

GOVERNMENT  
OF  
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

+ + + + +

PUBLIC MEETING

+ + + + +

TUESDAY

NOVEMBER 1, 2005

+ + + + +

The Public Meeting convened in Room 220 South, 441 4th Street, N.W., Washington, D.C., 20001, pursuant to notice at 10:13 a.m., Geoffrey H. Griffis, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

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

ZONING COMMISSION MEMBER PRESENT:

CAROL J. MITTEN	Chairperson
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OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY	Secretary
BEVERLEY BAILEY	Zoning Specialist
JOHN NYARRU	Zoning Specialist
TRACEY W. ROSE	Senior Zoning Specialist

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

SHERRY GLAZER, ESQ.  
LORI MONROE, ESQ.

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OFFICE OF PLANNING STAFF PRESENT:

TRAVIS PARKER

This transcript constitutes the minutes  
from the Public Meeting held on November 1, 2005.

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

10:13 a.m.

CHAIRPERSON GRIFFIS: Let me call to order this November 1, 2005 public meeting of the Board of Zoning Adjustments to the District of Columbia.

My name is Jeff Griffis. The Chairperson joining me today is the Vice-Chair, Ms. Miller. And representing the National Capitol Planning Commission is Mr. Mann.

Mr. Etherly is away on travel for business and will not be able to join us here in the hearing room today. But I believe he has reviewed and may well be indicating his deliberative decisions on certain cases for this morning's decisions.

Copies of this hearing agenda are available for you. They are located on the table where you entered into the hearing room. You can pick that up and see what is on our agenda for decisions today.

I would ask that people please turn off cell phones and beepers at this time so we don't interrupt the transmission of our proceedings.

Of course, our public meeting is set and scheduled for deliberation and decisions on cases that have previously been heard. We are not going to hear

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1 any additional testimony on these cases; but will  
2 review and deliberate and decide on the record that  
3 has been previously created before us.

4 I should say a very good morning to our  
5 Office of Zoning staff. On my very far left is Ms.  
6 Bailey, and Mr. Moy, closer to me on the left. The  
7 Office of the Attorney General is represented by Ms.  
8 Glazer and Ms. Monroe, with us this morning.

9 Mr. Nyarku is also in and out attending to  
10 the Board and the Office of Zoning.

11 With that, Ms. Bailey, if you wouldn't  
12 mind, a very good morning to you, calling the first  
13 case for our decisions this morning.

14 MR. MOY: Yes, sir.

15 CHAIRPERSON GRIFFIS: I'm sorry, Mr. Moy.

16 MR. MOY: Good morning, Mr. Chairman and  
17 members of the Board. That's fine. We work as a  
18 team.

19 We do have just a very quick preliminary  
20 matter, if I may, Mr. Chairman. The second case in  
21 the afternoon, I don't believe we have a quorum for  
22 that since you as the Chair and Ms. Miller and Mr.  
23 Etherly are participating on the case.

24 However, Mr. Etherly, as you mentioned  
25 earlier, is not with us; is not present this morning.

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1 CHAIRPERSON GRIFFIS: The second case, No.  
2 17027, Emergence, Inc. Is that correct, Mr. Moy?

3 MR. MOY: That's correct, Mr. Chairman.

4 CHAIRPERSON GRIFFIS: Yes, I tend to  
5 agree. We have that in as a minor modification. And  
6 as we don't have, as you've indicated, a quorum, in  
7 order to deliberate on that, I would suggest that we  
8 move that to another date so that we might be able to  
9 take that up.

10 I think we should probably, if it's  
11 appropriate, Mr. Moy, in your review of the schedule,  
12 move that to next week. We do have a special public  
13 meeting already scheduled; however, it doesn't appear  
14 that this will take up much additional time in our  
15 review. And we might be able to fit it in then.

16 VICE-CHAIRPERSON MILLER: Yes, sir. Staff  
17 would concur.

18 CHAIRPERSON GRIFFIS: Okay.

19 MR. MOY: To take that up on the special  
20 public meeting on November 8.

21 CHAIRPERSON GRIFFIS: Let's do that then.

22 MR. MOY: Okay. The first case then, this  
23 morning, Mr. Chairman, is Application No. 17369 of  
24 Kenneth and Andrea Pogue, pursuant to 11 DCMR 3103.2,  
25 for a variance from the non-conforming structure

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1 provisions to allow an addition to an existing  
2 accessory garage under Subsection 2001.3; a variance  
3 to allow an accessory garage exceeding one story in  
4 height under Subsection 2500.4; a use variance to  
5 allow living quarters on the second level of an  
6 accessory garage under Subsection 2500.5; and a  
7 variance from the side-yard accessory building set-  
8 back requirements under Subsection 2500.6; to allow a  
9 second story addition of living quarters on an  
10 existing accessory garage in the R4 District at  
11 premises 1029 4th Street, N.E. That's in Square 806,  
12 Lot 23.

