

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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PUBLIC HEARING

+ + + + +

TUESDAY,

JUNE 21, 2005

+ + + + +

The Public Hearing convened in Room 220 South, 441 4th Street, N.W., Washington, D.C. 20001, pursuant to notice at 9:30 a.m., Ruthanne G. Miller, Vice Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

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

ZONING COMMISSION MEMBER PRESENT:

KEVIN HILDEBRAND	Commissioner
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OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY	Deputy Secretary
BEVERLY BAILEY	Zoning Specialist
TRACEY ROSE	Zoning Specialist

D.C. OFFICE OF THE ATTORNEY GENERAL:

SHERRY GLAZER, ESQ.
LORI MONROE

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OFFICE OF PLANNING STAFF PRESENT:

ARTHUR JACKSON
TRAVIS PARKER

COURT REPORTER: Matthew Gates

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

9:59 a.m.

VICE CHAIRPERSON MILLER: Good morning.

This hearing will please come to order. This is the June 21st Public Hearing of the Board of Zoning Adjustment of the District of Columbia.

My name is Ruthanne Miller, I'm the Vice Chair of the BZA. Our Chair, Mr. Griffis, will not be with us today. Joining me today, to my right, is Mr. Hildebrand from the Zoning Commission.

Mr. Cliff Moy, from the Office of Zoning. Sherry Glazer, Office of Attorney General, and Ms. Beverly Bailey from Office of Zoning.

And to my left is Mr. John Mann, BZA member from NCPC, and Mr. Arthur Jackson is here for the first case from the Office of Planning, and Ms. Tracey Rose is also with the Office of Zoning.

Copies of today's hearing agenda are available to you and are located to my left in the wall bin near the door. Please be advised that this proceeding is being recorded by a Court Reporter, and is also webcast live.

Accordingly, we must ask you to refrain from any disruptive noises or actions in the hearing room. When presenting information to the Board,

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1 please turn on and speak into the microphone, first
2 stating your name and home address.

3 When you are finished speaking, please
4 turn your microphone off, so that your microphone is
5 no longer picking up sound or background noise. All
6 persons planning to testify, either in favor or in
7 opposition, are to fill out two witness cards.

8 These cards are located to my left on the
9 table near the door and on the witness tables. Upon
10 coming forward to speak to the Board, please give both
11 cards to the Reporter sitting to my right.

12 The order of procedure for special
13 exceptions and variances. One, statement and
14 witnesses of the Applicant. Two, government reports
15 including Office of Planning, Department of Public
16 Works, etcetera.

17 Three, a report of the Advisory
18 Neighborhood Commission. Four, parties or persons in
19 support. Five, parties or persons in opposition.
20 Six, closing remarks by the Applicant.

21 Pursuant to Sections 3117.4 and 3117.5,
22 the following time constraints will be maintained.
23 The Applicant, Appellant, persons and parties, except
24 an ANC, in support, including witnesses, 60 minutes
25 collectively.

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1 Appellants, persons and parties, except an
2 ANC, in opposition, including witnesses, 60 minutes
3 collectively. Individuals, three minutes.

4 These time restraints do not include cross
5 examination and/or questions from the Board. Cross
6 examination of witnesses is permitted by the Applicant
7 or parties.

8 The ANC, within which the party is
9 located, is automatically a party in a special
10 exception or variance case. Nothing prohibits the
11 Board from placing reasonable restrictions on cross
12 examination, including time limits and limitations on
13 the scope of cross examination.

14 The record will be closed at the
15 conclusion of each case, except for any material
16 specifically requested by the Board. The Board and
17 the staff will specify, at the end of the hearing,
18 exactly what is expected and the date when the persons
19 must submit the evidence to the Office of Zoning.

20 After the record is closed, no other
21 information will be accepted by the Board. The
22 Sunshine Act requires that the public hearing on each
23 case be held in the open before the public.

24 The Board may, consistent with its rules
25 of procedure and the Sunshine Act, enter Executive

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1 Session during or after the public hearing, on a case
2 for purposes of reviewing the record of deliberating
3 on the case.

4 The decision of the Board in these
5 contested cases must be based exclusively on the
6 public record. To avoid any appearance to the
7 contrary, the Board requests that persons present not
8 engage the members of the Board in conversation.

9 Please turn off all beepers and cell
10 phones at this time so not to disrupt these
11 proceedings. The Board will no consider any
12 preliminary matters.

13 Preliminary matters are those which
14 related to whether the case will or should be heard
15 today, such as request for postpone, continuance or
16 withdrawal or whether proper and adequate notice of
17 the hearing has been given.

18 If you are not prepared to go forward with
19 a case today, or if you believe the Board should not
20 proceed, now is the time to raise such a matter. Does
21 the staff any preliminary matters?

