I need to be
16 granted a variance for the lot coverage. Because it's
17 going to put me a little bit over on the issue of lot
18 coverage, if I keep both of those parking spots.

19 CHAIRMAN GRIFFIS: This is a surface
20 parking, is it not?

21 MR. BUTLER: Yes, surface parking. No
22 enclosed.

23 CHAIRMAN GRIFFIS: They wouldn't, how are
24 they being calculating the lot occupancy?

25 MR. BUTLER: Well, when I met with the

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1 Office of Zoning, they said any impervious surface
2 would be consider a part of lot coverage.

3 CHAIRMAN GRIFFIS: Office of Planning.
4 That's okay, I'm just trying to make sure. Because
5 they're here, so they'll be able to answer this.

6 MR. BUTLER: No, no, no, not the Office of
7 Planning, this was DCRA, the permitting office. When
8 I first filed my building permit.

9 CHAIRMAN GRIFFIS: Impervious surface would
10 count toward lot occupancy.

11 MR. BUTLER: Yes, right.

12 CHAIRMAN GRIFFIS: That's an interesting
13 point. I'm not sure I agree, but let's move ahead.

14 MR. BUTLER: Good, well then I won't need
15 a variance on that.

16 CHAIRMAN GRIFFIS: I don't know. I'm not
17 sure. Okay. So, okay, so what are we here for?

18 MR. BUTLER: Well, the issue of the lot
19 coverage, the variance from the lot coverage, that's
20 really what I'm here for.

21 CHAIRMAN GRIFFIS: Okay.

22 MR. BUTLER: And again, maybe that's not
23 even an issue because you're saying that the added
24 parking was not considered in lot coverage.

25 CHAIRMAN GRIFFIS: I don't know, we'll have

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1 to get to it. Let me ask you, then, just to brief all
2 these issues, have you received the Office of
3 Planning's Report?

4 MR. BUTLER: No.

5 CHAIRMAN GRIFFIS: You don't have that?
6 The October 25th, Office of Planning's Report?

7 MR. BUTLER: No, I believe it was mailed to
8 the owner.

9 CHAIRMAN GRIFFIS: So you haven't reviewed
10 it?

11 MR. BUTLER: No.

12 CHAIRMAN GRIFFIS: Are you aware that
13 they're saying that you need a special exception under
14 Section 410?

15 MR. BUTLER: Yes.

16 CHAIRMAN GRIFFIS: Okay. You're prepared
17 to discuss that?

18 MR. BUTLER: Yes.

19 CHAIRMAN GRIFFIS: And you don't think you
20 need it?

21 MR. BUTLER: Under 410, is your lot
22 coverage?

23 CHAIRMAN GRIFFIS: No, 410 is indicated
24 because, let me try and put it very simply. There was
25 all this talk about vertical, horizontal separations

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1 of the units.

2 The Office of Planning, my understanding
3 of their assertion is the fact that this will be
4 looked at, under the Zoning Regulations as,
5 essentially, well, as two separate structures on a
6 single lot. And so you need relief under 410 to allow
7 you to do that, which is special exception relief.

8 MR. BUTLER: But, because I'm going to make
9 the entire basement a single unit, I won't need that.

10 CHAIRMAN GRIFFIS: So the communication is
11 in the basement level, not a cellar level?

12 MR. BUTLER: Yes, right.

13 CHAIRMAN GRIFFIS: And you're showing that
14 in the documents that are provided?

15 MR. BUTLER: On the proposed plan. Drawing
16 211, I show the single unit addition. That's the
17 addition that's going to be added at the rear. But as
18 I stated earlier, I'm going to modify the existing
19 basement so this will all become one, single unit.

20 So the issue of vertical separation won't
21 be an issue. Originally, this unit was just to be
22 added at the rear, and the existing house was to act
23 separately, as a separate unit.

24 So there was an issue of vertical
25 separation under 410, but I won't need that relief

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1 because I'm going to modify the basement, like I said,
2 make the entire basement one, single unit.

3 CHAIRMAN GRIFFIS: Okay. Help me bring
4 some clarification in terms of the drawings that we're
5 looking at. Do you have anything that shows the
6 existing and the proposed new on one plan or on a site
7 plan?

8 Does 211, no, 211 won't do that. Is there
9 any drawing that shows me the front and back of this?

10 MR. BUTLER: You mean the plan?

11 CHAIRMAN GRIFFIS: Yes.

12 MR. BUTLER: Yes. Well, 1-A shows the
13 existing basement, first and second floor. And then
14 211 shows the addition.

15 CHAIRMAN GRIFFIS: Any drawing that shows
16 them together?

17 MR. BUTLER: No combination, no, sir.

18 CHAIRMAN GRIFFIS: Okay. What I'd like to
19 do is, forgive me for interrupting you so
20 dramatically. But this was, this is a terribly
21 confusing application and I don't usually get confused
22 by these.

23 And I think it's because there's an awful
24 lot of different directions that this is going. So
25 I'm trying just to focus us very quickly so that we

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1 can get through this in an expeditious manner.

2 I think at this point it probably would be
3 best, and I'll open it up for the Board for their
4 comments or any initial questions.

5 I think what I'd like to do is get
6 everything on the record. I'd like to hear from the
7 Office of Planning and other government reports. I
8 wouldn't mind hearing from the ANC.

9 And then let's re-visit your case in terms
10 of what you need to present, in terms of whether it
11 would be a variance or a special exception. If that's
12 acceptable to you, I think that might be the quickest
13 way to get through this.

14 MR. BUTLER: Yes, it is.

15 CHAIRMAN GRIFFIS: Okay, Board members, do
16 you have any quick questions on this, clarifications
17 from the Applicant?

18 (No response.)

19 CHAIRMAN GRIFFIS: Okay, if there's no
20 difficulty, I think it's appropriate to get a
21 substantial amount of information from the Office of
22 Planning that's with us this morning.

23 MR. PARKER: Good morning. This is a very
24 complicated case and it appears to have gotten more
25 complicated today from, since my report has been

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1 written.

2 This was originally, as you know, a use
3 variance to allow an apartment building in R-4, with
4 three units. And I believe, from what the
5 documentation said, that the existing house was one
6 unit and they proposed to add two units on the rear.

7 I spoke with Mr. Butler and let him know
8 what our recommendation on that application would be.
9 We discussed matter of right and options with less
10 relief, and determined that they could just add one
11 unit on, for a total at the time, I believe, for two
12 units, the existing house and an addition on the back.

13 DCRA had said that they will not approve
14 flats that are separated vertically, and I discussed
15 this issue with OAG as well. They said that that
16 constitutes two principle structures and they would
17 need special exception relief under 410.

18 CHAIRMAN GRIFFIS: I'm sorry, I'm going to
19 interrupt you there because I think there's some
20 clarification that's required. When we're talking
21 about vertical separation, it's essentially stand-
22 alone units that are then combined with a common --

23 MR. PARKER: With a party wall, correct.

24 CHAIRMAN GRIFFIS: Party wall, but there's
25 no communication between those.

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1 MR. PARKER: Exactly.

2 CHAIRMAN GRIFFIS: They don't share an
3 entrance or any sort of communication. And the
4 difficulty with that, that this may not arise to what
5 the regulation is actually written to, but it
6 certainly falls within that.

7 But, if my understanding of 410, is to
8 preclude, in these residential zones, from having, for
9 instance, a series of row dwellings on a single lot
10 that might constitute different structures.

11 MR. PARKER: That might then be illegally
12 subdivided and sold in the future.

13 CHAIRMAN GRIFFIS: Right, okay, good.

14 MR. PARKER: That's where we were when I
15 wrote my report. And we recommended in favor of two
16 units, separated vertically under the special
17 exception, under 410.

18 It appears that plans maybe have been
19 changed that would allow the existing house, the upper
20 floors of the existing house to be one unit, and the
21 basement of the existing house, plus the addition to
22 be a second unit.

23 And my initial opinion is that would
24 appear to make this a matter of right project, and
25 remove, it appears to remove the need for a variance,

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1 because it doesn't appear to be a lot occupancy issue.

2 I think the total lot occupancy is 45
3 percent and the only issue remaining, as long as there
4 are two units, would have been the vertical
5 separation.

6 A third unit would, of course, change our
7 recommendation. We recommended against that from the
8 beginning, but we recommend in favor of two units
9 vertically separated, and of course the matter of
10 right project with two units, one below the other,
11 would not seem to present a problem at all.

12 CHAIRMAN GRIFFIS: But the testimony today
13 is they're proposing three units, with the removal of
14 the basement unit.

15 MR. BUTLER: There was another unit about
16 that basement unit on the rear, but we've removed
17 that. So it's just one, the basement and the addition
18 on the rear is going to be one unit.

19 CHAIRMAN GRIFFIS: So there will be a total
20 of two units?

21 MR. BUTLER: Yes, two units. One with the
22 existing and the basement modified.

23 CHAIRMAN GRIFFIS: Yeah, no, I understand.
24 So you could conceivably come in the front of the
25 building and get to the rear unit.

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1 MR. BUTLER: Yes.

2 CHAIRMAN GRIFFIS: You'd have to go through
3 the basement. Or can you?

4 MR. BUTLER: Well, when you approach the
5 addition, you will approach it from Randolph Street.
6 Again, I was told that was an issue, or that would
7 become an issue if you didn't have direct access off
8 of Randolph Street.

9 CHAIRMAN GRIFFIS: To the back unit?

10 MR. BUTLER: Yes. We have access through
11 an alley on the rear of the property.

12 CHAIRMAN GRIFFIS: Sure. So for
13 clarification now, you come off from Randolph, you can
14 get to the Unit Number 2?

15 MR. BUTLER: Yes. From the front basement.

16 MR. PARKER: And that unit is the entire
17 basement, under the existing house and the addition.

18 MR. BUTLER: Yes, right.

19 MR. PARKER: That seems to remove the need
20 for variances.

21 CHAIRMAN GRIFFIS: I don't see anything
22 that's arising. Anyone else? Let's hear from -- a
23 very good morning, sir. You're with the ANC, correct?

24 MR. JONES: That's correct.

25 CHAIRMAN GRIFFIS: If you wouldn't mind

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1 sliding the mic over, you're just going to share that
2 mic with him. And we'll just have you introduce
3 yourself with your name, for the record.

4 MR. JONES: Yes, my name is Timothy Jones
5 and I am the ANC Commissioner for Single Member
6 District 4C08.

7 CHAIRMAN GRIFFIS: Indeed. Good to see you
8 again. Did you have a comment on what you've heard
9 this morning? I know that you were coming in in
10 opposition to the application originally, is that
11 correct?

12 MR. JONES: That is correct.

13 CHAIRMAN GRIFFIS: And that was for the
14 four units?

15 MR. JONES: That is correct.

16 CHAIRMAN GRIFFIS: And now that it's been
17 reduced to three, then two, and now no relief
18 whatsoever, I guess, is where we are. Do you have any
19 comments on what you've heard today or the Office
20 Planning's Report?

21 MR. JONES: Well, I have not seen the
22 Office of Planning's Report and the issue has not been
23 vetted with the community, so it is really hard,
24 because that's the tail that wags me, so it's kind of
25 hard to comment.

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1 CHAIRMAN GRIFFIS: Yes, indeed. Which is,
2 what the Board was actually also concerned about is
3 that we had an awful lot of testimony and positions
4 based on a prior application of which now has gone
5 quite a distance in changing.

6 Okay, well, there it is. Let's hear, is
7 there anyone else here that was present -- why don't
8 we get through everything that we have very quickly.

9 If you wouldn't mind coming forward and
10 let me ask if Ms. Roy has joined us yet, this morning?

11 MS. GLENN-GIBSON: -- both her parents are
12 sick so she couldn't be here.

13 CHAIRMAN GRIFFIS: Indeed. Why don't you
14 have a seat and make yourself comfortable. You're
15 going to need to state your name and address for the
16 record and you have just stated that Ms. Roy was
17 called out of town because of her parents being ill,
18 and we certainly feel for her there, especially going
19 to Florida.

20 MS. GLENN-GIBSON: My name is Shirley
21 Glenn-Gibson, and I'm the Block Captain for the
22 neighborhood.

23 CHAIRMAN GRIFFIS: Excellent.

24 MS. GLENN-GIBSON: I've been in the
25 neighborhood for 40 years and I've been the Block

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1 Captain for more than 25.

2 CHAIRMAN GRIFFIS: Congratulations.

3 MS. GLENN-GIBSON: And this proposal really
4 upsets me, and upsets the whole neighborhood. Simply
5 because, first of all, we are objecting for Mr. Kamdem
6 to have permission because he already has two units.
7 There's a unit in the basement already.

8 CHAIRMAN GRIFFIS: Right.

9 MS. GLENN-GIBSON: And I think there's
10 about four or five people there and they have cars.
11 And then, two, Mr., since Mr. Kamdem has moved into
12 the neighborhood, he has just violated everything that
13 the neighborhood stands for.

14 He's done extensive work in the basement,
15 rented it out. Put in extra doors and windows. Dug
16 it all out so he could rent it out. And this hasn't
17 been very good.

18 And according to the DCRA that requires
19 any modifications to existing structure, you have to
20 have permits for. And we have proof that there's been
21 no permits for none of this work that's been done.

22 So how do we know how far it will go if
23 he's granted this. And in addition to that, we also
24 have a parking problem. As it is, we are surrounded
25 by four churches.

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1 Mr. Kamdem is in construction work. And
2 before he started this proposal, his backyard was just
3 full of junk. So if he is given this permission to do
4 this, where the cars are going to park.

5 If this is in his backyard, the cars are
6 going in the alley. And each end of the alley is dead
7 end. Which means the trash man won't be able to come
8 in.

9 CHAIRMAN GRIFFIS: Right.

10 MS. GLENN-GIBSON: And we're going to find
11 ourselves running behind the trash man. They don't
12 wait for you, you know, cars are supposed to be out of
13 their way. So we're concerned about this.

14 I mean we don't, nothing personal against
15 him, but it's what he's trying to do. And I don't
16 think it's fair to the neighbors.

17 CHAIRMAN GRIFFIS: Sure, sure.

18 MS. GLENN-GIBSON: So, he's been in
19 violation for a lot of things and he says to me that
20 I didn't know what to do? Yes, he did know what to do
21 because our ANC person puts all kind of notes in
22 everybody's mailbox whenever there's a change. So you
23 know what to do.

24 So if you don't follow that, you're doing
25 what you want to do. So, that's why I'm here.

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1 CHAIRMAN GRIFFIS: And thank you very
2 much for being here. And it's excellent testimony
3 that you provided. A lot of it is also in the record,
4 which the Board has reviewed.

5 Let me just be clear however, how far our
6 jurisdiction goes. In terms of previous work that's
7 happened that would require permits, certainly that is
8 supported by the Board.

9 However, that's not an element of which we
10 control. I mean I can't levy a fine or go inspect or
11 anything, that's DCRA. And before you leave you can
12 talk to the Office of Zoning staff and find the
13 contacts down at DCRA to make sure that that's being
14 done.

15 Clearly, the Architect is here that
16 represents the Applicant and he's very well aware that
17 permits are required and will be pursuing those
18 permits if they pursue the addition.

19 However, let me get just a brief reaction
20 to you today, because this substantially changed
21 before our eyes, in terms of the unit number and
22 perhaps even the massing or the addition.

23 Do you have any comments on what has been
24 stated today?

25 MS. GLENN-GIBSON: Well, the fact that they

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1 still, I mean he still wants to, the existing units
2 will be in the backyard. So what happens to his
3 business?

4 He has trucks and the other people that's
5 already living in the basement unit, they have cars.
6 And so if these people in the back, I'm trying to see
7 how they're going to go from the front basement.

8 If it's rented, that's one unit, to the
9 back, to get to where they're going to be. And what
10 are they going to do with the cars?

11 CHAIRMAN GRIFFIS: Good, let's hear
12 comment. Is there any discussion with the owner? I'm
13 sorry, I'm just going to have to move the mic back
14 over. Have you had discussion with the owner of how
15 this is going to be programmed and what's actually
16 going to be used to give some assurance to the
17 community that this will be a better situation than it
18 is now?

19 MR. BUTLER: Well, in regards to the bottom
20 unit being rented out, Mr. Kamdem actually has a very
21 large family. His family is down using space in his
22 basement, or at least this is the understanding that
23 I've been given.

24 Now, as I stated earlier, that area is
25 going to be modified so that there will be a single

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1 entrance into one, single basement unit from the front
2 of the existing house, into the basement, and the new
3 added unit.

4 As I stated earlier, we'd like to still
5 keep the two parking spaces in the rear, to assist
6 with any additional parking or any parking --

7 CHAIRMAN GRIFFIS: Have you had any
8 discussion with the owner? I mean --

9 MR. BUTLER: Yes, I have.

10 CHAIRMAN GRIFFIS: There's written
11 testimony in the record and we've just heard the oral
12 testimony about there's construction debris, there's
13 trucks, commercial trucks.

14 Is that going to continue, is this
15 configuration changing that programming of that site?

16 MR. BUTLER: Well, once the addition is
17 added in the rear, there won't be a whole lot of space
18 of any type of construction debris in the back. So
19 that area, if there is a problem back there now, won't
20 be a problem in the future.

21 CHAIRMAN GRIFFIS: And he's setting up a
22 rentable unit, is that correct? I that your
23 understanding?

24 MR. BUTLER: Yes.

25 CHAIRMAN GRIFFIS: So family or not family,

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1 someone is going to be utilizing that unit?

2 MR. BUTLER: Yes.

3 CHAIRMAN GRIFFIS: Okay, good. Any follow
4 up questions from the Board?

5 (No response.)

6 CHAIRMAN GRIFFIS: Adequately perplexed.
7 Good, we're at an interesting situation here, because
8 the Office of Planning's review, my review, and I
9 think the Board's consensus review is that there's no
10 relief required here.

11 So what I'm going to ask the Applicant's
12 representative if they're in agreement with that?

13 MR. BUTLER: Yes.

14 CHAIRMAN GRIFFIS: Are we all clear on
15 that?

16 VICE CHAIR MILLER: I think, based on what
17 we've heard, we're clear. We haven't really seen any
18 up-to-date plans or anything. But it doesn't sound
19 like there's any relief required.

20 CHAIRMAN GRIFFIS: I think, based on the
21 testimony, and in fact the plans that were submitted
22 today, if we can glean from these somewhat the program
23 that's happening, I would tend to, I would not tend
24 to, I would absolutely agree with Mr. Parker that it
25 doesn't rise to the level of requirement any relief.

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1 In which case it's the Applicant's
2 discretion to withdraw the application at this point.

3 MR. BUTLER: Okay, that's what I'll do.

4 VICE CHAIR MILLER: I'm sorry, so these are
5 the final plans?

6 CHAIRMAN GRIFFIS: Right, are there
7 different, I wasn't, I didn't look through very
8 quicky. We had the full-size plans submitted and we
9 also have these 11x17s that were just handed to us.
10 There's no difference between the two?

11 MR. BUTLER: They're the same.

12 CHAIRMAN GRIFFIS: Right, okay.

13 VICE CHAIR MILLER: Okay, thank you.

14 CHAIRMAN GRIFFIS: Okay, anything else then
15 from the Board? Does the staff have any opinions on
16 this? OAG?

17 (No response.)

18 CHAIRMAN GRIFFIS: Okay. The situation is
19 this. It is, what OAG has just indicated is that we
20 cannot give advisory counsel to you. However, our
21 review, I mean obviously we will need to decide on
22 moving ahead with this.

23 We have a plethora of different sections
24 that this could come under relief for, but based on
25 the testimony that you're indicating today, and the

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1 documents, I don't see this as required relief.

2 However, I'm asking you if there is, it's
3 your decision to proceed, one, as you have brought
4 this application, under several variances or one
5 variance, as you've indicated, proceed under special
6 exception under 410, as the Office of Planning has
7 indicated, or it's your decision to withdraw the
8 application.

9 MR. BUTLER: It is my decision, as the
10 representative of the Applicant, to withdraw the
11 application.

12 CHAIRMAN GRIFFIS: Excellent, thank you all
13 very much then. We appreciate everyone's patience in
14 getting through this today. Hopefully, we will see
15 great communication with the community as this goes
16 into construction and continues.

17 Very well. With that, then let's move
18 ahead to call the next case in the morning.

19 MS. BAILEY: Application Number 17377 of
20 Jefferson, LLC, pursuant to 11 DCMR 3103.2, for a
21 variance from the nonconforming structure provisions
22 under Subsection 2001.3, to allow the renovation and
23 addition to an existing apartment house not meeting
24 the lot occupancy requirements in Section 403, and
25 open court requirements, Section 406.

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1 The property is zoned R-4, and it's
2 located at 5401 through 5407 Ninth Street, N.W.,
3 Square 2294, Lots 23, 24, and 25.

4 CHAIRMAN GRIFFIS: Whenever you're ready we
5 can move ahead.

6 MR. COLLINS: Good morning, Mr. Chairman
7 and members of the Board. My name is Christopher
8 Collins with the law firm of Holland and Knight.
9 Seated to my left is Karen Freeman of our office, and
10 to my right is Jason Saunders with BHI International,
11 the Applicant in this case.

12 Also with us today is Delores Johnson, of
13 our organization. And then seated to my far right is
14 Rich Markus, of Rich Markus Architects, who is the
15 Architect for this project.

16 Also, we will have as another witness, Mr.
17 Lindsley Williams as an expert witness on rebuttal
18 today. This is an application involving a pre-1958
19 apartment building.

20 This building is about 60 years old, and
21 it was built as a matter of right under the existing
22 zoning regulations at that time.

23 We're here today for a variance from
24 Section 2001.3, because the building is nonconforming
25 as to lot occupancy, rear yard and court width.

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1 The building does not now conform to the
2 current R-4 zoning regulations. This application is
3 supported by the community. We have substantial
4 support for this application, as referenced in the
5 record.

6 You'll hear today how we meet the three
7 parts of the variance test here. The property is
8 affected by an exceptional situation or condition. It
9 is the largest building in the square.

10 If you extend out the R-4 District,
11 distance of about 1,000 feet to the east and to the
12 west, because it's bordered on the north by the C2A
13 zone along Kennedy Street, and to the south by an R-3
14 zone about a block away.

15 But if you extend out about 1,000 feet in
16 each direction, east and west, you'll find about 125
17 or so buildings, and this is, there is no building of
18 identical, and lot, of an identical sizing
19 configuration. And that's where, as a matter of fact,
20 there's only two other lots that are anywhere near the
21 size of this property.

22 The site is extremely small relative to
23 the size of the building footprint. Or, stated
24 another way, the building is extremely large relative
25 to the size of the lot.

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1 Finally, the configuration of the
2 building, on this lot, is such that there is
3 substantial open space in the middle, as opposed to
4 where you would normally look to find the open space
5 in the sides and the rear.

6 The practical difficulty you will hear, in
7 this application, to meet the 40 percent lot
8 occupancy, that applies in this zone now for this
9 site, you'd have to do several things.

10 You'd have to either increase the lot
11 size, almost double the existing size. You'd have to
12 increase it to 19,957 square feet, in order to have
13 the building be 40 percent lot occupancy.

14 That means you'd have to purchase the two
15 properties to the north and demolish them and a little
16 bit of the parking lot on the third lot to the north.

17 CHAIRMAN GRIFFIS: But you're not changing
18 any of the lot occupancy, right?

19 MR. COLLINS: Say that again?

20 CHAIRMAN GRIFFIS: You're not increasing
21 the lot occupancy?

22 MR. COLLINS: We're clearly not increasing
23 lot occupancy.

24 CHAIRMAN GRIFFIS: It's an existing,
25 nonconforming.

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1 MR. COLLINS: But the reason that we're
2 here in 2001.3A --

3 CHAIRMAN GRIFFIS: Right, I understand.

4 MR. COLLINS: -- the first test is that in
5 order to make these additions, the building has to
6 comply with lot occupancy.

7 CHAIRMAN GRIFFIS: Right, right.

8 MR. COLLINS: But we are not increasing the
9 lot occupancy, no.

10 CHAIRMAN GRIFFIS: So your point is the
11 practical difficulties based on the fact that it's
12 existing nonconforming, this lot occupancy.

13 MR. COLLINS: Right.

14 CHAIRMAN GRIFFIS: So doing anything else,
15 you'd have to remedy that situation.

16 MR. COLLINS: Exactly.

17 CHAIRMAN GRIFFIS: Of which that would be
18 removal of the structure of the building.

19 MR. COLLINS: Before you do anything else,
20 you either have to purchase additional land, the sites
21 around it on three sides by public space.

22 CHAIRMAN GRIFFIS: Right.

23 MR. COLLINS: So the only way to go is
24 north. And you have to purchase and demolish other
25 buildings to make the lot occupancy comply, which

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1 clearly is a practical difficulty.

2 Or you'd have to demolish 32 percent of
3 the footprint of the existing building, in order to
4 put the mezzanines on top, which also is a practical
5 difficulty.

6 Now, neither of those is practical. But
7 if a variance, if you did grant a variance of 2001.3A,
8 on the lot occupancy, we'd still have an issue with
9 the nonconforming court. And to comply with the
10 nonconforming, to comply with the court requirements,
11 in this instance, we'd have to do one of several
12 things, in order to add these additions of the
13 mezzanine on the top.

14 We either have to fill in the court, to
15 raise the lower lever, the lowest level of the court,
16 to a height where the court with, which is based upon
17 the height of the court, meets the existing condition.

18 CHAIRMAN GRIFFIS: Would that increase the
19 lot occupancy?

20 MR. COLLINS: No, it would not. Because it
21 would be a fill-in, it would be dirt, it would be
22 grade. You'd have to create a wall, the Architect
23 will talk about that in more detail, but we'd have to
24 create a wall.

25 Put substantial dirt in to raise the level

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1 of the grade to the point where the lowest level of
2 the court would be such that the court width would be
3 complied with, which would also cover the windows on
4 the lowest level of the building.

5 Or, we could cover over the court, which
6 I'll talk about a little bit more. I know there was
7 a discussion in an earlier case this morning about
8 that.

9 We could cover over the top of the court
10 to eliminate the court, because it would no longer be
11 open to the sky, but that would increase lot
12 occupancy. So we'd be in another practical
13 difficulty.

14 The third, which maybe appears to be the
15 most logical, which is we could set the new addition,
16 the mezzanine on the top, we could set it back four
17 feet from the edge of the roof.

18 That sounds like a simple solution, but
19 really is not. Because in order to do that, there is
20 no bearing wall below that. So we would have to put
21 a beam in, the Architect will describe this in more
22 detail.

23 Put a beam and joist in such that we would
24 wind up either raising the height of the building or
25 lowering the ceiling on the third floor such that the

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1 building, the rooms become, the don't meet the
2 habitability standards.

3 It's important to note several things.
4 Since the time of the filing of this case, several
5 things have changed. We have, I've labeled the
6 courts, Court Number 1, Court Number 2, and Court
7 Number 3, on the plans.

8 And I hope you've seen that, Mr. Chairman.
9 Court Number 1 is the small, sliver court on the,
10 what's on the left side of the plan, on the north side
11 of the building.

12 Court Number 2 is the larger court, all on
13 the same side of the building, and Court Number 3 is
14 right in the middle. That's the large open area that
15 I referred to in the exceptional situation where you
16 have potential open space in the middle of the site,
17 as opposed to around the edge of the property.

18 Court Number 1 has been eliminated,
19 because we are now roofing over with an eave at the
20 top of the court. Now the difference between that
21 situation and what you've discussed in a case this
22 morning, there's two differences.

23 Number 1, that's not a required court.
24 And, number 2, it does not, by doing that it does not
25 change the building into something that it presently

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1 is not.

2 CHAIRMAN GRIFFIS: Right. Yeah, I don't
3 think we need to get too far into it. The
4 differentiation is pretty clear on this.

5 MR. COLLINS: All right. So, Court Number
6 1 has been eliminated. Therefore, the need to set
7 back 12 feet, or the variance and the requirement
8 setback 12 feet, that's been eliminated.

9 And, secondly, the setback on Court Number
10 2 is now four feet instead of 4.51 feet. So we've
11 come closer to the edge, in other words, eliminating
12 more of the degree of nonconformity of that court.

13 And finally you'll hear that there's no
14 adverse impact on the public good. The lot occupancy
15 of this building is what it is. It is not proposed to
16 be changed.

17 It's been this way since the 1930s, as far
18 as we can tell, when it was built. We don't know the
19 exact date it was built, but it was this way since it
20 was built.

21 The height of the building will be within
22 the permitted 40 feet and three stories. The Court 2,
23 with, based upon the height of court requirement is
24 15.58 feet, but a court is not required in the R-4
25 zone.

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1 The minimum width is based upon the height
2 of the court, as I said. There's also no side yard
3 requirement in the R-4 zone. If this was a new
4 building, this could be built right up to the side lot
5 line, without the need for variance relief.

6 But if a side yard was provided, in this
7 case, a side yard requirement, based upon the height
8 of this building, is only ten feet. This court is
9 more than that, right now.

10 So the court presently exceeds the side
11 yard requirement. So there's substantial open space,
12 given what the zoning regulations dictate in the R-4
13 zone. It just so happens that given the configuration
14 of this building, we have this situation that requires
15 us to be here.

16 And then finally, as I said, we have
17 substantial support from the ANC and the surrounding
18 neighbors, as indicated in the statement of the
19 Applicant that we filed. You did receive a statement
20 of the Applicant which shows how we do meet the test
21 for relief.

22 And it has with it, we have several
23 exhibits. Here, Exhibit A, Tab A, to the statement to
24 the Applicant, is the based map which shows the site,
25 it shows the surrounding area, approximately nine

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1 blocks total.

2 We just took the area in the middle and
3 just went around to show the neighborhood and also
4 Exhibit A shows the based map, the Sandborn Map.

5 The zoning map you can see that the site is one
6 block east of Georgia Avenue, one block south of
7 Kennedy Street. Both are major commuter routes, major
8 corridor, transportation corridors in this area.

9 And, as you know, the Georgia Avenue
10 corridor is a focus of revitalization of the policies
11 of the Mayor. Exhibit C is the plans. You have the
12 testimony of the Applicants, witnesses and then
13 Exhibit G is the ANC Report.

14 Exhibit H is the letter, I'm sorry, the
15 petition. And we've submitted a revised Page 2 on
16 Exhibit I. Revised Page 2 and the self-certification
17 forms reflect the changes in the building plans.

18 So, unless there are any questions at this
19 time, I would like to go to the first witness, Mr.
20 Jason Saunders.

21 CHAIRMAN GRIFFIS: Yes, Mr. Mann?

22 MEMBER MANN: When you cover up Court 2,
23 why doesn't that increase lot occupancy?

24 MR. COLLINS: Because, that's a very good
25 question, and let me take some time to go through

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1 that.

2 If you look at the zoning regulations
3 definition on percentage of lot occupancy, that
4 refers, it's under P for percentage. It refers you to
5 the definition of building area, and let me read it.

6 It says a figure that expresses that
7 portion of a lot lying within the lot lines and
8 building lines that is occupied or that maybe be
9 occupied under the provisions of this title as
10 building area.

11 You then go to the definition of building
12 area. Which says the maximum horizontal projected
13 area the building and it's accessory buildings. And
14 then it says what it includes. It says the term
15 building area shall include all side yards and open
16 courts less than five feet.

17 So, this open court, Court Number One is
18 already included in the building area. So by covering
19 it we're not increasing the lot.

20 MEMBER MANN: Thank you.

21 MR. COLLINS: Sure.

22 VICE CHAIR MILLER: Can you tell me how you
23 got to this design, in the sense that the building is
24 being increased from 35 to 39 units, and, I'm trying
25 to put that in the context of the practical

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1 difficulties test and complying with the regulations.

2 For instance, was there a way if you only
3 went to 37 units, that you would comply. I mean,
4 obviously you wouldn't because you're over the lot
5 occupancy.

6 But, you know, in general, does that have
7 some kind of significance, the way you ended up with
8 the 39 units?

9 MR. COLLINS: Yes, and the Architect will
10 get a little more detail in to that. We're going from
11 35 to 39 by adding four units in the basement where
12 there's currently utility space, laundry room, things
13 of that nature.

14 A lot of open space in the basement, which
15 is, I guess, standard for buildings of that era.

16 CHAIRMAN GRIFFIS: Let's be clear of the
17 fact of the calculation for the conversion to an
18 apartment in an R-4, is based on the lot size, and
19 it's 900 square feet per unit, correct?

20 MR. COLLINS: That's correct, yes.

21 CHAIRMAN GRIFFIS: And so, the 39, the
22 count, is allowable matter of right in terms of the
23 lot size here, correct?

24 MR. COLLINS: That's correct for several
25 reasons.

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1 CHAIRMAN GRIFFIS: Well, so, it's not part
2 of actually the elements of the relief sought here, is
3 that correct?

4 MR. COLLINS: That's correct.

5 CHAIRMAN GRIFFIS: Okay.

6 MR. COLLINS: Because we're not converting
7 this building to an apartment, it is an apartment, it
8 has been an apartment since Day 1, and has a C of O
9 for the entire building.

10 CHAIRMAN GRIFFIS: I guess what I'm trying
11 to understand then is how the design direction would
12 be a critical understanding for us in terms of the
13 review of the relief sought.