13 On October 18, 2005, the Board completed  
14 public testimony on the application and scheduled its  
15 decision on November 1, 2005.

16 The Board requested additional information  
17 from the applicant, which the applicant has filed in  
18 the record. And it identified in your case folders as  
19 Exhibit 26.

20 The Board is to act on the merits of the  
21 application. And that concludes the staff's briefing,  
22 Mr. Chairman.

23 CHAIRPERSON GRIFFIS: Good. Thank you  
24 very much Mr. Moy. And the full reading of the  
25 application, I think, is appropriate, Mr. Moy. As it

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1 was advertised.

2 Or course, it was amended and the hearing  
3 proceeded with the amended application. The applicant  
4 had brought that to the Board. The Office of Planning  
5 had also concurred and analyzed the application, based  
6 on the amended variance request.

7 That variance request, if I am  
8 understanding, was under 2001.3, and also for the lot  
9 occupancy, which is 403.2.

10 There was some initial discussion from the  
11 Board of whether the rear yard variance should also be  
12 required, as this was an existing site with a garage  
13 accessory structure that is allowable in the rear yard  
14 and it is able to occupy a certain percentage of the  
15 rear yard.

16 However, the proposal to attach the  
17 accessory structure to the primary structure, making  
18 it a single structure. It would then remove the  
19 accessory structure from the rear yard; thus occupying  
20 the rear yard.

21 So I believe that the amended application  
22 is appropriately before us with the rear yard also  
23 included.

24 We did have additional filings on this  
25 which were excellent in terms of the completeness and

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1 thoroughness for the application and the issues that  
2 were to be presented for the Board.

3 Let me begin first in looking at some of  
4 my concerns in terms of the test for the variances  
5 that were put before us.

6 I believe other Board members will talk  
7 about the uniqueness. But I believe that there is the  
8 aspects of uniqueness to this site.

9 The fact of a corner lot; the curb cut;  
10 the access to the accessory structure; these are  
11 elements that I believe begin to make for the test of  
12 the variance in terms of uniqueness.

13 My difficulty has been in looking and  
14 reviewing and hearing this. And believe me, I spent  
15 a lot of time deliberating on this to try and find and  
16 get more in depth; really, almost read between the  
17 lines in the application of the next criterion for  
18 approval of the variance.

19 And that is, out of these uniqueness; out  
20 of these unique aspects, where is the practical  
21 difficulty in conforming with the zoning regulations?

22 And there is a substantial amount of  
23 evidence of the demand for renovation of this  
24 structure. The remedying of certain situations in  
25 terms of water seepage and mold and then infestations,

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1 etc.

2           Definitely, a critical issue that needs to  
3 be taken to task and dealt with. However, in all my  
4 search, I found nothing that led me to the zoning  
5 regulations in those elements.

6           So, again going back to the unique  
7 characteristics of the property, I still was wanting  
8 for the practical difficulties in compliance.

9           We have a non-conforming structure and the  
10 uniqueness essentially is that this is an existing  
11 structure built prior to the zoning regulations and  
12 their adoption.

13           And certainly, I concur with that. Now,  
14 what the practical difficulty out of that uniqueness  
15 is in terms of making the addition to attach the  
16 accessory structure to make a single structure, I  
17 don't -- I'm not persuaded by the linkage that's  
18 provided.

19           There seems to be in the last filing, I'm  
20 not sure if it was correctly understood or perhaps  
21 this is the vein of argument that's being taken. In  
22 that there's a substantial amount of discussion on  
23 bringing this into conformity with the regulations.  
24 Meaning, what would have to be removed in demolishing  
25 an entire existing garage or demolishing 19.5 percent

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1 of the structure to bring it.

2 But there's nothing in the regulations  
3 that is demanding that this come back into compliance.  
4 Unlike, for instance, building code might. As you  
5 renovate a building, you have to bring it up to total  
6 building code.

7 The Zoning Regulations don't require that  
8 aspect. But rather, if a variance from the matter of  
9 right, it obviously has to be shown that it is unique  
10 and that it is practically a difficult thing complying  
11 fully with it.