22 MS. BAILEY: Madame Chair, good morning.
23 Also to the members of the Board and everyone. Staff
24 does have one and it concerns Application Number 17339
25 of James and Lisa Standish.

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1 That application was withdrawn, Madame
2 Chair.

3 VICE CHAIRPERSON MILLER: Thank you, Ms.
4 Bailey. Would all individuals wishing to testify
5 today please rise to take the oath. Ms. Bailey would
6 you please administer the oath.

7 MS. BAILEY: Thank you. Please raise your
8 right hand.

9 (Witnesses are sworn.)

10 VICE CHAIRPERSON MILLER: Thank you, Ms.
11 Bailey, would you call the first case.

12 MS. BAILEY: Thank you, Madame Chair, and
13 that is Application Number 17334 of C. Rothfeld,
14 pursuant to 11 DCMR 3104.1, for special exception to
15 allow an addition to an existing, single-family,
16 detached dwelling under Section 223, not meeting the
17 lot occupancy requirements in Section 403; the rear
18 yard requirements, Section 404; the open court
19 requirements, Section 406; and the nonconforming
20 structure provisions in Subsection 2001.3.

21 The property is located in the R-1-B
22 District at 4540 Butterworth Place, N.W., Square 1567,
23 Lot 5.

24 VICE CHAIRPERSON MILLER: Good morning,
25 would you introduce yourself for the record, please?

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1 MS. O'NEIL-MANION: Good morning, I'm Sara
2 O'Neil-Manion, from O'Neil and Manion Architects.

3 MR. ROTHFELD: And I'm Charles Rothfeld.

4 VICE CHAIRPERSON MILLER: Thank you. Ms.
5 Bailey, I think, just as a preliminary matter here, we
6 have a request by the Office of Planning to waive the
7 rules for late submittal of their report.

8 The rules require seven days in advance of
9 the hearing and I believe the report was submitted
10 five days in advance?

11 MS. BAILEY: Yes, Madame Chair, that waiver
12 of, that request for waiving in that report is now
13 before the Board.

14 VICE CHAIRPERSON MILLER: Thank you. I
15 don't have any problem with waiving the rules. Do my
16 Board members? Okay, then by consensus we will waive
17 the rules and accept the Office of Planning's report.

18 Okay. So we have before us your request
19 for special exception. And before you make your
20 presentation, I just noticed, in reviewing the files,
21 there seemed to be some discrepancy in figures
22 between, well, in my Exhibit 3 and Exhibit 4, and
23 Office of Planning report, the address lot occupancy
24 and rear yard.

25 And in Exhibit 3, it looked to me like the

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1 lot occupancy proposed was set at 42 percent. In
2 Exhibit 4 it's 44 percent.

3 And my understanding is that, I believe
4 you're seeking to 44 percent, but I need to clarify
5 this for the record.

6 If you want to take a minute and look the
7 exhibits. Do you have those exhibits?

8 MS. O'NEIL-MANION: I don't believe I have
9 the exhibit that says anything about the plan. We
10 certainly want the larger amount.

11 VICE CHAIRPERSON MILLER: The 44 percent.

12 MS. O'NEIL-MANION: The 44.

13 VICE CHAIRPERSON MILLER: Okay, the Exhibit
14 4 with notes and computations from Office of the
15 Zoning Administrator, and Exhibit 3 was your Form 120.

16 MS. O'NEIL-MANION: Form 120. I'm not
17 exactly sure why there was a discrepancy.

18 VICE CHAIRPERSON MILLER: Okay.

19 MS. O'NEIL-MANION: It's certainly, if
20 anything it was inadvertent.

21 VICE CHAIRPERSON MILLER: Okay.

22 MS. O'NEIL-MANION: Because we're using the
23 existing garage as a footprint and then there's just a
24 very small addition that's being added to the
25 footprint.

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1 VICE CHAIRPERSON MILLER: Okay, so for the
2 record, we'll just clarify that you're seeking the 44
3 percent.

4 MS. O'NEIL-MANION: Right.

5 VICE CHAIRPERSON MILLER: I also have in my
6 notes, a discrepancy in the rear yard proposed. I
7 have, what rear yard are you seeking, maybe we can
8 just clarify that.

9 MS. O'NEIL-MANION: We're not changing the
10 rear yard. Right now the lot is an extraordinary
11 small lot, and it's nonconforming as it stands, the
12 house is nonconforming per lot occupancy,
13 nonconforming side yard, nonconforming just as it
14 stands.

15 So to do anything to the house, we'd have
16 to come to see you. We're not going to change the
17 rear yard setback at all. We're going to hold the
18 existing setback.

19 It's nonconforming, but it's aligning with
20 the existing house.

21 VICE CHAIRPERSON MILLER: Okay, and do you
22 know what it is?

23 MS. O'NEIL-MANION: I, it says reduce to
24 required - I think we're, I think at like seven feet,
25 like seven and a half feet.