14 VICE CHAIR MILLER: Okay, I think the
15 number of units is probably the wrong thing to focus
16 on. I just mean often we see, for variances, that
17 really this was the best you could do to achieve some
18 result, because there's no way else you could do it,
19 because otherwise you'd need another variance or
20 whatever.

21 And so I'm just wondering if there's any
22 other significance to the configuration, with respect
23 to that practical --

24 MR. COLLINS: Sure, well there's several.
25 And the witnesses will get us into more detail but,

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1 essentially it's this. There is a great demand for
2 housing in this neighborhood.

3 There's a great demand for two-bedroom
4 units in this neighborhood. This building was built
5 with one better units, and as far as we can tell it
6 was built around the time that there was tremendous
7 influx of people into the city, to become government
8 workers.

9 And this building was probably built at
10 that time to satisfy that demand for one-room
11 apartments. Since that time, and especially recently,
12 there's been a significant demand in this neighborhood
13 for two-bedroom units.

14 The Applicants will tell you, if you ask
15 them, that every time they advertise a one-bedroom
16 unit for sale, for rent, their inquiries are for two-
17 bedroom units. There's a great demand.

18 So what they're trying to do is not
19 decrease the number of units in the building, but to
20 increase or to provide two-bedroom units, within the
21 current configuration of the first, second, third
22 floors, there are significant walls between the units.

23 And given the market that this building is
24 seeking to achieve, the renovation has to be cost
25 effective. And what was done was to leave the units

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1 on Floors 1, 2 and 3, substantially intact. No change
2 in the configuration of the units, one to the other.

3 There were some demising walls inside that
4 have been moved around. The kitchens have been opened
5 up, things of that nature, and the Architect will
6 describe that.

7 But here the goal is to, not, the goal is
8 not to decrease the number of units in the building.
9 The goal is to provide, to allow two-bedroom units
10 where they can be added. And the way it's been
11 configured, there's one in the basement and there are
12 seven on the top floor with the addition of the
13 mezzanine.

14 And this is to respond to the market
15 demand. This is the best way to do it, the most
16 economical way to do it, given the economic
17 constraints of a project like this.

18 This is not luxury units. This is not
19 high-end condos. This is what's been called workforce
20 housing in the city. This is housing that responds to
21 a demand for young couples or grandparents who have
22 live-in help or maybe a grandchild living with them,
23 who needs to have their own bedroom. Things like
24 that, that's what this is all about.

25 CHAIRMAN GRIFFIS: So if someone offered a

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1 million dollars for the two-bedroom or the mezzanine,
2 you wouldn't take it? All right, you don't have to
3 answer that. Okay.

4 But I think we understand. It is my
5 understanding, your description of this is that this
6 is a modification of an existing, clearly existing
7 prior to the Zoning Regulations, apartment building,
8 and it's a modification or to bring it back to, what
9 you're indicating, as a market use and demand.

10 MR. COLLINS: Yes.

11 CHAIRMAN GRIFFIS: And in that
12 accommodation there are certain things that you're
13 running up against in terms of the regulations. And
14 basically it's the existing non-conformities that are
15 becoming troubling to do anything in the building.
16 Okay.

17 MR. COLLINS: Yes, that's right.

18 CHAIRMAN GRIFFIS: Any other questions at
19 this time?

20 (No response.)

21 CHAIRMAN GRIFFIS: Clarifications?

22 (No response.)

23 CHAIRMAN GRIFFIS: Did we breeze over the
24 number of stories issue?

25 MR. COLLINS: The building is three stories

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1 and it will remain three stories.

2 CHAIRMAN GRIFFIS: Okay. And it's very
3 clear to me that this is a self-certified application,
4 correct?

5 MR. COLLINS: That's correct.

6 CHAIRMAN GRIFFIS: And you brought the
7 relief that you're seeking. And it won't be unknown
8 as we get into the Office of Planning, and if they're
9 indicating that it might be not that.

10 But for the clarification of the Board, of
11 course, we're going to look at the application that's
12 brought to us.

13 MR. COLLINS: Sure.

14 CHAIRMAN GRIFFIS: We will entertain some
15 discussion of this because it's an important aspect to
16 review in terms of their analysis.

17 MR. COLLINS: Sure, sure.

18 CHAIRMAN GRIFFIS: But we'll deal with it
19 expeditiously at any juncture that we have.

20 MR. COLLINS: Well, would you like it now
21 or would you like it later or how would you like that
22 to be dealt with?

23 CHAIRMAN GRIFFIS: Let's do it when it
24 comes up, if you don't mind. I'll let you basically
25 look at a rebut of the Office of Planning.

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1 MR. COLLINS: That's fine, sir. Very Good.

2 CHAIRMAN GRIFFIS: So let's move ahead.

3 MR. COLLINS: Okay. Mr. Saunders would you
4 identified yourself and proceed with your testimony.

5 MR. SAUNDERS: Good morning, my name is
6 Jason Saunders. My address is 817 5th Street, N.E.,
7 Washington, D.C. 20002.

8 I'm here representing BHI, International.
9 BHI, International, Inc. is a DC business and it was
10 set up in 2001, for the purpose of acquiring and
11 managing residential and commercial property.

12 One such property that BHI own, is located
13 at 5401 through 5407 9th Street, N.W. This property
14 has been owned and operated by BHI International,
15 Inc., since 2002. The property, as Mr. Collins said,
16 is located one block from Georgia Avenue and one block
17 from Kennedy Street.

18 Both Kennedy Streets and Georgia Avenue
19 are major transportation corridors in and out of
20 downtown DC. 5401 through 5407 9th Street is
21 currently and has always been a 35 one-bedroom unit
22 apartment buildings that was built in the '30s.

23 At the time the building was acquired it
24 was in great need of renovation. It had the
25 building's original windows and still has a 40-year

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1 old boiler, electrical fuses, low power availability
2 each unit and original wiring and plumbing that needs
3 consistent and costly service calls due to their age.

4 The building, and the immediate area, have
5 also had a long-standing open air drug market. BHI
6 International has been working with the police to
7 greatly and positively clean up the drug dealing and
8 drug use in and around the building.

9 BHI International, Inc.'s exhaustive
10 efforts to assist in the clean up efforts, include
11 giving the police keys to the building and use of a
12 unit in the building for observation of this drug
13 activity.

14 Over the years, BHI International Inc. has
15 installed new, energy-efficient windows throughout the
16 building, has created a warmer and more inviting look
17 by repainting the building entry areas and common
18 hallways, landscape the green spaces and made numerous
19 upgrades to the interiors of units.

20 The interior unit upgrades include new
21 kitchen cabinets, counter-tops and appliances, water
22 and energy-saving devices and new flooring.

23 However, BHI International, Inc. has spent
24 significant amounts of money fixing problems that were
25 present due to the antiquated systems which leaves us

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1 to wanting to change out the major systems in the
2 building.

3 As Mr. Collins talked about the great
4 demand in the area for units, as well as larger units,
5 including two-bedroom units, those started to become
6 important factors that BHI International, Inc. was
7 focusing on in the revitalization of this building.

8 In developing a game plan for the
9 redevelopment as a building, BHI International, Inc.,
10 has had desire to upgrade the building, desire to
11 renovate and provide two-bedroom units, where
12 possible, to respond to market demand with increasing
13 the total number of units.

14 The desire to maximize a percentage of
15 outdoor space that would be, being utilized by the
16 residents, and also their desire to help replenish the
17 city supply of workforce housing.

18 As Mr. Collins mentioned, these are not
19 luxury units, okay. Therefore the cost and expenses
20 must be kept in line. So how we went accomplishing
21 this was first BHI International, Inc. hired Rich
22 Markus Architects.

23 And Rich Markus fully understood the task
24 at hand and devised an innovative and adaptive
25 development plan that meets all of these goals in a

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1 cost-efficient way that maximizes the benefits to the
2 community.

3 This plan that Rich Markus will get a
4 chance to talk about, will not decrease the number of
5 available units, nor will it exceed the zoning
6 envelope of 40 feet height and three floors. The plan
7 is to add four units in the cellar, one two-bedroom
8 and one, and three, one-bedroom units.

9 Formerly, this space was relatively unused
10 utility space, laundry room, different things to that
11 affect. Also, the plan is to add a mezzanine on top
12 of the third floor to convert seven, one-bedroom units
13 to two-bedroom units, while creating private, rooftop
14 decks for each of the ten third-floor units.

15 The plan is, the plan will also keep the
16 existing unit configurations in floors one, two and
17 three. BHI International, Inc. has also secured all
18 the financing needed to complete these renovations and
19 the demolition process is well underway.

20 This plan is the most efficient layout to
21 achieve these goals in the most cost-effective manner.
22 However, this plan does require BZA variance, which is
23 why we're here today.

24 BHI International, Inc. believes that this
25 variance is minor in nature and will allow us to help

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1 respond to the District's housing market needs in the
2 neighborhood.

3 This is a small project that will fill a
4 big need. I'll be available for questions.

5 CHAIRMAN GRIFFIS: Excellent, thank you
6 very much. Just for clarification, not that it, I
7 don't think it matters much, substantively. This is
8 an apartment building, rental units?

9 MR. SAUNDERS: This is an apartment
10 building.

11 CHAIRMAN GRIFFIS: Okay, indeed. Mr.
12 Jeffries.

13 MR. JEFFRIES: These units will be
14 dedicated as workforce housing. I mean there's going
15 to be like some monitoring of like income levels.
16 Just walk me through that, understanding.

17 MR. SAUNDERS: Well, basically the
18 understanding is, as we were mentioning, these re not
19 luxury units. This is not high end, million dollar,
20 you know, two million dollar houses. These are
21 workforce --

22 CHAIRMAN GRIFFIS: You're saying the market
23 and demand in that area, from what you understand, is
24 going to illicit certain applications for these units,
25 and that is putting it into this workforce housing

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1 scenario, is that correct?

2 MR. SAUNDERS: Exactly.

3 CHAIRMAN GRIFFIS: But this isn't a
4 programmed apartment building?

5 MR. SAUNDERS: Right.

6 MR. JEFFRIES: I mean if someone wants come
7 and pay \$1,200.00 for a one-bedroom apartment, they
8 can do it here? And that might be a luxury to them,
9 but they can do it?

10 MR. SAUNDERS: Right, well, basically, as
11 the market in the area dictates, I mean, that it's
12 going to be in this envelope of work --

13 MR. JEFFRIES: No, I'm, please don't take
14 my questioning as accusatory or anything.

15 MR. SAUNDERS: No problem.

16 MR. JEFFRIES: I mean it's just, I'm just
17 trying to understand. I mean there are certain, you
18 know, projects that have covenants that go with the
19 project.

20 MR. SAUNDERS: Right, and this is not one
21 of the those.

22 MR. JEFFRIES: And that is not what we have
23 here?

24 MR. SAUNDERS: Right.

25 MR. JEFFRIES: Okay.

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1 CHAIRMAN GRIFFIS: Good. Any other
2 questions, clarifications?

3 (No response.)

4 CHAIRMAN GRIFFIS: Let's proceed.

5 MR. COLLINS: Mr. Markus.

6 MR. MARKUS: Hi, my name is Rich Markus,
7 I'm with Rich Markus Architects. Address is 3143 N
8 Street, in Washington, D.C. 20007.

9 I'm the Architect for this project. The
10 owners came to me and they've already kind of
11 iterated. I'll just kind of reiterate, reinforce and
12 hope we clarify any issues from your end.

13 The, it was an existing apartment
14 building, and the intent was to design, the intent was
15 to renovate, and also to meet the local demands, which
16 we've kind of gone through the need for, not to reduce
17 the number of units, but also to increase the number
18 of two-bedroom units.

19 The existing building, it is all, and the
20 most efficient way to kind of, when we researched it
21 and kind of analyzed the building, is to keep, we kept
22 the, on the first, second and third floor, the same
23 floor plans, not to touch them.

24 There was existing demising walls,
25 existing bearing conditions. We were trying to make

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1 it the most efficient renovations as possible. And
2 even on the, in the determination. There's a little
3 bit of space in the basement to pick up.

4 There's existing laundry, existing
5 corridors that we don't need anymore, so we're picking
6 up that space. That's where we're picking up a few
7 additional units.

8 But the, on the first, second and third
9 floor, the existing floor plans remain, with minor
10 modifications to accept new mechanical units and that
11 kind of thing.

12 The determination to increase to the, and
13 to create the two-bedroom units, the most efficient
14 way was to add a mezzanine level, essentially would be
15 ripping off the roof, the third floor, and essentially
16 the third floor, floor plan stays exactly the same.
17 What you see in the lighter tone, and it coordinates
18 with the mezzanine plan, I'll set it up in a second,
19 is, it creates two-story areas which enhance the
20 mezzanine and the definition of the mezzanine.

21 And the floor plan actually stays as it
22 is, with the addition of a spiral stair coming up from
23 each individual unit. Thanks, thanks.

24 This is an additional plan that it's no
25 new information, it's just color-coded to help clarify

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1 the intent of the mezzanine level. So the idea was
2 that we'd just take off the entire roof, lift up the
3 roof of the building to meet within the zoning rules,
4 so it doesn't exceed the 40 foot height limit in the
5 R-4 zone.

6 And then also the definition of the
7 mezzanine is that we can't exceed one-third of the
8 square footage of the floor below. So we meet that.
9 And what you see here is the lighter tone is the two-
10 story space which opens up to the floor below.

11 And then the mid-tone is the actual floor
12 space on the mezzanine level, and then the darker tone
13 are rooftop terraces. So the intent, once we decided
14 to lift up the roof, you gain two things.

15 You gain, seven of the units gain the
16 second bedroom and a second bathroom. And all of the
17 units actually gain an outdoor space which was lacking
18 in this building before.

19 So that was the, just a pretty straight
20 forward approach and the most efficient way to kind of
21 add the two-story and the two-bedroom units. And it
22 meets, with actually met with the Zoning Administrator
23 at the time, at two different times, to define and
24 design it in a way to meet the understanding of what
25 a mezzanine is, and also to clarify the areas of

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1 relief that we needed.

2 CHAIRMAN GRIFFIS: So it's your
3 understanding, in reading the regulations and
4 designing this, and then all your discussions, that
5 this fits the definition of a mezzanine?

6 MR. MARKUS: Correct. We actually met with
7 the Zoning Administrator twice to clarify that. And
8 design it in a way that he understood.

9 As Chris Collins already pointed out that
10 the two issues that we're looking at as far as relief,
11 is that the entire building exceeds the lot occupancy
12 so we're adding square footage to it.

13 So that's one area of relief. The second
14 area of relief is the one court. There's three
15 courts. Court 3 is actually this one. That actually
16 meets the requirements of the zoning , for a court
17 with, this one is a little court, and the way we're
18 actually treating that is we put a cover over it so it
19 actually meets, it's not nonconforming anymore.

20 This one is nonconforming. We're
21 extending that nonconforming piece. If we wanted to
22 make it conforming, just on this floor, we have to set
23 this back four feet, and that actually creates a lot
24 of problems, some practical difficulties and just
25 structurally.

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1 There's a certain, there's a dimension
2 from the floor of the third floor up to the height of
3 the mezzanine and we'd have to create some major
4 structural issues here, and that actually would not
5 work.

6 It would make the spaces not habitable by
7 the regular building code, and also it's some major
8 financial issues with that.

9 It doesn't, the problem is that it doesn't
10 meet, there's a bearing wall in the center here, and
11 the most efficient way to do it is just to bear it on
12 the existing exterior wall there.

13 So that was the decision. It was in
14 keeping and trying to keep the cost down and make the
15 design as efficient as possible.

16 For that particular issue, if we decided
17 to setback this four feet, there would have to be, we
18 haven't designed it because it's practically, it's
19 just, wouldn't make sense.

20 It would be, several things. The floor
21 would have to bear on the, the roof would have to bear
22 on this wall here and it would bring down some of the
23 roof load and also the wall load coming down on this
24 portion here.

25 And then we'd have to transfer that to the

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1 bearing condition on the exterior wall. We'd either
2 have to create some major beams this way, or probably
3 a combination of transfer beams kind of going all the
4 way across the building, and also carrying it this
5 way.

6 And what would happen is, with the beams
7 running one way and the other beams on top of it, you
8 wouldn't actually have the head height required by
9 Code to a habitable space because the distance from
10 the floor of the mezzanine, or the floor to the third
11 floor to the ceiling of the mezzanine is not
12 sufficient to kind of create enough space for an
13 actual habitable space, plus the structure that would
14 be required.

15 MR. COLLINS: And if you did provide
16 sufficient head room, what would that do to the height
17 of the building?

18 MR. MARKUS: That would then exceed the 40
19 foot height required in the R-4 zone.

20 CHAIRMAN GRIFFIS: So if I understand you
21 correctly, what you're talking about is that there's
22 this structure. In order to, you can plop a room on
23 top of the structure that's there now, the roof we'll
24 call it now, right, the mezzanine.

25 But if you set it back and not utilize the

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1 exterior walls, which are structural walls, so you
2 don't use that framing that's there which creates a
3 floor above and a ceiling below.

4 MR. MARKUS: Right.

5 CHAIRMAN GRIFFIS: If you stepped it back,
6 you have to create a whole new structure which is
7 adding this depth. And you either put it in the unit
8 that exists, which means everyone is hitting their
9 heads when they're down there.

10 MR. MARKUS: Right.

11 CHAIRMAN GRIFFIS: Or you put it up above,
12 which means you've got to go up even higher to get to
13 that floor level, so maybe you add a foot, two feet,
14 ten feet, whatever it is.

15 And if you do that then you would exceed
16 the height allowed for the building.

17 MR. MARKUS: Right.

18 CHAIRMAN GRIFFIS: I see.

19 MR. JEFFRIES: I have a question. I'm
20 still trying to get comfortable with, you said you had
21 two meetings with the Zoning Administrator who blessed
22 the notion that this is a mezzanine.

23 Can you just walk me through that
24 discussion with the Zoning Administrator?

25 MR. MARKUS: Yes. The way he looked at it

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1 and through discussions with myself and Chris Collins
2 was there, the ceiling, when you raise the top floor
3 of the building, the ceiling needs to read as the
4 ceiling of the whole building, then.

5 So the difference being that if you just
6 raised little portions everywhere, then it would look
7 like a floor because there would be all these
8 individual little buildings around.

9 So the intent was, and we went through
10 several designs to kind of get to this point that
11 everybody was comfortable with, and the Zoning
12 Administrator.

13 So the intent was to make it appear so
14 that the entire roof is lifted up, and that height of
15 the mezzanine is the height of the entire, is the
16 height of the top floor of the building.

17 So the definition of the mezzanine was
18 that that needs to read as the top floor of that
19 building, and then the mezzanine level then reads as
20 a space within that volume.

21 MR. JEFFRIES: Okay, so you have third
22 floor, you have the envelope that, the top of the
23 envelope is the roof line, and then the mezzanine,
24 there could be movement in between that would --

25 MR. MARKUS: It has to fit within that

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1 volume. Here it's very restrictive because the height
2 is fixed and it has to be, there's only one spot that
3 it can be in order to create the head heights that you
4 need.

5 CHAIRMAN GRIFFIS: So you don't have ten
6 mezzanines here, you have one? Is that what I'm
7 understanding you saying?

8 MR. MARKUS: It's aggregate, yeah. The
9 definition is an aggregate definition. In the square
10 footage is an aggregate of the entire floor below.

11 CHAIRMAN GRIFFIS: Interesting. Okay.
12 Anything else? Any other questions? I'm sorry, sir,
13 go ahead.

14 MR. COLLINS: Can you describe in a little
15 more detail the other things that could be done to
16 solve the practical difficulties and why they would
17 not work, specifically the filling in the court?

18 MR. MARKUS: Just to kind of reiterate,
19 clarify some issues that Chris touched on earlier,
20 there's the two issues that we're asking for the
21 variance from.

22 One is it exceeds the lot occupancy in
23 order to, in order to make the building conform to lot
24 occupancy, they'd have to purchase two plus some of
25 the lots additional to it, raise those buildings and

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1 then it would meet the 40 percent of the lot
2 occupancy. So that's one issue.

3 The other issue to stay within the
4 existing confines of this lot. He'd have to cut more
5 than 30 percent of this building, just to get, to be
6 able to make it conform so you can actually add some
7 square footage to it, which doesn't really make sense.

8 So that's why we're trying to leave the
9 existing footprint as it is, and add the square
10 footage. That's why we need the variance to that
11 issue.

12 The second issue is the court, and it
13 comes down to the second one court in the back. Two
14 ways to make that conform. One would be to actually
15 raise the grade at the basement level.

16 That would actually create, you'd have to
17 put a major retaining wall along this part, this party
18 wall here, this property line. Raise up the earth
19 into the partial of the first floor.

20 So actually you would cover up the entire
21 basement level. We do have units down there and we're
22 also trying to open up units, terraces for the
23 basement unit along here, so that would ruin these
24 open areas here.

25 And that was one issue. And then the

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1 second issue, if we actually tried to cut back the
2 court on this level. We already kind of went through
3 that with all the structural modifications that would
4 make it unfeasible.

5 MR. COLLINS: And is your illustration of
6 filling in the court to comply with the height, is
7 that what's shown as Exhibit D to the Statement of the
8 Applicant?

9 MR. MARKUS: Correct. The shaded area
10 would be what would needed to be filled in for the
11 court.

12 MR. COLLINS: That concludes our
13 presentation in chief.

14 CHAIRMAN GRIFFIS: Excellent, thank you
15 very much. Are there final questions from the Board
16 at this point?

17 (No response.)

18 CHAIRMAN GRIFFIS: Very well, let's move
19 ahead then and go to the Office of Planning's Report.

20 MR. COCHRAN: Thanks, Mr. Chairman. For
21 the record, my name is Steven Cochran, Office of
22 Planning. The Applicant is requesting an area
23 variance from Section 2001.3. This is a section
24 intended to limit the size and density of structures
25 that are already non-conforming to the zoning

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1 regulations. The Applicant has made several arguments
2 but its principal argument boils down to this. The
3 building should be bigger because it already is too
4 big.

5 Section 2001.3 says that, "Enlargement or
6 additions may be made to a structure, i.e. the
7 structure being the existing building, if the
8 structure shall conform to the percentage of lot
9 occupancy requirements and the addition or enlargement
10 shall, itself conform to use and structure
11 requirements and C, the addition or enlargement shall
12 not increase or extend any existing non-conforming
13 aspect of the existing structure and shall not create
14 any new non-conformity of the existing structure and
15 addition combined".

16 And with respect to A, the Applicant's
17 pre-1958 existing building is already non-conforming
18 as I've stated with respect to lot occupancy and open
19 courts. It occupies 72 percent of the lot in an R4
20 zone where 40 percent lot occupancy is permitted. Two
21 of its open courts are more than 60 percent smaller
22 than are required. Therefore, for there to be an
23 addition an area variance is clearly required.

24 With respect to B, the proposed addition
25 and enlargement conforms to use requirements. With

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1 respect to C, the addition increases or extends an
2 existing non-conforming open court. It also proposes
3 in its latest plan to bring an existing non-conforming
4 open court into compliance by adding a roof that would
5 make it no longer an open court.

6 The Applicant requires relief from 2001.3
7 to construct the proposed plans therefore. It's OP's
8 opinion that the Applicant has not met the standard
9 variance tests of Section 3103.2 that are necessary to
10 secure the requested relief. Let's look at
11 uniqueness. The Applicant posited that the existing
12 structure is unique because it occupies more of the
13 lot than would have been permitted had it been
14 constructed after the 1958 zoning regulations were
15 adopted. Actually, if you examine pages 6 and 7 of
16 the Applicant's pre-hearing statement, it seems more
17 like the Applicant is arguing that the lot is unique
18 because while the lot is the largest in the square,
19 the lot is too small for the building.

20 Contrary to what the Applicant states on
21 page 7, there is, and I quote, "No, there is no", and
22 I quote, "Exceptional narrowness and shallowness of
23 the lot", end quote. The Applicant already noted
24 earlier in that same paragraph on page 7, that this is
25 the largest lot in the square. Rather, they're saying

1 it is the building itself that is already too large.
2 It strikes OP as circular logic for the Applicant to
3 argue that a building is too large to conform to lot
4 occupancy requirements and should therefore, be
5 granted a variance from a zoning regulation that
6 permits an addition to a non-conforming structure only
7 if that building already conforms to lot occupancy
8 requirements.

9 OP does not accept such an argument and
10 believes it is directly contrary to the intent of
11 Section 2001.3(A). The Applicant's interpretation
12 would permit almost any structure with non-conforming
13 lot occupancy to receive a variance. With respect to
14 practical difficulties, on pages 8 and 9 of the pre-
15 hearing statement, the Applicant again seems to be
16 arguing that the building is so large that it poses a
17 practical difficulty and therefore, should be
18 permitted to be made yet larger.

19 After calculating how much larger the lot
20 would need to become for the building to comply with
21 lot occupancy standards, the Applicant then states,
22 and I quote, "The only other option to theoretically
23 comply with the lot occupancy requirement would be to
24 demolish a substantial portion of the building.
25 Removing 45 percent of the existing building in order

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1 to add 2,658.9 gross square feet of mezzanine floor
2 area would constitute a practical difficulty", end of
3 quote.

4 Having to destroy the building to save it
5 would seem to be a practical difficulty if that were
6 true. There actually do seem to be other options;
7 either don't expand an already large building or
8 demonstrate that there is a practical difficulty to
9 rehabilitating the structure without expanding it or
10 without increasing the non-conformity of an existing
11 open court. And frankly, I believe that within the
12 context of that open court the Applicant may have
13 demonstrated structural difficulty there.

14 Because despite requests from OP for
15 additional information, there is nothing in the record
16 to indicate that the Applicants tried to make a
17 rehabilitation work without adding to the building, OP
18 does not believe the Applicant has demonstrated a
19 practical difficulty in complying with Section 2001.3.
20 Now the Applicant today started talking about two
21 bedroom units that it desired to add and that there
22 was a market for two bedroom units in the neighborhood
23 and that this was a practical difficulty, that they
24 couldn't market two bedroom units. Undoubtedly, there
25 is a market for two bedroom units here as there is

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1 everywhere in the city and we would like to see more
2 two bedroom units.

3 But the Applicant hasn't done anything to
4 demonstrate that they couldn't make two bedroom units
5 in the existing already large building within the
6 confines of the footprint of that building and the
7 volume of that building. They've simply shown you
8 what they want to do rather than showing a practical
9 difficulty to accomplishing what they might like to do
10 within the confines of the building.

11 I mean, you look at one of those two
12 bedroom units, take Unit 302 for example, look on
13 plans A203 and A204. Okay, you're walking up to the
14 third floor. You come in. You have a living room
15 with three windows, a kitchen, you go back you've got
16 a bedroom with a full bath and several walk-in
17 closets. Then you go up a circular stair, you hit a
18 den, then you hit another bedroom and another bathroom
19 and then you go out to your private roof deck. Now,
20 this is a very nice unit. I would love to have this
21 as Workforce housing, but there's no need to have a
22 two bedroom, two bath, with den unit. This is a
23 desire, not a practical difficulty. I'm sorry.

24 Substantial detriment to the public good
25 or substantially impairing the intent, purpose and

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1 integrity of the zone plan. As expressed in Section
2 330.1, the clear intent and purpose of the R4 zone is
3 for a zone district of road dwellings that also permit
4 conversion of road dwellings to flats. Section 330.2
5 further notes that the R4 district shall not be an
6 apartment house district as contemplated under the
7 general residents district and limits conversion by
8 setting relatively high minimum lot area for each
9 dwelling unit in the conversion to apartments.

10 While the Applicant's building exists
11 legitimately as a grand fathered apartment building,
12 OP strongly believes that granting the requested
13 relief without a demonstration of a uniqueness or
14 practical difficulty would substantially impair the
15 integrity of the R4 zone plan.

16 Finally, I'd like to make some
17 observations about the number of square feet by which
18 the Applicant is proposing to enlarge or add on to the
19 building. According to the pre-hearing statement, the
20 Applicant proposes to add 2,659 roughly square feet of
21 gross floor area to the building, not the 3341 square
22 feet of expansion that OP had listed in the lower
23 right-hand corner of Table 1 of page 3 of our report,
24 so that's a correction.

25 The Applicant has told OP that this 2659

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1 square foot figure includes the enclosed GFA of the
2 new top level of the building, both the area on which
3 a person could stand and the area that is open to the
4 floor below. OP has been unable to verify this absent
5 the breakdown of square footage in interior occupiable
6 area, interior open area and exterior roof decks that
7 OP had asked the Applicant to provide. It is,
8 however, clear that the 20,000 -- excuse me, 2659
9 square foot figure does not include the area of the
10 roof decks. Now, typically, if a building is a non-
11 conforming structure, it's not possible even to build
12 a roof deck without seeking an area variance. The
13 Applicant may, therefore, have under-stated the amount
14 of enlargements or additions. If one examines Sheet
15 A204, it appears that there is enlargement or
16 addition, occupying nearly the entire 7,983 square
17 feet of the building's footprint.

18 Thank you very much. That concludes OP's
19 testimony.

20 CHAIRMAN GRIFFIS: Thank you very much and
21 a substantial amount of analysis which we always
22 appreciate and particularly appreciate in this
23 application. I think there's an awful lot of detailed
24 information that you've brought up, so let's get right
25 to it.

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1 First of all, in terms of your logic, I
2 don't really follow. I can understand the fact that
3 this is, as you determined this, the Applicant's
4 argument is circular. However, you begin in
5 describing that in your written report and also in
6 your presentation of it today, "As indicated, this
7 somehow is too big and exceeds" and your wording is
8 "the anticipated allowable in the R4 zone". I could
9 see that and follow your logic as inappropriately
10 circular if this was non-conforming for lot occupancy
11 and the application was basing its practical
12 difficulty of not conforming on lot occupancy and is
13 requesting to increase lot occupancy. But as was
14 established in my reading of the application, we have
15 an Applicant here before us that, in order to do any
16 -- or what they're saying, in terms of doing the
17 modifications to this, the conformities that are
18 existing are what are precluding it. I'm not sure why
19 we would even need to go into the analysis of the
20 square footage unless it's the determination of the
21 mezzanine level or not.

22 MR. COCHRAN: No, the square footage I was
23 just pointing out that the Applicant is structuring an
24 argument that makes it seem like there's a fairly
25 small amount of square footage added, when, in fact,

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1 there is more square footage added. That's all I'm
2 saying.

3 CHAIRMAN GRIFFIS: And I appreciate that.

4 MR. COCHRAN: Now, with respect to what
5 you were just stating about there being circular
6 logic, the Applicant first and foremost says that the
7 building is unique because it's so large.

8 CHAIRMAN GRIFFIS: But that's not a
9 preclusion for adding onto large buildings. I mean,
10 we've had that as an establishment of uniqueness
11 before. I mean, frankly, I find that it's persuasive,
12 its uniqueness in the fact that it existed prior to
13 the 1958 zoning regulation is adopted and therefore,
14 became -- it was a build structure. It's uniqueness
15 is established based on the fact that it became non-
16 conforming when we adopted our zoning regulations.
17 Now, whether the uniqueness that are established and
18 presented to us today rise to the level of practical
19 difficulty, that's what we need to get into.

20 MR. COCHRAN: Okay, it then further goes
21 on to state that the major practical difficulty is
22 that it's so large.

23 CHAIRMAN GRIFFIS: Well, of course,
24 because the largeness of the building, as I'm
25 understanding the application, the largeness of the

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1 building goes to the lot occupancy which relates to
2 the uniqueness and the non-conformity.

3 MR. COCHRAN: But the Applicant then,
4 having tried to establish -- well, it's a big building
5 but the Applicant then states, "Okay, we've got a big
6 building, that makes it unique in this area. This
7 bigness proposes a practical difficulty because if we
8 wanted to do what we're going to do, and comply with
9 the zoning regulations, we would basically have to
10 destroy most of the building or we'd have to triple or
11 double the size of the lot".

12 CHAIRMAN GRIFFIS: Well, that would cure
13 the lot occupancy. I mean, based on --

14 MR. COCHRAN: Well, of course it would but
15 has the Applicant ever attempted to show that it --
16 that it could not rehabilitate this building and put
17 in two bedroom units without encountering -- without
18 having to put an addition on the building? This is
19 supposed to -- putting an addition on the building is
20 supposed to be an exception. That's what 2001.3 is
21 made to accommodate, but the Applicant hasn't
22 demonstrated anything that meets those tests.

23 CHAIRMAN GRIFFIS: Right, and that goes
24 the last piece that I want to address in terms of your
25 analysis which again is incredibly detailed and

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1 important for the Board's own deliberation and
2 decision on this. The detailed analysis that you're
3 presenting seems to create a higher threshold for an
4 area of variance than I'm used to hearing and
5 deliberating on in terms of practical difficulty. I
6 mean, what you seem to be asking the Applicant to so
7 is to establish the reasoning why this is required to
8 do, when, in fact, the courts have established the
9 definitions of our practical difficulty, I think it
10 was Gilmartin that was saying it just needs to be
11 shown the uniqueness, that it becomes unnecessarily
12 burdensome to comply with the zoning regulations.
13 That's a whole different -- my understanding of that,
14 it's a whole different interpretation of threshold for
15 us than what you -- even your nomenclature of need
16 requirement, why do you have to do that. It's almost
17 raised to the level of threshold through of what's
18 making this -- how can -- prove to us that you can't
19 utilize this building as is before we even get into
20 where you're going to add onto it.