12 The aspect of the compliance with -- or  
13 being able to comply with the lot occupancy, I  
14 certainly am persuaded by that because you have a non-  
15 conforming lot occupancy.

16 But then I need to go back to what's the  
17 uniqueness that's arising of the practical difficulty  
18 in laying this out the way it's being proposed? The  
19 connections aren't there for me.

20 But let me leave it at that for now, and  
21 hear other people's deliberation on that.

22 VICE-CHAIRPERSON MILLER: I would agree  
23 with you. I thought that the supplemental pleadings  
24 were helpful in addressing the issues more. Because  
25 when I left the hearing, it was like I thought that

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1 the uniqueness they were talking about was the fact  
2 that it was uninhabitable, due to all these  
3 deteriorating conditions. And we had said that that's  
4 really not a unique situation that we could find.

5 So, when I went back to do the analysis,  
6 I saw that perhaps they could meet the first prong of  
7 the test in that this was a non-conforming structure  
8 that pre-dated the zoning regulations.

9 But I also found disconnects when I got to  
10 the practical difficulty test. I really didn't see  
11 that strict application of the zoning regulations was  
12 what was creating a practical difficulty.

13 We heard at the hearing a practical  
14 difficulty of living in a house while renovations were  
15 going on. And that's really not a zoning type of  
16 practical difficulty connected to the regulations.  
17 It's a temporary situation.

18 And then, in their pleading, the applicant  
19 said that there was a practical difficulty of not  
20 being able to renovate the property because of  
21 complying with the lot occupancy and rear yard  
22 requirements when compared to the severity of the  
23 relief requested weighs in favor of granting the  
24 requested relief.

25 And again, we don't do that kind of

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1 comparison under the statute. We have to really find  
2 a practical difficulty that actually stems from the  
3 condition of the property.

4 In this case, that might be that  
5 uniqueness that it pre-dated the regulations. And I  
6 just didn't see the practical difficulty that actually  
7 stemmed from that.

8 CHAIRPERSON GRIFFIS: Very well.  
9 Additions? Mr. Mann?

10 MR. MANN: I would add only that I concur  
11 with the analysis of my colleagues. There was a lot  
12 of new information that was presented in the  
13 additional filings. But it still didn't exactly  
14 connect the dots in a way that we need to prove the  
15 practical difficulty test.

16 And although there's some, you know,  
17 perhaps some compelling information regarding the  
18 severity of the condition of the house and even some  
19 information that perhaps added to the uniqueness of  
20 the property, I don't believe that it made the test.

21 CHAIRPERSON GRIFFIS: Okay. Good. I  
22 think it's difficult in terms of this, especially with  
23 certainly there's an amount of support. The analysis,  
24 I think, subsequently I looked at the Office of  
25 Planning's reports more often than a petition of

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1 surrounding neighbor's support. Although that's  
2 informative to the Board for its deliberation.

3 In going to the Office of Planning's  
4 report, they were indicating that some of the  
5 exceptional situations and practical difficulties were  
6 arising from the existing condition of the property.  
7 And we've touched upon that.

8 But I -- really, I looked long and hard to  
9 see how foundation problems or flooding problems, of  
10 great concern, but how they arose to the practical  
11 difficulty in complying with the regulations, outside  
12 of a temporary nature.

13 But, Ms. Miller, you had additional?

14 VICE-CHAIRPERSON MILLER: No. I just  
15 wanted to agree and say that when I read the Office of  
16 Planning's report again, I was struck by a line that  
17 said that they would be denied further options to  
18 pursue a flat on this lot without the single request  
19 of variance.

20 And I thought that was an interesting  
21 point. But it really wasn't developed. They really  
22 didn't explain how they would be denied or why the  
23 strict application of the regulation would lead to  
24 that. It's just a sentence that was put out there  
25 that I don't think the facts necessarily do lead to

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1 that conclusion.

2 CHAIRPERSON GRIFFIS: Meaning you think  
3 that they could fit a flat in the existing structure?

4 VICE-CHAIRPERSON MILLER: Well, I -- you  
5 know, again, in perusing the documents that were  
6 submitted, there were some I think in exhibit I, I  
7 guess it was, that talked about a basement apartment.

8 So it's not clear to me -- exhibit I to  
9 the -- or attachment I to exhibit 26. It's not clear  
10 to me that they could not pursue that without a  
11 variance.

12 So I just didn't think that they had made  
13 the argument. They may have raised an issue, but I  
14 don't think the facts necessarily support that.