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1 VICE CHAIRPERSON MILLER: Okay. Okay. Do
2 you want to address how you meet the test under 223?

3 MS. O'NEIL-MANION: Under the Section 233,
4 we are requesting the ability to increase the size of
5 this house to make more liveable area for the family,
6 that's a growing family in this nice neighborhood.

7 They would like to stay in the
8 neighborhood and not have to move. And the only way
9 to expand the house, and it's just a modest expansion,
10 is to incorporate the existing garage and then put a
11 second story on top of the garage.

12 Have a small addition that links the
13 existing kitchen to the back of the garage. The
14 garage doesn't extend all the way to the back line of
15 the house.

16 And that's all that's being proposed.
17 We've approached all the neighbors and actually
18 adjusted the windows for the immediate neighbor to one
19 side, so there were less actual openings in the
20 window, and all the neighbors are in support of the
21 addition.

22 VICE CHAIRPERSON MILLER: And does this
23 affect the light and air of neighbors?

24 MS. O'NEIL-MANION: No, because there's an
25 existing garage and we're adding a second story on

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1 top. So we've done light studies, computerized light
2 studies and there's no shadows cast. We're to the
3 west of the adjacent neighbor and we're on the north
4 side of the block.

5 So light coming from south, we'd only cast
6 shadows on the street.

7 VICE CHAIRPERSON MILLER: How about
8 affecting the privacy of any neighbors?

9 MS. O'NEIL-MANION: The one thing that we
10 did so is reduce the size of the windows because a
11 neighbor had asked. We already have, Mr. Rothfeld
12 already has a row of evergreen trees along that
13 neighbor's border, and we're going to maintain those
14 trees.

15 And we've reduced the window size and
16 naturally we'll be having some sort of window
17 treatment inside, so you'd have drapes, curtains.

18 VICE CHAIRPERSON MILLER: And is this
19 addition in character with the neighborhood and with
20 the scale of the houses in the neighborhood?

21 MS. O'NEIL-MANION: Yes, ma'am. We're
22 keeping, actually, the roof line is slightly below the
23 existing roof line. We're keeping the materials the
24 same.

25 The existing house is a nicely balanced

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1 colonial, so we're keeping the same character. It
2 will be brick with white windows, similar to what's
3 already there.

4 VICE CHAIRPERSON MILLER: Okay, and the lot
5 occupancy is going to be under 50 percent?

6 MS. O'NEIL-MANION: I realize, it's a tiny,
7 tiny lot.

8 VICE CHAIRPERSON MILLER: Okay, is there
9 anything else you want to add?

10 MS. O'NEIL-MANION: We believe we're
11 enhancing the neighborhood by doing this and just
12 helping the overall neighborhood grow without ripping
13 houses down and making large monster houses.

14 VICE CHAIRPERSON MILLER: Okay. And is
15 there a representative from the ANC here today?

16 (No response.)

17 VICE CHAIRPERSON MILLER: Okay, no one is
18 responding, though, we do have a letter from ANC-2E,
19 unanimously in support of your application.

20 MS. O'NEIL-MANION: Thank you.

21 VICE CHAIRPERSON MILLER: Okay, in which
22 case I think then we can go to the Office of Planning.
23 Oh, I'm sorry, do my Board members have any
24 questions?

25 (No response.)

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1 VICE CHAIRPERSON MILLER: Okay. Good
2 morning, Mr. Jackson.

3 MR. JACKSON: Good morning, Madame Chair
4 and members of the Board. My name is Arthur Jackson
5 with the D.C. Office of Planning, and I will briefly
6 summarize the Office of Planning Report.

7 Essentially, we stand on the record with
8 our presentation of the report. I would note that in
9 the exhibits provided by the Applicant, the first map
10 after the table of computations, the distance shown
11 from, in the rear yard, is eight feet, ten inches.

12 In our report we essentially were looking
13 at that number as being the number to use, but it said
14 nine feet because it appeared that the rear deck was
15 actually going to be a few inches back of that.

16 But if we were to use, we wouldn't have
17 any problem with using the existing setback of eight
18 foot, ten inches, or another number that the Board
19 should decide, in that case.

20 VICE CHAIRPERSON MILLER: Which do you
21 think is the more appropriate number to use?

22 MR. JACKSON: Eight foot, ten inches.

23 VICE CHAIRPERSON MILLER: Okay.

24 MR. JACKSON: Just because two inches
25 difference could make, when you build something on

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1 site, there could be at least a two inch difference.

2 But what we would see, and the final
3 result will be nothing that would differ, in terms of
4 depth, from the existing building.

5 In addition, we did get a response from
6 the Department of Public Space Management
7 Administration of the Department of Transportation.
8 The Applicant proposed to move the curb cut and we
9 shared with the Applicant an e-mail we received back
10 saying that is possible and then made application and
11 they can discuss the particulars about how that shift
12 would happen.