21 MR. COCHRAN: Prove to us that there's a
22 practical difficulty in utilizing this building as is,
23 that would be the test.

24 CHAIRMAN GRIFFIS: And that's where I
25 disagree with you. I don't find anything in the

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1 regulations or the court rulings that says that the
2 Applicant is required to prove they can utilize this
3 or utilizing the building as is, is a practical
4 difficulty. That goes to a use variance where you go
5 into hardship. What they need to show us is that as
6 proposed in this addition, that it is unnecessarily
7 burdensome to comply with the regulations.

8 MR. COCHRAN: If you follow that logic,
9 then I think you're allowing every roof deck in the
10 city to come in under Section 2001.3, any addition to
11 come in under Section 201.3, because if your asking
12 for rear addition for a non-conforming structure, then
13 there would be, by your logic, Mr. Chairman, a
14 practical difficulty in putting that addition without
15 further increasing, say a lot occupancy overage.

16 CHAIRMAN GRIFFIS: No, I think there's --

17 MR. COCHRAN: Putting the roof deck in, a
18 practical difficulty in putting the roof deck in and
19 adding or enlarging to the building. You know,
20 everybody wants a roof deck. Most people would like
21 to have a family room in the back, but the zoning
22 regulations aren't intended to allow you necessarily
23 to have what you want.

24 CHAIRMAN GRIFFIS: True. I don't disagree
25 with you there. I think there's a substantial amount

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1 that would lend itself and would be persuasive to deny
2 the application.

3 MR. COCHRAN: Yeah, we're not looking at
4 whether these would be nice units. These would be
5 nice units. We're looking at whether they meet the
6 zoning regulations.

7 CHAIRMAN GRIFFIS: Right, and quite
8 frankly, it wasn't until you walked me through 302
9 that I actually got into the interior of these units
10 or actually care whether they were two bedroom or one
11 bedroom. I went directly to the regulations and what
12 the regulations tell me I should be looking at and I
13 should be looking at the uniqueness of this, which I
14 think is substantially established. The practical
15 difficulty in what's proposed and the proposal is to
16 add on a mezzanine level to this building and the
17 practical difficulty is in order to comply with that,
18 in order to be able to do that under our regulations
19 they would --

20 MR. COCHRAN: Excuse me, I'm sorry, in
21 order to be able to do what?

22 CHAIRMAN GRIFFIS: In order to add this
23 mezzanine onto the building, they would have to comply
24 with all the requirements of the regulations. They
25 would have to bring this into conformity. In order to

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1 bring it into conformity, they would have to increase
2 the lot or decrease the building footprint in order to
3 change the lot occupancy.

4 MR. COCHRAN: But Mr. Chairman, I'd ask,
5 what makes their desire to add a mezzanine on
6 different than say your desire to add a roof deck?

7 CHAIRMAN GRIFFIS: Right. And I
8 absolutely understand your statement and I don't think
9 it has any bearing to an area variance. I don't think
10 I have to establish why they want to do something. I
11 don't think I have to ask the question, "Why do you
12 want to do this". I don't think I have to get to the
13 place of two bedrooms, people want two bedrooms. My
14 gosh, we've got letters coming in, in support of these
15 two bedrooms today. They keep getting handed to us up
16 here. I'm not sure it has really much to do with the
17 application. I mean, we'll get to them, but I go
18 directly to we have a proposed addition to this
19 building. Show me why it's practically difficult to
20 comply with the regulations and the case has been
21 made.

22 Whether persuasive or not, I don't know
23 but the case is pretty straightforward. But let's
24 hear from others. Ms. Miller?

25 VICE-CHAIRPERSON MILLER: I guess on that

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1 point, I understand where Mr. Cochran is coming from
2 because I often have looked at applications that way
3 except I think they have put forward a case so far
4 with respect to practical difficulty in providing
5 these two unit bedrooms to respond to a public need,
6 which is for workplace housing and I think that --

7 MR. COCHRAN: Excuse me, Madam Chair, I
8 notice no -- I've actually talked about this with the
9 Applicant. The Applicant doesn't know if they're
10 going to be apartments or whether they're going to be
11 for sale. The Applicant is doing no covenant to
12 guarantee that this two bedroom plus two bath, plus
13 den, plus roof deck is going to be covenanted to
14 anybody in an affordable range. There is the old IBEX
15 club at Georgia Avenue and Missouri, just south of
16 here is going for probably \$500.00 a square foot for
17 similar type units.

18 VICE-CHAIRPERSON MILLER: I don't really
19 want to enter into a debate on this. I was just
20 saying that I understand that there could be a larger
21 context in which we're looking at practical
22 difficulties and as to how they want to design their
23 renovation but what may be unduly burdensome but I saw
24 some structural explanations as to why they had to do
25 things certain ways. Whether it rises to that test we

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1 could decide but in looking at this, let me ask you
2 this, the variances though in this case, they appear
3 to me to be minor.

4 The open court variance, I mean, I think
5 the Office of Planning may be have a concern with an
6 addition but that didn't -- I mean, under 2001.3, but
7 if you'll just look at the different things that are
8 changing, they need a variance. They don't need a lot
9 occupancy variance. They need this open court
10 variance. Is that a minor or a major variance?

11 CHAIRMAN GRIFFIS: Let me just interrupt
12 and then I'll let Mr. Cochran, because I think this
13 goes to an interesting point of all this. They're
14 asking for one variance under 2001.3 which precludes
15 them from adding onto this building because it doesn't
16 comply with the lot occupancy but it's very clear the
17 application in this addition is not adding to the lot
18 occupancy.

19 VICE-CHAIRPERSON MILLER: Right, right.

20 CHAIRMAN GRIFFIS: Okay, just to be clear.

21 VICE-CHAIRPERSON MILLER: The only thing
22 that would be changing then for getting a variance is
23 that not minor?

24 MR. COCHRAN: With respect to the one open
25 court variance, if you presume that the mezzanine is

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1 appropriate and even allowed under the zoning
2 regulations, the variance that's being asked for is,
3 you know, relative minor. That's a very big if.

4 CHAIRMAN GRIFFIS: Here's what I need to
5 take up with you because perhaps you're going to be
6 very persuasive with the entire board. Where in the
7 regulations am I to look at to find that I need to
8 establish, your words, that this addition is
9 appropriate or not? And I mean, what's the level of
10 measure of appropriateness that I'm trying to
11 establish here, because I'm happy to do it if I can be
12 provided the direction of where it is within my
13 jurisdiction. I mean, like or not, appropriate or
14 not, need, required, these are the terminologies that
15 you've described this application and perhaps, I'm
16 missing something.

17 MR. COCHRAN: Mr. Chair, of course
18 "appropriate" is a subjective word. I mean
19 appropriate to the zoning regulations.

20 CHAIRMAN GRIFFIS: Okay, but is that then,
21 the third test of what we're talking about, whether it
22 would impair the intent and integrity of the zone
23 plan? That's the measure and level of appropriateness
24 that you're establishing for this?

25 MR. COCHRAN: I also mean appropriateness

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1 on whether it complies with the other two prongs of
2 the test.

3 CHAIRMAN GRIFFIS: Okay, all right, I
4 understand, I understand. Okay. I see. Okay.

5 VICE-CHAIRPERSON MILLER: Do you want to
6 address your view on the mezzanine question as
7 different from the Zoning Administrator's at least as
8 represented in this case. Oh, my microphone is not
9 on, I'm sorry.

10 Do you want to address the question of why
11 you view the mezzanine differently -- issue
12 differently from how it's been presented as that of
13 the Zoning Administrator's advice to them?

14 MR. COCHRAN: I'd be happy to but I'd like
15 to first stress that OP's case is not predicated on
16 whether this is a mezzanine or a fourth floor. OP's
17 case is predicated on whether the building meets -- on
18 whether the proposal meets the tests of uniqueness,
19 practical difficulty and damage to the integrity --
20 substantial harm to the integrity of the zoning
21 regulations with or without the additional fourth
22 story.

23 VICE-CHAIRPERSON MILLER: Okay, let me ask
24 you this then we don't necessarily need to go there.
25 With respect to your analysis of practical

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1 difficulties test, are you saying that they have to
2 show that they can't renovate it; is that what you're
3 -- I mean, where do you come down as to what their
4 practical difficulty has to be? It sounds like you're
5 saying -- well, go ahead.

6 MR. COCHRAN: Yes, they would not be --
7 let me just go back to the language. Putting an
8 enlargement or addition on is presumed not to be
9 permitted. They would have to demonstrate that not
10 putting an enlargement or addition on would be
11 unnecessarily burdensome to them. The Applicant
12 hasn't shown how not putting this mezzanine level on
13 would be unnecessarily burdensome because it's only by
14 putting this mezzanine level on that they're creating
15 a situation that they need relief from.

16 Whether you call it a mezzanine or whether
17 you call it a fourth floor, which if you did call it
18 a fourth floor it would require additional relief,
19 they haven't demonstrated how sticking to the rules is
20 unnecessarily burdensome.

21 CHAIRMAN GRIFFIS: Very well, well said.
22 Other questions from the Board?

23 COMMISSIONER JEFFRIES: I have a question.
24 Mr. Cochran, so the concern here is that this could be
25 precedent setting, that, you know, if we were to

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1 somehow allow this to go forward, then we might see
2 other applications coming forward with, you know,
3 adding additions to roof decks to -- and making a case
4 for practical difficulty and so forth.

5 MR. COCHRAN: Certainly, Commissioner,
6 every decision stands on its own and no BZA case sets
7 a precedent because you have to consider it uniquely,
8 but what I'd be concerned that someone misguidedly
9 might look at this decision and think, "Ah-ha, well,
10 that's how they decided on this case, yes".

11 CHAIRMAN GRIFFIS: Anything else? Does
12 Applicant have any cross examination for the Office of
13 Planning? Is ANC 4D01 represented today? Oh, I'm
14 sorry, I should have recognized you earlier. If you
15 wouldn't mind, do you have any cross examination of
16 the Office of Planning or I'm going to have you come
17 up and go through this. I think it would be
18 appropriate to hear from the ANC. And I'd also give
19 you the opportunity to cross examine any of the
20 witnesses that you've heard from the Applicant's
21 presentation but also the Office of Planning after you
22 introduce yourself with your name and your address.

23 MR. JACKSON: Thank you and good morning.
24 Keith A. Jackson, ANCI Commissioner for 4D01 and Chair
25 for 4D, 5403 Eighth Street, N.W. No cross examination

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1 but I am here in support of this measure. I do
2 believe you have a copy of a letter that I wrote to
3 Mr. Saunders, BHI International Incorporated in
4 support of this measure. I believe it's good for our
5 community, continued growth in our community. Several
6 of our residents are excited about this and are
7 looking forward to it coming, possibly being residents
8 in this property.

9 CHAIRMAN GRIFFIS: Excellent. Thank you
10 very much, Mr. Jackson. We appreciate you being down
11 here all morning with us to present the ANC's position
12 on this. Is there any questions from the Board members
13 of Mr. Jackson? Does the Applicant have any cross
14 examination of Mr. -- I'm sorry, Mr. Jeffries.

15 COMMISSIONER JEFFRIES: I have a question.
16 So you are representing your --

17 MR. JACKSON: Single member district.

18 COMMISSIONER JEFFRIES: So there was a
19 quorum, there was a vote?

20 MR. JACKSON: This was not taken before
21 the full body because this is in my single member
22 district. This is something I have discussed with
23 other Commissioners, but when met with BHI
24 International it was after we had done our general
25 body meeting. We don't meet again until next Tuesday

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1 and this hearing was today, so it was not brought
2 before the full 4D constituency.

3 COMMISSIONER JEFFRIES: Thank you.

4 CHAIRMAN GRIFFIS: Mr. Collins, any cross?

5 MR. COLLINS: No, sir.

6 CHAIRMAN GRIFFIS: Indeed.

7 COMMISSIONER ETHERLY: Mr. Chair, if I
8 could very briefly, Mr. Jackson thank you very much
9 for your testimony. Just a quick question for you.
10 Attached to your letter submission is a petition. I
11 just wanted to get a little further information on how
12 that petition came to be circulated and signatures
13 attached to it. Was that a petition that you
14 distributed?

15 MR. JACKSON: That was not a petition that
16 I distributed. That was a petition that was
17 distributed by BHI International and their staff.
18 They actually went door to door speaking with
19 residents and requesting their signatures.

20 COMMISSIONER ETHERLY: Okay, and despite
21 the fact that the ANC had not yet -- has not yet had
22 an opportunity to take action on the proposed
23 application -- actually, I'll just leave it at that,
24 because I don't want to invite any speculation on your
25 part as to what the ANC might be inclined to do, but

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1 just to reiterate, you are in support as a single
2 member district representative, you are in support of
3 the application.

4 MR. JACKSON: Correct.

5 COMMISSIONER ETHERLY: Okay, thank you,
6 sir.

7 CHAIRMAN GRIFFIS: Thank you very much.
8 I don't have any other government reports appended to
9 the application. We can move ahead to persons present
10 for Application Number 17377 in support and
11 opposition. Are there any persons present to provide
12 testimony to the Board today? Yes, please, if you
13 wouldn't mind coming forward. That's okay.

14 Very well, not noting any persons present
15 for 17377 Jefferson LLC, support/opposition, we can
16 move ahead. I would make note that we do have, as I
17 was indicating several other additional submissions of
18 letters in the record and I will start with Exhibit
19 Number 30 which is a letter in support -- expressing
20 support of the application from Chairman Linda Croft
21 of the District of Columbia. We also have Exhibit
22 Number -- I don't have an exhibit number on the next,
23 however, from Council Member at Large Tony Brown of
24 the District of Columbia, also in support of the
25 application. And finally, the council member of Ward

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1 4 within which this property is located, Council
2 Member Adrian Fenty in support of the application,
3 each giving indications of different elements of it.

4 I won't read all of these in. I'm
5 understanding that the Applicant has these in their
6 possession and seen them; is that correct?

7 MR. COLLINS: I do not have the Chairman's
8 letter.

9 CHAIRMAN GRIFFIS: Indeed and that was
10 delivered to us as we came out this morning, so we'll
11 make sure that -- it is in the record now. We'll
12 make sure that you have a copy provided.

13 MR. COLLINS: Thank you.

14 CHAIRMAN GRIFFIS: I'll take any other
15 additional comments that or anything I've missed in
16 terms of the submissions into the record at this
17 point. Not noting any additional aspects to that,
18 let's move ahead then. Mr. Collins, we'll allow you
19 rebuttal or closing comments.

20 MR. COLLINS: Thank you, Mr. Chairman. I
21 do have one more witness, an expert witness, Mr.
22 Lindsley Williams, as an expert planning witness, in
23 rebuttal to the Office of Planning report. I have
24 his resume and would offer him as an expert witness.
25 I'll give you these if you'd like.

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1 CHAIRMAN GRIFFIS: Why don't we do that?

2 DIRECT EXAMINATION

3 MR. COLLINS: Mr. Williams, would you
4 please -- your resume is being submitted to the
5 record. Would you please summarize your
6 qualifications as an expert witness on DC zoning and
7 planning?

8 MR. WILLIAMS: Good afternoon, members of
9 the Board. My name is Lindsley Williams. I live at
10 3307 Highland Place and I'm a consultant in land use
11 planning and zoning to the law firm of Holland and
12 Knight (phonetic). After graduating from
13 undergraduate school, I attended and graduated with a
14 Master's Degree in urban and regional planning from
15 the University of North Carolina at Chapel Hill.

16 MR. COLLINS: You're going too far back.

17 CHAIRMAN GRIFFIS: Let's go any Board
18 questions? I think we're very familiar with Mr.
19 Williams now that we have it in front of us and we all
20 took Evelyn Wood over the summer so we can get through
21 this pretty quickly. Are there questions from the
22 Board in terms of establishing the expert status of
23 Mr. Williams in this case in terms of land use? We've
24 established you as an expert witness previously.

25 MR. WILLIAMS: Yes.

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1 CHAIRMAN GRIFFIS: And I would have no
2 objection to moving on with that unless there's any
3 objections to that from the board members or any
4 questions at this time. Not noting anything, we'll
5 move ahead. Mr. Williams, if you wouldn't mind
6 getting right to it, let's get to the actual points
7 that you're rebutting with the Office of Planning? I
8 mean, I would understand that that would be, of
9 course, the tests for the variance and practical
10 difficulty.

11 MR. WILLIAMS: Mr. Chairman, I was asked
12 to review the Office of Planning's report and I've
13 prepared some notes which will assist me, if I could
14 just turn to them and I'll speak to the points that
15 are of interest here.

16 It will not surprise you jumping to the
17 bottom line that I come to a different conclusion as
18 a planning expert as to the merits of the case that
19 have been reached by the Office of Planning. My view
20 of the matter is that they satisfy each of the three
21 tests that are involved. I'm going to tick off those
22 that are under the first standard, which I note that
23 OP described under the rubric of uniqueness when
24 really the standard is what's quoted is a less
25 stringent standard of extraordinary exceptional. So

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1 you don't have to establish one of a kind.

2 The lot is the largest. The building is
3 the largest on the square. Nothing else compares.
4 The immediate areas zoned are for 1,000 feet east/west
5 which is essentially one block east and one -- a
6 little bit more than a block west because they're
7 short blocks, includes about 123 lots of which only
8 two are larger. There are not many which is the OP
9 word but some of the pre-1958 apartments building 2 on
10 the larger lots noted above. Of these one is two
11 stories, the other is three stories. The latter is
12 appearing to be somewhat higher such that a mezzanine
13 level might not even be feasible.

14 What I'm trying to do is to distinguish
15 the other large apartment buildings that are on large
16 lots from this one supporting the effort that this is
17 an extraordinary exceptional situation in its
18 framework. The plan -- I have a few other points but
19 as to practical difficulty, you've heard testimony
20 from the architect and the developer that I believe
21 are sufficient but I would also add to that, that the
22 building contains a set of four stairs and interior
23 walls that divide the units, so there's no
24 communication from one across the entirety of levels
25 1, 2 and 3. The only communication is the basement

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1 level and the walls that separate them, as I
2 understand it, are ones that have bearing qualities,
3 so the idea that you can scramble things up to create
4 two bedroom units by mixing with the population of
5 things that are there given the existing kitchens,
6 bathroom chases and the like, I believe represents a
7 substantial impediment to the sort of sweep it all out
8 and start over approach that was suggested as being
9 one feasible way to create two bedroom units.

10 I don't believe it's feasible here and
11 particularly feasible against the economics. You can
12 get more information on that from the Applicant's own
13 witnesses from earlier if need be, but that's my
14 general conclusion that I've reached on that.

15 And I would further add that the total
16 amount of floor area that's being added at the
17 mezzanine level within the contended area is under 130
18 square feet. In other words, you take the four-foot
19 step-back that is required and you flow it back over
20 the distance that's involved, some of it's open area
21 so you won't count that. It's basically four feet
22 times that, you come up with a very small increment of
23 space that's being required to be occupied in this
24 case and that's part of the practical difficulty.

25 As to the substantial detriment test, it

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1 impacts no other building adjacent or nearby at all,
2 other than slightly influencing the shadow cast solely
3 on the property north, whose owner is recorded on the
4 petition you have as being in support. The shadows
5 will not extend to any public street, public alley, or
6 the sidewalk area. It falls -- because the
7 projection, the additional vertical projection for the
8 mezzanine level simply doesn't get up there except
9 maybe at one minute before sunrise or sunset. It's
10 simply not a factor.

11 It does not increase the density above any
12 threshold, bright or not, where density could be
13 interpreted as more than moderate. That term
14 "moderate" comes out of the comp plan. The area is
15 designated for moderate density and OP has long held
16 with an analysis that the moderate density zones are
17 R3, R4, R5A and R5B. And those cap out at an FAR of
18 1.8. The next zone up, the R5C zone, has an allowable
19 density of 3.0. This is more than an R5B zone as it
20 is right now. It comes out to about 2.1 and it goes
21 up slightly, but it's not getting anywhere close to
22 the 3.0 of the next highest zone category above the
23 comp plan's moderate density level.

24 The courtyard is adjacent to a side lot
25 line where a wall could be built to a height of 40

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1 feet so that wall that we're concerned is so high
2 against -- some people seem to be concerned is so high
3 could even be higher closer in the face of the
4 abutting neighbors than it is under the current
5 situation. If razed, as seems to be contemplated, if
6 you should start all over and maybe that isn't what's
7 entirely contemplated here, but if the whole building
8 were razed to start over, what you would wind up with
9 is a frontage of sufficient length to accommodate six
10 flats facing onto 9th Street. That would create a
11 total at most of 12 housing units and it would result
12 in a net loss in the District that's trying to add
13 housing to receive the people that the Mayor is
14 speaking about.

15 So we have a situation where we have a
16 good -- a building that is solid and refurbishible and
17 it's ready to go and we don't think it's appropriate
18 to do that. That would be a detriment to the economy
19 and to the city to have it be forced into doing that.
20 I believe that the building is going to be providing
21 housing, affordable housing in terms of the way it's
22 being marketed, not necessarily controlled, that's
23 another good -- it's not a bad thing at all.

24 And as the Applicant's own witness
25 indicated earlier, the building has had a history of

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1 use with vagrants and other undesirables. They're
2 going to be putting the building back in so that it
3 becomes a bright spot in the community rather than the
4 conditions that have pre-existed here. To me that's
5 all something that's well, and good.

6 And finally, I would just remind you that
7 although Mr. Cochran didn't speak about it to any
8 great extent, not only are there sections of the comp
9 plan that are supporting this for the ones that are in
10 the OP report, there are also a series of provisions
11 in the general comp plan in the 300s, which I can
12 provide in more detail, but it would just take a lot
13 of time. There are a series of sections in the 300.2
14 area that are in favor of housing of this sort,
15 affordable housing, mixed use, keeping existing
16 housing stock and not making it be torn down. So
17 these all run in the direction of supporting my thesis
18 that we have a benefit that comes from the projects
19 being approved and a detriment from its being denied.
20 So OP recommends denial. My findings run in exactly
21 the opposite direction, Mr. Chairman. That's my
22 testimony.

23 CHAIRMAN GRIFFIS: Excellent. Thank you
24 very much. Questions from the Board? Let me just
25 make a clarification. You were talking about FAR and

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1 the zone district as opposed to the comprehensive plan
2 and the generalized land use plan. And you were
3 comparing it to a higher zone than the R5, but there's
4 no FAR requiring the R5; is that correct?

5 MR. WILLIAMS: There's no limit here at
6 all.

7 CHAIRMAN GRIFFIS: This meets the unit
8 size, the unit number based on the lot size; is that
9 correct?

10 MR. WILLIAMS: There is a limit for
11 converted buildings of the number of units. I don't
12 know that there's even a limit for a building that
13 pre-existed as to the number of units that can be
14 established unless it triggers a parking or loading
15 requirement.

16 CHAIRMAN GRIFFIS: I'm not sure I follow
17 that but nonetheless, it's conforming in terms of the
18 number of units based on the size of the lot.

19 MR. WILLIAMS: Yes, it is conforming.

20 CHAIRMAN GRIFFIS: Okay. The other takes
21 us in a whole different direction.

22 MR. WILLIAMS: Well --

23 CHAIRMAN GRIFFIS: Okay, very well, if
24 there's nothing from the Board, then thank you very
25 much. Appreciate it. Is there any redirect to the

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1 expert witness' comments?

2 MR. COLLINS: No, but I do have some
3 clarification with the other witnesses, if I may just
4 ask.

5 CHAIRMAN GRIFFIS: Certainly.

6 MR. COLLINS: First of all, Mr. Saunders,
7 the petition that was presented in -- or statement of
8 the Applicant in which there was a question to the ANC
9 Chair about that issue, that was a petition that you
10 were involved with soliciting the signatures of the
11 neighbors?

12 MR. SAUNDERS: Yes, I was.

13 MR. COLLINS: Can you explain how you did
14 that and the responses that you received?

15 MR. SAUNDERS: Okay. We went around to
16 the neighbors with the plans and showed them and
17 discussed exactly what we were planning on doing. And
18 the petition you see in front of you is the result. W
19 we're basically 100 percent of the people in the
20 occupied buildings that were home at the times that we
21 were out talking to residents were all in support and
22 their names are represented on that petition that you
23 see in front of you.

24 MR. COLLINS: And that petition, those
25 addresses represent a radius of approximately half a

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1 block in each direction or more?

2 MR. SAUNDERS: Or more, right.

3 MR. COLLINS: And specifically, the two
4 adjacent property owners, the property owners to the
5 east and to the north, are their names on that
6 petition?

7 MR. SAUNDERS: Both are on the petition
8 and support it.

9 MR. COLLINS: Thank you, thank you. Mr.
10 Marcus, I have a couple of questions for you just for
11 clarification. Maybe this was in the record and maybe
12 I missed it but are there interior bearing walls on
13 the first and third floors that would fundamentally
14 limit the ability to reshape the units to create two
15 bedroom units by combining adjacent apartments as they
16 now exist?

17 MR. MARCUS: Yes, there are. There's a
18 series of demising walls which is one issue and then
19 also bearing walls running down the middle of each
20 wing of the building which would have to be
21 manipulated in order to make larger spaces to
22 accommodate second bedrooms.

23 MR. COLLINS: And then Mr. Williams
24 touched on an issue, I'm not sure that you discussed
25 it in your case in chief, but the -- how much

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1 additional square footage is actually being gained by
2 pushing the wall of the court out to the existing wall
3 instead of pulling it back four feet?

4 MR. MARKUS: That I'll point to it. He
5 touched on this but that's the -- this court here, if
6 we brought this back, the additional four feet, the
7 livable square footage the interior floor space is
8 only right here and that's 128 square feet.

9 MR. COLLINS: Is that a significant
10 percentage of the overall square footage of the
11 building?

12 MR. MARCUS: No.

13 MR. COLLINS: Thank you. In closing, Mr.
14 Chair and members of the Board, I'd like to make a few
15 points if I may. The issue of uniqueness was raised
16 and is whether uniqueness is a test. Well, uniqueness
17 is really not the test here. The zoning regulations
18 don't use the word "unique" or "uniqueness". The
19 regulations say that a variance is appropriate where
20 by reason of exceptional narrowness, shallowness or
21 shape of a specific piece of property at the time of
22 the adoption of the regulations or exceptional
23 topographical condition or other extraordinary or
24 exceptional situation or condition of a specific piece
25 of property, that's the test.

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1 Now, what does that mean? Well, there are
2 several cases and I'd like to hand in copies to you.
3 You've seen them I'm sure many times before, De
4 Azcarate v. DC Board of Zoning Adjustments is one of
5 the seminal cases that cited time and again to
6 demonstrate what that phrase means and what the Court
7 of Appeals of the District of Columbia said in that
8 case is that that phrase, "extraordinary or
9 exceptional situation or condition", I'm reading from
10 page 1236 of De Azcarate which is cited at 388 At2nd
11 1233 and you'll have copies in a second, I've
12 highlighted them for your convenience, page 1236, the
13 Court says, "The statutory phrase other extraordinary
14 or exceptional situation or condition of a specific
15 piece of property serves as a grant of authority to
16 the Board empowering it to provide variance relief in
17 appropriate cases to extraordinary or exceptional
18 condition brought about after the original adoption of
19 the zoning regulations".

20 So not only before the regulations but
21 after the regulations. That case also is important
22 because it quotes earlier cases. It cites the fact
23 that Palmer v. BZA, which is another one of the
24 important cases, did not cite many other cases to
25 determine what that phrase means. And it did not

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1 offer any explanation of what that phrase means,
2 meaning that it really -- it's on a case by case
3 basis. You look to this exceptional situation or
4 condition of a specific piece of property on a case by
5 case basis.

6 It again cites Clerics of St. Viator
7 (phonetic) which is probably the granddaddy of them
8 all and that says that extraordinary and exceptional
9 situation or condition of a piece of property may be
10 grounds upon which a variance may be granted. The
11 Board -- this Board is in error when it takes the
12 position that the variance may only be granted when
13 the required hardship adheres in the land as opposed
14 to the property.

15 The case, Mr. Chair, that you cited,
16 Gilmartin v. BZA, which is another one that we just
17 handed in, I'll just go quickly on that case. That
18 case is important because on page 1168, the Court of
19 Appeals said that, "To support a variance it is
20 fundamental that the unique hardships -- unique
21 circumstances, particularly to the Applicant's
22 property and not to the general condition of the
23 neighborhood". That's exactly what we have here.
24 This is not a condition that is a general condition in
25 the neighborhood. This is our property.

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1 It also says that the approval of a
2 variance is allowed where the uniqueness -- they use
3 a phrase improperly, "the uniqueness arises from a
4 confluence of factors". Well, we have here a
5 confluence of factors. We have the fact that we have
6 a large building. It is a large building. We're not
7 trying to hide the fact that it's a large building on
8 a small piece of property that existed pre-1958. It
9 was approved as a matter right back then under the
10 zoning scheme that was allowed at the time.

11 Apartments were allowed in that zone. We
12 have a situation where it is unusually configured. It
13 is a U-shaped facing west, where the large majority of
14 the open space is in the middle. You don't build
15 buildings with large spaces in the middle under the
16 current regulations. The current regulations
17 encourage open spaces on the sides and in the rear and
18 no front yard setback. There is no front yard setback
19 in the current regulations.

20 This has a U shape with a big open area in
21 the middle which pushes the building out to the sides
22 which leads us to where we are. We have a court
23 that's our issue here, that is larger than the side
24 yard would be if it was -- if there was a side yard
25 required here, which is only 10 feet. This is 11.58

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1 feet for a court and we have a court where you don't
2 need a court. It's not required. We could build a
3 wall to the side lot line.

4 So those cases are important. We have --
5 excuse me a second. Office of Planning did say that
6 this is not unlike many similar structures in the
7 neighborhood. I think Mr. Williams hit on that issue.
8 There is no other building of this size and
9 configuration on a lot of this size and configuration
10 in the area. The exceptional situation or condition
11 we've talked about it many times, so I won't repeat
12 it, it's already in the record, but the practical
13 difficulty, the options that we have to conform,
14 either expand the site, reduce the building footprint,
15 that allows us to get the lot occupancy to where it
16 is. We still have a court issue. The court issue,
17 we'd have to either fill in the court or set it back.

18 We've talked about that. The architect
19 has talked about the practical difficulties of both of
20 those situations. There is no expansion of this
21 building that's being undertaken beyond the zoning
22 regulations by any measurable standard in the R4 zone
23 except for the court width. We're not increasing the
24 height beyond 40 feet. We're not increasing the lot
25 occupancy beyond what it is and has been for the last

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1 60 years. There is no FAR limitation. There's no
2 square footage limitation. There's no side yard
3 requirement here. There's no rear -- there's a rear
4 yard requirement here, we meet it.

5 The only issue here is the court. The
6 statement has been made that we haven't made the case
7 so we cannot do this in the way that conforms. That's
8 not really the standard. The practical difficulty
9 we're stating here is not the unit size. The
10 practical difficulty is what was stated about how can
11 we make these expansions. The test is not putting the
12 mezzanine on must be burdensome. The test is whether
13 expanding the lot or decreasing the footprint or
14 filling in the court or setting back the mezzanine is
15 a practical difficulty. That's our test and we think
16 that we've met that test.

17 Just to clarify, the square footage that
18 is cited in our submission, that's 2659 square feet of
19 additional space on the mezzanine. It does not
20 include the roof decks. It's a gross floor area
21 number. The roof decks don't generate gross floor
22 area. The mezzanine open space on the mezzanine level
23 does not generate gross floor area. So it's not the
24 mezzanine open space and the roof deck and the
25 mezzanine floor levels that is the 2659. It's only

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1 the space you can stand on in the mezzanine that's
2 2659.

3 It's not a test that -- we're not required
4 to show that we can't live without this mezzanine.
5 That's a use variance standard, Mr. Chair, as you
6 pointed out and that's not the test that we're here
7 for. So in closing, I believe that we've answered all
8 your questions. I believe that we've demonstrated
9 that we meet the test for a variance in this case, for
10 this particular building, on this particular site, in
11 this particular residential neighborhood and we
12 respectfully request your affirmance at the earliest
13 possible date. Thank you very much.

14 CHAIRMAN GRIFFIS: Excellent. Thank you
15 very much, Mr. Collins. We do appreciate that. I
16 think the record is full here. I don't have any
17 indication that we need additional information
18 submitted. However, with the time that we have, I
19 think we're going to set this for decision making and
20 also in order to further our own study of the
21 information that's in the record, which would mean I
22 would set this for decision at our next public meeting
23 which will be the first Tuesday in December. Mr. Moy
24 will announce that date. Yes.

25 SECRETARY MOY: December 6th.

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1 CHAIRMAN GRIFFIS: The 6th of December
2 will be the first Tuesday. Lastly then before we
3 leave, I want to address two things. First of all, I
4 didn't mention Exhibit Number 29, which is put into
5 the record which is from Avanti Real Estate Services,
6 also a letter of support in which they outline of the
7 analysis for variance, area variances is set forth and
8 that is supportive of the application.