15 CHAIRPERSON GRIFFIS: Very well.

16 VICE-CHAIRPERSON MILLER: And it's not to  
17 say that -- I think we said at the hearing, it's not  
18 that we're not sympathetic to the situation. But that  
19 we can't decide variance cases on sympathy.

20 CHAIRPERSON GRIFFIS: Indeed. Okay.  
21 Anything else? Is there action proposed by the Board?

22 Noting the deliberation by the Board, I  
23 think it's appropriate to continue our deliberation  
24 under a motion. And, understanding the substantive  
25 aspects of the statements now being said, I think it's

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1 appropriate under a motion to deny Application 17369  
2 as the amended application for the variances included  
3 of 2001.3 and the rear yard and lot occupancy for  
4 premises of 1029 4th Street N.E. And I would ask for  
5 a second.

6 VICE-CHAIRPERSON MILLER: Second.

7 CHAIRPERSON GRIFFIS: Thank you, Ms.  
8 Miller. I'll leave the record open at this point for  
9 any further deliberation from the Board. Any other  
10 aspects that have not been addressed?

11 Not noting any further comment, I would  
12 just say, first of all, I believe that, as I've said  
13 that the uniqueness and practical difficulty or  
14 special circumstances have not been persuasive enough  
15 to lead us -- lead me to go even further into the next  
16 tests of the variance.

17 Obviously, they are cumulative and one has  
18 to meet one before it moves on to the second. And so  
19 I'll be limited in any further discussion on whether  
20 it would impair the intent and integrity of the zone  
21 plan map or the public good.

22 I don't think that it would have  
23 necessarily gone to the detriment of those. But, I'm  
24 not reaching the final conclusions on those as I could  
25 not get beyond the nexus of the uniqueness of this

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1 aspect in creating the practical difficulty in  
2 compliance with the Zoning regulations.

3 Very well. If there's nothing further, I  
4 would ask for all those in favor of the motion to  
5 signify by saying aye.

6 ALL: Aye.

7 CHAIRPERSON GRIFFIS: And opposed? Mr.  
8 Moy, if you wouldn't mind?

9 MR. MOY: Yes, Mr. Chairman. The staff  
10 would record the vote as three to zero to zero. This  
11 on the motion of the Chairman, Mr. Griffis, to deny  
12 the application, seconded by Vice-Chair, Ms. Miller.  
13 Also in support of the motion, Mr. Mann.

14 Staff is in receipt of two absentee votes,  
15 Mr. Chairman. The first is from Mr. Parsons who  
16 participated on the case. He has voted to deny the  
17 application.

18 Would the Board care for me to read Mr.  
19 Parson's comments, or not?

20 In the mean time, the staff has also  
21 received an absentee vote from Mr. Etherly. And Mr.  
22 Etherly has voted to approve the application.

23 CHAIRPERSON GRIFFIS: Yes, Mr. Moy, I  
24 think it would be appropriate to read the comments  
25 from the absentee ballot submitted.

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1 MR. MOY: Yes, sir. Mr. Parsons's  
2 comments read as follows: "The BZA has no authority,  
3 nor should it, to grant a variance for a temporary  
4 condition on a property.

5 The condition of the building, which  
6 mandates a complete renovation or tear down, is not an  
7 extraordinary or exceptional situation or condition  
8 which would permit the Board to allow the addition to  
9 this garage, unless the addition was to be removed  
10 after the temporary condition is remedied."

11 CHAIRPERSON GRIFFIS: Good.

12 MR. MOY: So, the resulting vote, Mr.  
13 Chairman, would be four to one to zero. That's four  
14 in support of the motion to deny, and one to approve  
15 the application.

16 CHAIRPERSON GRIFFIS: Excellent. Thank  
17 you, very much, Mr. Moy.

18 On this record, also, I just want to make  
19 note that the Board was just delivered a letter from  
20 the Council Member of Ward 6, Ms. Ambrose. And I'm  
21 going to read it into the record, and it is addressed  
22 to myself.

23 And it's: "I respectfully request that I  
24 be permitted to submit a late letter attached for  
25 support." And the letter reads: "I'm submitting this

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1 letter in support of Mr. Kenneth Pogue's application  
2 for a zoning variance at 1029 4th Street, N.E. The  
3 case number is 17369.

4 Mr. Pogue has worked diligently with Skip  
5 Coburn and my staff, Trey Bell, with the Zoning  
6 Administrators, Commissioner Neil Burnell and  
7 Commissioner Travel Parker of the Office of Planning  
8 and the District Transportation to obtain concurrence  
9 of all of the above with his proposed construction.