13 That was important because the Applicant
14 was putting a parking pad in the side yard, and as
15 such that was a difficult turn. There's a current
16 curb cut, but it does seem possible that that could be
17 changed, as was proposed by the Applicant.

18 VICE CHAIRPERSON MILLER: Great.

19 MR. JACKSON: We also would note that based
20 on the review of our, of the provisions and our site
21 visit and the submittals by the Applicant, we think
22 they meet all the requirements for the approval and we
23 would continue to support and recommend approval of
24 this request.

25 That concludes the summary of the Office

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1 of Planning report and I'm available to answer
2 questions.

3 VICE CHAIRPERSON MILLER: Thank you. I
4 just want to clarify with you, also, what the right
5 lot occupancy figure to use is. I think it's 44
6 percent, but if I'm correct, I think even in your
7 report, I think on Page 2, you refer to 42 percent and
8 on Page 1, you refer to 44 percent.

9 MR. JACKSON: Forty-four percent is the
10 correct number.

11 VICE CHAIRPERSON MILLER: Okay, thank you.
12 And you're not recommending any special treatments or
13 anything like that for privacy or -

14 MR. JACKSON: No, as the Applicant
15 observed, there is an existing stand of trees,
16 evergreen trees, along one side of the property.

17 And the neighbor was made aware of this
18 proposal and with the adjustments to the windows they
19 were willing to support, with a letter of support.

20 And I think in the dead of winter, it
21 doesn't appear that the, the neighbor would probably
22 be inadvertently, would be significantly affected by
23 the casting of shadows because the shadows would only
24 be on the front corner, in the worst scenario.

25 So, again, we think that this application

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1 meets the standards.

2 VICE CHAIRPERSON MILLER: Thank you. That
3 was an excellent report.

4 MR. JACKSON: Thank you.

5 VICE CHAIRPERSON MILLER: So I don't have
6 any other questions. Do my Board members have
7 questions?

8 (No response.)

9 VICE CHAIRPERSON MILLER: Do you have any
10 questions of the Office of Planning?

11 MS. O'NEIL-MANION: Not at this time.

12 VICE CHAIRPERSON MILLER: And do you have a
13 copy of their report?

14 MS. O'NEIL-MANION: Yes, I do. Yes, we do.

15 VICE CHAIRPERSON MILLER: Okay, great.

16 MS. O'NEIL-MANION: Oh, yes.

17 VICE CHAIRPERSON MILLER: Yes, do you have
18 a question?

19 MS. O'NEIL-MANION: When would you be
20 reaching a decision?

21 VICE CHAIRPERSON MILLER: Today, probably.

22 I asked before if there was anybody here from the
23 ANC, and I'm just going to ask one more time because
24 at this point it would be appropriate for the ANC to
25 come forward and present their letter or resolution or

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1 testimony. And, is there anybody here from the ANC-
2 2E?

3 (No response.)

4 VICE CHAIRPERSON MILLER: Okay. I believe
5 it's 2E, 3E. In any event, okay, not seeing any
6 member from the ANC, then we can move on to persons or
7 parties in support of this application. Is there
8 anyone here who like to testify in support of this
9 application?

10 (No response.)

11 VICE CHAIRPERSON MILLER: Okay, not seeing
12 anybody, is there anybody here who would like to speak
13 in opposition to this application?

14 (No response.)

15 VICE CHAIRPERSON MILLER: Not seeing
16 anybody, at this point then we're going to leave it to
17 you to make any closing remarks you might want to make
18 and then the Board will deliberate on your case.

19 MS. O'NEIL-MANION: We believe that this is
20 a reasonable request for a very tight, constrained lot
21 and we would like to request approval of our
22 application. Thank you, for your consideration.

23 VICE CHAIRPERSON MILLER: Okay, at this
24 point then, I would move to grant special exception
25 relief of Application Number 17334 of C. Rothfeld,

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1 pursuant to 11 DCMR Section 3104.1, to allow an
2 addition to an existing, single-family, detached
3 dwelling, under Section 223; not meeting the lot
4 occupancy requirements, Section 403; the rear yard
5 requirements, Section 404; the open court requirements
6 under Section 406; and the nonconforming structure
7 provisions under Subsection 2001.3; at premises 4540
8 Butterworth Place, N.W.

9 MEMBER MANN: Second.

10 VICE CHAIRPERSON MILLER: Thank you. Do my
11 Board members have any comments at this point? Other
12 wise I'll go through why I think they make the test.

13 (No response.)

14 VICE CHAIRPERSON MILLER: Okay, basically,
15 I think Office of Planning submitted a very
16 comprehensive summary and report on how you meet the
17 test under 223.2, starting with that there be no
18 adverse affect on the use or enjoyment of any abutting
19 or adjacent dwelling or property.