9 And there's one other aspect to this that
10 I want to address very briefly because the Office of
11 Planning brought up and Mr. Collins brought it up in
12 his closing remarks in terms of the roof deck. The
13 Board has found in previous applications and actually
14 has a draft letter going to the Zoning Administrator
15 for clarification of what goes into and encompasses
16 additions to non-conforming structures that would, in
17 fact, invoke relief and the Board has found in one
18 subject, one application, and I won't get into a lot
19 of detail, that if this deck was to be put on a
20 building that was essentially non-conforming but
21 didn't rise to the level of changing any of the
22 aspects or impacting any of the area, any of the areas
23 dealt with in the zoning regulation, there is nothing
24 that brings it to come to the Board, meaning if it
25 doesn't touch off anything that's regulated by zoning,

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1 how is it that we would have the jurisdiction to grant
2 relief to it? So it sets I think a very clear outline
3 of what is to be looked at as additions to non-
4 conforming structures.

5 And because there is -- the nomenclature
6 of the regulation speaks to modernizations,
7 alterations, et cetera, none of which are defined, and
8 we have found that the limited aspect of just putting
9 an area that is already in existence that is a
10 structure that is calculated toward lot occupancy and
11 then animating that on top of it, is clearly not
12 rising to the level of an enlargement or addition, but
13 rather is more of ordinary repair or alterations,
14 modernizations to structures.

15 So that doesn't necessarily have great
16 substantive evaluation for this application but it's
17 a clarification that I thought I'd take the
18 opportunity to make. That being said, lastly, it came
19 up and it was something that I hadn't really taken a
20 lot of note of, Mr. Williams brought it up, in his
21 testimony, another aspect of -- although we do use now
22 the whole definition, the word uniqueness in terms of
23 looking at how this is differentiated from other
24 places but so I will again say that an interesting
25 interior configuration of this which is -- lends

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1 itself to -- it has been testified but it seems to
2 lend itself to an exceptional circumstance which goes
3 to the other discussions that obviously have been
4 brought up today. Okay. That's enough from me. Yes.

5 MR. COLLINS: One more clarification.

6 CHAIRMAN GRIFFIS: Sure.

7 MR. COLLINS: If I may, you mentioned the
8 letter from Avanti Real Estate Services. Is that --
9 is that signed by Sheila Cross Reid?

10 CHAIRMAN GRIFFIS: That was, yes.

11 MR. COLLINS: Okay, I'd just like the
12 Board to take note that Ms. Reid is a former member of
13 this Board.

14 CHAIRMAN GRIFFIS: Probably not something
15 lost on us.

16 MR. COLLINS: Thank you, for the record.

17 CHAIRMAN GRIFFIS: Good. Yes, Mr.
18 Cochran.

19 MR. COCHRAN: Since you're bringing up
20 questions that this case suggest need additional
21 clarification, the Office of Planning would suggest
22 that this case also raises a significant question
23 about what constitutes a mezzanine and what
24 constitutes an additional story, and if you're asking
25 for clarification from the Zoning Administrator, you

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1 might want to ask about that also.

2 CHAIRMAN GRIFFIS: Okay, I'm sorry, let me
3 be clear because we weren't asking for any
4 clarification. What I had said, in a previous case
5 the Board actually found that there was an application
6 that came to us that the overwhelming consensus and
7 majority of the Board was that there was no reason for
8 them to be in front of us. And so we have a letter
9 that's been drafted and now that we have a new Zoning
10 Administrator, it will be addressed to him and will go
11 to clarify what we found that was allowable
12 alterations that did not step over the threshold of
13 requiring a variance under 2001.3. That was my only
14 point of saying, I think we've clarified, because you
15 brought up the fact that the roof deck should count
16 towards additions to this building that may have
17 invoked 2001.3, and I think that if this was just a
18 roof deck without any sort of enclosure or any other
19 alteration of this building, if it was just a deck put
20 up, didn't touch the height, didn't touch lot
21 occupants, didn't touch any of these areas, that the
22 Board would, in its previous ruling, would look at
23 that as not needing relief under 2001.3. That's not
24 the whole case here. However, I just wanted to put
25 that into context of the decking.

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1 So I don't think the record is open for
2 any other additional information unless other Board
3 members feel there's a need for -- Mr. Jeffries.

4 COMMISSIONER JEFFRIES: Yeah, just a
5 question and I want to make certain that I was clear
6 on something that Mr. Cochran said. You stated, I
7 think, that the practical difficulty had been caused
8 by really the addition and not based on the actual
9 envelope. Did you say -- and I'm not quoting you but
10 did you say something to that effect?

11 MR. COCHRAN: The Office of Planning had
12 been unable to find a practical difficulty that was
13 based on the building or the lot as it now exists
14 unless the Applicant chose to expand -- to put an
15 addition or an enlargement on the building. It was
16 the very act of choosing to do that, that the
17 Applicant then -- that then made their -- according to
18 the Applicant, a practical difficulty. This is what
19 we're saying was circular logic because the point of
20 2001.3 is to make these kinds of additions or
21 enlargements exceptions.

22 COMMISSIONER JEFFRIES: And Mr. Collins,
23 can you just respond to that?

24 MR. COLLINS: If I can. The exceptional
25 situation or condition that we have, there's nothing

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1 that -- that precludes a building of whatever size
2 from being considered to have an exceptional situation
3 or condition or property of any size. A large
4 property can be faced with an exceptional situation or
5 condition and so can a small property. A non-
6 conforming use can have an exceptional situation or
7 condition and justify a variance for an addition to a
8 non-conforming use which we are not but in this case
9 as in the Monaco case, there was an exceptional
10 situation found in that. So it all relates to the
11 specific individual cases and the individual piece of
12 property, the exceptional situation or condition of a
13 specific piece of property. That's what it says in
14 the regulations and that's what we have here.

15 And we have -- not to reiterate but just
16 to summarize, we have a large building on a relatively
17 small piece of property based upon the current
18 regulations under which it was not constructed with a
19 large open space in the middle and the walls pushed
20 towards the edges of the property where normally in
21 the current regulations, the buildings would be
22 designed so that the buildings would be more central
23 into the property with open space on the sides and the
24 rear except in the R4 zone where no side yard is
25 required. And we have a situation, we have a court

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1 that's wider than a required side yard in this zone
2 for a building of this height. And that's what we're
3 trying -- and I believe we've demonstrated through the
4 sufficient evidence and testimony that we meet that
5 test.

6 MR. COCHRAN: Mr. Jeffries, I think where
7 the misunderstanding arises is that the Office of
8 Planning is not getting past a certain point that Mr.
9 Collins goes to. If you jump over the point that Mr.
10 Collins is going to, then yes, it is difficult to add
11 onto the top of the building without -- there is a
12 practical difficulty to adding onto the top of the
13 building without further increasing a non-conformity
14 with respect to the court.

15 What we're suggesting is, and I really
16 would like to stress this, the Applicant's relying on
17 the existence of a present non-conformity to establish
18 an exceptional circumstance that is then used to
19 justify a request to expand the existing non-
20 conformities, that's --

21 COMMISSIONER JEFFRIES: But I thought he
22 listed several things as it relates to the court.

23 MR. COCHRAN: Okay, that all relates to
24 whether or not you -- whether there's a practical
25 difficulty to put in the enlargement on and not

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1 increasing the side yard -- excuse me, the open court
2 non-conformity. I'm not looking at whether the -- OP
3 is not looking at that first and foremost. OP is
4 looking at whether it passes the threshold of even
5 considering or even beginning to meet the test of
6 whether an enlargement or addition is permitted,
7 period. It has to meet that test first before you
8 start looking at the specifics and OP believes that it
9 has not met that first test.

10 MR. COLLINS: I think that it's important
11 that the Board reconsider the -- as I've called it
12 before the Seminole case, the granddaddy of them all,
13 Clerics of St Viatore. That's a case where the
14 existence of a particular building gave rise to the
15 exceptional situation or condition. It was not a non-
16 conforming building. It was a seminary for -- with 80
17 rooms.

18 CHAIRMAN GRIFFIS: Right, and I think the
19 Board has held in previous application, numerous
20 application the court upholds this decision and the
21 existence of a structure on a lot can be the
22 uniqueness and it doesn't need to be historic
23 landmark, doesn't need to be contributing. There
24 needs to be no designation outside of that it is
25 there. That may make it unique if it can be

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1 established why that is. And again, that is the next
2 step that goes to what practical difficulty it then
3 create in complying with the regulation. I think we
4 have enough here. I mean, this is what we're going to
5 have to -- I don't find more information being
6 provided at this point. I think we all have what we
7 need to in order to continue the deliberation in our
8 heads, but Ms. Miller has one last final question.

9 VICE-CHAIRPERSON MILLER: This is along
10 Mr. Cochran's lines, but is there something you could
11 have done to renovate the building without doing an
12 addition to it that would have resulted in livable
13 units or two units or whatever? I mean, I think what
14 Mr. Cochran is saying is you don't get to go to the
15 enlargement unless you have a practical difficulty.

16 MR. COLLINS: Well, that's not the
17 standard.

18 VICE-CHAIRPERSON MILLER: I'm sorry, I'm
19 not saying that it is.

20 MR. COLLINS: That's not the standard.
21 Certainly, with enough money you could do anything for
22 any piece of property and nothing would ever need a
23 variance.

24 CHAIRMAN GRIFFIS: It reminds me, the
25 question you're asking him is actually a question that

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1 could have -- I don't know why it popped into my head
2 but there was a application we had on K Street and it
3 was two structures on a lot, I think it was or maybe
4 it as a single lot and they were storage units and
5 they were 10 stories high on K Street and they wanted
6 to take them down and they created variances to create
7 a commercial office building. And we could have asked
8 all day long why can't you just put storage back in
9 them and not be here? I'm not sure why the threshold
10 question we keep asking them is why can't you use the
11 building as it is?

12 VICE-CHAIRPERSON MILLER: Well, I gather
13 the building is not in good shape as it is but --

14 MR. COLLINS: Is it the use variance
15 standard?

16 VICE-CHAIRPERSON MILLER: No, I'm not
17 talking about standards of use, I'm just saying you
18 went through a lot of demonstrations about how the
19 walls were in certain places and so I'm just wondering
20 that no matter what you did, either it would be too
21 costly or -- this is going to practical difficulty, it
22 would be too costly or you'd need a variance anyway
23 because you would be changing the court. You'd be
24 changing a --

25 MR. COLLINS: Certainly, if we were not

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1 putting the mezzanines on the building, we wouldn't be
2 here. If we were renovating the building under
3 ordinary repairs, alterations and modernization may be
4 made to a non-conforming structure, just to paraphrase
5 the regulation. So if we were not going outside of
6 the existing envelope, we wouldn't need to be here.

7 COMMISSIONER JEFFRIES: Well, the real
8 driver here is the need for -- I mean, two bedroom
9 units.

10 MR. COLLINS: Exactly, we couldn't have
11 the two bedroom units that we're providing.

12 VICE-CHAIRPERSON MILLER: So whether you
13 agree with, you know, what the test is for practical
14 difficulty, that's kind of what I was -- where I was
15 going. If you didn't go outside that envelope, then
16 you could not provide the two unit --

17 MR. COLLINS: Sure, but any applicant
18 before this Board who wants to expand a kitchen or put
19 a deck on, they don't need a deck. They can have --
20 they have a kitchen already, they don't need that. So
21 really, you know, that's really not the test for an
22 area variance.

23 CHAIRMAN GRIFFIS: I would agree. Okay,
24 anything else? Any other clarifications? Very well,
25 thank you all for a very substantive presentation of

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1 this case and analysis and we have set this for
2 decision making the first public meeting. Let's
3 continue with the last case then, in the morning and
4 we'll let you all go for lunch but the rest of you
5 must stay. Thank you all very much.

6 Why don't we call the next case while
7 these folks move and then we'll allow them to get set
8 up very quickly.

9 MS. BAILEY: Application Number 17381, of
10 AMM Development, Inc. pursuant to 11 DCMR 3404.1 for
11 special exception to permit new residential
12 development, that's four dwelling units under Section
13 353 and for multiple buildings to be considered a
14 single building under Section 410. The property is
15 located in the R5A District and it's in the 1400 block
16 of Rock Creed Ford Road, Northwest. It's between Fort
17 Stevens Drive and 14th Street. The property is also
18 known as Square 2726 and it's Lot 810.

19 Mr. Chairman, if I'm not mistaken, the
20 Applicant is requesting that the file name, the
21 property owner be updated to indicate that it's now --
22 AMM Development is no longer, it's now 1455 Fort
23 Steven LLC, I think is the new name. Is that right,
24 Mr. Donohue?

25 MR. DONOHUE: Not quite, Ms. Bailey. The

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1 modification was made June 21st to reflect AGG
2 International.

3 CHAIRMAN GRIFFIS: Okay, so we have the
4 proper documentation of the owner or proceeding on
5 this; is that correct?

6 MR. DONOHUE: Yes, sir.

7 MS. BAILEY: The new name is AGG
8 International?

9 MR. DONOHUE: That's correct, Ms. Bailey.
10 And that change was made back in June and that ought
11 to be what we're going forward with today.

12 CHAIRMAN GRIFFIS: Okay, anything else you
13 need, Ms. Bailey?

14 MS. BAILEY: No, Mr. Chairman, that's --

15 CHAIRMAN GRIFFIS: Do we all know who we
16 are? Let's proceed then.

17 MR. DONOHUE: Mr. Chairman, I'm going to
18 introduce the members of my group and I'm going to
19 suggest that we have a briefer case than was
20 previously heard. We're not going to be talking about
21 variances. We're not going to be talking about either
22 extraordinary or unique conditions. We have a couple
23 of special exceptions. I can perhaps walk you through
24 this pretty quickly but let me first introduce the
25 folks that have joined me.

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1 Mr. Juan Gruner is to my immediate right.
2 He is the architect, project architect and also the
3 principal of the developer. To his right, Ms. Lelia
4 Imas, also project architect. To my left Jill Cooper
5 who is a planner with Holland and Knight. We have
6 submitted witness cards for Mr. Gruner and Ms. Cooper
7 but if the Board prefers, given the length of your
8 morning agenda, I can perhaps, walk you through the
9 critical points of the case and make those folks
10 available for questions.

11 CHAIRMAN GRIFFIS: Yes, let's do that.
12 I'm sorry, I'm just trying to change gears myself and
13 looking at this.

14 MR. DONOHUE: Yes.

15 CHAIRMAN GRIFFIS: And I think that's
16 absolutely appropriate to expedite this. Let me just
17 see a show of hands of people that are here to testify
18 as persons, persons to give testimony? Anyone going
19 to present. Oh, good, the ANC member is here and we
20 also have one person to give testimony; is that
21 correct? Excellent. Excellent, so we have a
22 representative from the associations and the
23 jurisdiction and also the ANC which we'll get to.
24 Let's move ahead then.

25 MR. DONOHUE: Mr. Chairman, we have a

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1 rather small and vacant parcel and it's located on
2 Rock Creek Ford Road just east of 16th Street. It's
3 approximately 7100 square feet. It is currently
4 vacant. It is in the R5A zone and subject to review
5 under Section 353. In addition, we're asking for
6 relief under Section 410 so that the four proposed
7 units be treated as one for zoning purposes. There is
8 no other relief requested or warranted by the project.

9 We have four townhouse dwelling units.
10 Mr. Gruner is prepared to walk you through that as
11 needed. I have up on the board an elevation that was
12 shared with the ANC and meant to show what we're
13 looking at. We did indicate to the ANC the type of
14 material that we're looking at, the nature of the
15 project. It is, in fact, a brick material to go
16 throughout. We talked about the -- and talk about in
17 our pleadings the application, that we meet the
18 parking requirements. There are four pad sites
19 located on site.

20 CHAIRMAN GRIFFIS: And you two might want
21 to come forward and sit up here as we're looking at
22 graphics that you probably have seen before but just
23 to make sure that you're seeing it. And this is --

24 MR. DONOHUE: Now on the board that you
25 see is a color version of the site plan that was

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1 submitted showing the four units and their orientation
2 from Rock Creek Ford Road. The two curb cuts and the
3 two parking pads are located on both the east and the
4 west end of the four units. The road to the north is
5 Fort Stevens Drive and the property is oriented as
6 shown there. It's a rather unusual shape but, again,
7 we're not going to get into extraordinary or unusual
8 conditions.

9 It is, in fact, in the R5A zone as I
10 mentioned and approximately 7100 square feet. There
11 were questions, there was discussion about the ANC
12 about the nature of relief under Section 410 and what
13 in fact, was driving that. And what we have explained
14 and what we've explained with Office of Planning and
15 prepared to talk about today is we want to be able to
16 treat these as one as permitted under 410 for zoning
17 purposes, so as to take advantage of the -- frankly,
18 the provisions that allow for calculations of side
19 yard and those kinds of things.

20 Beyond that, with respect to height and
21 FAR and the parking and everything else, we fully meet
22 the requirements and that's set forth in the
23 pleadings.

24 CHAIRMAN GRIFFIS: And the site plan is
25 reflecting the new placement of the second floor so

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1 that it's not projecting over public space which is
2 one of the --

3 MR. DONOHUE: That's correct. We made
4 that change. We had a comment from DHCD and OP with
5 respect to the projection. We've made that change and
6 this plan shows that. Perhaps it makes sense for me
7 to go to the discussion with ANC since we know the
8 folks from the ANC are here and we ought to talk about
9 some of the questions that were raised. We were asked
10 to explain what the nature of the project was. We met
11 with ANC in early September, September 6th and as I
12 mentioned, I showed the site plan, discussed the
13 nature of the relief, talked about the hearing date.

14 There was a fair amount of discussion
15 about what were these units going to be. In other
16 words, what was driving it. Was this a market type?
17 What was the issue here and as we explained these are
18 proposed to be market units. There are, in fact, a
19 total of four. Mr. Gruner and Mr. Gruner's family
20 intend to occupy two, so that there are, in fact, two
21 units that are ultimately going to be offered for sale
22 at market upon delivery, which we would hope to be
23 some time in the spring.

24 To my way of thinking, the ANC wasn't
25 happy about that. We had a lot of discussion about

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1 what costs would be and what market was going to be
2 and we had to say that we didn't know what the prices
3 of these were going to be but we did want to make
4 people understand that there were, in fact, only two
5 units that were going to be offered for sale. We
6 didn't think that that had much of an effect on market
7 to be honest with you.

8 With respect to things like site plan
9 review, with respect to impact on schools, et cetera,
10 I think the Office of Planning report is exhaustive.
11 They cover all those things. A project of this size
12 doesn't generate a lot of students as you can imagine.
13 It doesn't generate a lot of parking. We do meet the
14 parking requirement. We have submitted the planning
15 report which Ms. Cooper has prepared along with Mr.
16 Shear (phonetic) and I can either ask Ms. Cooper to
17 walk you through the planning issues attendant to the
18 lot or submit that simply for the record and ask her
19 to adopt it. The lot is somewhat challenging. There
20 is some topographical issues, there's some size issues
21 and that kind of a thing and those may be interesting
22 to you or not, as you decide.

23 CHAIRMAN GRIFFIS: That's your Tab D,
24 correct, is what you're referring to?

25 MR. DONOHUE: That's correct.

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1 CHAIRMAN GRIFFIS: Okay, I think it's
2 sufficient. I know the Board's read it and reviewed
3 it. Unless there are direct questions from the Board
4 for clarification, I think we can just take it in.

5 MR. DONOHUE: Very good. Unless there are
6 questions for the project architects who obviously are
7 here and available, Mr. Chair, we don't have a lot to
8 add. I think we've pled it carefully. I think the
9 pictures speak for themselves. We do have additional
10 overhead photos and those kinds of things but again,
11 given your length of time with the previous case and
12 perhaps your desire to move on, we can maybe stay on
13 our record.

14 CHAIRMAN GRIFFIS: We're here all day. We
15 not moving anywhere. However, I think that more
16 importantly the amount of submission that is here is
17 very clear in terms of the 353 and also 410 in terms
18 of the requirements that have to be met and the Board
19 is very well aware of what 410 requires and has been
20 laid out with the Applicant and also, I think the
21 Office of Planning will give us a great amount of
22 information in-depth into the analysis as we review it
23 and as they present it, but I'll open it up for any
24 Board questions or clarifications that are required at
25 this time. Anything?

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1 Yes, Mr. Mann.

2 COMMISSIONER MANN: Perhaps you mentioned
3 it earlier but is there still going to be a portion of
4 the building that's cantilevered over public space?

5 MR. DONOHUE: No, sir, we removed that.

6 CHAIRMAN GRIFFIS: You know, it's
7 interesting when you look at 353 and clearly the
8 intent of that is for very large developments and they
9 were talking about one in the R5 zone obviously for
10 multi-family. I don't think it was written to look at
11 something of this density in terms of the -- so it's
12 almost interesting and actually going to 410, too, it
13 seems overwhelming the amount that has to be addressed
14 and perhaps, that's why we can easily move on. I
15 think the Applicant's representative has adequately
16 stated that the Office of Planning addresses and they
17 also have. In terms of referring this to the Board of
18 Education, it's pretty clear that the Board of
19 Education would have to look at the capacity of their
20 schools in order to see whether they could meet the
21 requirements of the students that were moving in and
22 we're looking at, right, you know, we're obviously not
23 adding on a huge amount of potential for new students.

24 So there it is. If there are no other
25 questions from the Board I think we can move ahead to

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1 get other substantive information into this record.
2 Very well, if there's nothing further from the
3 Applicant --

4 MR. DONOHUE: I'd just like to reserve a
5 little time following the --

6 CHAIRMAN GRIFFIS: Absolutely, you'll
7 have time for cross. Let's move to the Office of
8 Planning for the presentation of their report.

9 MS. THOMAS: Good afternoon, Mr. Chairman,
10 members of the Board. I'm Karen Thomas with the
11 Office of Planning. The Office of Planning would
12 stand on our report and we are satisfied that the
13 application meets the special exception requirements
14 of Sections 353 and 410 for a new residential
15 development in R5A Zone and we understand that the
16 Applicant has submitted a revised plan showing the
17 second floor within the lot's boundaries and
18 therefore, we stand on our recommendation of approval
19 as stated in our report.

20 CHAIRMAN GRIFFIS: Excellent. We
21 absolutely appreciate that. The report did come in
22 and it was to recommend the approval of this four unit
23 residential development with the condition that that
24 provision, the second floor be pushed back to be
25 totally on site and not projecting over public space.

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1 I do have to highlight some of the aspects
2 that the Office of Planning has put together as the
3 Applicant has already indicated, but they actually
4 went to the analysis of the schools in the area and
5 their capacity. We did look at 353.3 in terms of
6 Department of Public works DHCD and do a full
7 analysis. They go through their own analysis of what
8 should be required under 353.4 and how it is met for
9 the site plan review of the traffic, the recreation,
10 the grading. There is a substantial amount of
11 information in here, including the landscaping of
12 which they have indicated that the tree protection
13 measures during the construction would be taken into
14 account.

15 Under 410, 410 really goes to as the
16 development, what is happening in R5. It speaks to a
17 large site, numerous types of units and
18 configurations, almost trying to deal with garden type
19 apartments. And so there's a substantial amount of
20 orientation of which this meets all of the
21 requirements under 410 as it's been laid out from the
22 Office of Planning, meaning the front door is facing
23 the streets, the heights of buildings and gosh, if I
24 remember correctly, even exterior stairs and the like.

25 Very well, if there's not further question

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1 or information, is there any questions from the Board
2 on that, on the Office of Planning's report? Very
3 well, let's move ahead then. Our ANC representative
4 is here. Why don't we bring them to the table? I'm
5 going to allow you to cross examine any of the
6 witnesses that are here for the Applicant or question
7 Office of Planning or just provide your statement, but
8 please come forward and we are ready for you.

9 MS. SNOW-ISRAEL: Good afternoon. My name
10 is Commissioners Haviva Snow-Israel with small single
11 district 4A-05. As stated before, we've met with the
12 respective contractors on two occasions and we asked
13 specific questions and at the time they were unable to
14 provide us with information pertaining to the
15 construction of the site which was very vague to us
16 which left the ANC commissioners with oppositions to
17 their reasoning for their construction of the site.

18 We voted -- we considered it a motion to
19 consider failure and we were in opposition to the
20 construction of the site. We asked one question, had
21 the community been aware of this construction. They
22 said, yes, however, through our own observation and
23 petitioning we found out that the community residents
24 were not aware. I live at the Ritten House, which is
25 adjacent to this location and which is a 200-unit

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1 building and we were never advised and also as an ANC
2 commissioner, as well as going throughout the
3 community there.

4 We also petitioned with other residents
5 which is mostly apartment buildings throughout the
6 community. They were not aware, so that was a
7 concern for us. And we want for you to ask that they
8 do get the approval from the community. We the ANC
9 commissioners, we voted against it, and so that is a
10 concern. If you're going to build something in a
11 community, surely you should get the community's
12 concern or favor in opposition.

13 We asked a number of questions and I would
14 like just to read them to you. I'm sure you've
15 already heard, many of the questions from the
16 community and the commissioners about the projects
17 were met with responses such as, "We have not figured
18 that out yet", or, "We don't know that right now. We
19 cannot give you an answer on that". The questions
20 included the following.

21 Why is the development requesting that a
22 four unit house be considered a single building?
23 Number two, will the townhouse be in or out of
24 character with existing single family homes in the
25 neighborhood? Question three, what materials would be

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1 used to construct the exterior of the townhouses?
2 Well, I just found out from the contractor it would be
3 brick.

4 Number four, will there be adequate
5 parking? Well, actually there was no parking because
6 it's street parking. You know, it would be street
7 parking on the street. Number five, will there be
8 green space and area for children to play, which is
9 very important? Number six, how will an interest
10 buyer access the townhouses? Will there be rental
11 sales, condominiums? What about cost? These are some
12 of the questions that we thought were relevant that
13 was not addressed.

14 So we had three commissioners oppose
15 considerations, one abstention and three were for it.
16 So it was unanimously, we're in opposition, so we
17 voted against it. Surely, we are in favor of
18 constructions coming into our community but also we
19 feel that going into -- if you're going to advertise
20 something surely you want everyone to know about it.
21 That's our major concern.

22 MS. HARTSFIELD: I'm Dottie Hartsfield
23 with the Brightwood Community Association and the
24 tenant association of the Rockford, across the street
25 from the vacant lot. We have very serious issues,

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1 very serious issues. We do not have adequate parking.
2 On my block there are two building, the Rockview and
3 the Rockford. In my building is 66 units. The
4 building next door has about 70. We have multiple
5 families in some units because some of the units are
6 two bedroom. There is no parking on Rock Creek Ford
7 Road unless you have a paid lot, space on your
8 property.

9 There is a very serious problem because
10 our street is located on a hill, very steep. My
11 building is older than I am. Any construction we
12 already have structural damage in my building because
13 the land does slide and it's sliding constantly
14 because in my building in various other units, you can
15 see the cracks, okay.

16 Now when you bring in heavy equipment,
17 that's going to do something to a building that is
18 very, very old, very old. Then again, we talk about
19 green space. I don't know how much green space they
20 can have with this type of unit, considering that Rock
21 Creek Ford is on a down -- what is that an incline.
22 We have problems with the city coming to remove the
23 snow because many of us cannot get to our cars or we
24 need some help to get to our cars or we just don't go
25 out, and we've lived with that, I have, for 30 plus

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1 years because it is a desirable neighborhood. It's
2 one of the best, kept secrets in DC.

3 We don't have a lot of traffic but we do
4 want the lot renovated or something built there
5 because now we have problems with outside activity,
6 but we cannot allow to have a large structure there
7 because again, we have multiple families in these
8 units and the crowding, I notice something about the
9 trash pickup. How will they pick the trash up because
10 people park on both sides of the street. We only
11 have one fire hydrant, one. And if someone parks
12 there because they can't find a space late at night
13 the fire department has a problem finding it.

14 We do have the Jewish Day School at the
15 bottom of the hill there. They have their children
16 and their parents there. Ritten House is on the other
17 side. It faces 16th Street. It has nothing to do
18 with Rock Creek Ford Road. On the -- what is that,
19 the 14th Street we have another large building, 1640
20 and it has about 50 units in it. On the other side of
21 Fort Stevens you have two, maybe three single family
22 homes. Then you have the Ritten House and on the
23 opposite side of that you have another large apartment
24 building.

25 We welcome development. We're not opposed

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1 to it. But no one came to us. We have our community
2 meetings every month. We've having one tonight. And
3 that's why I'm here to take this information back. It
4 is unfair to come into a community that has long been
5 in existence, that has been an enclave for many
6 federal workers, DC workers, who have now retired and
7 who still live there. We desire not to go out and
8 purchase a home. We desire not to move to PG County
9 or any other county because we are between -- we have
10 the best transportation system in the world and it's
11 public transportation. We have three bus routes and
12 we can get to any metro station within less than 10
13 minutes. So it is a desirable neighborhood, but we
14 don't want it disturbed by adding more stress, because
15 our streets, they do not come through.

16 We have to fight. We fought to get the
17 sidewalk across the street because it was a vacant
18 lot. The city didn't see the need to put a sidewalk
19 there. We fought to get lighting around the corner
20 because people were leaving their abandon cars on Fort
21 Stevens Drive. We patrol our community religiously.
22 But for them to say that they gave adequate notice is
23 a misnomer. They said nothing to no one other than
24 the Commissioners. We are involved in everything that
25 goes on in Ward 4 as far as the Safeway wanting to

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1 sell beer and wine, as far as the CVS locating, as far
2 as any new business in our community.

3 We would have sat down and talked with
4 them. No one came to us. And tonight we will present
5 this to our council person because we're upset about
6 this. We're not the kind of community that you can
7 just come in and walk on. We're professionals as well
8 and we have our rights and we need to know who's going
9 to be living there. To say that someone is going to
10 be living there and two or three years later, after
11 the law has passed, you move out, then you have
12 multiple people living in there. We're not going to
13 tolerate that.

14 We fight with our property managers daily
15 about multiple families living in two bedrooms. We
16 have that problem. We want to keep our community safe
17 and affordable. No one has said anything about
18 affordability. The Ritten House does not dictate
19 what's affordable in our community. That is the only
20 high-rise. It is the only beyond means of living in
21 that neighborhood. It is the only one. You have to
22 go all the way up -- then we have Shepherd Park.
23 They're coming in on it because it effects all of us.
24 We have the Walter Reed closing. It effects all of
25 us. So to put in new development that has not

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1 presented itself to the community we enraged.

2 MS. SNOW-ISRAEL: In addition to that,
3 I've contacted Adrian --

4 CHAIRMAN GRIFFIS: Can you just move the
5 mike a little.

6 MS. SNOW-ISRAEL: In addition to that, I
7 contacted Adrian Finty's (phonetic) office which is my
8 council member. I checked with all of the
9 neighborhood associations in that area to talk with
10 the chairpersons and they had no knowledge. They were
11 appalled at the fact that we had met as ANC
12 commissioners but yet they knew nothing about it. You
13 know, some of the community people knew about it but
14 some did not. So that was a major concern for us as
15 well.

16 CHAIRMAN GRIFFIS: Indeed. And I want t
17 thank you both for coming down today and spending time
18 and waiting to be able to provide this testimony. And
19 believe me, one of the most important things that this
20 Board has established and relies on is our
21 requirements for announcement. I think it's an
22 incredible element of importance in any public hearing
23 and preceding this of how an applicant proposes or
24 brings their proposal to the community.

25 But I need to be absolutely clear with

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1 you. How much control and jurisdiction we actually
2 have. With that and also with a lot of the elements
3 that you're bringing up are also of great concern. We
4 all live in the city. We all live in neighborhoods
5 that we think are the best kept secrets in the city
6 and we deal with the same type of thing. However, I
7 can't let you leave here feeling like we have control
8 over all those elements that you've brought up.

9 So let me first address the application --
10 of course the applicant is required to post the
11 property and we have an affidavit in the record that
12 shows that it was properly posted from our
13 requirements, meaning that an orange plaque was there
14 and I'll take comments on all that.

15 The other is in the -- in a radius letters
16 go out to all the property owners notifying. In
17 addition, a letter to the council member, in addition
18 to the ANC letters go out. We can check the record to
19 make sure that that was appropriately done. Our --
20 the Office of Zoning staff is very diligent in making
21 sure every application meets that.

22 I would have a large note in front of me
23 if it hadn't met that, but I'm happy to go through and
24 make that -- but I want to go into more of the
25 substance of it because again, it's going to how much

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1 jurisdiction, how much control we actually have in
2 looking at some of these elements because development
3 anywhere is a change and it impacts everyone that's
4 there and in the future who's going to be there.

5 Let me list a couple of things that we
6 have no control over; who is going to live there.

7 MS. HARTSFIELD: Well, we know that.

8 CHAIRMAN GRIFFIS: There are other
9 agencies that may regulate that. Certainly, building
10 code will establish size and egress and all that but
11 something other than that, there's not much we can get
12 into. Green space is also not a requirement in the R5
13 outside of the open space that's required, meaning the
14 rear yard requirement, the lot occupancy requirements.
15 There's nothing that the applicant is bringing to us
16 that is saying that they are not complying with that.