10 I have also taken note of the fact that  
11 Mr. Pogue's house and property are not vainness to our  
12 District.

13 I hope the Board of Zoning Adjustment will  
14 rule favorably on his request."

15 I think we can take this into the record.  
16 But I don't note that that would change any of the  
17 members' deliberations on it. But I'm open to hear  
18 that if it would.

19 As we don't really go into the substantive  
20 aspects of what we were to be dealing with. And  
21 certainly, all those that the Council Member has  
22 indicated as being participants in this analysis of  
23 the application, we have heard from; specifically, the  
24 Office of Planning.

25 But I'll leave it open for any of the

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1 Board members to give comments on that.

2 Very well. Not noting any comments, could  
3 you pass that back down to them? Let's move ahead  
4 then.

5 MR. MOY: Yes, sir. The next and last  
6 case for decision making is Application Number 17349,  
7 or Michael Taylor. Pursuant to 11 DCMR 3104.1, for a  
8 special exception to allow a rare addition to an  
9 existing single family detached dwelling. Under  
10 Section 223, not meeting the lot occupancy, Section  
11 403, side yard, Section 405; and non-conforming  
12 structure provisions, Sub-Section 2001.3, at premises  
13 6919 6th Street, N.W.. That's in Square 3191, lots 19  
14 and 811.

15 On October 25, 2005, the Board completed  
16 public testimony on the application and scheduled its  
17 decision on November 1, 2005.

18 The Board did not request any further  
19 information from the parties. And the Board is to act  
20 on the merits of the special exception under Section  
21 223, Mr. Chairman.

22 CHAIRPERSON GRIFFIS: Excellent. Thank  
23 you very much, Mr. Moy.

24 Let's move right into this. Does anyone  
25 want to open discussion on this?

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1 MR. MANN: I'll open the discussion on  
2 this.

3 CHAIRPERSON GRIFFIS: Excellent. Thank  
4 you, Mr. Mann.

5 MR. MANN: I certainly say that it's  
6 interesting in receiving an application like this when  
7 the structure is substantially built. Because you  
8 actually get to view evidence that's been entered into  
9 the record that supports the requirement to have plans  
10 and photographs and the sort of documentation that  
11 allows us to thoroughly evaluate an application,  
12 perhaps in a way that was unintended.

13 But I think in a way it makes it easier to  
14 deliberate; not that the decision should be based  
15 necessarily on that alone. I think that the  
16 regulations have to be taken into consideration in  
17 their entirety.

18 But, it does provide a unique starting  
19 point. And so, unlike certain applications that are  
20 less developed or less substantiated by evidence, this  
21 one had a lot to look at. It had a lot to deliberate  
22 on.

23 CHAIRPERSON GRIFFIS: Good. It is  
24 interesting to make that note, as we have. Once in a  
25 while we see that a partially constructed or fully

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1 constructed applications come in. And I tend to  
2 agree, perhaps, that it's easier to see things than it  
3 is graphically to represent them.

4 But I also disagree with that. Because I  
5 think even in the physical form, there are different  
6 opinions and we see, you know, that there are  
7 different subjective and maybe objective, but  
8 subjective aspects to it.

9 But with that, let's get to the details,  
10 then. Of course, the Taylor application came to us  
11 for a Special Exception under 223. The 223 Regulation  
12 is very well known to the Board and the criterion on  
13 which it needs to meet.

14 Let's begin by the first of several  
15 thresholds of the Special Exception case. Mr. Mann  
16 has certainly substantiated the fact that proffered  
17 documentation to represent what is being proposed is  
18 required.

19 But we also need to get through the  
20 threshold of whether, if approved, the addition would  
21 impact the light, air, use, privacy and enjoyment of  
22 the adjoining neighbors and properties.

23 And then we can move on to the other  
24 tests, or however you would like to proceed.

25 VICE-CHAIRPERSON MILLER: Well, I think

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1 the crux of this case was around 223.2; whether or not  
2 the addition shall have a substantially adverse effect  
3 on the use or enjoyment of any abutting or adjacent  
4 dwelling or property.

5 And there is a lot of opposition to this  
6 application. The Office of Planning was opposed to  
7 it; the ANC Takoma D.C. Neighborhood Association;  
8 Historic Takoma D.C.; Council Members Brown and Fenty.