20 Looking at the light and air available to
21 neighboring properties, there's no evidence that they
22 would be affected, whatsoever. And you did a Shadow
23 Study, according to Office of Planning, and your own
24 testimony, supporting that.

25 So that there is no impact on light or

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1 air. The next test is whether the privacy or use and
2 enjoyment of neighboring properties would be unduly
3 compromised.

4 And, as Office of Planning stated, the
5 visibility from the addition toward the rear doesn't
6 really change. And I understand that you had windows
7 on one side that one of your neighbors was concerned
8 about and you modified those windows and your neighbor
9 is now satisfied with that.

10 The proposed addition will not intrude
11 upon the character, scale and pattern of the
12 residences. It's in keeping with the architecture in
13 the neighborhood. Lot occupancy of the dwelling will
14 not exceed 50 percent.

15 And the figure that I understand is going
16 to be is 44 percent. And no special treatment is
17 recommended. So, it's in accordance with 3104.1.
18 It's in harmony with general purposes of the zoning
19 regs.

20 Department of Transportation has weighed
21 in and said that you could make your curb cut to
22 change your parking, and ANC supports this application
23 unanimously, and also the neighbors, we have letters
24 of support from adjacent neighbors across the street,
25 behind the property and adjacent.

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1 And there's no opposition to this case.
2 And Office of Planning has supported it and we give
3 great weight to the Office of Planning and the ANC.
4 So, therefore, I think everything is here to grant
5 this application. Yes, Mr. Hildebrand?

6 COMMISSIONER HILDEBRAND: I was only going
7 to second what you were saying, but also add too that
8 the planned screening, the planting screen along the
9 neighbor's property, I think goes a long way to ensure
10 that even though you're adding windows on the side of
11 the addition, that you're taking steps to mitigate
12 that impact on their potential privacy loss.

13 But also I think it's important to
14 recognize that they way you've designed the addition
15 is also a key factor in mitigating its impact on the
16 street.

17 By keeping the break in the slate roof,
18 that sort of is reminiscent of the original garage
19 level. Using the same brick material that the garage
20 was constructed of and using the same slate on the new
21 roof addition, but keeping those elements separate
22 from the original massing of the house by having that
23 step in the roof plane.

24 It really helps to mitigate its impact on
25 the street.

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1 VICE CHAIRPERSON MILLER: Thank you. Any
2 other comments?

3 (No response.)

4 VICE CHAIRPERSON MILLER: At this point,
5 then, all those in favor, say aye.

6 (Chorus of ayes.)

7 VICE CHAIRPERSON MILLER: All those
8 opposed?

9 (No response.)

10 VICE CHAIRPERSON MILLER: All those
11 abstaining?

12 (No response.)

13 VICE CHAIRPERSON MILLER: Ms. Bailey, would
14 you like to call the vote.

15 MS. BAILEY: Sure. The vote is recorded as
16 3-0-2, to approved the application. Ms. Miller made
17 the motion, Mr. Hildebrand seconded, Mr. Mann is in
18 agreement, Mr. Griffis and Mr. Etherly are not here
19 today. And are we doing a Summary Order, Madame
20 Chair?

21 VICE CHAIRPERSON MILLER: I think we can
22 waive our rules for issuing a Summary Order in this
23 case, unless the Applicant objects?

24 MS. O'NEIL-MANION: No.

25 VICE CHAIRPERSON MILLER: Okay, in which

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1 case, by issuing a Summary Order, we can get that to
2 you very quickly.

3 MS. O'NEIL-MANION: Very good, thank you.

4 VICE CHAIRPERSON MILLER: Okay, thank you.

5 MS. O'NEIL-MANION: Thanks very much.

6 COMMISSIONER HILDEBRAND: Just as a minor
7 thing, Ms. Bailey, Mr. Mann was the second on that.

8 MS. BAILEY: Oh, I'm sorry, thanks.

9 VICE CHAIRPERSON MILLER: Ms. Bailey, would
10 you like to call the next case?

11 MS. BAILEY: Sure.

12 VICE CHAIRPERSON MILLER: Thank you.

13 MS. BAILEY: Application Number 17336 of
14 Lois F. Keys, pursuant to 11 DCMR 3103.2, for a
15 variance from the lot occupancy requirements under
16 Section 403; a variance from the rear yard
17 requirements under Section 404; a variance from the
18 open court requirements under Section 406; and a
19 variance from the nonconforming structure provisions
20 under Subsection 2001.3; to allow a rear addition to
21 an existing, single-family, row dwelling at 1428
22 Florida Avenue, N.W.

23 The property is zoned R-5-B, and it's also
24 known as Square 202, Lot 46.

25 VICE CHAIRPERSON MILLER: Thank you, Ms.

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1 Bailey. Good morning. Would you like to identify
2 yourself for the record?