17 So in terms of the open space, everything
18 that I have in front of me says that they are
19 complying with that. Parking, I think is an important
20 aspect because I need -- well, I will ask the
21 applicant whether they -- how much parking is actually
22 required and how much they provide, because what I'm
23 seeing is four parking space on the site plan that's
24 put in but we can easily get the answer to that, in
25 fact, right now. What is the parking requirement for

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1 this development?

2 MR. DONOHUE: Four required and four
3 provided, Mr. Chairman.

4 CHAIRMAN GRIFFIS: Okay, and now if we
5 look -- I'll bring your attention to this because this
6 what I'm seeing. Clarification can be brought to my
7 attention but the two gray portions no the left and
8 the right side of that, it seems to me that those are
9 -- and I have one right in front of me that I can see,
10 those are the compliant parking spaces four, there are
11 two curb cuts.

12 MS. HARTSFIELD: So the two curb cuts --
13 what I'm seeing here, where is the fire hydrant?

14 CHAIRMAN GRIFFIS: That I don't know.
15 Where is the fire hydrant?

16 MR. DONOHUE: Where is the fire hydrant?

17 CHAIRMAN GRIFFIS: Are you moving the fire
18 hydrant? They're not proposing to move the fire
19 hydrant. They're not proposing to move the fire
20 hydrant. We just need to have you speak into the
21 mike.

22 MS. HARTSFIELD: Where would the
23 properties be in terms of the fire hydrant? I'm
24 concerned because we have had people to get sick and
25 the fire department to come. We're talking about

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1 maybe 300 families.

2 CHAIRMAN GRIFFIS: Right, but I'm sorry,
3 let me just get clarification. In their parking, how
4 does that -- what's the concern that arises in terms
5 of locating those four required parking spaces and the
6 location of the fire hydrant?

7 MS. HARTSFIELD: Are they off-street
8 parking?

9 CHAIRMAN GRIFFIS: Yeah, let's be
10 absolutely clear.

11 MS. HARTSFIELD: Okay, so --

12 CHAIRMAN GRIFFIS: They have a driveway
13 that goes into four places for cars to park.

14 MS. HARTSFIELD: Okay, you have off-street
15 parking.

16 MR. DONOHUE: Correct.

17 MS. HARTSFIELD: The propensity for people
18 to block in is serious, very serious.

19 CHAIRMAN GRIFFIS: But there's nothing we
20 can deal with that right now.

21 MS. HARTSFIELD: No, but I'm just saying
22 to him because --

23 CHAIRMAN GRIFFIS: That's fine.

24 MS. HARTSFIELD: -- see, if he had shared
25 this --

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1 CHAIRMAN GRIFFIS: And before you go,
2 you're going to make sure they know exactly where the
3 meeting is tonight and what time it is because there's
4 nothing that's going to stop them from going and
5 talking to the community even after we get through
6 this.

7 MS. HARTSFIELD: Absolutely.

8 CHAIRMAN GRIFFIS: And those are
9 interesting issues to bring up. Believe me, one of
10 the things that infuriates me is to go out in the
11 morning, I have a fire hydrant out in front of my
12 house and have a car be in front of it. Ironically,
13 just to digress a bit, we had a fire one night and
14 there's a person that always parks and the neighbor
15 has always yelled at him, "Well, how could you do
16 that". There was a fire and he was parked in front of
17 the fire hydrant, not a good situation.

18 Also --

19 MS. HARTSFIELD: We've experience that.

20 CHAIRMAN GRIFFIS: -- controlled outside
21 of our jurisdiction but everyone feels that and it's
22 a major concern.

23 MS. HARTSFIELD: It's a major concern.

24 CHAIRMAN GRIFFIS: But what we would look
25 at is how is this development negatively impacted or

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1 potentially creating an adverse condition.

2 MS. HARTSFIELD: We really don't know
3 because we have not sat down with the developer.
4 Hopefully, he'll come out tonight, if not tonight,
5 next month before he starts construction, because and
6 again we have, you know, the large trucks coming on
7 the street. We also have the debris. We also will
8 have the dust. You know, we need to take some kind of
9 -- we need to plan when this is going to happen and
10 what we need to do in our own homes because dust
11 particles do get in and if we need to move out, we do
12 have some residents who are elderly. If they need to
13 move out, we need to consider that.

14 CHAIRMAN GRIFFIS: Sure.

15 MS. HARTSFIELD: And that again, is not
16 your concern. It's our concern. It's the community
17 and we will, you know, make sure we get a handle on
18 these issues because we have not -- this is our first
19 time. We had no knowing. I went out and I spoke to
20 the man when I came home one evening, Saturday and saw
21 him posting the sign and tagging the trees. So I
22 approached him and I asked him about it and he
23 wouldn't speak to me. He just stopped doing what he
24 was doing and he road away.

25 Then another day I came up and everything

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1 was already there.

2 CHAIRMAN GRIFFIS: Right.

3 MS. HARTSFIELD: So to me there seems to
4 be some kind of hidden agenda that I feel, I mean, not
5 you --

6 CHAIRMAN GRIFFIS: No, I understand.

7 MS. HARTSFIELD: -- that they just didn't
8 want to get involved with whatever the community may
9 have or could have offered.

10 CHAIRMAN GRIFFIS: Okay.

11 MS. HARTSFIELD: And in terms of the
12 school, Brighton --

13 CHAIRMAN GRIFFIS: The poor guy posting
14 the property didn't know anything about the
15 application. He was just out there to put the poster
16 up.

17 MS. HARTSFIELD: Yeah, I understand.

18 CHAIRMAN GRIFFIS: I understand totally,
19 that you see something changing and you're not sure
20 what it is.

21 MS. HARTSFIELD: What is going on.

22 CHAIRMAN GRIFFIS: So we have everything
23 here today.

24 MS. HARTSFIELD: Yes.

25 CHAIRMAN GRIFFIS: And we have the

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1 applicant and their attorneys are here. They know
2 exactly the zoning regulations. They have all these
3 new documents.

4 MS. HARTSFIELD: Wonderful.

5 CHAIRMAN GRIFFIS: I suggest that you take
6 the time now to make sure that they make it tonight or
7 however you want to communicate.

8 MS. HARTSFIELD: Well, we just wanted to
9 let the Board know that we have a community that's in
10 concern.

11 CHAIRMAN GRIFFIS: Good.

12 MS. HARTSFIELD: We're not asleep. We're
13 very much awake. We have people who patrol our
14 communities. They tell us what's going on and we see
15 things. And for -- what's that, United -- the
16 planning people didn't even come out and talk to us.
17 We meet in our building every month. Our community
18 meets every month.

19 CHAIRMAN GRIFFIS: Okay.

20 MS. HARTSFIELD: So we just want to go on
21 record that we are concerned about what's going on and
22 we want to be on notice.

23 CHAIRMAN GRIFFIS: Sure. Good. No, and
24 I appreciate that and I think both the ANC and
25 yourself have indicated some critical aspects that the

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1 Board will take into their -- under advisement in
2 their own deliberations and talking about open space
3 and parking and the siting of this as we're looking at
4 the buildings themselves. And I think it was well put
5 in terms of the ANC's presentation in the written and
6 you also read it, the questions that were asked that
7 you don't have answers for. And we have everything
8 that we need in terms of our deliberation and we'll be
9 able to answer those questions that are actually
10 within our scope and jurisdiction for the process of
11 the application. Yes.

12 MS. HARTSFIELD: How soon will this
13 application go forward?

14 CHAIRMAN GRIFFIS: I would say we're going
15 to set this for decision on the 6th of December.
16 Good, any other questions from the Board or the ANC to
17 the association? Is there any cross examination?

18 MR. DONOHUE: Very briefly, Mr. Chairman.

19 CROSS EXAMINATION

20 MR. DONOHUE: Thank you, Mr. Chair. With
21 respect to the ANC meeting, the letter, I think is
22 very clear and it indicates that the ANC considered
23 this proposal on September the 6th and again on
24 October the 4th; is that correct?

25 MS. SNOW-ISRAEL: Yes.

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1 MR. DONOHUE: Were you at the presentation
2 at the September 6th meeting of the ANC?

3 MS. SNOW-ISRAEL: Of course.

4 MR. DONOHUE: Were you there when the
5 application was discussed by the ANC?

6 MS. SNOW-ISRAEL: Yes, of course.

7 MR. DONOHUE: In September.

8 MS. SNOW-ISRAEL: Yes. I was the -- I
9 fulfilled -- I was there at both. I was there at the
10 first one because it was vaguely that you were not
11 providing us with questions from the audience and the
12 community and we tabled and said you must come back to
13 us with questions because it was irrelevant. You
14 weren't really giving us the questions that we wanted.

15 MR. DONOHUE: Okay.

16 MS. SNOW-ISRAEL: So when you came back
17 the second time, you were still very vague. You never
18 actually gave us the questions that we wanted you to
19 present.

20 CHAIRMAN GRIFFIS: But the question was,
21 you were there at both of the --

22 MS. SNOW-ISRAEL: I was there present at
23 both times.

24 CHAIRMAN GRIFFIS: That's fine.

25 MR. DONOHUE: And with respect to the

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1 question of parking, because that's the cleanest one,
2 did the question of parking get addressed on September
3 6th when we first briefed the ANC?

4 MS. SNOW-ISRAEL: Yes, you indicated that
5 there would be parking on the streets as well as on
6 the premises.

7 MR. DONOHUE: Did we indicate that the
8 parking requirement would be met on site as is shown
9 in the site plan?

10 MS. SNOW-ISRAEL: I really can't answer
11 that because I don't recall, but I do recall you
12 saying that --

13 CHAIRMAN GRIFFIS: That's okay. I mean,
14 if you can't answer that direct question, we'll just
15 move on. That's good. Next question.

16 MR. DONOHUE: Let me ask about the
17 associations because there was a fair amount of
18 discussion about that. Do the associations, for
19 example, the one that's meeting tonight, do the
20 associations participate in the ANC meetings?

21 MS. HARTSFIELD: The commissioners come to
22 us. They come to the meetings. The commissioners
23 come to us.

24 MR. DONOHUE: Do they participate in the
25 ANC meetings?

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1 MS. HARTSFIELD: Yes, they do.

2 MR. DONOHUE: Were they in attendance on
3 the September 6th or the October 4th?

4 MS. HARTSFIELD: There were several
5 commissioners there at the meeting, at our meeting.
6 I don't know about the ANC meeting. At our community
7 meeting, our commissioners come.

8 MR. DONOHUE: I can answer that. We do
9 not poll in our community meetings the ANC to find out
10 which community people are present.

11 MR. DONOHUE: Sure. No, the question was,
12 the association has said that it just became aware of
13 this and my question is, does the association pay
14 attention to and attend the ANC when the ANC has an
15 agenda matter on two separate months and do the
16 associations keep track of that so that they are aware
17 of what's going on.

18 MS. HARTSFIELD: Well, I don't know if
19 Commissioner Sutton went to that meeting. She might
20 not have been there. I don't know if she was there.

21 MR. DONOHUE: That's fair enough.

22 MS. SNOW-ISRAEL: She was not present.

23 MS. HARTSFIELD: There was some
24 development going on.

25 CHAIRMAN GRIFFIS: Okay, next question.

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1 MS. HARTSFIELD: And she did not have any
2 information about the development.

3 MR. DONOHUE: Back to the ANC meeting of
4 September 6th, you're a new single member district
5 rep; is that correct?

6 MS. SNOW-ISRAEL: Yeah, but I'm very
7 involved in the community.

8 MR. DONOHUE: I didn't suggest otherwise.
9 My understanding is that you are a recently seated
10 single member district representative.

11 MS. SNOW-ISRAEL: Yes, but I'm a reserve
12 police officer and I'm a very well-known person in t
13 the community.

14 CHAIRMAN GRIFFIS: We'll get to where
15 he's going.

16 MR. DONOHUE: Were you seated --

17 MS. SNOW-ISRAEL: Oh, absolutely.

18 MR. DONOHUE: Let me finish. Were you
19 seated when the ANC took the vote on September the
20 6th?

21 MS. SNOW-ISRAEL: Absolutely.

22 MR. DONOHUE: Was there a reason that you
23 weren't on the dias when the ANC took the vote?

24 MS. SNOW-ISRAEL: What do you mean on the
25 dias?

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1 MR. DONOHUE: At the table when the ANC
2 was considering --

3 MS. SNOW-ISRAEL: Yes, I was, I was there.

4 MR. DONOHUE: Okay.

5 MS. SNOW-ISRAEL: So were you.

6 MR. DONOHUE: Okay. That's all I have,
7 Mr. Chairman.

8 CHAIRMAN GRIFFIS: Okay. Thank you very
9 much. Thank you both very much. We do appreciate you
10 participating in this public hearing. Is there anyone
11 else here present in our morning session of
12 application 17381 that would like to provide testimony
13 for the Board, persons in support or in opposition?
14 Very well, not noting any, I think we've been through
15 everything. We'll turn it over to the applicant for
16 any closing remarks that you might have.

17 MR. DONOHUE: Thank you, Mr. Chairman.
18 First of all, I'd like to thank the representatives of
19 the community that have come out. We thought we had
20 met and met on a couple of occasions to brief the
21 community on the issues. If it appears that there are
22 some other things to talk about, as it may appear, we
23 will certainly get back with the association to talk
24 about things like construction and scheduling and
25 those kinds of things. And it think that's

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1 appropriate.

2 It's a vacant parcel. It has been for a
3 long time and so as the Chair has said, change is
4 sometimes unsettling. So we will go back and talk
5 with those folks on that.

6 With respect to the zoning issues that are
7 before the Board, with respect to heights, setbacks,
8 number of units, projections into public space and all
9 the things that we laid out in the pleadings, I
10 believe that we have covered those things thoroughly
11 in summary fashion here today, but in the pleadings,
12 I think, very thoroughly. I also believe we did that
13 with the ANC both in September and in October.

14 We weren't able to get the ANC to
15 reconsider the position it took at the previous
16 meeting but as the letter lays out and lays out
17 carefully, it was close. It was a three, three, one
18 vote. Our hope was that we would enjoy their support
19 here today. We didn't have that but I do think that
20 we took care of or answered the legitimate questions
21 and tried to be responsive to all the things that they
22 wanted to talk about. So that's what I'll say about
23 our efforts at community outreach.

24 Just very briefly, Mr. Chair, I think we
25 have met the criteria that you find in 353 and in

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1 Section 410 and we are very pleased to have the report
2 in support of the Office of Planning. Of course, we
3 enjoy that and we have no questions of OP and we think
4 that we do satisfy the requirements and ask that you
5 find as follows. Thank you.

6 CHAIRMAN GRIFFIS: Good, thank you very
7 much. I would just also for Exhibit 20 and 27 which
8 is Department of Transportation notice has not
9 objection to the application. I'm not sure we
10 highlighted that. And I think we've talked about the
11 rest, didn't we talk about that? Well, either way.
12 And we had mentioned it, I just wasn't sure that that
13 was noted. Okay, I think based on the time
14 requirements that we have, we're going to set this for
15 decision making for the 6th is our first public
16 meeting and put this on the agenda. Unless the Board
17 members feel differently, I'm going to close the
18 record today.

19 Actually, very well, we're just going to
20 keep the record open, a limited opening of the record
21 in case there is additional information from the
22 community in terms of a letter from the association.
23 I think we would take that in and take it under
24 advisement. I would make a very direct recommendation
25 and also highlight -- well, anything that comes into

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1 the record, we will obviously, read and look at. The
2 only thing we will be able to be determinative about
3 are the zoning issues. So you know, you can write us
4 directly a letter or you can write a big letter, but
5 we will piece out those that actually do directly to
6 Section 353 and 410. I know that the applicant's
7 representatives are well-versed in the regulation.
8 I'm sure they're open to making sure that there is a
9 full understanding of those issues and how you would
10 address them.

11 I don't think this should be lengthy or
12 cumbersome at all. So I'm assuming that we may have
13 something of that nature. Obviously, we will have the
14 record open for any submission from the applicant in
15 terms of addressing those and that would be it. I
16 don't anticipate that that would be substantial at
17 all, if at all, but that being said, we can move ahead
18 there.

19 Any questions, clarifications on that?

20 MR. DONOHUE: Just a question about
21 timing, Mr. Chair. We hope to stay on your December
22 6th calendar.

23 CHAIRMAN GRIFFIS: Oh, absolutely. That's
24 noted. We keep the record -- I don't see why that
25 wouldn't turn around very quickly. We, obviously need

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1 -- actually, let's set a date when that would have to
2 be in the latest. We can do that, by 3:00 o'clock the
3 Wednesday prior.

4 MS. BAILY: Mr. Chairman, just so that I
5 could be on the same page with you, are you asking for
6 submissions and then response from the applicant?

7 CHAIRMAN GRIFFIS: No, what I'm -- I'm
8 keeping the record open. I'm not requiring or asking
9 for any submissions but the record would stay open if
10 there was a letter from the association based on the
11 communications of -- with the applicant if it does
12 happen, those would come in -- I would keep the record
13 open only for responses by the applicant to that.

14 MS. BAILEY: The 29th of November, which
15 is a week before the 6th of December is a good date.

16 CHAIRMAN GRIFFIS: Okay, good.

17 MS. BAILEY: Is that not good?

18 CHAIRMAN GRIFFIS: What day of the week is
19 that, the 29th?

20 MS. BAILEY: November 29th is on a
21 Tuesday.

22 CHAIRMAN GRIFFIS: Okay, so we'll keep the
23 record open for any other additional submissions by
24 that Tuesday and then we'll keep the record open too,
25 for that Thursday, that following Thursday prior to

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1 the 6th for any address to the submission.

2 MS. BAILEY: I'm sorry, Mr. Chairman, let
3 me do that again. The 22nd of November is when the
4 submissions would be due, comments from the community
5 and then the 29th would be the response.

6 CHAIRMAN GRIFFIS: Yeah, that would be
7 great.

8 MS. BAILEY: Okay?

9 CHAIRMAN GRIFFIS: That would be great.
10 And I don't think that it should be lengthy or
11 cumbersome, but clearly there's time and ample time
12 for that. If there's questions of -- or dates or
13 anything, the Office of Zoning Staff can easily and
14 adequately describe that but this is very limited
15 information that is open to the record.

16 Okay, that being said, anything else, any
17 clarifications, clarifications at all? Very well,
18 thank you all very much, we do appreciate everyone
19 being here and getting through this lengthy morning
20 session. If there's no other business for the Board
21 this morning, why don't we adjourn the morning
22 session? As I note that we are well into our
23 afternoon hour and I would imagine that applicants are
24 here for the afternoon session, I would say that we
25 will call to order our afternoon session at 2:00

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1 o'clock today.

2 (Whereupon at 1:26 p.m. a luncheon recess
3 was taken.)

4 CHAIRPERSON GRIFFIS: Good afternoon,
5 ladies and gentlemen. Let me call to order our
6 afternoon session of the 8th of November, 2005. And
7 I thank you all for your patience with us. As you
8 know, we had a very long morning, but we will get
9 right into our afternoon schedule and welcome you all
10 here.

11 Of course, I am Geoff Griffis,
12 Chairperson, and this is our afternoon public hearing
13 of the Board of Zoning Adjustment of the District of
14 Columbia. Joining me today is Vice Chair Ms. Miller
15 and Mr. Etherly. Representing the National Capital
16 Planning Commission is Mr. Moy, and representing the
17 Zoning Commission is Mr. Jeffries with us this
18 afternoon.

19 Copies of today's hearing agenda are
20 available for you. I'm going to get through this very
21 quickly. I'll highlight anything as we get through
22 that I miss in my opening statement so that we can
23 call the cases right away.

24 I'm so sorry. See that? I'm already
25 being corrected. Mr. Mann, of course, will be sitting

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1 on the Board representing National Capital Planning
2 Commission. Mr. Moy and I were in deep discussion
3 coming out, which means he was on my mind.

4 That being said, there will be no other
5 errors or oversights on my part. The order of
6 procedure for variances and special exception is,
7 first, we will hear from the applicant. Second, we
8 will hear any government reports attendant to the
9 application. Third, we will hear from the advisory
10 neighborhood commission within which the property is
11 located. Fourth, we will hear persons or parties in
12 support of an application. Fifth, we will hear
13 persons or parties in opposition to an application.
14 Finally, we have the applicant again address the Board
15 and present a rebuttal testimony, as required, or
16 closing summation remarks.

17 I would ask that people fill out two
18 witness cards prior to coming forward to speak to the
19 Board if you are planning to provide testimony to the
20 Board. You will need to state your name and address
21 also for the record prior to beginning your address to
22 the Board.

23 We will establish parties in each case, as
24 we have applications for party status. Parties, ANC,
25 and the applicant, of course, are able to conduct

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1 cross-examination in our proceedings. I will get into
2 further direction and discussion on cross-examination
3 as it's required in particular and specific cases.

4 We do close the record at the end of each
5 hearing on a case. I would anticipate that at the end
6 of our session today, the record would be closed. If
7 it is not to be closed, we will be very specific as to
8 why we are keeping the record open. And we will
9 request specifically information to be provided to the
10 Board. And we will also indicate exactly when that is
11 to be submitted in to the Board. All of that will be
12 done at the end of the hearing, and I will make sure
13 that everyone is very clear on our direction.

14 The Sunshine Act does require that we
15 conduct all our hearings in the open and before the
16 public. Our rules and regulations and procedures
17 allow us to enter into executive session, both during
18 or after hearings, on a case. Those executive
19 sessions are used for deliberating on cases or just
20 for reviewing records on the case. And that is in
21 accordance with the Sunshine Act.

22 Let me get right to saying a very good
23 afternoon to Ms. Bailey and also Mr. Moy, as
24 previously noted, who will not be representing the
25 National Capital Planning Commission but is with the

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1 Office of Zoning with us today.

2 Let me ask for all of those persons
3 present that are going to provide testimony to the
4 Board if you would please stand and give your
5 attention to Ms. Bailey. She is going to swear you
6 in.

7 MS. BAILEY: Please raise your right hand.

8 (Whereupon, witnesses were duly sworn.)

9 CHAIRPERSON GRIFFIS: Good. Thank you all
10 very much. At this time the Board will consider any
11 preliminary matters. Preliminary matters are those
12 which relate to whether a case will or should proceed
13 today.

14 If you are not prepared to go forward with
15 a case, you can come forward and have a seat at the
16 table and let us know that or if you have a concern
17 about a case that is on our schedule, whether proper
18 and adequate notice has been provided or any other
19 aspects that you think should be brought to the
20 Board's attention, postponements, withdrawals, now
21 would be the time to give that. And you can provide
22 that information by coming forward.

23 I will ask Ms. Bailey if she is aware of
24 any preliminary matters for the Board's attention with
25 the afternoon schedule.

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1 MS. BAILEY: Mr. Chairman and members of
2 the Board, good afternoon. There is a matter that is
3 on the Board docket. However, the applicant has
4 decided to pursue another option for development of
5 this property. The application number is 17375, Hope
6 IV Monroe Street LT. We understand that this case has
7 now been transferred to the Zoning Commission. So the
8 application has been withdrawn, Mr. Chairman.

9 CHAIRPERSON GRIFFIS: Excellent.
10 Obviously they weren't aware of how unfriendly the
11 Zoning Commission is in comparison with the Board and
12 have taken their business elsewhere, but there it is,
13 Mr. Jeffries. Good luck with that one.

14 If there is no further action or official
15 action required by the Board, then let's move ahead
16 and call the first case for the afternoon.

17 MS. BAILEY: And that is application
18 number 17385 of 936 N Street, LLC, pursuant to 110
19 DCMR 3103.2, for a variance from the limitation on the
20 number of stories under section 400, a variation from
21 the prohibition against enlarging a structure devoted
22 to a nonconforming use under subsection 202.5, and a
23 variance from the nonconforming structure provisions
24 under subsection 2001.3, for the enlargement and
25 renovation of a vacant former apartment building. The

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1 property is zoned R-4. It's located at 936 N Street,
2 Northwest, square 368, lot 832.

3 And there is a request for party status
4 from Donna Clarke, Mr. Chairman.

5 CHAIRPERSON GRIFFIS: Excellent. Thank
6 you very much, Ms. Bailey. We appreciate that.

7 Is Ms. Clarke present? A very good
8 afternoon to you.

9 Board members, you have in front of you
10 exhibit number 25. And it is a properly filled
11 request for party status in this case explaining how
12 Ms. Clarke is more significantly, distinctly, or
13 uniquely affected in character.

14 She has indicated that she believes that
15 the applicant has not met the burden of proof for the
16 construction of the additional units. The renovation
17 of the building can be completed without the
18 additional units and it would be detrimental to the
19 public good if this were granted.

20 Are there questions from the Board of Ms.
21 Clarke at this time?

22 VICE CHAIRPERSON MILLER: I have a
23 question for Ms. Clarke.

24 CHAIRPERSON GRIFFIS: If you wouldn't
25 mind, Ms. Clarke, come forward.

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1 MS. CLARKE: Thank you.

2 CHAIRPERSON GRIFFIS: I'm just going to
3 have you state your name and address for the record.

4 MS. CLARKE: My name is Donna Clarke. My
5 address is 1239 10th Street, Northwest.

6 VICE CHAIRPERSON MILLER: Good afternoon,
7 Ms. Clarke. I just want to ask if you are going to be
8 personally affected by this development separate from
9 your concern about the public good and the historic
10 character.

11 MS. CLARKE: Yes.

12 VICE CHAIRPERSON MILLER: And how is that?

13 MS. CLARKE: By the light, first of all,
14 the way the building, the setback is configured, it's
15 significantly less lights in my yard and into my
16 house. That's the first item, then also the view of
17 the historic neighborhood based upon -- see, the
18 building, it sets back. And it's true that it's set
19 back from N Street, but the setback, then, interferes
20 or has a negative impact, I should say, on the 10th
21 Street properties, of which one is mine.

22 VICE CHAIRPERSON MILLER: And that impact
23 is the light? Is that what you're saying?

24 MS. CLARKE: Yes, the light and the --

25 VICE CHAIRPERSON MILLER: Okay. Thank

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1 you.

2 COMMISSIONER JEFFRIES: Question.

3 CHAIRPERSON GRIFFIS: Mr. Jeffries?

4 COMMISSIONER JEFFRIES: Ms. Clarke, what
5 do you suppose is the increase in height from what the
6 building is currently?

7 MS. CLARKE: One full story. It looks
8 like it's about seven feet, seven, eight feet. It's
9 one complete new level.

10 CHAIRPERSON GRIFFIS: So that seven feet
11 has just impacted you such that --

12 MS. CLARKE: It throws a -- well, it's
13 right in my face. It sits back. But it's up. It
14 goes up one additional story, which then it goes like
15 that.

16 COMMISSIONER JEFFRIES: Okay.

17 CHAIRPERSON GRIFFIS: So your rear yard
18 faces the side yard of this property. Is that
19 correct?

20 MS. CLARKE: That's correct.

21 CHAIRPERSON GRIFFIS: How many lots are
22 you from the corner?

23 MS. CLARKE: Well, it's not really --

24 CHAIRPERSON GRIFFIS: Do you know?

25 MS. CLARKE: -- a block. It's --

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1 CHAIRPERSON GRIFFIS: They're lots.

2 MS. CLARKE: It's probably two lots, I
3 would say.

4 CHAIRPERSON GRIFFIS: So you're the second
5 or the third lot? Are you the first townhouse?

6 MS. CLARKE: See, it's a strange
7 configuration. The building is on N Street. So I
8 would say it's probably two lots over.

9 CHAIRPERSON GRIFFIS: No. I mean your
10 property. I'm just trying to locate your property on
11 the square.

12 MS. CLARKE: It's on a -- you know, I
13 don't have my lot and square number. I'm sure these
14 gentlemen --

15 CHAIRPERSON GRIFFIS: Look at A.01 in the
16 applicant's submission. What is it?

17 MS. CLARKE: Eight thirty. On 10th
18 Street, there's one house on the corner. Then there's
19 another house. Then there's my house on 10th Street.

20 CHAIRPERSON GRIFFIS: Okay. So you're the
21 third one.

22 MR. TUMMONDS: Exhibit B to the
23 applicant's statement has the plat. And I believe Ms.
24 Clarke is saying that she is lot 830.

25 MS. CLARKE: Eight thirty, third lot in.

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1 Thank you.

2 VICE CHAIRPERSON MILLER: I just have one
3 just general question for you. I'm not sure how
4 familiar you are with our proceedings. I'm probably
5 jumping the gun. Maybe the Chairman would have said
6 this to you anyway.

7 You're automatically allowed to testify in
8 the proceeding. And what this party status would give
9 you is the ability to cross-examine, put on witnesses,
10 submit pleadings. And sometimes people will apply for
11 party status when all they really want to do is
12 testify. So I just wanted to know if you wanted to
13 clarify what your wishes would be.

14 MS. CLARKE: Well, I have a question.
15 Would I be able to file an appeal? That's the only
16 other additional item.

17 VICE CHAIRPERSON MILLER: Right. Okay.

18 CHAIRPERSON GRIFFIS: No. Please proceed.

19 MS. CLARKE: I'm just asking. That would
20 be --

21 CHAIRPERSON GRIFFIS: Certainly as a party
22 in the case, you would have the ability to file an
23 appeal. I'm not sure you'd necessarily be precluded,
24 but it would be easier if you were a party in my
25 opinion. Okay.

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1 MS. CLARKE: But no, I don't really intend
2 to cross-examine if that's what you're saying.

3 CHAIRPERSON GRIFFIS: Well, there are a
4 couple of things, first of all, we still need to do.
5 We are going to hear from the applicant if there is
6 any opposition to the request for party status.

7 Of course, as Ms. Miller was saying, as a
8 party, you are afforded a certain amount of additional
9 abilities within a case, but you are also required to
10 come up with additional responsibilities. We will
11 call you to present the full case. And so you will
12 have the ability to present a case in opposition to
13 the application.

14 That being said, I think you fully
15 understand.

16 MS. CLARKE: Well, being that, obviously
17 I'm not prepared to present a full case today. So
18 that wasn't my understanding of it.

19 CHAIRPERSON GRIFFIS: Yes. I think we can
20 get through it.

21 Mr. Tummonds, do you want to introduce
22 yourself for the record? And would you state any
23 position that you have as the applicant's
24 representative to the party application?

25 MR. TUMMONDS: Yes. Good afternoon. Paul

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1 Tummonds with Pillsbury, Winthrop, Shaw, Pittman. We
2 really have no view on this. We would leave it up to
3 the Board's decision as to whether to grant party
4 status.

5 CHAIRPERSON GRIFFIS: Very judicial of
6 you. Okay. Let's get to it. Any questions further?
7 It seems to me, first of all, rising straight on face,
8 your application would have failed dramatically
9 because you basically stated the fact of what we need
10 to process any area variance.

11 And Ms. Miller's direct questions to you
12 were right on the fact of how are you individually
13 affected, just pointing out where your property is and
14 talking about the aspect of how you would be impacted
15 rises to the level of, one, being the adjoining
16 property owner; and, two, bringing up the element of
17 how that would distinctly affect your property.

18 I find that it's not the most incredibly
19 strong and persuasive argument for establishing party
20 status, but I don't find any myself very brief
21 deliberation. They both oppose the application. And
22 I would support establishing you a party in this case.
23 But let me hear from others on the Board.

24 MEMBER ETHERLY: Well, if I could, Mr.
25 Chair?

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1 CHAIRPERSON GRIFFIS: Okay.

2 MEMBER ETHERLY: Basically from what I
3 have heard, it sounds as though Ms. Clarke would be
4 comfortable with simply the opportunity to offer
5 testimony, as opposed to going into full-fledged
6 cross-examination.

7 I'm not certain if it would be helpful
8 perhaps to solicit -- well, actually, I'll stay away
9 from that particular question. My inclination might
10 be simply to afford the opportunity to provide
11 testimony in opposition to the application and just
12 proceed in that route.

13 CHAIRPERSON GRIFFIS: Others? Mr. Mann?

14 MEMBER MANN: I would actually go along
15 with Mr. Etherly in that regard and support his
16 position. And, further, just to add on to what Ms.
17 Miller said, the party status application doesn't
18 really go so much to how you would individually be
19 affected as it does how members of the public might be
20 affected.

21 The questions that you raise on the party
22 status application, it's kind of repeating the
23 questions that we would be asking but without really
24 answering in the application.

25 MS. CLARKE: Yes. I found that out after

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1 I submitted it. I understand what you're saying.

2 VICE CHAIRPERSON MILLER: I would concur
3 with my Board members that it doesn't rise to the
4 level of party status, but I look forward to hearing
5 your testimony.

6 MS. CLARKE: All right. Thank you.

7 CHAIRPERSON GRIFFIS: Interesting.
8 Others? Mr. Jeffries, any opinion? Mr. Etherly?

9 MEMBER ETHERLY: I just want to be clear
10 kind of where I'm at. I'm perhaps not as stridently
11 in opposition to reading the application as being
12 sufficient for party status. I'm perhaps being just
13 a little more pragmatic in terms of what you want to
14 do in terms of being able to raise issues or concerns
15 that you have about the application.

16 As was indicated, clearly as a party you
17 have the ability to take a very hands-on role in this
18 particular case. It sounds as though, one, there is
19 a question of preparation for you in terms of your
20 ability to do that today.