9 There was a lot of evidence put in on this  
10 case, I think, with respect to at least two of the  
11 criteria under 223.2. One being B, the privacy of use  
12 and enjoyment of the neighboring properties shall not  
13 be unduly compromised; and C, the addition taken  
14 together with the original building as viewed from the  
15 street, alley, and other public ways, shall not  
16 substantially visually intrude upon the character,  
17 scale, and pattern of houses along the frontage.

18 So, if we want to jump into the meat of  
19 this? Okay. Office of Planning said that, due to the  
20 difference in elevation, that this addition actually  
21 towers over the rear and side yards of adjacent  
22 properties and appears as if it's three stories.

23 I think this goes to both privacy and  
24 scale. But, with respect to privacy, that it also has  
25 five additional windows that are all visible to and

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1 overlook the adjacent house. And that the rear has  
2 three large glass doors that overlook the yards of  
3 adjacent properties.

4 I think that the Takoma parties describe  
5 this as a visual assault. I think, just taking the  
6 question of privacy, we heard from some individual  
7 neighbors.

8 One was Mr. Larry Hailes who lives at 530  
9 Cedar Street, who stated that it overwhelms his back  
10 yard. That it peers down over the rear. That there's  
11 a direct line of sight into the rear of the home. And  
12 it interferes with his privacy on his deck.

13 A Mr. Newman said that the privacy issue  
14 was very real, as well.

15 I think, you know, privacy is a tricky  
16 issue when you're talking about life in the city. And  
17 I think that the Applicant's position was, well, we  
18 live in the city and we look at each other's back  
19 yards and you can't expect houses to be that far away,  
20 or whatever.

21 But I think I was convinced personally  
22 that, in this case, we have an addition that's  
23 towering over people's back yards to a greater extent  
24 than I think the special exception relief should  
25 allow.

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1 I don't know if you want to discuss the  
2 privacy separate from the other? Okay. So then, when  
3 we go into C about visually intruding upon the  
4 character, scale, and patterns of houses, that  
5 addresses also along the frontage.

6 And we're questioning, well, can you see  
7 this from the street or alley, or whatever? And you  
8 can see this from Cedar Street. And we heard a lot of  
9 testimony and we saw pictures that this was out of  
10 character with the historic neighborhood.

11 This is a very special historic  
12 neighborhood. And OP described the addition as a  
13 rectangular box that did not incorporate architectural  
14 details consistent with other houses.

15 What I also was interesting is that the  
16 Applicant said well there have been other large  
17 additions in this neighborhood. But the Takoma  
18 parties presented evidence that, in other instances,  
19 the bigger houses have larger lots. And so,  
20 therefore, that they were still in character with the  
21 neighborhood.

22 We heard testimony from a Nancy Smith who  
23 said that the impact is overwhelming. That, when  
24 people went by, they said -- and I thought this was  
25 kind of compelling, just testimony. "Oh, my God.

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1 What is that? How did anyone get away with building  
2 that monstrosity?"

3 And the Vice President of Historic Takoma  
4 said that the photos don't convey how massive this  
5 addition really is.

6 And I found these witnesses very credible.  
7 They've lived in Takoma almost all of their -- many of  
8 them lived in Takoma all of their lives. And there is  
9 a great unanimity that this was an exceptionally  
10 massive intrusion.

11 So, I think, based on all of that  
12 testimony and the pictures in the record, I think it  
13 is out of character and does visually intrude upon the  
14 character, scale, and pattern of the houses along  
15 Cedar Street and in this historic neighborhood.

16 And therefore, it's not the type of  
17 situation for special exception relief.

18 CHAIRPERSON GRIFFIS: Good. Thank you.  
19 Others? Mr. Mann?

20 MR. MANN: Yes. I actually agree with the  
21 analysis the Ms. Miller presented and the conclusions  
22 that she came to. And I would add that sometimes  
23 Section 223 to me seems like something that is  
24 subjective, as you mentioned before.

25 But I actually believe there was enough

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1 evidence entered into the record and the testimony  
2 that we heard was substantial enough and compelling  
3 enough to make me feel as though a lot of the  
4 subjectivity was taken out of this. And I was  
5 actually able to evaluate the sections of 223  
6 objectively.

7 And I came to the same conclusions that  
8 Ms. Miller just outlined. And I do agree with her  
9 that the privacy of use and enjoyment of neighboring  
10 properties is unduly compromised, in addition with the  
11 visual intrusion on the character, scale, and pattern  
12 of houses.

13 CHAIRPERSON GRIFFIS: Good. Thank you,  
14 very much. And noting in my own deliberation on this,  
15 in terms of the privacy, I was not -- there was  
16 certainly impact. But one might say that of any sort  
17 of addition.