3 MS. KEYS: Good morning, I'm Lois F. Keys,
4 residing at 1428 Florida Avenue, N.W.

5 VICE CHAIRPERSON MILLER: Thank you. And
6 we have a representative from the ANC here, as well?
7 Okay. Would you like to start and summarize your case
8 a little bit for us, and discuss how you think you
9 meet the variance test?

10 MS. KEYS: Well, I had hoped the Architect,
11 Mr. Hamilton, would be here, and the fact that he's
12 not, I'll do the best I can.

13 VICE CHAIRPERSON MILLER: Okay.

14 MS. KEYS: It's an aging in place project,
15 extending the back of the house to allow an extra room
16 and a bathroom so that in coming months and years that
17 I will be able to stay in my house.

18 VICE CHAIRPERSON MILLER: How long have you
19 been there?

20 MS. KEYS: Six years.

21 VICE CHAIRPERSON MILLER: Okay. Do you
22 know why you can't do an addition in conformance with
23 the regulations?

24 MS. KEYS: It's my understanding that it
25 has to do with the percentage of the not, I'm not

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1 really keen on this, but it's extending, it goes
2 beyond the zoning, is what I'm told is why it needs an
3 exception.

4 VICE CHAIRPERSON MILLER: Okay, and is your
5 house unique in some way from other houses around you?
6 That's one of our tests for the variance analysis.

7 MS. KEYS: The houses vary as they go down
8 the block, but the first three or four houses, they're
9 very small and very narrow, so there's not, the square
10 footage is just limited.

11 VICE CHAIRPERSON MILLER: Is your house
12 smaller than your neighbors' houses, or no?

13 MS. KEYS: I'm not quite sure.

14 VICE CHAIRPERSON MILLER: Okay, can you, do
15 want to talk just a little bit about what your
16 practical difficulty is? That's one, that's the
17 second test.

18 For the variance there are three tests.
19 The first is uniqueness, the second is a practical
20 difficulty and the third is no substantial detriment
21 to the public.

22 Well, with the health issues that are
23 arising now, my feeling is that there's going to be
24 difficulty with using the stairs. So, that I can stay
25 in the house, is why I'm trying to get the addition,

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1 so I won't have to use the stairs that much, if I can
2 use them at all.

3 VICE CHAIRPERSON MILLER: What's on the
4 second floor, currently?

5 MS. KEYS: Two bedrooms and a bath.

6 VICE CHAIRPERSON MILLER: And is there a
7 bathroom on the first floor, currently? No.

8 MS. KEYS: No, there is not.

9 VICE CHAIRPERSON MILLER: Okay. And do you
10 know of any harm that would cause to your public, to
11 the public, if you do your addition?

12 MS. KEYS: I don't see that there's any
13 harm being done by this small addition, as the backs
14 of the houses going west are out further than what I
15 propose to have done.

16 VICE CHAIRPERSON MILLER: Yes, Mr. Mann?

17 MEMBER MANN: Is your house located in a
18 historic district?

19 MS. KEYS: Say that again, please?

20 MEMBER MANN: Are you located in a historic
21 district?

22 MS. KEYS: I believe so.

23 MEMBER MANN: And have you coordinated this
24 project with the Historic Preservation Review Board or
25 submitted the plans to them?

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1 MS. KEYS: We did talk to, the Architect
2 and I both talked, we went to the Historic Office,
3 Preservation Office, and talked to them, but beyond
4 that, no.

5 MEMBER MANN: Do you know if there's any
6 requirement, any more requirement for you to
7 coordinate with them or to submit the plans?

8 MS. KEYS: Since we aren't doing anything
9 to change - it's the back of house, no, I don't.

10 MEMBER MANN: Did they give you any
11 guidance as to what you could or could not do or
12 anything that -

13 MS. KEYS: No, they did not.

14 MEMBER MANN: So there was, there were no
15 requirements that they imposed on you that might have
16 required you to plan your addition in any particular
17 way?

18 MS. KEYS: Not that I know of.

19 MEMBER MANN: Okay.

20 COMMISSIONER HILDEBRAND: When you were
21 considering your addition, did you look, at all, at
22 the possibility of using the existing side court as a
23 location for your addition, as opposed to building
24 into the backyard?

25 MS. KEYS: Side court.

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1 COMMISSIONER HILDEBRAND: The little, where
2 you have the, there is a sliver of space between your
3 kitchen and the ally.

4 MS. KEYS: It is a sliver. So, I don't -

5 COMMISSIONER HILDEBRAND: A sliver, it's
6 four foot, six inches wide.

7 MS. KEYS: The Architect that drew the
8 drawings thought his plan was the best plan, and
9 that's the only way I can answer that.