21 As I read your application, as I think we
22 heard from your brief opening statement, there simply
23 are some concerns that you definitely want to express.
24 And you can clearly do that by just providing
25 testimony.

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1 That being said, I'm not going to offer
2 any advice or guidance on what you can do or not do to
3 protect your appeal rights here. I'll leave that for
4 perhaps another opportunity.

5 That being said, if you are comfortable
6 with that, I just didn't want to suggest that I'm
7 necessarily pushing you to head in that direction. I
8 don't think any of my colleagues are. But if that
9 gets you where you think you need to be, I think that
10 is the most expedient thing for you to do today.

11 MS. CLARKE: Yes. I think that is the
12 best way to go today. Thank you for your comments.

13 CHAIRPERSON GRIFFIS: Good. Thank you
14 very much, in which case we'll call you when we are
15 ready to hear testimony of persons in opposition to
16 the application, which may be fairly shortly.

17 Very well. Let's move ahead.

18 MR. TUMMONDS: I thank you very much.
19 Before we begin our presentation, I would ask that our
20 project architect, Bill Bonstra, be admitted as an
21 expert witness. It is my understanding he has been
22 admitted before this Board numerous times as an expert
23 in architecture.

24 CHAIRPERSON GRIFFIS: Did you attach a
25 resume or --

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1 MR. TUMMONDS: We did not. We will get
2 that into the record just as a fulfilling record, but
3 I think everyone has sat in a case, if I'm not
4 mistaken, with Mr. Bonstra. Do you want to have me
5 speak to his experience?

6 VICE CHAIRPERSON MILLER: Really briefly.
7 I just can't remember. I don't think we need a whole
8 long history.

9 CHAIRPERSON GRIFFIS: Start with high
10 school.

11 MR. BONSTRA: My experience? Let's see.
12 It all began in a small town in New Jersey. I'm an
13 '83 graduate of the University of Maryland. I
14 graduated with honors.

15 Since then, I have worked for notable
16 firms, for Lombronas Associates, Kaiskam and Florence,
17 Hickok Warner. I started my office in January of
18 2000.

19 And I have presented probably six cases to
20 the Board of Zoning Adjustment. And I am involved in
21 some PUD cases before the Zoning Board as well.

22 CHAIRPERSON GRIFFIS: How many residential
23 commissions do you have going currently?

24 MR. BONSTRA: Probably 35.

25 CHAIRPERSON GRIFFIS: So you have indeed

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1 an immense amount of experience in the residential
2 additions and also new construction in the District?

3 MR. BONSTRA: Yes.

4 CHAIRPERSON GRIFFIS: Any further
5 questions?

6 VICE CHAIRPERSON MILLER: No.

7 CHAIRPERSON GRIFFIS: Mr. Bonstra is being
8 proffered as an expert in architectural design?

9 MR. TUMMONDS: That's correct.

10 CHAIRPERSON GRIFFIS: Excellent. Is there
11 any opposition to establishing Mr. Bonstra as an
12 expert?

13 (No response.)

14 CHAIRPERSON GRIFFIS: Excellent. Let's
15 move ahead.

16 MR. TUMMONDS: Thank you.

17 Good afternoon, Mr. Chairman, members of
18 the Board. I am Paul Tummonds with the law firm of
19 Pillsbury, Winthrop, Shaw, Pittman. Also with me here
20 this afternoon is Christine Rotti of our firm.

21 We are here representing 936 N Street,
22 LLC, the applicant in today's application, who is
23 seeking variance relief in order to renovate an
24 existing apartment building located in an R-4 zoned
25 district and also located in the Blagden Alley, Naylor

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1 Court, and Shaw historic districts.

2 This application requests variance
3 approval to add to an existing structure that exceeds
4 the permitted lot occupancy and to add a partial
5 fourth floor to the existing structure. The
6 applicant's satisfaction of the three-pronged area
7 variance standard is discussed in detail in the
8 pre-hearing statement and will be further addressed by
9 the project architect.

10 Before we start, I would like to highlight
11 a few issues. The first is with regards to the
12 hearing notice, where, if you will, it was discussed
13 in the alternative. There was some concern raised, as
14 you saw by the Office of Planning's report, as to
15 whether or not a use variance was necessary to
16 renovate this existing apartment building in the R-4
17 zone.

18 I think it's clear that an apartment
19 building in an R-4 district is not a nonconforming
20 use. It is an allowed use provided certain area
21 requirements are met.

22 As noted in our pre-hearing statement, the
23 existing apartment building formerly contained 13
24 apartment units. A copy of the existing certificate
25 of occupancy identifying those 13 apartment units was

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1 submitted earlier today and should be before you.

2 We disagree with the Office of Planning
3 report, which seems to say that an apartment building
4 in an R-4 district is a nonconforming use. The use is
5 not nonconforming. It is permitted provided you
6 satisfy certain area requirements.

7 We also note that in a case before the
8 Board this morning, the Office of Planning report in
9 that case did not cite that applicant as needing use
10 variance relief in order to renovate an R-4 apartment
11 building. So we think it is clear that this is an
12 area variance case.

13 In regards to the area variance standards,
14 I will quickly note some of the rulings from the Court
15 of Appeals that help guide us in determining whether
16 an application satisfies the three-part variance
17 relief test.

18 First is whether or not a property is
19 subject to an extraordinary or exceptional situation
20 or condition. The Clerics of St. Viator case clearly
21 and unequivocally states that the situation or
22 condition goes to the property and not just the land.

23 The property includes the buildings
24 existing on the land. Therefore, the Office of
25 Planning deemed that because this property was roughly

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1 4,000 square feet and was a rectangle that did not
2 have any exceptional topographical conditions, that we
3 did not satisfy that variance standard.

4 We disagree based on the St. Viator case,
5 which says we get to look at the fact that we have an
6 existing nonconforming building located in an historic
7 district on our property.

8 Second, the practical difficulty standard.
9 The Palmer decision tells us that in satisfying the
10 practical difficulty standard, we need to show that
11 complying with the zoning regulations is unnecessarily
12 burdensome. We are not required to show that it is
13 impossible.

14 Further, the court in De Azcarate found
15 that the practical difficulty standard was satisfied
16 in a case where zoning personnel approved
17 construction, only to later rescind that approval.
18 This analysis, recently followed by this Board, in a
19 case of 1464 Harvard, LLC decided on August 2nd of
20 this year, in which this Board determined that a
21 practical difficulty results if an applicant is faced
22 with a task of undoing work that was already completed
23 in reliance on a zoning administrator's assurances.

24 Finally, the third prong of the test is
25 that no harm to the public good or the zone plan will

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1 occur as a result of the variance approval.

2 In its report, the Office of Planning
3 states that granting this variance will be contrary to
4 the intent of keeping the R-4 district as a
5 low-intensity form of development.

6 The appearance of the existing building is
7 one of an apartment building. It was constructed as
8 an apartment building. It is clearly not a rowhouse
9 that was subsequently thereafter renovated to become
10 an apartment building.

11 As you can see from the pictures of the
12 900 block of N Street attached as exhibit C to our
13 pre-hearing statement and also on the Board here, the
14 900 block of N Street includes a variety of building
15 heights, sizes, styles, and of commercial and
16 residential uses. This is not a line of rowhouses
17 that continually line the 900 block of N Street.

18 We note that the project has received the
19 unanimous support of ANC-2F, as evidenced by their
20 submission into the record. In addition, property
21 owners in the immediate area, including property
22 owners on 10th Street, adjacent property owners to Ms.
23 Clarke, have expressed their support for the project
24 and submitted letters of support in the record.

25 Real quickly, we have only two witnesses

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1 today. Our first is Scott Friedman, representative of
2 the developer, who will talk about the development
3 history of this project. And then Mr. Bonstra will
4 discuss the project itself.

5 CHAIRPERSON GRIFFIS: Yes?

6 VICE CHAIRPERSON MILLER: Just for the
7 context here, I think you went through a lot of what
8 you didn't think you needed a variance for, such as a
9 use variance or whatever. Could you just set the
10 context of what you do think you need a variance for?

11 MR. TUMMONDS: Yes. We need an area
12 variance relief in order to add any additional square
13 footage to this building because the existing
14 structure is not conforming as to lot occupancy. The
15 existing structure has a lot occupancy of 78.3
16 percent.

17 CHAIRPERSON GRIFFIS: So a variance under
18 2001.3.

19 MR. TUMMONDS: Correct. The second
20 variance we need is for a fourth floor in this zone.
21 The R-4 zone allows a building height of 40 feet or 3
22 stories.

23 The original building permit, which we
24 attached, showed and was approved. The upper floor
25 that we were proposing was approved as a mezzanine.

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1 Thereafter, the zoning administrator's
2 office, if you will, changed their mind and determined
3 that was no longer a mezzanine but that is, in fact,
4 a fourth floor. So the second area of relief we are
5 requesting is relief to allow a fourth floor for this
6 project and, as we note, a fourth floor, but, however,
7 we are still within the 40-foot building height.

8 CHAIRPERSON GRIFFIS: So in your reliance
9 on the transcript of 1464 Harvard Street, page 12 was
10 indicating that the similarities of our discussion on
11 the reliance of the zoning administrator's
12 determination is your reliance on the zoning
13 administrator's determination that this was a
14 mezzanine, but it has now changed that opinion.

15 MR. TUMMONDS: That's correct. And, as we
16 have noted, in reliance on that decision, which
17 resulted in the issuance of a building permit, work on
18 that mezzanine, if you will, or fourth floor
19 commenced. It's up there now.

20 CHAIRPERSON GRIFFIS: Can you clarify just
21 briefly a question that may be burning in Board
22 members' minds of why didn't you then appeal that
23 decision from the zoning administrator? Why do you
24 have an application before us for relief of that?

25 MR. TUMMONDS: Through the further

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1 discussions with the Office of the Zoning
2 Administrator, which was now two or three zoning
3 administrators ago, there was concern that there would
4 be further neighborhood concern about a project
5 through the appeal of a decision of the zoning
6 administrator.

7 It was determined that in both instances,
8 we will come before this Board, whether it's an appeal
9 of the zoning administrator's decision or a variance,
10 request for a variance. But truthfully this way we do
11 not get stuck in the cycle of appeals of appeals of
12 appeals of a decision of the zoning administrator.

13 CHAIRPERSON GRIFFIS: So this is a cleaner
14 way to look at all of the issues?

15 MR. TUMMONDS: That's correct.

16 CHAIRPERSON GRIFFIS: Do you think that
17 the Board has the legal jurisdiction to determine that
18 this might not need relief if it were to take the time
19 to do that type of analysis?

20 MR. TUMMONDS: Perhaps, yes. I mean, that
21 would relieve the need for the variance relief for
22 that upper --

23 CHAIRPERSON GRIFFIS: I'm talking about
24 legal jurisdiction of the Board. Does it have legal
25 jurisdiction to review an application before it to say

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1 that you're incorrect in what you've brought forth in
2 this self-certified application and no relief is
3 required?

4 MR. TUMMONDS: There is still the relief
5 required to add on to --

6 CHAIRPERSON GRIFFIS: I know you have to
7 be here for certain things, but I have got a bigger
8 agenda. But in seriousness and directness, in that
9 one instant circumstance of this as a mezzanine, if we
10 wanted to go reach that decision, which I don't think
11 we will, do you think that we legally have the
12 jurisdiction to do that?

13 MR. TUMMONDS: Absolutely, yes.

14 CHAIRPERSON GRIFFIS: Okay. Do you have
15 any other things?

16 VICE CHAIRPERSON MILLER: Yes. I just
17 don't understand the sequence stuff. How is it that
18 you got a building permit but you didn't think you
19 needed the relief with respect to the fourth story but
20 you do think you need the relief with respect to
21 2001.3 to add an addition to a nonconforming
22 structure, correct?

23 MR. TUMMONDS: Yes.

24 VICE CHAIRPERSON MILLER: So why are we
25 seeing you now?

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1 MR. TUMMONDS: Why are you seeing me or
2 why are you seeing --

3 VICE CHAIRPERSON MILLER: As opposed to --

4 MR. TUMMONDS: You know, I think we are
5 here to clean up this case, make them move forward.
6 And then we believe that we will have all of the
7 sufficient relief we need to obtain a building permit
8 to complete the renovation of this structure.

9 VICE CHAIRPERSON MILLER: Okay. Thank
10 you.

11 CHAIRPERSON GRIFFIS: Good. Okay. Any
12 other initial questions in the legal aspects of this
13 application?

14 (No response.)

15 CHAIRPERSON GRIFFIS: Good. Let's move
16 ahead, then, for testimony.

17 MR. TUMMONDS: Thank you.

18 MR. FRIEDMAN: My name is Scott Friedman.
19 I am the managing member of 936 N Street, LLC.

20 Back in 2003, when I bought the building,
21 it was one of my first projects and may kind of answer
22 one of your questions, right or wrong. I claim lack
23 of experience, I suppose. I hired Bill Bonstra, my
24 expert architect.

25 We came up with what we thought was a

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1 great design. It reduced the occupancy of the
2 building from 13 down to 7, bringing it more current,
3 up to date in terms of size of units and salability.

4 I got neighborhood support. I went
5 through all of the proper channels. I had a permit
6 expediter that brought it through the permit process.
7 We had full support from ANC and HPRB because it's in
8 the historic zone and went on to obtain the permits.

9 I then sold the project to someone who we
10 had done work with in the past and stayed on in a
11 financing capacity. Work progressed slowly but
12 steadily. And when problems arose and a stop work
13 order came in the first time, bringing up issues, he
14 basically stopped paying me.

15 So some time went on. And finally we
16 decided that, you know, we couldn't afford to go on
17 like this forever. we took control back of the project
18 and began again to go down the proper channels.

19 Shaw, Pittman -- I don't know that whole
20 beginning part anymore. Long story short, here we are
21 today. We have been back in front of ANC. We have
22 talked to the community.

23 We believe that we have gone through the
24 proper channels once again and have the support of the
25 community at large. And here we are today.

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1 MR. BONSTRA: I'm Bill Bonstra. I'm a
2 principal of Bonstra Haresign Architects.

3 I wanted to say a few things about the
4 site and the existing building for the record. As
5 shown in your exhibit A, the property is located
6 within the R-4 zoning district. The adjacent C-2A
7 districts are existing to the east and the west.

8 And, as many of you may know, this is
9 one-half block from the Convention Center. There are
10 numerous developments happening in the C-2A zone
11 within a half block or less of the site.

12 The existing building was deemed a
13 contributing building to the Shaw or Mt. Vernon
14 historic district. We received approval for this
15 project in its current form from the HPO.

16 As Paul Tummonds said, we have received
17 approval from the ANC on two occasions: initially
18 when we went through the historic designation and then
19 again when we went back in preparation for this
20 presentation.

21 Also in your exhibits are some photographs
22 of the area. And, as Mr. Tummonds said, this is not
23 a renovated townhouse and actually not located in an
24 area that is predominantly townhouses.

25 The buildings to the north, directly

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1 across the street, are large-scale apartment
2 buildings. The building on the corner of 10th and N,
3 as you can see on that sheet, the photo board, is a
4 five-story building. The building directly across the
5 street, as you can see, is a six-story apartment
6 building. And there are many of those building types
7 in the immediate vicinity of this project.

8 This clearly was built as an apartment
9 building. It was a 13-unit building. We felt we were
10 actually making it more conforming by coming down to
11 seven units.

12 The state of the building at this point
13 with the stop work order that was issued, the building
14 is exposed to the elements. The building -- they
15 could not move ahead with any of the construction that
16 was happening. We all have concern that this building
17 left unfinished, it will, in fact, fall. And we would
18 like to see at the very least having this closed up at
19 the roof.

20 In terms of the design, we chose a
21 sensitive approach. And that was to set back what we
22 called a mezzanine significantly from the street in
23 our elevation drawing here. This shows a site line
24 from the opposite side of the street.

25 This piece is actually just a stair. It's

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1 very narrow. The bulk of the building doesn't happen
2 until this point. And, in fact, we had four courts,
3 and we took the center zone between those courts as
4 the area where we would put our mezzanine level. The
5 mezzanine level contains bedrooms and access to
6 private decks on the roof.

7 Part of our design was to take advantage
8 of some outside space that the building didn't
9 otherwise have because of its nonconforming lot
10 occupancy. So this was a scheme that we believe was
11 embraced by all as a --

12 CHAIRPERSON GRIFFIS: Where's Ms. Clarke's
13 lot in relation to that plan that you're showing, the
14 mezzanine level plan? Do you know?

15 MR. BONSTRA: I did a little scribble.
16 And I'm not exactly sure if I'm correct, but I do know
17 that the buildings that are to the south of Ms. Clarke
18 have a parking lot behind it.

19 The parking lot is entered through a
20 garage coming off Blagden Alley. And I believe that
21 Ms. Clarke at the third one in has a rear yard and
22 behind her rear yard I believe that the adjacent
23 building is located prior to her lot.

24 So if I were to -- I know I am not
25 supposed to assume anything, but I believe that her

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1 lot starts here and this is her back yard. And her
2 house is fronting on 10th Street. So, again, I don't
3 have the photograph --

4 CHAIRPERSON GRIFFIS: It may be actually
5 further east on that. I think we can figure that out.
6 Just a couple of quick questions while you had the
7 mezzanine sign up there.

8 MR. BONSTRA: Yes.

9 CHAIRPERSON GRIFFIS: You indicated -- and
10 you keep talking about it as a mezzanine. What makes
11 that a mezzanine?

12 MR. BONSTRA: There is a definition of
13 mezzanine from the building code standpoint --

14 CHAIRPERSON GRIFFIS: Right.

15 MR. BONSTRA: -- and from a zoning
16 standpoint.

17 CHAIRPERSON GRIFFIS: So when you use it
18 in this situation, is it the building code definition
19 or the zoning?

20 MR. BONSTRA: I use it as a -- well,
21 initially we believed it was both. It was not a floor
22 above grade that this was, in fact, a three-story
23 building less than 40 feet tall and that this was a
24 mezzanine by building code standards, which means it's
25 less than one-third of the area below it.

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1 CHAIRPERSON GRIFFIS: Is it open to the
2 floor below?

3 MR. BONSTRA: Through the stairs. There
4 is not an opening in the floor, but it is directly
5 communicating with the floor below.

6 CHAIRPERSON GRIFFIS: Okay.

7 MR. BONSTRA: As I said -- I don't know if
8 you want me to -- do you have any other questions that
9 you want me to answer?

10 CHAIRPERSON GRIFFIS: Go ahead.

11 MR. BONSTRA: Okay. In terms of the
12 satisfaction of the variance relief, exceptional
13 situation or condition, we have a conforming or a
14 contributing building in an historic zone. It's an
15 existing apartment building. These were the cards
16 that were dealt. And, you know, we believe that we
17 couldn't make significant alterations to that building
18 to make it conforming from a lot occupancy standpoint.

19 The practical difficulty at this point
20 since the building is in the middle of construction,
21 that, in fact, removing this is considerable hardship
22 and that it also would make us have to reconfigure the
23 floor below possibly more in order to reallocate the
24 apartment units and spaces and what have you. Had we
25 known that this would not have been approved here, we

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1 would have done something very different.

2 And then as far as the harm to the zoning
3 plan or the public good, this is within the height
4 limits. We believe it's set back substantially from
5 the street. And we feel like the impact on the
6 surrounding houses and properties is insignificant.

7 And we ask that you approve this, as the
8 DCMR should have, did and should have still.

9 CHAIRPERSON GRIFFIS: So a substantial
10 portion of this is in construction or has been
11 constructed?

12 MR. BONSTRA: Yes.

13 CHAIRPERSON GRIFFIS: Is there a roof on
14 the top? You said that you want to enclose it. I'm
15 not trying to get to that threshold level.

16 MR. BONSTRA: A roof on the mezzanine?

17 CHAIRPERSON GRIFFIS: From the
18 photographs, it shows that there is certainly framing
19 and some sheathing up, right? How much more is there
20 --

21 MR. BONSTRA: I don't believe that the
22 previous owner or the interim owner was allowed by the
23 stop work order to put the roof on the property.

24 CHAIRPERSON GRIFFIS: Right.

25 MR. BONSTRA: And apparently he was told

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1 not to make any more progress towards completing the
2 project.

3 CHAIRPERSON GRIFFIS: So the addition is
4 that it's framed out but not enclosed.

5 MR. BONSTRA: It's sheathed on the
6 sidewalks.

7 CHAIRPERSON GRIFFIS: Okay.

8 MR. BONSTRA: But I don't believe the
9 actual roofing materials have been placed.

10 CHAIRPERSON GRIFFIS: Okay. Questions?

11 VICE CHAIRPERSON MILLER: Could you just
12 show on the drawings how the space that the mezzanine,
13 how it's that floor space between the floor and --
14 let's see. The definition in the regulations say a
15 floor space within a story between its floor and the
16 floor or roof next above it and having an area of not
17 more than one-third of the area of the floor
18 immediately below.

19 MR. BONSTRA: This is the floor area,
20 including this area. There is a stair here, which
21 goes down to the living area of the unit below. So
22 this piece comes up here. This stair comes into the
23 rear unit here. And it's my understanding that that
24 is open to the area below, meaning it doesn't have a
25 door and doesn't close off.

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1 I believe that depending on certain
2 occupancy levels and in a fully sprinkler building, it
3 does not have to be open, like a loft might have to
4 be.

5 CHAIRPERSON GRIFFIS: Anything else? Any
6 other questions?

7 (No response.)

8 CHAIRPERSON GRIFFIS: Very well. Let's
9 move ahead. Anything else? Is there a representative
10 from ANC-2F here?

11 (No response.)

12 CHAIRPERSON GRIFFIS: The ANC rep is not
13 here. Very well. Let's move ahead, then, to the
14 Office of Planning. Mr. Lawson?

15 MR. LAWSON: Thank you, Mr. Chair, members
16 of the Board. For the record, my name is Joel Lawson.
17 I'm with the D.C. Office of Planning.

18 As noted by the applicant, this proposal
19 is to permit a fourth floor addition to an existing
20 apartment building at 936 N Street, Northwest to
21 provide seven residential units.

22 The existing building is within the height
23 limits for the zone and is about 9,075 square feet in
24 total area. As I said, the applicant wishes to
25 construct a four-story addition.

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1 The site is zoned R-4. Although the
2 zoning regulations acknowledge that the R-4 district
3 includes existing conversions of row dwellings into
4 small apartment buildings, the zone specifically
5 states that the R-4 district shall not be an apartment
6 house district since the conversion of existing
7 structures shall be controlled by a minimum lot area
8 per family requirement.

9 As this lot is about 4,000 square feet, an
10 apartment building on this site conforming to the lot
11 area restrictions would be limited to 4 units, as
12 opposed to the 7 units proposed.

13 The applicant has requested variance
14 relief from number of story provisions since the
15 zoning regulations permit three stories maximum within
16 this zone. And the addition would result in a new
17 fourth story.

18 The applicant would also require a
19 variance to section 2001.3, which is specifically
20 intended to prevent the expansion of existing
21 nonconforming buildings and to encourage buildings
22 being brought into greater conformity with zoning
23 regulations, which, in turn, establish the character
24 of an area to be preserved or encouraged.

25 As noted, the intent of the R-4 zone is to

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1 preserve and encourage a lower-density form of
2 development. Section 2001.3 of the zoning regulations
3 prohibits addition to an existing nonconforming
4 structure if the structure is already nonconforming to
5 lot occupancy if the addition is for a nonconforming
6 use or if the addition either increases an existing
7 nonconforming aspect of the structure or creates a new
8 nonconformity.

9 In this case, the existing structure does
10 not conform to lot occupancy if 40 percent is
11 permitted and the lot occupancy is over 78 percent.
12 However, OP does not believe that this is intended to
13 require that existing buildings be brought into
14 conformity for lot occupancy. Just the opposite, the
15 regulations allow the continued use of existing
16 structures. Rather, the regulation is intended to
17 prevent already two large structures from becoming
18 even larger and more out of scale with the intent of
19 the R-4 district.

20 The proposed nonconformity addition also
21 leads to the creation of a new nonconformity in terms
22 of number of stories. As I said, three are permitted.
23 And the addition would constitute a new fourth floor.
24 That's the requested relief.

25 OP analysis indicates that this

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1 application does not meet the required test. The
2 property itself is not exceptional. And the applicant
3 has not demonstrated any exceptional condition with
4 the building that necessitates additional
5 nonconformities for its use. The exceptional
6 condition does not rest with the property or with the
7 building but with the applicant's preference to
8 construct a new nonconforming addition to the existing
9 building.

10 The presence of an existing nonconformity
11 cannot be used as an exceptional circumstance to
12 permit increased and additional nonconformities.
13 Rather, the language of the zoning regulation section
14 2001.3 is specifically intended to discourage
15 additions, which would create new or expanded
16 nonconformities. Existing buildings that are already
17 too big for this zone are not intended to be made even
18 bigger.

19 As there is no unique circumstance
20 associated with the lot, there is no practical
21 difficulty that is burdensome to the applicant.
22 Again, section 2001.3 is specifically intended to
23 limit the provision of additional space and the
24 ability to exacerbate nonconformities. So if he does
25 accept the applicant's argument that the strict

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1 application of the three-story limit would prohibit
2 the provision of additional space, this is exactly
3 what the regulation is intended to do.

4 Finally, for the reasons noted above,
5 relief requested would impair the intent, purpose, and
6 integrity of the zoning regulations in math as the
7 variances are clearly contrary to the intent of the
8 R-4 district and to the intent of section 2001.3.

9 Subsequent to filing the OP report, the
10 Department of Transportation provided some comments to
11 the proposal in an e-mail to the Office of Planning
12 noting no objection to the proposal. OP did not
13 receive comments from any other District agency.

14 In summary, the Office of Planning
15 strongly supports the rehabilitation of vacant and
16 derelict properties for housing and would encourage
17 the applicant to continue with renovation of this
18 structure in a manner that is consistent with zoning
19 regulations and more consistent with the R-4 intent.

20 The proposal is not consistent with the
21 comprehensive plan and would undermine the integrity
22 and intent of the zoning regulations. As such, the
23 Office of Planning recommends that this application be
24 denied.

25 This concludes my testimony. And I am, of

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1 course, available for questions. Thank you.

2 CHAIRPERSON GRIFFIS: Excellent. Thank
3 you very much, Mr. Lawson, a very important
4 substantive report.

5 Let me ask you, though, generally speaking
6 on this one, it seems like if we were to follow your
7 reasoning and analysis, which is sound, and looked at
8 section 2001.3, based on the fact that something was
9 not conforming to lot occupancy, you're indicating
10 that you already have something that is too vague for
11 the district that it's in, even though it was there
12 before the regulations were put into effect.

13 But aren't you essentially saying you
14 cannot get a variance from 2001.3?

15 MR. LAWSON: We're saying that the
16 applicant hasn't met the test for getting a variance
17 from 2001.3, in particular, in this case because it is
18 a use that is not the principal use of the R-4
19 district, the principal intent being a lower-density
20 form of development and because the applicant hasn't
21 shown that the addition to the existing building is in
22 any way necessary for the use of the building in a
23 conforming manner.

24 In a conforming manner, the applicant is
25 absolutely right. We, the Office of Planning, never

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1 stated or intended to state that this is a use
2 variance of any kind. The apartment is an existing
3 grandfathered use. And the zoning, as we stated,
4 specifically states that an existing apartment
5 building is allowed to continue.

6 The zoning regulations go on to state,
7 though, that that use is not allowed to be expanded.
8 And that's what this is all about. The application is
9 not about the renovation of the building, which the
10 Office of Planning strongly supports. We congratulate
11 the applicant for taking this building and renovating
12 it.

13 So it's not about renovation of the
14 building. It's about an addition to an existing
15 building. It's also not about the number of units,
16 frankly, because there are 13 units in it now. The
17 applicant is proposing seven. And four would be
18 permitted for a new building under the regulations.

19 So it's not even about the number of
20 units. The application is all about whether or not
21 2001.3 anticipates the ability of a use such as this
22 to expand beyond what is already currently
23 nonconforming, what is already, as I pointed out, a
24 building that is considered too large for its lot in
25 the R-4 zone.

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1 CHAIRPERSON GRIFFIS: Right. Well, then
2 I go more directly into 2001.3 to understand the
3 Office of Planning's reasoning and analysis of this.
4 There obviously is an importance to the lot occupancy
5 because that is a threshold of allowable matter, right
6 or not, under 2001.3.

7 And isn't the direct language of the
8 regulations saying to us, "Hey, watch out. When
9 you've got these buildings, make sure that you don't
10 add on to the lot occupancy because that is going to
11 increase difficulties?"

12 Isn't that what is trying to be preserved
13 in 2001.3? I'm sorry. Even though we have clearly
14 something that is nonconforming to lot occupancy,
15 we're not increasing that area of zoning.

16 MR. LAWSON: Actually, I would have a
17 slightly different interpretation.

18 CHAIRPERSON GRIFFIS: Okay.

19 MR. LAWSON: We may ask the Office of
20 Attorney General to kind of weigh in on this as well
21 at some point. But I don't believe the language says
22 that lot occupancy shall not be increased.

23 CHAIRPERSON GRIFFIS: Right.

24 MR. LAWSON: I think the language is very
25 clear in stating that additions to buildings that are

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1 nonconforming to lot occupancy are the problem. So it
2 isn't stating that the problem is necessarily whether
3 or not lot occupancy is being increased at all.

4 CHAIRPERSON GRIFFIS: Okay.

5 MR. LAWSON: It's just talking to the
6 volume, to the bulk, to the size of the building, and
7 the impact that that building has on, again, what is
8 otherwise a fairly low-density zone with a fairly low
9 form of lot occupancy.

10 2001.3 is stating that the caution is when
11 the building is that large, not when the lot occupancy
12 is of a certain percentage. If it was simply a lot
13 occupancy question, I think the regulations would
14 state something a bit more direct in stating an
15 increase to lot occupancy shall not be permitted.
16 That's not what the regulations say.

17 CHAIRPERSON GRIFFIS: I see. Okay. Very
18 well.

19 Other questions?

20 VICE CHAIRPERSON MILLER: I just want to
21 figure out what the real problems are. With respect
22 to this --

23 CHAIRPERSON GRIFFIS: As opposed to my
24 questions.

25 VICE CHAIRPERSON MILLER: No. Some seem

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1 more legitimate than others. I don't understand. I
2 thought that an apartment of this type was a permitted
3 use in the R-4 zone. So I'm having trouble seeing how
4 that's a problem in this case.

5 CHAIRPERSON GRIFFIS: We're not talking
6 about a use, though. Is that clear or is that your
7 question?

8 VICE CHAIRPERSON MILLER: I know we're not
9 talking about a use variance, but I thought that Mr.
10 Lawson was talking about perhaps that this was a
11 detriment because it wasn't a permitted use or a
12 principal use or something, an R-4.

13 MR. LAWSON: No. Apartment is
14 specifically a permitted use within limits. And the
15 zoning regulations state that that is a permitted use
16 only within certain parameters. It is very specific
17 on that. But those parameters were established to
18 limit kind of the extent of that use.

19 Those parameters are one unit per 900
20 square feet of lot area. And in this case because of
21 4,000 square feet, that would allow 4 lots. That
22 would really kick in if this were a brand new building
23 on a vacant lot.

24 VICE CHAIRPERSON MILLER: Right.

25 MR. LAWSON: That's not the case here.

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1 VICE CHAIRPERSON MILLER: Right.

2 MR. LAWSON: The case here is that we have
3 an existing building which had a whole bunch of units
4 in there. The applicant is proposing to reduce that
5 number of units, which is probably a good idea. I
6 don't know. But it's probably a good idea.

7 But, you know, again, the question the
8 Office of Planning had is, where does the addition
9 come in, then? You know, why is the addition
10 necessary for the continued use of the building for a
11 conforming use, which in this case would include an
12 apartment building?

13 We have no comments on whether or not it's
14 7 units or 13 units or even 4 units. I think probably
15 a skilled architect and a good developer, they could
16 make any of those work. The question and the reason
17 they need the variance is that there is an addition to
18 the existing building which is nonconforming to lot
19 occupancy requirements.

20 VICE CHAIRPERSON MILLER: I am just trying
21 to understand Office of Planning's concerns. I think
22 that one is that under 2001.3, you just don't think
23 that it meets that and to grant a variance in this
24 case would violate that provision or we might be
25 reading it too liberally.

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1 But, separate from that, I am wondering,
2 you know, what's the real detriment to the zone plan
3 or the comprehensive plan?

4 MR. LAWSON: Well, I think the detriment
5 is definitely -- and this is I guess what I would like
6 to stress -- to the intent of the R-4 regulations.
7 There is specific language in the R-4 that is talking
8 about, although apartment buildings being a permitted
9 use, limiting the size of those and certainly language
10 in the comprehensive plan about maintaining the
11 character, the low-density character, of the R-4
12 district, of the low-density districts like R-4.

13 So to me I think the clearest test of all
14 to me is that the addition is contrary to the intent
15 of the zoning regulations themselves because the
16 zoning regulations are so clear in saying that the
17 intent is to bring this kind of apartment use to not
18 permit its expansion, which is what is being proposed.