18 Even in the additions of the adjacent  
19 properties there was some impact on the neighboring  
20 properties. Whether it rises to the level of not being  
21 supported by this Board.

22 I was more persuaded by the Applicant's  
23 representation in terms of their description of  
24 privacy, in that it is not absolute privacy or one's  
25 right in adjacent neighbors. But there's a relativity

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1 to it.

2 And I think, from a starting point,  
3 especially in the review of 223, this cut close to the  
4 threshold and maybe near it. But it was -- it's not  
5 the most determinative factor for me.

6 However, when you start putting it into  
7 the other aspects, as both of you started to talk  
8 about, the other aspects of the scale and the  
9 character and whether it's visually intrusive; well  
10 then it does start to come and rise to the level of  
11 how that integrates into the adjoining properties.

12 And really, that's what 223 as I view it  
13 is about. It specifically enumerates certain things  
14 that we need to look at. But it is all encompassing;  
15 even down to the fact of materiality and lighting and  
16 screening is under our jurisdiction for this.

17 Now I know the Board has taken a stance in  
18 past review of this when an application is in an  
19 Historic District to not go too far with the design  
20 review of that; knowing full well that the Historic  
21 Preservation Board, HPRB, will review that.

22 But I don't think, as I'm hearing you, and  
23 my own deliberation didn't get directly into the  
24 absolute design, but it's more in the conceptual  
25 massing of this building that rose to a level of

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1 concern. That's what I'm hearing today.

2 I tend to begin to agree. One of the most  
3 persuasive things that I believe I heard from the  
4 Office of Planning and in their report was the fact  
5 that the square footage might have been able to have  
6 been accomplished.

7 Perhaps not directly, exactly the square  
8 footage, but the articulation of the building should  
9 have taken a different tack in order not to become so  
10 heavy and so intrusive.

11 The Applicant made the statement in their  
12 testimony and their representative indicates that they  
13 were following the same roof line all the way through  
14 the project; that there was not a breaking of that.  
15 And that was their intent of taking -- the maintaining  
16 of character.

17 However, in doing that, they lost one of  
18 the elements of scale to the addition. And really,  
19 it's a difficult balance, I think, in a design to  
20 appropriately do that with a beginning of a bungalow  
21 structure.

22 However, I think that the grade of the  
23 site could have been utilized better. And I think  
24 some articulation could have actually helped, in terms  
25 of a varying roof line; maybe varying masses, as you

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1 moved back into the site, itself.

2 I think if you looked at the surrounding  
3 character, it was persuasive on both sides; the  
4 opposition and the Applicant's, that it is an eclectic  
5 architectural character in the neighborhood in  
6 massing.

7 Ms. Miller is absolutely correct, and a  
8 lot of the photographs that we saw on additions, there  
9 were larger houses, three stories, many of them;  
10 differing types of architecture and on differing sized  
11 lots.

12 However, I don't think that that would  
13 necessarily mean you could not do anything on this  
14 particular site or this particular structure. But  
15 rather, take cues from those surrounding and see how  
16 they were articulated and massed and often times  
17 diminished in scale and importance as it went to the  
18 rear of the properties and around the sides, as  
19 opposed to a very formal, strong front.

20 I don't think this is the first time a  
21 bungalow has been added on to in an historic district,  
22 or proposed to be added on to. And I think there are  
23 some successful ways to doing it.

24 I did find, however, that this lacked any  
25 success in terms of meeting the test under the 223,

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1 that demands that we look at whether it would become  
2 an intrusion of character, scale, design. And I find  
3 that it fails in that regard.

4 To that, does that go directly to the  
5 privacy, use, and enjoyment of the neighboring  
6 properties?

7 As I started this, I don't -- I think it's  
8 compromised in this case. I don't think that if it  
9 was alone, the single threshold element, that I would  
10 -- I'm not sure that I would deny an application based  
11 on that it was unduly compromising it.

12 Just the fact of the number of windows or  
13 whether there was a view into someone else's back  
14 yard. But the fact of the dimension of this and the  
15 carrying back of it.

16 It may have been more appropriate to go  
17 higher and not so further back. I find that, in  
18 combination with the massing of this, that it has in  
19 fact risen to the level of also unduly compromising  
20 those enjoyments of the neighboring properties.

21 Mr. Mann has adequately indicated that the  
22 graphic representation, and I think we had substantial  
23 on both sides for the application; certainly from the  
24 Applicant.