10 COMMISSIONER HILDEBRAND: Okay, because
11 your primary goal is to get a bathroom on the first
12 floor?

13 MS. KEYS: The primary goal is to get a
14 bathroom and a room that possibly will have to be used
15 as a bedroom.

16 COMMISSIONER HILDEBRAND: The morning, the
17 morning room area that's shown on the plan?

18 MS. KEYS: Yes.

19 COMMISSIONER HILDEBRAND: One of the
20 reasons I'm asking the question is that in the
21 addition that you propose, you're creating a new,
22 nonconformance on your lot.

23 You're building back into the rear yard,
24 which your current house does not do. And I was
25 wondering if there was a way that the addition could

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1 be configured so it doesn't create that new,
2 nonconformity. That was the goal of my question, and
3 I think, without having your Architect here to assist
4 you in answering that question, it puts you in a very
5 difficult position.

6 MS. KEYS: It does, because I can't answer
7 that.

8 VICE CHAIRPERSON MILLER: Do we have any
9 other questions from the Board, at this ?

10 (No response.)

11 VICE CHAIRPERSON MILLER: Okay, would you
12 like to introduce yourself for the record. We have,
13 at the table, the representative from the ANC.

14 MR. SPALDING: Phil Spalding, I live at
15 1929 13th Street, and I represent ANC-1B.

16 VICE CHAIRPERSON MILLER: Mr. Spalding, do
17 you have any cross examination questions for the
18 Applicant?

19 MR. SPALDING: Not for the Applicant, no.

20 VICE CHAIRPERSON MILLER: Okay. You will
21 for Office of Planning, is that -

22 MR. SPALDING: I may for Mr. Parker.

23 VICE CHAIRPERSON MILLER: Okay, fine. Then
24 at this point I think we can turn to the Office of
25 Planning. Good morning, Mr. Parker.

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1 MR. PARKER: Good morning. Good morning,
2 Ms. Chairman, members of the Board. I'm Travis Parker
3 with the Office of Planning. We have a very
4 interesting situation here in that we have a house
5 that is trying to do something that the zoning
6 regulations try very hard to let it do.

7 We have Section 223, that attempts to
8 allow nonconforming structures to add additions and we
9 have an existing deck on the rear of the property that
10 comes very close to adding lot occupancy.

11 There are two specific things, that I
12 pointed to in my report, the existing court is four
13 foot, six inches wide. If it were a matter of six
14 inches more wide, excuse me, wider, it would not count
15 towards lot occupancy.

16 They would be at 60 percent now, or nearly
17 so. The addition would leave them within their 70
18 percent, making this a special exception under 223.

19 As well, the deck that is part of the
20 house that was, I believe, been with the house for
21 quite some time, as well. If the deck were a matter
22 of six inches higher, it would have counted towards
23 the existing lot occupancy and make this just a change
24 of the existing deck, and not add to the lot occupancy
25 at all, making this a matter of right project.

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1 So this is an existing house, that if it
2 have been built different, in a matter of inches, 40
3 years ago, 50 years ago, would have made this either
4 special exception, matter of right.

5 The point is that the intent of the zoning
6 ordinance is to allow a project like this. And the
7 fact that it barely misses the limits seems to be, in
8 and of itself, an exceptional situation that there are
9 so many ways that is project can almost take place as
10 a matter of right.

11 And the practical difficulty, I think the
12 Applicant stated herself is that this house will
13 become unusable for her if it's not allowed to proceed
14 forward.

15 The Office of Planning doesn't believe
16 that there will be a substantial detriment to the
17 surrounding neighborhood, or that the integrity of the
18 zoning regulations will be affected by approval of
19 this application.

20 VICE CHAIRPERSON MILLER: Mr. Parker, how
21 unique is this situation? Is this like a one-of-a-
22 kind that you really haven't seen? Or is this, do
23 other homes in her neighborhood have a similar
24 problem?

25 MR. PARKER: I think this is unique in that

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1 it can't, I think that neighboring houses could do the
2 same addition, under Section 223, and this one can't
3 because it's got six inches too narrow of a court.

4 COMMISSIONER HILDEBRAND: So you're saying
5 the other adjacent houses don't have the same four
6 foot, six, court?

7 MR. PARKER: I haven't, the houses on this
8 block are not identical. The lots actually get
9 narrower, as you go down, Florida is at an angle. So,
10 I have not looked at the footprints of the adjacent
11 buildings, but I know that they are not identical.

12 And I have a feeling that either the decks
13 could be enclosed as a matter of right, or Section 223
14 could apply in some way.

15 COMMISSIONER HILDEBRAND: But you haven't
16 investigated that? You just have a feeling?

17 MR. PARKER: No, I have not.

18 VICE CHAIRPERSON MILLER: But you don't
19 know of any houses that have the same problem, in the
20 neighborhood?

21 MR. PARKER: I don't know of any that have
22 this problem.

23 VICE CHAIRPERSON MILLER: Did you look at
24 this application to see if it could be modified to
25 come in under 223?

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1 MR. PARKER: Well, one way that it might be
2 possible, and without the Architect here, it's very
3 difficult to discuss, is filling in the court.