19 VICE CHAIRPERSON MILLER: Okay. I don't
20 know. I might be repeating myself, but I hear what
21 you're saying, how that reg doesn't want it to expand.
22 But I guess the follow-up question is, well, what harm
23 is this expansion having?

24 You know, we're not talking about
25 increasing lot occupancy. We're not talking I don't

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1 think about going beyond the height limits of the zone
2 or we're not -- what is the harm --

3 MR. LAWSON: Well, I guess, again --

4 VICE CHAIRPERSON MILLER: -- that follows
5 from expansion?

6 MR. LAWSON: I guess I think, you know,
7 the harm here is that the intent -- the Office of
8 Planning feels that the intent of the regulations is
9 so clear in this case. The intent is that there just
10 simply won't be additions.

11 So if you accept that additions are
12 acceptable, then, in theory, there would be no limit.
13 You know, would there be a problem with a 10,000
14 square foot addition? Would there be a problem with
15 a 20,000 square foot addition?

16 We're saying that the regulations are
17 clear enough that the intent is to simply limit that
18 kind of expansion of the apartment use in the R-4
19 zone, that -- well, that's where the intent is.
20 That's simply what the intent is.

21 VICE CHAIRPERSON MILLER: Okay. And I
22 don't want to beat this to death, but it sounds like,
23 what the Chair asked you before, it sounds like,
24 you're saying there shouldn't ever be variances
25 granted from that provision because that provision is

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1 intended to prevent expansions.

2 And I think what my question and probably
3 the Chair's question went to was, well, are there any
4 circumstances that -- you know, can't you meet a
5 variance test and get a variance from that provision?

6 MR. LAWSON: I think that when you're
7 dealing with this particular use in this particular
8 zone because 2001.3 has to be read in conjunction with
9 the requirements of the R-4 zone itself, that it would
10 be extremely difficult to meet that test. And offhand
11 I can't think of an example.

12 I know somebody at some point will prove
13 me wrong that there are cases where there is some
14 exceptional circumstance associated with the property
15 that might allow it to be considered.

16 I don't see that case being made here.
17 And I haven't seen one yet. As you know better than
18 me, we've been dealing with a whole bunch of these
19 cases, a whole bunch of cases of expansions to
20 existing buildings in the R-4 zone. And I believe the
21 Office of Planning has been pretty consistent in
22 recommending denial of them.

23 And so I would say that yes. So far we
24 haven't seen an example where that variance test has
25 been made.

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1 COMMISSIONER JEFFRIES: I think that we
2 have a serious collision course here as it relates to
3 obviously what is set forth in the comprehensive plan
4 and in the regs and, really, in some of the realities
5 that are set forth in some of our communities here.

6 I am just concerned that if we continue to
7 take this stance, I mean, we're not going to be able
8 to get any of these projects, particularly those
9 nonconforming projects, up and going, particularly
10 given construction costs and just the need for
11 developers to have some level of interest in these
12 developments.

13 I absolutely hear what you are saying as
14 it relates to those regs, but I think that we're on a
15 collision course here as it relates to getting some of
16 these buildings functioning and contributing to the
17 common good and the tax base and so forth and so on.
18 So that's just an observation I have.

19 You know, I am just really very concerned
20 about that aspect because, you know, as I sit there
21 and look at this plan and its development, I'm just
22 not having such a problem with this addition here
23 and, again, also understanding that, you know, some of
24 these things are absolutely required for these
25 projects to make, you know, sense from just a

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1 financial feasibility point of view. So this is a
2 real quandary for me, in particular. And I don't know
3 how my colleagues here feel about it, but just coming
4 off with the case this morning and now this case, this
5 is just a problem.

6 MR. LAWSON: I would definitely agree
7 with you that this is a problem that needs to be
8 addressed. I don't see an economic analysis argument
9 being made in this case. It's possible that it was
10 there, and I'm not sure that the BZA would accept
11 economic hardship.

12 Presumably if the zoning regulations are
13 clear that additions aren't permitted to these kinds
14 of buildings, these kinds of buildings would be priced
15 accordingly. And you would know that going into the
16 proposal to buy one.

17 But beyond that, I would say that, again,
18 given that Office of Planning at least hasn't been
19 made to understand that there is an economic or other
20 requirement for this addition for the building to
21 function, for the building to be put to any kind of
22 use since we haven't seen that, then I would say that
23 that argument simply can't be made.

24 COMMISSIONER JEFFRIES: Well, I am just
25 looking at the pre-hearing statement, page 8, the

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1 second from the bottom. And it states here, "The
2 additional 870 square feet of gross floor area,
3 including the mezzanine level, of the structure does
4 not increase the overall lot occupancy of the
5 structure, yet provides the necessary amount of square
6 footage to make this renovation project financially
7 possible."

8 I mean, I hear what you're saying. I
9 just, you know --

10 MR. LAWSON: You know, again, there is no
11 analysis to indicate why that is the case. But, more
12 importantly, I think that there is no analysis to
13 indicate -- again, the variance doesn't prevent
14 renovations of buildings. The variance doesn't
15 prevent resubdividing -- the interior of the variances
16 you discussed this morning doesn't prevent the
17 provision of to better -- whatever.

18 The regulations, you know, don't prevent
19 any of that kind of stuff. And, in fact, as I said,
20 we very much encourage and, you know, we congratulate
21 the applicant on coming forward with a proposal to
22 renovate this building.

23 And, you know, I'm sure it's a great
24 design. The question is whether or not they would
25 meet the variance test. That's the question before

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1 you.

2 And I guess, just in very brief summary,
3 I would say that the Office of Planning feels that
4 those tests have not been made.

5 CHAIRPERSON GRIFFIS: Excellent. Thank
6 you very much, Mr. Lawson. Very well said and
7 presented.

8 Follow-up questions?

9 VICE CHAIRPERSON MILLER: I have one more
10 question. I don't think I've asked you this. Do you
11 know what the rationale of the Zoning Commission was
12 behind 2001.3?

13 MR. LAWSON: I do not.

14 VICE CHAIRPERSON MILLER: Okay. Thank
15 you.

16 MR. LAWSON: I think that the language is
17 very clear. And so I think that we can certainly read
18 what the language says, but I wasn't involved in a
19 case that added that section to the regs.

20 CHAIRPERSON GRIFFIS: Right. I mean, I
21 tend to agree that it's a fast-ending question. I
22 don't think we need to go into the legislative
23 history. I'm not saying that you are proposing that
24 we do that, but it is somewhat clear to me what it was
25 to do.

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1 Mr. Bonstra, let me ask you very quickly
2 as I'm looking at this section, actually, in the
3 submission of your A-07A. Do you have scale documents
4 with you or do you know? The first question is where
5 you took the measurement of the building height. Is
6 it the center or the front of the building essentially
7 where your door is?

8 Let me take this opportunity to say that,
9 as many of you probably know, we're just finishing up
10 a total renovation of our hearing room. And we don't
11 have all of our sound equipment set up. And we are
12 utilizing that of the recorder. So there is a delay
13 in your microphones when you start speaking before he
14 turns the volume up over there. So we'll just talk a
15 little bit slower. And he gets it to us very quickly.

16 But now, with that, you took the
17 measurement of the height in the center of the
18 building, essentially where the front door is. Is
19 that correct?

20 MR. BONSTRA: The zoning height is from
21 the sidewalk --

22 CHAIRPERSON GRIFFIS: Right.

23 MR. BONSTRA: -- to the center line of the
24 building.

25 CHAIRPERSON GRIFFIS: Okay. To the center

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1 line. But this is exactly where I am going. I am not
2 trying to hide anything here. I am looking at your
3 section A-07A.

4 Just counting the steps in the front, I
5 was trying to figure out what height there was at the
6 first level that is shown to that ceiling because the
7 stories are calculated from the place of measurement
8 of the building. I was just wondering if that
9 actually was a cellar or a basement at the front. I
10 don't know if you know this or not.

11 MR. BONSTRA: I really don't know the
12 answer to that.

13 CHAIRPERSON GRIFFIS: Okay.

14 MR. BONSTRA: That wasn't part of this
15 presentation.

16 CHAIRPERSON GRIFFIS: No. Indeed it --

17 MR. BONSTRA: Sorry. It was so many years
18 ago.

19 CHAIRPERSON GRIFFIS: Yes. It was
20 something that I was looking at, but, in any case, we
21 can probably get to that later if need be.

22 MR. BONSTRA: Okay.

23 CHAIRPERSON GRIFFIS: Anything else from
24 the board, questions for the Office of Planning? Does
25 the applicant have any cross-examination for the

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1 Office of Planning?

2 MR. TUMMONDS: Just a couple of quick
3 things. Mr. Lawson, page 4 of your report, the
4 section dealing with the third prong of the variance
5 test, the last sentence says, "The variance also
6 expands an existing nonconforming use, which is
7 considered contrary to the map."

8 So based on your testimony, that's not
9 right. This is a conforming use?

10 MR. LAWSON: No. the use, the use that
11 is on this property right now, is nonconforming to
12 what current regulations would permit in that there
13 are many more units than would be permitted under
14 current zoning.

15 The apartment use -- I understand what
16 you're saying, and I understand why this sentence is
17 badly worded. The apartment use is a permitted use.
18 It's not a nonconforming use. The extent of the
19 apartment building is nonconforming.

20 MR. TUMMONDS: Okay. Yes. That's what I
21 was getting at. In the parlance of 2001.3 and 2002
22 for the zoning regulations, this, an apartment use in
23 an R-4 district, is a conforming use.

24 MR. LAWSON: It is a permitted use, yes.

25 MR. TUMMONDS: Great. Mr. Lawson, if the

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1 proposed structure, the proposed mezzanine we're
2 showing, if that didn't have any gross floor area
3 attached to it, if it were merely double height space
4 for that third floor so you had light in there and we
5 built a very tall light well, if you will, and light
6 poured in within the existing 40-foot height limit, we
7 would, in effect, be allowed to do that without any
8 relief? Is that your understanding?

9 MR. LAWSON: Well, first of all, I don't
10 like dealing with hypotheticals without having
11 drawings in front of me. So, actually, I'm going to
12 leave it at that.

13 I don't know. I don't know what the
14 situation would be. We would look for direction from
15 the zoning administrator on how that would be
16 interpreted. And then we would deal with the
17 application and forward accordingly.

18 MR. TUMMONDS: That's fine. I have no
19 further questions.

20 CHAIRPERSON GRIFFIS: It's interesting
21 that you bring up whether it was just a stair
22 enclosure. I mean, we could go in a lot of different
23 directions, which we don't have right here in front of
24 us.

25 I'm going to just take this brief moment

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1 to disagree fairly strongly with the Office of
2 Planning in terms of the nomenclature of distinctly
3 labeling this as a nonconforming use.

4 I mean, I think the Board has under
5 numerous applications, whether it's a use variance or
6 not, in the R-4 zones based on the unit. I know
7 fairly definitively that I've sat on all of them in
8 the past couple of years, whether successful or not,
9 most not being successful in requesting additional
10 units in that. But it's never been processed as a use
11 variance. I go strongly to the fact of looking at it
12 because the density, in fact, is dealt with based on
13 an area requirement. And it's a site square footage
14 requirement, which to me strongly puts it into an area
15 review.

16 That being said, let's move ahead if
17 there's nothing further. Thank you for an excellent
18 report, Mr. Lawson. I know you've given a great
19 amount of information for the Board's deliberation on
20 this case. And let's move ahead.

21 We do have exhibit number 26 from the
22 ANC-2F. Let me ask again if the ANC member is present
23 to present that. I believe it's also -- I have a note
24 that the letter actually from the ANC submission is
25 unsigned. Is that correct?

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1 MR. BONSTRA: The letter that we submitted
2 attached to our --

3 CHAIRPERSON GRIFFIS: In your submission.

4 MR. BONSTRA: It's unsigned. I believe
5 that exhibit 26-27 of the record is a signed copy of
6 --

7 CHAIRPERSON GRIFFIS: Okay. We'll make
8 sure of that.

9 All right. We have perhaps another one
10 that came in today, exhibit number 29, perhaps the
11 same, dated November 7, 2005. And we'll take note of
12 this. It was a unanimous recommendation to support
13 the application, 620.

14 I don't have any other government reports
15 to the application unless any Board members or the
16 applicant are aware of any other submission to this
17 application.

18 If not, we can move ahead to persons to
19 provide testimony. Let me call up all of the persons
20 for Ms. Clarke that's here and anyone in support or in
21 opposition to the application will get to the table.
22 And we'll hear her testimony on this application.

23 Is there anyone else here present in 17385
24 to provide testimony?

25 (No response.)

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1 CHAIRPERSON GRIFFIS: Very well.

2 MS. CLARKE: Good afternoon again. I just
3 want to make one statement about the plan, the
4 comprehensive plan, that we have in the District of
5 Columbia. You know, these plans were put together by
6 citizens and others in the Office of Planning. I
7 think what they did was they did their best to come up
8 with how we want our city to be, what types of
9 buildings and activities do we want to have in these
10 different neighborhoods.

11 I think a lot of times it may not be clear
12 as to in instances like this what should be done, but
13 that is why they always come up with a test. And
14 they're pretty sure when they come up with the
15 comprehensive plan about how they envision a
16 neighborhood to be. And that's why they always put
17 the burden upon the applicant to show why an exception
18 should be granted to the plan.

19 The problem is once -- and the reason they
20 make the test tough is because they want these
21 neighborhoods to stay in conformance with their
22 vision. It is a test. They don't want to negate
23 properties from being renovated. However, what they
24 are trying to do is to make sure that the intent as to
25 how they see it and how the citizens saw it at the

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1 time when they put the plan together is maintained.

2 CHAIRPERSON GRIFFIS: Good. Let me
3 interrupt you just briefly because --

4 MS. CLARKE: So I just wanted to make that
5 --

6 CHAIRPERSON GRIFFIS: No. Exactly. I
7 thin it is an excellent point. However, if you look
8 at the comprehensive plan, it is not as prescriptive
9 as you're laying it out. First of all, we're not
10 granting a waiver or variance to take special
11 exception of the comp plan. The comp plan is a very
12 directed document. And I'm sure you've read
13 substantially and it's in review now, and the Office
14 of Planning does do that, works closely with
15 communities and associations and looks at the overall
16 area and directive.

17 We have even more prescriptive guidance
18 for us in this one. And that's the regulations
19 because the regulations tell you exactly what a
20 building can be or cannot be. The comprehensive plan
21 doesn't come close to that. And when you talk about
22 staying within the intent of the regulations and such,
23 there are two sides to the argument which you're
24 taking because I'm fascinated with the R-4 zone
25 because it is an interesting district. And it's all

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1 over the city.

2 I live in an R-4 zone. I look around, and
3 I look at these townhouses that we look to say in the
4 city are great neighborhoods, like Kalorama and Mt.
5 Pleasant and Adams Morgan and Columbia Heights. I
6 live in a row dwelling in one of those neighborhoods
7 in an R-4.

8 And guess what? It's 4 stories and 47
9 feet high. It's the most nonconforming structure you
10 have ever seen. And, yet, it's been there for over
11 100 years. It was there 40 years before the
12 regulations were actually implemented.

13 So I understand that there is intent here.
14 And I understand that the companies applying can give
15 us direction. And I understand that, in fact,
16 maintaining these districts is a very important piece.
17 But I think we do have the availability of looking at
18 relief and creativity or steps to and from certain
19 aspects of the regulations because my point of
20 bringing up the R-4 is only that the regulations
21 couldn't understand every single thing that was in
22 there and, in fact, many times find us in
23 neighborhoods where we have created nonconforming
24 neighborhoods of these neighborhoods that we seem to
25 all really enjoy.

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1 So here we are in an R-4, big apartment
2 building, doesn't fit for our normal regulations. And
3 we have to show that it either is somehow a particular
4 circumstance that has happened here and out of that
5 has created a difficulty in complying with the exact
6 regulations. And that really is what we're looking at
7 as complying with the story as this point is being
8 brought to us.

9 So, with that, why don't we talk about I
10 think more of what you are looking at is, how is this
11 detrimental to you as an adjacent property owner or
12 perhaps to the rest of the neighborhood?

13 MS. CLARKE: Okay. Well, I would like to
14 start out with the test and then get to that.

15 CHAIRPERSON GRIFFIS: Great.

16 MS. CLARKE: And I'll just try to go
17 through this as quickly as possible. But first I want
18 to say that I support the rehabilitation of these
19 vacant properties, including this apartment building.
20 But I am requesting that you deny the application
21 that's submitted because they haven't met their burden
22 of proof. And I am going to go through each of the
23 items.

24 Applicant has not met the burden of proof
25 that the property exhibits specific uniqueness with

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1 respect to the exceptional shape, narrowness,
2 shallowness, or other extraordinary or exceptional
3 situations or conditions.

4 The applicant has not submitted
5 documentation relating to the condition, size, or
6 shape of the land or the building to substantiate its
7 burden. The property is rectangular in shape and does
8 not have a significant slope or other unique national
9 characteristic.

10 Additionally, the applicant has not
11 provided sufficient evidence that the building is in
12 an extraordinary or exceptional situation or condition
13 and that the building can be rehabilitated without the
14 addition.

15 My second point is the applicant has not
16 met its burden of proof that the zoning regulations
17 result in a practical difficulty or undue hardship.
18 The applicant has not provided evidence of practical
19 difficulty or undue hardship.

20 The applicant has not submitted a
21 construction analysis to prove that the construction
22 of an additional floor at 936 N Street, Northwest is
23 necessary and integral to the completion of the
24 rehabilitation and I guess you could call it the use
25 of the building. The proposed architectural plan and

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1 the documentation submitted do not support the
2 practical difficulty or undue hardship alleged.

3 The proposed plan could easily be
4 modified, and the rehabilitation of the building could
5 be completed to comply with zoning requirements
6 without expanding the nonconforming use. They cited
7 to all of these cases, but they haven't really related
8 it that well to their burden.

9 The applicant has not provided evidence of
10 detailed plans and permits for plumbing, electric, and
11 mechanical work and approvals by DCRA for the work
12 completed to date to prove that the construction of
13 the addition has been substantially completed.

14 Removal of a plywood frame that contains
15 no windows, roof, or doors does not meet the burden of
16 undue hardship. Additionally, the applicant has not
17 submitted financial data to verify financial hardship
18 that was not within the applicant's control.

19 The original stop work order was issued
20 due to noncompliance with the construction codes. And
21 I don't know if I can speak to the ANC ruling, but
22 their ruling was based upon financial hardship, of
23 which there was no evidence presented during the ANC
24 meeting. I don't know if I can. I just wanted to
25 speak to that. But that was the basis for their

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1 determination.

2 CHAIRPERSON GRIFFIS: Okay.

3 MS. CLARKE: If relief were granted -- let
4 me see here. Oh. The applicant has not met its
5 burden of proof regarding practical difficulties since
6 litigation is pending in Superior Court between the
7 applicant and the city, 936 N Street, LLC versus the
8 District of Columbia, filed in August 18, 2005.

9 The facts and the circumstances relating
10 to the issuance of construction permits has not been
11 determined. Therefore, there is no evidence that
12 really should be granted on this basis.

13 You know, this is still an ongoing. So
14 what happened, who shot John, was a permit issued, was
15 it issued for what reason we don't know until it's
16 been decided.

17 If relief were granted, there would be a
18 substantial detriment to the public good. The relief
19 requested would impair the intent, purpose, and
20 integrity of the zoning regulations and the map
21 because, as the Office of Planning said, the variances
22 are contrary to the intent of the R-4 district.

23 Increasing the size and density of the
24 buildings, it sets a precedent -- I think that answers
25 the question here -- for the expansion of

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1 nonconforming uses that would be a detriment to the
2 historic area. Increase this. Where are we going
3 from here? Pretty soon you don't even recognize it as
4 R-4.

5 The addition as proposed negatively
6 impacts the surrounding properties. In the specific
7 instance, expanding the nonconforming use
8 significantly blocks the light and obstructs the view
9 of the alley dwellings and surrounding historic
10 district from the 10th Street properties.

11 Other environmental concerns include the
12 impact of the need for additional parking and space
13 within trash. The applicant did not provide
14 sufficient evidence as to how it would mitigate any of
15 these negative impacts to the 10th Street properties.

16 The height and the location of the setback
17 of the addition does not mitigate the negative impact
18 in 10th Street. See, what it does is if you -- it's
19 hard to really tell from looking at this, but if you
20 look at it from a different direction, you might see
21 it a lot differently.

22 You know, if you go actually into Blagden
23 Alley itself or you're overlooking it because you're
24 like "What harm is this one little addition?" you
25 really I think have to go over there to kind of see

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1 and make a judgment on it. It's difficult to tell
2 from these drawings.

3 CHAIRPERSON GRIFFIS: And what's the harm?
4 What would we see if we went to where you wanted us to
5 be?

6 MS. CLARKE: You really would see an
7 additional floor. I know what they said about the
8 rowhouses in a line, but it doesn't look like that to
9 me when I look at it going up N Street.

10 CHAIRPERSON GRIFFIS: So what is the harm?
11 What is the harm?

12 MS. CLARKE: What is the harm?

13 CHAIRPERSON GRIFFIS: Right.

14 MS. CLARKE: The harm is it's an historic
15 area, which you are setting a precedent for continued
16 development that will not be reflective of R-4.

17 CHAIRPERSON GRIFFIS: Okay.

18 MS. CLARKE: That's what it is. And it
19 might seem a small thing, but I guess the whole thing
20 -- I don't want to say where is the line drawn, but
21 once we allow this to happen, what next? You really
22 have to go and look at it, I think, to really see
23 exactly what it is because they might have thought
24 they were doing okay by that setback from the street.
25 But if you look at it from a different direction in

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1 the alley, then you can see it tarring a foot over the
2 adjoining properties that are next to it.

3 The roof line, it goes up higher. I think
4 no one is really opposed to this, but what they need
5 to do is try to redesign it to be more in keeping to
6 fit in with the intentions of R-4 and the
7 neighborhood.

8 CHAIRPERSON GRIFFIS: Okay. So one of
9 your major points of opposition is the fact that it
10 wouldn't maintain the character of the historic
11 district that it is in?

12 MS. CLARKE: Yes. And I know what
13 historic preservation says, but I invite anyone to go
14 over there and look at it and see exactly what it looks
15 like.

16 I think the bigger point here is that the
17 applicant has not met its burden of proof --

18 CHAIRPERSON GRIFFIS: Right. Got that
19 one.

20 MS. CLARKE: -- since that the variance
21 should be granted. That's why we have the burden. If
22 they've met the burden, we -- it would be yes, let's
23 go forward with this.

24 CHAIRPERSON GRIFFIS: Right. Of course,
25 we don't know that until we get through this whole

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1 thing. But that's --

2 MS. CLARKE: Okay. And I don't think that
3 they -- discussing cases is one thing, but providing
4 actual evidence --

5 CHAIRPERSON GRIFFIS: Sure.

6 MS. CLARKE: -- to show how it relates
7 back to these cases is another.

8 CHAIRPERSON GRIFFIS: Good. Anything
9 else?

10 MS. CLARKE: No, but I hope you really
11 give this consideration. And it is more than just a
12 fourth floor. Some of the neighbors are really
13 concerned about the area and the neighborhood and what
14 this could mean for the neighborhood if --

15 CHAIRPERSON GRIFFIS: Excellent.

16 MS. CLARKE: -- we continue in that, if it
17 goes in violation of the plan.

18 CHAIRPERSON GRIFFIS: Good.

19 MS. CLARKE: And maybe a way to do it is
20 if the plan should be changed, if people feel that the
21 plan doesn't meet with today's needs or whatever, I
22 think that is where we need to go.

23 CHAIRPERSON GRIFFIS: Change the zoning?

24 MS. CLARKE: If that's what people want,
25 that's what should be discussed. I think we have a --

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1 CHAIRPERSON GRIFFIS: We're getting a
2 little far afield for this application.

3 MS. CLARKE: -- plan. I think we have
4 regulations. And I think we have a test.

5 CHAIRPERSON GRIFFIS: Indeed. I
6 absolutely agree. And Mr. Jeffries will take note as
7 he sits on the Zoning Commission of the zone change
8 and possibly --

9 MS. CLARKE: I'm not saying that I agree
10 with that, but I'm saying that's to me would be what
11 --

12 CHAIRPERSON GRIFFIS: Exactly. And you
13 made a note. And I want to thank you very much for
14 your testimony. And you have indicated that we should
15 take this seriously. And I want to assure you that we
16 absolutely will. There is an awful lot to get through
17 here.

18 MS. CLARKE: Okay. Thank you.

19 CHAIRPERSON GRIFFIS: And what we do, of
20 course -- don't go anywhere. What we do, of course,
21 is hear all of the evidence and all of the testimony
22 from the Office of Planning, which has made a very
23 strong analysis here to the applicants.

24 I want to lay out a few things. First of
25 all, I'm not an attorney. So when they throw all of

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1 these court cases around, it doesn't mean much to me
2 either.

3 However, in my experience sitting on the
4 Board, I have noticed the importance of the courts'
5 rulings to what we do in actually defining the
6 elements of the case presentation that they have to
7 present, those tests that we talk about.

8 You know, Gil Martin, St. Viator and
9 clerics and all of the stuff that they're throwing
10 around and not really getting substantive in many
11 respects, we have come from our understanding -- I
12 have attorneys up here -- that the courts have said
13 that, "Look, the Board," us, "we cannot establish
14 precedence here."

15 And that is why the first element that we
16 look at is what is particularly interesting or unique
17 about this. And we call it uniqueness. It's not in
18 the regulations, though. But what is unique about it?

19 The whole point of that is that if we
20 grant this, the next door can't come in and say,
21 "Look, you granted it to them. I get it, too." We
22 are searching for something that makes this unique to
23 itself. And out of that uniqueness is its practical
24 difficulty. And that is what we are going to have to
25 wrestle with.

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1 I think a lot of the information you have
2 provided in terms of your analysis of whether they
3 have made the test or not is important for us to
4 understand.

5 I also want to say it's important for you
6 to -- and you have indicated the character and the
7 elements of the historic district. I think the Board
8 understands that. And you say that we should just go
9 out and see it.

10 Believe me, many a time the Board thinks,
11 you know, it would be a heck of a lot easier if we
12 could just go there and take a look at it. And we're
13 actually precluded from doing that. We cannot go out
14 and take a look at these properties. It would be
15 essentially an ex parte type communication. And we
16 won't get into that because I'm not a lawyer either.
17 So I can't understand all of that stuff. But I know
18 I am not allowed to go there and take a look at this
19 in terms of the tests here.

20 We have to decide this case based on all
21 of that which is created before us in this room. And
22 that's why it's important to have these documents, to
23 have the witnesses, to have the opportunity to be
24 cross-examined on all of these pieces, which is where
25 we're going to go to in a moment unless there are any

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1 other questions from the Board on this one.

2 (No response.)

3 CHAIRPERSON GRIFFIS: Very well. Then we
4 will go to cross-examination if there are any
5 questions.

6 MR. TUMMONDS: No questions.

7 CHAIRPERSON GRIFFIS: No cross, in which
8 case we thank you very much. We appreciate your
9 taking the time and the preparation also provided in
10 testimony today, Ms. Clarke. And we will take it
11 under great advisement.

12 MS. CLARKE: Thank you.

13 CHAIRPERSON GRIFFIS: Let's move ahead,
14 then. We don't have any other persons to provide
15 testimony in this case. We have been through the
16 government reports that I have a record of and note
17 of.

18 Mr. Tummonds, I will turn it over to you
19 for any rebuttal witnesses that you might have or
20 closure remark summations.

21 MR. TUMMONDS: No. I think that we will
22 just have our closing remarks.

23 CHAIRPERSON GRIFFIS: Okay. Let's take
24 last questions, then, if we have any, from the Board.
25 Ms. Miller?

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1 VICE CHAIRPERSON MILLER: I have a
2 question for you. This came up in this morning's
3 proceedings as well. It is, what is the practical
4 difficulties test?

5 When I look at the Office of Planning's
6 test as they state it, they say, "The applicant has
7 not demonstrated that the additional space is required
8 for the restoration of the building or for the
9 structure to function as the intended use."

10 I guess my first question to you would be,
11 do you agree that that is the practical difficulties
12 test in this case?

13 MR. TUMMONDS: No, I don't. I think that
14 the practical difficulties test is, as was stated, on
15 -- we need to show that satisfying the strict
16 requirements of the zoning regulations is
17 unnecessarily burdensome. We are not required to show
18 that the only way we can renovate this building is to
19 have this mezzanine level.

20 VICE CHAIRPERSON MILLER: And how is it
21 unnecessarily burdensome in this case?

22 MR. TUMMONDS: Right. I think, as noted
23 on page 7 of our statement, because we do have this
24 existing mezzanine, which was previously approved.
25 The mezzanine is intertwined with the existing units

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1 in the rest of the building.

2 It is not just as easy as we chop off the
3 top, put the roof over, and there you go, you've got
4 a building. It's not that easy. It is unnecessarily
5 burdensome to do that now because the interior layout
6 of that floor below anticipates having that space
7 above.

8 We also noticed that because we have a
9 building that is over the existing lot occupancy now,
10 adding one additional square foot throws us into this
11 variance relief being necessary. So we think it is
12 unnecessarily burdensome when we want to renovate this
13 building to add only 870 square feet on the roof,
14 which we think is more appropriate. We are not
15 looking to add it to, say, the rear of the property,
16 adding, say, more to our lot occupancy of 78.3
17 percent.

18 We say that it would be unnecessarily
19 burdensome to tell us that, you know, we cannot add
20 another square foot to this property.

21 VICE CHAIRPERSON MILLER: Just to follow
22 up on where I think Office of Planning was coming
23 from, do you think it's unnecessarily burdensome to
24 not allow you to add anything, any addition, despite
25 the fact that this regulation goes to discouraging, at

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1 least, additions to nonconforming structures?

2 MR. TUMMONDS: I guess I think what is
3 interesting to note in this case is that we have a
4 nonconforming structure because we have 13 apartment
5 units in this building.

6 VICE CHAIRPERSON MILLER: Aren't you also
7 because of lot occupancy?

8 MR. TUMMONDS: Right. But also with
9 regards to a big part of the Office of Planning's case
10 was that this R-4 zone is a low-intensity development
11 zone. We're following that. We're taking 13 units,
12 and we're bringing it down to 7. So we think that
13 that is entirely keeping with making our project more
14 conforming to the zone.

15 As noted in 2001.3, alterations,
16 modernizations of existing nonconforming structures
17 can occur. We could keep 13 units on this site as
18 long as we didn't add a single square foot, we would
19 have a 13-unit apartment building on this site. And
20 we wouldn't be before this Board.

21 I don't think that is more conforming to
22 the zone plan than asking the variance relief that
23 we're asking today, which is keeping within the
24 40-foot height limit but reducing the number of
25 apartments from 13 to 7. We think what we are doing

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1 today is more conforming than truly what could be done
2 to this building as a matter of right.

3 VICE CHAIRPERSON MILLER: Thank you.

4 CHAIRPERSON GRIFFIS: Anything else?

5 (No response.)

6 CHAIRPERSON GRIFFIS: Okay.

7 MR. TUMMONDS: As stated in detail in our
8 pre-hearing statement and as further elucidated today
9 in our testimony, we believe that we do satisfy the
10 area variance relief standards to allow in addition to
11 this existing nonconforming structure.

12 As stated, we are requesting relief in
13 order to add on to a building that is nonconforming as
14 to lot occupancy. And we are requesting relief in
15 order to construct a fourth floor on this structure.

16 We believe that we have shown how the
17 Office of Planning's report is flawed in some
18 respects, but we respectfully disagree with them in
19 some others. We think that we do satisfy the variance
20 relief standards.

21 We note that we do have individual letters
22 of support from a resident of 1233 10th Street, two
23 doors down from Ms. Clarke. We have other individual
24 letters of support for this project, in addition to
25 the ANC's letter of support.

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1 We believe that this project is fully
2 keeping with the intent and integrity of the zone
3 plan. We would request that you approve this
4 application.

5 And, as noted today, with this structure
6 being open to the elements, clearly every day that we
7 are not able to close in this structure, it adds onto
8 the cost to this. So if you believe it is
9 appropriate, we would ask for a decision today. If
10 not, we would ask for an expedited decision so that if
11 you do grant this approval, we can move that much
12 quicker to closing in the building but also bringing
13 this project, bringing this structure back to a
14 contributing part of this neighborhood.

15 Thank you.

16 CHAIRPERSON GRIFFIS: Excellent. Thank
17 you very much, Mr. Tummonds. And I would think that
18 is an excellent presentation of the application that
19 is before us.

20 I'll hear from other Board members, but I
21 would like to set this for a decision-making and not
22 take the time today to deliberate. There's an awful
23 lot of and substantial pieces of information that we
24 will need to look at. But I am open to be persuaded.

25 If we do not decide today, the best, we

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1 would set it for the first decision-making. That
2 would be the 6th of December, which is not that far
3 off.

4 Let me hear from others.

5 MEMBER ETHERLY: Mr. Chair, thank you very
6 much.

7 I am perhaps inclined to hear what
8 additional information might be necessary. Otherwise
9 I'm leaning towards aligning myself with where Mr.
10 Jeffries' perspective was on this in that I think we
11 are just coming to a little bit of a choke point on
12 this particular issue.