25 And I don't think that, you know, in

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1 223.4, looking at whether we could somehow -- if we  
2 looked at this as not build, but rather as proposed,  
3 is there any way that we could diminish the potential  
4 impact of this, and therefore move to approve a  
5 special exception?

6 That would mean, in terms of materiality  
7 or screening. I've spent some time thinking about  
8 that; how to deal with this and it's whether an  
9 appropriate way.

10 And I think that's the difficulty in  
11 returning to the instant application; is that it's in  
12 the massing. Which it's substantial moves that would  
13 have to be made.

14 And I think that goes beyond this Board's  
15 perhaps understanding, but certainly authority, in  
16 terms of -- well, I think it would move beyond just a  
17 simple recommendation, but more into a level of a  
18 redesigning aspect. And I don't think that it's  
19 appropriate for us to take those steps at this time.

20 I'll let other speak to any other further  
21 aspects of this.

22 VICE-CHAIRPERSON MILLER: I would agree  
23 with you. I think that basically, you know, the  
24 problem here is the towering over and the massiveness.  
25 And it's not like a little fix that we could

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1 condition, such as eliminating windows, that would  
2 change our decision.

3 CHAIRPERSON GRIFFIS: Okay. I just want  
4 to take an issue. I understand it's your opinion, but  
5 I take issue with the terminology of towering over.  
6 Because, in viewing the grades, it's not as if this  
7 was built substantially higher or taller in structure,  
8 but the grade itself is being utilized.

9 So, I'm not sure that that, from my  
10 deliberation, is the critical element. Or it  
11 certainly is not a description that I would use in  
12 looking at this. But rather, I certainly understand  
13 your view of it in that sense.

14 VICE-CHAIRPERSON MILLER: Well, I'd say  
15 it's one of the impressions I'm left with, with  
16 respect to why this is out of character in scale, but  
17 not the only one.

18 CHAIRPERSON GRIFFIS: Okay. Understood.  
19 Okay. Anything else? Additional deliberation. Is  
20 there an action proposed?

21 MR. MANN: Sure. Mr. Chairman, I would  
22 move that we deny Application 17349 of Michael Taylor  
23 for a special exception to allow a rare addition to an  
24 existing single family detached dwelling under 223,  
25 not meeting the lot occupancy, side yard, and non-

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1 conformance structural provisions at 6916 6th Street,  
2 N.W.

3 CHAIRPERSON GRIFFIS: Okay. Was there a  
4 second?

5 VICE-CHAIRPERSON MILLER: Second.

6 CHAIRPERSON GRIFFIS: Thank you, Ms.  
7 Miller. The motion is before us. It has been  
8 seconded. Is there further deliberation of the  
9 motion?

10 Very well. If there's no further  
11 deliberation of the motion that's before us, I'll ask  
12 for all those in favor signify by saying aye.

13 ALL: Aye.

14 CHAIRPERSON GRIFFIS: And opposed?  
15 Abstaining? Very well. Why don't we record the vote,  
16 Mr. Moy?

17 MR. MOY: Yes, sir. The staff would  
18 record the vote as three to zero to one. This is on  
19 the motion of Mr. Mann to deny the application,  
20 seconded by Ms. Miller, the Vice-Chair. Also in  
21 support of the motion, Mr. Griffis, the Chair.

22 We have no Zoning Commission member  
23 participating. As well, we have an absentee vote from  
24 Mr. Etherly, who participated on the case, Mr.  
25 Chairman. And he has voted to deny the application.

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1                   Which would give a resulting vote of four  
2 to zero to one. Mr. Etherly has written comments.  
3 Would the Board desire the staff to read the comments?

4                   CHAIRPERSON GRIFFIS: Yes, please.

5                   MR. MOY: Mr. Etherly's comments read as  
6 follows; "The addition would unduly affect the light  
7 and air to neighboring properties. Moreover, the  
8 privacy, use, and enjoyment of neighboring properties  
9 would also be unduly compromised. Finally, the scale  
10 of the addition would substantially visually intrude  
11 upon the character, scale, and pattern of houses along  
12 the street frontage."

13                  CHAIRPERSON GRIFFIS: Thank you, very  
14 much. Very well. Is there any other business for the  
15 Board in this morning's session?

16                  MR. MOY: No, sir.

17                  CHAIRPERSON GRIFFIS: Not noting any other  
18 business, then we can adjourn our November 1, 2005  
19 Public Meeting.

20                               (Whereupon, the meeting was adjourned at  
21 10:56 a.m.)

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