13 I think Office of Planning has raised some
14 very excellent observations, but I think we are just
15 simply at a point where there is going to need to be
16 a read on this particular case or this set of facts,
17 which may not indeed be an unusual set of facts for us
18 going forward as we deal with the efforts of other
19 applicants to bring these kinds of properties back
20 into productive use.

21 So I am inclined to hear what additional
22 information might be of assistance. But perhaps
23 that's a signal to some of my colleagues that I could
24 be persuaded to move forward today.

25 CHAIRPERSON GRIFFIS: Pretty direct

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1 signal, I'd say.

2 Any other comments? I'm perfectly able if
3 we can expedite this today. It's 4:00 o'clock.

4 COMMISSIONER JEFFRIES: You know,
5 obviously given the history with the stop order and so
6 forth, I mean, I know that that is really not part of
7 what we are looking at her, but just taking that into
8 consideration, you know, I don't see any problem with
9 moving forward today. I could get on board with that
10 as well.

11 CHAIRPERSON GRIFFIS: Okay. Others?

12 (No response.)

13 CHAIRPERSON GRIFFIS: Very well. I'm
14 going to ask you again very quickly just for my own
15 whatever it is, entertainment perhaps. Do you have
16 scaled drawings? Do you have a scaled section?

17 This is what I'm getting at. I don't know
18 why I'm obsessed with it, but in your section, it
19 seems so close that your lowest level as a seller in
20 the front, where the height of the building is
21 established, that we may not be needing to deliberate
22 on the fourth level, meaning that this would be in
23 conformance with three levels.

24 MR. TUMMONDS: We would still need
25 variance --

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1 CHAIRPERSON GRIFFIS: I understand the
2 2001.3. I mean, we're still here. It's not like a
3 waste of an afternoon. My gosh, why would we want to
4 do that?

5 Okay. So there it is. We'll just move
6 ahead as we don't have that ability to figure that
7 out, that calculation. It seems like the Board is
8 prepared to move ahead. And I think in order to
9 facilitate that, it's best to do our deliberation
10 under a motion.

11 I'm perfectly prepared if the Board would
12 like. I'll make the motion and not speak to it and
13 allow Board members to speak to it in order to
14 establish our discussion and direction of the
15 discussion. And I think that is the fair intent of
16 the Board.

17 So I'll move ahead and move for approval
18 of application 17385 of 936 N Street, LLC. That is
19 for the variance under 2001.3 and also for the
20 variance under section 400 for the number of stories
21 allowed in the R-4 district. And, as I indicated,
22 it's for the premises of 936 N Street, Northwest and
23 would ask for a second.

24 MEMBER ETHERLY: Second, Mr. Chair.

25 CHAIRPERSON GRIFFIS: Thank you, Mr.

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1 Etherly. Thank you.

2 I'll open it up, then, for deliberation.

3 COMMISSIONER JEFFRIES: Well, you know, I
4 think that clearly the comments provided by the Office
5 of Planning are very strong. I clearly understand the
6 need to respect this strict interpretation of the
7 zoning regs.

8 But I am looking at this building and I am
9 looking at it as within the envelope of 40 feet that
10 is the max in the R-4 zone. I'm not fully compelled
11 with this whole notion of light and air of this
12 building being impacted in some of the adjacent
13 residents.

14 Given the hardship that I really think has
15 occurred here as it relates to the stop order and so
16 forth, I think we should move forward in a very
17 expeditious fashion here to allow this developer to
18 get this building into a contributing use. So I would
19 agree to go forward.

20 CHAIRPERSON GRIFFIS: Excellent. I take
21 that as speaking in support of the motion and what
22 you're saying. As I understand, what you're
23 indicating is that part of this uniqueness factor that
24 we're talking about, the special circumstances that
25 created the practical difficulties, is the fact that

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1 this wasn't approved permanent in construction.

2 Now, there was some testimony of what was
3 indicated in the permit or not, but what you're saying
4 is that there is construction that has progressed in
5 this. And that should be a factor in terms of the
6 situation in the building.

7 I think you also hit upon a point of that
8 this is an existing structure. And that lends itself
9 to obviously nonconformities, which we're looking at
10 in terms of 2001.3.

11 Our regulations state pretty clearly that
12 the initial threshold of those buildings that are
13 rendered nonconforming based on the adoption of the
14 zoning regulations fit the test of what we would call
15 uniqueness and, therefore, meet that threshold aspect
16 and then need to move on to what that practical
17 difficulty is.

18 Okay. Others?

19 VICE CHAIRPERSON MILLER: I want to add
20 that I think that 2001.3 does not certainly preclude
21 variance, I believe. And the Office of Planning seems
22 to have a very high standard, which I don't think is
23 correct. And I think that they need to meet the
24 normal standard, which is pretty high to begin with,
25 for a variance test. And I don't want to repeat.

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1 We certainly have touched upon the
2 uniqueness or the exceptional condition. We have a
3 building here. We also have construction that was
4 approved by the zoning administrator. And it would be
5 quite practically difficult to undo that, as far as I
6 could see.

7 But getting to the third prong, I also
8 find that it is consistent with the comprehensive plan
9 and the zone plan. We're talking about their
10 improving an apartment use in that zone, which it had
11 been before. And that is consistent with that zone.
12 And it's consistent with the goals of the District to
13 renovate and improve housing and create more housing
14 opportunities for our residents.

15 CHAIRPERSON GRIFFIS: Well said.

16 Others? Anything else?

17 (No response.)

18 CHAIRPERSON GRIFFIS: Very well. I think
19 Mr. Jeffries also brought up an interesting point of
20 the fact that the envelope of which the R-4 sets out.

21 Clearly this is a nonconformity that this
22 envelope most often or one would think in the ideal
23 situation that all of the zoning aspects come together
24 in balance. As you max out your height, you max out
25 your, let's say, unit or FAR if it was the aspect here

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1 and your lot occupancy, I mean, that is just the
2 symbiotic nature of zoning.

3 And, as one goes outside the other, one
4 needs to look at what is being done here. Is there
5 that kind of special circumstance in that practical
6 difficulty?

7 I think that is what I am hearing Mr.
8 Jeffries say is that this just isn't working for some
9 reason, but it doesn't make it -- he's persuaded by
10 the fact that it meets that variance test.

11 I'm concerned that we don't often seem so
12 diametrically opposed to the Office of Planning as I'm
13 hearing the Board move ahead. And so this may
14 actually raise a larger issue that goes beyond the
15 Board's jurisdiction and may need to be taken up in a
16 different forum, that being the Commission.

17 But it is hard for me to hear such a
18 strong, fairly unanimous voice on the Board as the
19 applicant has made in persuasion of that application,
20 and still have opposition from the Office of Planning.

21 So I say that somewhat I may be in
22 summation of our deliberation on this to say that
23 perhaps we outside of this application have work to do
24 in terms of looking at either the requirements for
25 nonconforming structures or perhaps how to deal with

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1 the different text in terms of relief sought under
2 2001, whether it be .3 or expanding .2.

3 Yes?

4 VICE CHAIRPERSON MILLER: I would say that
5 I don't think that we actually addressed the question
6 about the reliance on the zoning administrator's
7 permit before with the Office of Planning because I
8 think that is a distinction in this case.

9 I don't think we have to necessarily
10 resolve the question, which seems to be a big general
11 question out there, not necessarily a rift between
12 Office of Planning and the Board. But I think a
13 general question out there is what is this practical
14 difficulty test. Is it just for conformance with the
15 regs or is it to be able to do some type of addition
16 to improve a property?

17 So in this particular case, there isn't
18 that big a difference because of that distinguishing
19 factor perhaps with the reliance on the permit, that
20 creating a practical difficulty in this case.

21 CHAIRPERSON GRIFFIS: Right. Certainly it
22 is an exceptional situation and condition.

23 Okay. Others?

24 MEMBER ETHERLY: I'll just say, Mr.
25 Chairman, as we close out on deliberation that I

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1 appreciated Mrs. Clarke's testimony. And I'll just
2 kind of speak directly to it because, of course, she
3 did take the time to come down personally.

4 I do agree with my colleague Mr. Jeffries
5 and I believe a comment that Mrs. Miller stated about
6 not being convinced that there was a harm here in
7 terms of moving forward with the application as
8 proposed, but I just wanted to be sure to speak
9 directly to that because, again, Mrs. Clarke took the
10 time to come out directly.

11 Thank you, Mr. Chair.

12 CHAIRPERSON GRIFFIS: Good. Thank you
13 very much. And I think it's an important aspect to
14 look at because she did strongly indicate and testify
15 to the fact that this doesn't hold to the historic
16 character of the neighborhood. And that would raise
17 great concern for me if we were the only board that
18 reviewed it.

19 However, in circumstances like this
20 specific one, I rely on the Historic Preservation
21 Review Board for more detailed and more perhaps
22 knowledgeable jurisdictional review of the
23 application, which this did undergo review. So I
24 didn't feel like it rose to the level of something
25 that we could even begin to address or need to have

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1 additional information to look at.

2 All right. Others? Anything else, then?

3 (No response.)

4 CHAIRPERSON GRIFFIS: Very well. We do
5 have a motion before us. It has been seconded. I
6 would ask for all of those in favor signify by saying,
7 "Aye."

8 (Whereupon, there was a chorus of "Ayes.")

9 CHAIRPERSON GRIFFIS: And opposed?

10 (No response.)

11 CHAIRPERSON GRIFFIS: Abstaining?

12 (No response.)

13 CHAIRPERSON GRIFFIS: Very well. Mr. Moy?

14 MS. BAILEY: Mr. Chairman?

15 CHAIRPERSON GRIFFIS: Ms. Bailey?

16 MS. BAILEY: Before I call the vote, I do
17 have a question for you, sir. The application was
18 advertised for a variance relief from the limitation
19 of the number of stories in section 400 and also a
20 variance from the nonconforming structure, 2001.3.
21 The applicant did add another variance from the
22 prohibition against enlarging a structure devoted to
23 a nonconforming use. This is subsection 2002.5.

24 And the question is, is 2002.5 applicable
25 to this application? Relief was granted from 2002.5?

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1 MR. TUMMONDS: I was going to say no.

2 CHAIRPERSON GRIFFIS: No. Right. It was
3 2001.3 and under -- I've lost the section now for the
4 number of stories. Okay.

5 MS. BAILEY: The vote is recorded as 5:0:0
6 to approve the application, motion made by Mr.
7 Griffis, seconded by Mr. Etherly. Mr. Mann, Mrs.
8 Miller, and Mr. Jeffries are in agreement.

9 And we are doing a summary order?

10 CHAIRPERSON GRIFFIS: Let me hear comments
11 from the Board if there is any objection to issuing a
12 summary order on this.

13 MEMBER ETHERLY: No objection, Mr. Chair.

14 MS. BAILEY: Thank you.

15 CHAIRPERSON GRIFFIS: Thank you very much,
16 Ms. Bailey. Thank you very much. The applicant,
17 thank you. Have a very good afternoon.

18 And please call the next case.

19 MS. BAILEY: Application number 17387 of
20 Strategic Georgetown LLC and Georgetown 32nd Street
21 LLC, pursuant to DCMR 3103.2, for a variance from the
22 rear yard requirements under section 404, to allow the
23 construction of two single-family row dwellings in the
24 R-3 district at premises 1517 and 1521 32nd Street,
25 Northwest, square 1270, lots 19, 20, and 74.

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1 MR. UTZ: Good afternoon, members of the
2 Board of Zoning Adjustment. My name is Jeffrey Utz,
3 and I'm with Pillsbury, Winthrop, Shaw, Pittman. And
4 I represent Georgetown 32nd Street LLC and Strategic
5 Redevelopment LLC, the applicants in BZA case number
6 17387.

7 Thank you for the opportunity to present
8 our case for variance relief from the rear yard
9 requirements of section 404.1 of the D.C. zoning
10 regulations.

11 The applicants propose to construct two
12 rowhouses on the properties that are the subject of
13 this application. One house is on lots 19 and 20, and
14 one house is on lot 74.

15 Both of the houses will not conform to the
16 minimum rear yard requirements of the zoning
17 regulations. Both rowhouses will be single family
18 homes and conform to the D.C. municipal regulations in
19 all other ways.

20 The properties are located in the R-3 zone
21 district, which permits row dwellings as a matter of
22 right. Under section 404.1 of the zoning regulations,
23 the minimum rear yard for a structure in the R-3 zoned
24 district is 20 feet. The applicants request variance
25 relief from section 404.1 to construct two rowhouses

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1 on the properties that have rear yards that are less
2 than 20 feet.

3 The rear yard at 1521 32nd Street,
4 Northwest is to be 18 feet, 2 inches on average, and
5 the rear yard at 1517 32nd Street, Northwest is to be
6 18 feet, 10 inches. The applicants satisfy the
7 standards for granting area variance relief.

8 Currently the applicants are also seeking
9 a subdivision to combine lots 19 and 20 into one new
10 record lot. Since these lots are located in the
11 Bowie-Sevier historic landmark, subdivision approval
12 by the mayor's agent for historic preservation will be
13 required. HPRB recommended the subdivision. And the
14 Commission of Fine Arts approved the concept design.

15 Due to the shallow lot depth of the
16 properties in a diagonal intersection of the
17 properties' lot line with 32nd Street, Northwest, the
18 rowhouses permitted as a matter of right would be
19 forced closer to the street if full rear yards were
20 required on the properties, as dictated under the
21 zoning regulations. In fact, the mayor's agent for
22 historic preservation approved houses on lots 74 and
23 75 that had complying rear yards and smaller front
24 yards than those proposed by this application.
25 However, that decision was appealed by the neighbors

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1 of the properties.

2 That litigation has been stayed in the
3 District Court of Appeals due to a settlement
4 agreement between the applicant, the neighbors,
5 Council Member Jack Evans, and ANC-2E. That
6 settlement agreement pushed the houses into the rear
7 yard, as Darren Phillips will explain.

8 With that, I would like to turn it over to
9 Darren Phillips, the managing member of the applicant,
10 to provide more detail about the properties and about
11 the project.

12 CHAIRPERSON GRIFFIS: Quick clarification.
13 I appreciate that opening statement. Lot 75, number
14 1515 is not part of this application. Is that
15 correct?

16 MR. UTZ: Correct.

17 CHAIRPERSON GRIFFIS: Because it has a
18 conforming rear yard, and we're only looking at rear
19 yards. Good. Okay. Although that is part of the
20 development that is happening here?

21 MR. UTZ: Right.

22 CHAIRPERSON GRIFFIS: Okay.

23 MR. PHILLIPS: Good afternoon, members of
24 the Board of Zoning Adjustment. My name is Darren
25 Phillips. I am the managing member of both Georgetown

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1 32nd Street LLC and Strategic Redevelopment LLC, the
2 owner of the properties 1515, 1517, 1521 32nd Street,
3 Northwest.

4 The two rowhouses proposed for the
5 property is part of a large four-townhouse development
6 on the same side of the street. We have received all
7 the necessary approvals to build one single family
8 house on lot 73, square 1270, 1525 32nd Street, just
9 north of the property, just north of the subject
10 property, and have started construction on this house.
11 We plan to build the fourth house on lot 75 and square
12 1270, 1515, just south of the subject property.

13 Historically the properties were part of
14 the land associated with the Bowie-Sevier mansion,
15 which is located at 3124 Q Street. In 2002, we bought
16 the lots. We bought lots 19, 20, 74, 75 from Herb and
17 Patrice Miller.

18 After purchasing the property, we applied
19 with BZA to develop lots 19 and 20 and the mayor's
20 agent for approval for 2 new construction houses in
21 the Georgetown historic district in lots 74 and 75.

22 The development has a long procedural
23 history and ultimately involved the mayor's agent
24 approval of the project on lots 74 and 75. The
25 neighbors appealed the decision and the subsequent

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1 decision. And those cases have been stayed in the
2 D.C. Court of Appeals and are to be dismissed under
3 the provisions of a settlement agreement that we reach
4 with our neighbors.

5 We determined to combine lots 19 and 20
6 and record a new record lot. This is the combination
7 of lots 19 and 20.

8 After nine months of negotiations with the
9 neighbors, we entered into a settlement agreement with
10 them. Council Member Jack Evans, ANC-2E, agreed to
11 significant front yard setbacks for lots 19, 20, and
12 74, and 75. The neighbors agreed to dismiss their
13 appeals in support of the application.

14 Therefore, the strict enforcement of the
15 rear yard requirements at the properties creates
16 substantial practical problems because the houses
17 cannot be located any closer to the street than they
18 currently are in this diagram.

19 We request permission to construct two
20 rowhouses on the properties, one house to be of the
21 combined lots 19 and 20 after the mayor's agent
22 subdivision approval at 1521 32nd Street, Northwest.
23 The other house will be on lot 74, 1517 32nd Street.

24 The house at 1521 32nd Street will be
25 approximately 24 feet, 4 inches high. The house at

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1 1517 32nd Street will be approximately 33 feet high,
2 1517, 1521.

3 The lot occupancy for lots 19 and 20 and
4 lot 74 is 58.3 percent and 60 percent, respectively.
5 Therefore, both houses are well under the 40-foot
6 maximum height and 60 percent maximum occupancy
7 allowed by the R-3 zoning district. The construction
8 will conform to zoning regulations in all other
9 aspects.

10 In addition to the project, it will be
11 abutted by permanent green space, which will be
12 landscaped and maintained by the owners of lots 19 and
13 20. In addition, we shall place and register a
14 conservation easement on each house on the properties
15 on lot 75 to be recorded with the Recorder of Deeds.

16 The project requires an area variance from
17 section 404.1 of the zoning regulations, which we meet
18 the test for this requested variance. The properties
19 are affected by several factors that create an
20 exceptional condition.

21 The properties' inclusion in the
22 Bowie-Sevier House historic landmark puts constraints
23 on the development of the properties beyond those of
24 the Georgetown Historic District. Unique because the
25 unusual shape of its lots, 32nd Street cuts through

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lots 19, 20, and 74 at such a large angle a piece of the front yard is taken out, the zoning and historic preservation procedural history, the properties have been the subject of historic preservation, application, and subdivision, a BZA appeal, historic preservation applications for new construction and revisions to the related plans.

And, lastly, the settlement with the neighbors alters the site plan to approve by the mayor's agent, pushes the buildings back. And the depth of the houses will be reduced as much as possible while still providing suitable corridors and minimum room sizes.

We must demonstrate compliance with the area restrictions. Restriction would be unnecessarily burdensome and the practicality difficult and unique to the particular property, unduly burdensome. There are two reasons. The first reason, we cannot comply with the strict rear yard setback while meeting with the requested front yard setback. The second is the unusual shape of the lots, unique.

All the difficulties are unique to this property because of the long procedural history, inclusion of the Bowie-Sevier House historic landmark.

And it's an unusual lot configuration. We

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1 can't shrink the depth of the houses any more due to
2 the minimum room, hall width, et cetera, for the
3 houses to be functional.

4 The request for the variance can be
5 granted without substantial detriment to the public
6 good and the zone plan. The project will be
7 consistent with the rowhouse development in the
8 neighborhood.

9 It will not change the overall permitted
10 density of the properties or the total size of the
11 development. The project will have no effect on the
12 light and air availability to the Millers' residence,
13 which is back here, this residence, or the new
14 homeowners on the property.

15 The Millers' property is heavily
16 landscaped. And the back yard drops off
17 significantly, which shields the structure on the
18 properties. In addition, the upper floors of the
19 houses will overlook the Millers' rear garden.

20 Other neighbors, ANC-2E, and Councilmember
21 Jack Evans support this application. We will actually
22 be adding open green space that is available for the
23 community and provided by the large landscape green
24 space area.

25 On lots 19 and 20, the variance for the

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1 rear yard would be one foot, 10 inches, smaller than
2 the rear yard requirement, or variation of 9 percent.
3 On lot 74, the variance for the rear yard would be one
4 foot, 2 inches smaller than the rear yard requirements
5 or variation of 6 percent. These variations are
6 negligible given the extent of the front yard setbacks
7 and the protection to the neighbors they have received
8 through this settlement. The project concept has been
9 approved by the Commission of Fine Arts.

10 And, lastly, community support from the
11 neighbors. The neighbors impacted by the project and
12 ANC-2E are now supportive of the project. The
13 settlement agreement addresses issues of these
14 community groups.

15 ANC-2E passed a resolution supporting the
16 project, in addition to many of the immediate
17 surrounding neighbors wrote a letter of support with
18 ANC-2E.

19 Thank you for allowing me to present this.

20 CHAIRPERSON GRIFFIS: Excellent. Thank
21 you very much. And I think that is incredibly
22 thorough and helps highlight an awful lot of the
23 detailed information that was already submitted.

24 Is there anything else in your
25 presentation at this time?

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1 MR. PHILLIPS: No.

2 CHAIRPERSON GRIFFIS: Let me ask you one
3 question. Why do the neighbors want it pushed back
4 from the street?

5 MR. PHILLIPS: To this day, I'm not really
6 sure, but that's what they wanted to make it.

7 CHAIRPERSON GRIFFIS: It makes a lot of
8 sense. I mean, I wouldn't mind having it. But if you
9 look at the context of the block and the structures
10 next to it, it seems like none of them are pushed
11 back. And also it, in fact, flies in the face of the
12 context of the historic district. But that's not any
13 of our business at this point.

14 Do we have an agreement?

15 (Whereupon, there was a chorus of "I
16 agree.")

17 CHAIRPERSON GRIFFIS: Then there it is.
18 Let's move ahead, then, if there are no other
19 questions for the applicant from the Board. Any other
20 questions? Yes, Ms. Miller?

21 VICE CHAIRPERSON MILLER: The bottom line
22 here basically the practical difficulty in complying
23 with the rear yard requirement is the settlement
24 agreement? But for the settlement agreement, could
25 you comply without the rear yard?

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1 MR. PHILLIPS: Yes.

2 VICE CHAIRPERSON MILLER: I know that has
3 a whole zoning history and everything with it. I just
4 want to know what --

5 MR. EPTING: If I could address it just
6 briefly, too? John Epting. You've got the Millers'
7 walk cutting in from the back. So that's how far we
8 can go back.

9 You do have the lot angle, which is an
10 issue. And the houses just really can't get any
11 smaller. So you add those together, in addition with
12 the settlement agreement. That's why we're here.

13 VICE CHAIRPERSON MILLER: The alternative
14 would be to go forward and cut into the front yard.
15 Is that right or not? Is that too simplistic? If it
16 weren't for the settlement agreement, you would go
17 forward and have a smaller front yard and a larger
18 rear yard?

19 MR. EPTING: Absolutely.

20 VICE CHAIRPERSON MILLER: Okay.

21 MR. EPTING: It would be in litigation
22 still.

23 CHAIRPERSON GRIFFIS: Interesting. Okay.
24 Anything else? Office of Planning, a very good
25 afternoon.

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1 MS. PARKER: Good afternoon, Mr. Chair.

2 CHAIRPERSON GRIFFIS: Don't worry. We're
3 not being broadcast live at all yet, just on the
4 transcripts. And they can't pick up facial maneuvers
5 here. Okay. Go ahead.

6 MS. PARKER: To further assist the
7 variance, I think that we have set out that they have
8 met the requirements. We support the development of
9 the proposed rowhouses on the subject site and
10 recommend that the requested variances be approved
11 with the flexibility to make any changes to the plans
12 that do not affect the variance request.

13 Thank you, Mr. Chairman.

14 CHAIRPERSON GRIFFIS: Excellent. Thank
15 you very much. In fact, it's an excellent Office of
16 Planning report that runs through the entire case
17 presentation.

18 You know, in context of all of today's
19 applications, I think this is a good one to end today
20 with because it does show the fact that: one, there
21 is incredible uniqueness of shape of the site and the
22 location of the road, also the confluence of factors
23 as they have laid out here in terms of the historic
24 district.

25 Then let's add in this whole neighborhood

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1 discussion. Let's take that out, actually. And let's
2 say that they just want a front yard and they decide
3 to do that.

4 Is it unnecessarily burdensome? Because,
5 look, we could look at there may be a legal -- I won't
6 take more than five minutes. There may be this legal
7 vein of some sort that says no, the Board -- actually,
8 I don't want to say that. Okay.

9 If they're just making a decision to place
10 this back, I think one could say that there's a strong
11 case made that the variance from the rear yard could
12 be granted. It's factoring in all of these things
13 that are thrown around here.

14 It's interesting that we're at this point.
15 It seemed to be important to me anyway. But,
16 nonetheless, I think that going directly to the Office
17 of Planning's report, it is true that the analysis --
18 it is fairly clear that it is laid out here that with,
19 then, this agreement of setting it back, with the
20 litigation, with the historic review, with the
21 placement of this, which I don't think the Board
22 belittles any of those reviews of the Georgetown board
23 or CFA or historic preservation, an understanding of
24 why that was an important move we may not have clear
25 understanding of.

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1 But all of those are of cumbersome nature,
2 that each has to be dealt with and complied with. And
3 then all of these reviews need to come together to
4 make a viable project. All that adds to I think the
5 uniqueness as we look at it but also practical
6 difficulty in complying. I know we don't need to
7 spend a lot of time on this because my reading from
8 the Board already is that this is a fairly
9 straightforward case with great support.

10 But, lastly, the minimis nature that is
11 being asked here in terms of the rear yard I think is
12 an important aspect also to take under consideration.

13 All right. That being said, are there any
14 other questions from the Board of the Office of
15 Planning? Thank you for that report. Certainly does
16 the applicant have cross-examination of the Office of
17 Planning?

18 MR. EPTING: No.

19 CHAIRPERSON GRIFFIS: No questions. Very
20 well. Good. Thank you all very much. Let's move
21 ahead, then, to any government reports attendant to
22 the application, which I don't have any. We have
23 noted all of those other aspects and agencies, the
24 historic, that have gone through this.

25 I will note that Councilmember Evans,

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1 exhibit number 32, had written a support letter. It
2 is also denoted in all of the agreements and
3 negotiations. Obviously it was a large participant in
4 that as were the other area residents in their
5 differing capacities.

6 Am I missing anything else? I don't have
7 any other notes unless the applicant is aware of any
8 other submissions in regards to this. Very well.

9 Then noting that there is no one else in
10 the hearing room unless the doors are locked, nobody
11 is here to provide testimony in application 17387,
12 support or in opposition, we can move to any other
13 last questions from the Board or the applicant. Mr.
14 Mann, did you have a question?

15 MEMBER MANN: Not a question, but I was
16 going to note that exhibit 33 was a letter that was
17 actually not supporting the project.

18 CHAIRPERSON GRIFFIS: Good. I'm glad you
19 bring that up. I just had that in hand and was
20 looking at that and the fact that opposition of Mr.
21 Burnson, who is an owner I believe on the block. It's
22 a tax lot that's listed concerned about the
23 construction on the block. Is that correct?

24 MEMBER MANN: No. I think he is using the
25 word "construction" as the buildings, their final

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1 completion. He simply says that he objects to the
2 construction due to the already dangerous traffic and
3 congested parking conditions, which will be magnified
4 substantially on such a narrow street.

5 But I don't believe we have heard any
6 evidence or seen any evidence in the presentation that
7 would show that there is going to be a substantial
8 magnification of traffic or parking conditions.

9 CHAIRPERSON GRIFFIS: Right. It's
10 interesting if it was within our jurisdiction to look
11 at that, but what I see in the plans that were
12 submitted in exhibit 11 and also the prehearing
13 submission is that there is actually parking space
14 provided.

15 Am I correct in looking at that that
16 there's actually parking for --

17 MR. PHILLIPS: There is parking space
18 provided, not only during construction but each
19 residence will have his own parking.

20 CHAIRPERSON GRIFFIS: Right. The
21 completed project is what we are looking at. They
22 have that drive aisle that there are two curb cuts
23 that access --

24 MR. PHILLIPS: Actually, there is one curb
25 cut in the center. This is a private alley owned by

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1 the Millers. And then there is a public alley at the
2 other end.

3 CHAIRPERSON GRIFFIS: Okay. Yes?

4 VICE CHAIRPERSON MILLER: I just want to
5 follow up on something you said, Mr. Epting. And it's
6 also in your pleading that we were talking about the
7 limitations on the property for options. One was that
8 you said that there is no way to further strengthen
9 the footprint of the houses, that they have been
10 struck back as much as practical. Can you just
11 explain that?

12 MR. EPTING: Let me let Mr. Phillips
13 explain it from a construction standpoint.

14 VICE CHAIRPERSON MILLER: Okay.

15 MR. PHILLIPS: From a construction
16 standpoint -- let me grab the floor plan. I don't
17 have the drawing that I looking for. From a
18 construction standpoint, the biggest single problem is
19 the lots are 20 feet wide when you have to put a
20 staircase in, carry the staircase, it is a substantial
21 amount of space.

22 And basically what you wind up doing by
23 having a staircase, then having a hallway to access
24 the front and the back, you wind up with rooms in the
25 front, rooms in the back, and some type of storage in

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1 the middle.

2 And by making that smaller, you make the
3 rooms that are in the front and the rear of the house
4 even less effective because it pushes the staircase
5 into those rooms.

6 VICE CHAIRPERSON MILLER: Thank you.

7 CHAIRPERSON GRIFFIS: Anything else? Any
8 other questions?

9 (No response.)

10 CHAIRPERSON GRIFFIS: Mr. Utz, any
11 conclusions?

12 MR. PHILLIPS: You might have just covered
13 this, but I think today or yesterday a letter was
14 submitted by the neighbors into the -- it might be
15 exhibit 34 that you just referenced.

16 CHAIRPERSON GRIFFIS: Yes, 36.

17 MR. PHILLIPS: Great.

18 CHAIRPERSON GRIFFIS: Is it?

19 COMMISSIONER JEFFRIES: Thirty-eight, 38.

20 MR. PHILLIPS: Okay. And those neighbors
21 are the neighbors that are also party to the
22 settlement agreement. Nothing further from us other
23 than we just ask the Board to approve the application
24 as a bench decision and request a summary order and
25 really appreciate the opportunity to present our case.

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1 Thanks.

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

4 Any last questions from the Board?
5 Clarifications?

6 (No response.)

7 CHAIRPERSON GRIFFIS: Very well. I think
8 it's appropriate to move forward with a motion on
9 this. And I would move approval of application 17387
10 for the premises of 1571-1521 32nd Street, Northwest.
11 And that is for the variance from the rear yard
12 requirements under section 404. I would ask for a
13 second.

14 COMMISSIONER JEFFRIES: Second.

15 CHAIRPERSON GRIFFIS: Thank you very much,
16 Mr. Jeffries. I think this is very clear in the case.
17 Actually, probably the site itself is familiar to a
18 majority of the Board as we have seen the previous
19 zoning history with this as it is part of the case
20 presentation. I think I recall the analogy of
21 buffaloes roaming the range in our last iteration on
22 this.

23 But, nonetheless, this is a very clear
24 application in terms of the relief that is being
25 sought today. And I think that that zoning history

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1 plays, in part, to the confluence of factors that has
2 led it to where we are with this aspect, clearly the
3 shape of the lots and their location in terms of the
4 front and the back shape with the street and the
5 property lines but also the location in the historic
6 district lends itself to the review, the history, and
7 the practical difficulty in providing an agreement in
8 all of those factors in terms of having a satisfactory
9 development scenario that complies fully with the
10 zoning regulations. And we find ourselves looking at
11 a de minimis rear yard variance being requested.

12 And I do not think that this would impair
13 the integrity and integrity of the zone plan map or
14 the public good in any fashion and would, therefore,
15 support the application.

16 I will turn to others for their
17 deliberative comments. Anything else? Yes?

18 VICE CHAIRPERSON MILLER: No. I think you
19 covered every aspect, really.

20 CHAIRPERSON GRIFFIS: Thank you.

21 VICE CHAIRPERSON MILLER: I would support
22 that.

23 CHAIRPERSON GRIFFIS: Anything else?

24 (No response.)

25 CHAIRPERSON GRIFFIS: Very well. If there

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1 is nothing further, we have a motion on the floor. It
2 has been seconded. Let me ask for all of those in
3 favor signify by saying aye.

4 (Whereupon, there was a chorus of
5 "Ayes.")

6 CHAIRPERSON GRIFFIS: And opposed?

7 (No response.)

8 CHAIRPERSON GRIFFIS: Abstaining?

9 (No response.)

10 CHAIRPERSON GRIFFIS: Very well. We will
11 record the vote now.

12 MS. BAILEY: Mr. Chairman?

13 CHAIRPERSON GRIFFIS: Yes?

14 MS. BAILEY: The vote is recorded as 5:0:0
15 to approve the application. Mr. Griffis made the
16 motion. Mr. Jeffries seconded. Mr. Mann, Mrs.
17 Miller, and Mr. Etherly are in agreement.

18 Are we doing a summary order, sir?

19 CHAIRPERSON GRIFFIS: I see no reason not
20 to issue a summary order. The rules and regulations
21 say if there is any opposition from the Board members.

22 (No response.)

23 CHAIRPERSON GRIFFIS: Not hearing any,
24 we'll do that. Thank you very much. Thank you all
25 very much. We appreciate it.

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1 MR. PHILLIPS: Thank you.

2 CHAIRPERSON GRIFFIS: Excellent job. And
3 good luck with these findings.

4 (Whereupon, the foregoing matter was
5 concluded at 4:38 p.m.)

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