4 VICE CHAIRPERSON MILLER: If they filled in
5 the court, I mean, are you familiar enough with the
6 plans to be able to say what they might be able to
7 propose?

8 MR. PARKER: The existing lot occupancy
9 would remain the same, because the court counts right
10 now towards lot occupancy. So I think it's at 63
11 percent.

12 VICE CHAIRPERSON MILLER: I guess my
13 question is, you know, would she be able to get a
14 bathroom in, kitchen -

15 MR. PARKER: I'm not an Architect.

16 VICE CHAIRPERSON MILLER: She would have,
17 right, okay.

18 MR. PARKER: And I don't know how the
19 layout of the house would work.

20 VICE CHAIRPERSON MILLER: Okay. Did you
21 talk to Historic, HPRB?

22 MR. PARKER: I have not talked, spoken to,
23 I don't believe that they have any problem. They did
24 not flag this at all for us.

25 VICE CHAIRPERSON MILLER: Because the

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1 addition would be in the back?

2 MR. PARKER: Right.

3 VICE CHAIRPERSON MILLER: But if the
4 addition is to the side, would they then have an
5 interest?

6 MR. PARKER: It would, I would send her
7 back to talk with the staff.

8 VICE CHAIRPERSON MILLER: Okay.

9 COMMISSIONER HILDEBRAND: Isn't this
10 addition visible from the alley in either case?

11 MR. PARKER: It is.

12 COMMISSIONER HILDEBRAND: Would they, would
13 the Review Board be required to weigh in on it at some
14 point?

15 MR. PARKER: I don't believe. I believe
16 that this is a case that staff would have approval.
17 But I can't swear to that.

18 COMMISSIONER HILDEBRAND: Okay.

19 MEMBER MANN: Could you maybe go into a
20 little more detail on how the practical difficulty
21 relates to the exceptional situation? Because I think
22 you have, you know, you have a fairly -

23 MR. PARKER: Two separate.

24 MEMBER MANN: - strong case on the
25 exceptional situation and certainly a compelling case

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1 on the practical difficulty. But I'm having a little
2 trouble making the nexus between the two.

3 MR. PARKER: I can understand that. And I
4 may have a little trouble making the nexus as well.
5 The special exception or the special situation
6 prevents any addition at all to this house.

7 And, well, may prevent any addition at all
8 to this house, depending on how the court is resolved
9 with the Architect.

10 And not allowing any addition at all
11 prevents Ms. Keys from using her house in the future,
12 or may prevent her from using this house in the
13 future.

14 So the continued use of this house is made
15 difficult by the enforcement of the regulations.

16 VICE CHAIRPERSON MILLER: I think because
17 the Applicant doesn't have an attorney here or an
18 Architect, we're going to look to you a little bit
19 more than we might.

20 MR. PARKER: I understand.

21 VICE CHAIRPERSON MILLER: In looking at the
22 practical difficulty test, I mean the court has said,
23 in one case, that practical difficulty should be
24 unique to the particular property. And can you just
25 say how that is in this case?

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1 MR. PARKER: Well, that depends - the Board
2 in the past, I believe, has tied the owner to the
3 property. And I think this owner's use of the
4 property is going to become difficult in the future.

5 The property itself doesn't necessarily
6 have a practical difficulty, but the owner's use
7 thereof will become difficult without a variance.

8 VICE CHAIRPERSON MILLER: Okay.

9 COMMISSIONER HILDEBRAND: Is there, is
10 there something unique about the house that keeps the
11 powder room from being incorporated into the existing
12 footprint?

13 MR. PARKER: I think that would become
14 extremely difficult. Let me see if I have the plans.
15 You have the existing floor plans. On Page A-2, you
16 see the first floor.

17 The house really isn't that large.
18 They've got a, she's got a nine by 14 living room and
19 a 13 by nine dining room, and then a small kitchen.

20 Unless perhaps the living room was cut in
21 half or the dining room was converted into, it would
22 be very difficult to fit in the existing footprint
23 without taking up one of those existing rooms, losing
24 either the living room or the dining room.

25 Again, the existing court might be the

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1 only option, as a matter of right.

2 VICE CHAIRPERSON MILLER: And we just don't
3 know the answer to that question because we don't have
4 the Architect here.

5 MR. PARKER: Right, and it looks like many
6 of the kitchen utilities might use that. I don't know
7 how that would affect changing that wall or the layout
8 of the rooms.

9 MEMBER MANN: If this had been, 223, what's
10 the maximum percentage of lot occupancy that they
11 could have gone up to ?

12 MR. PARKER: Seventy.

13 MEMBER MANN: And the existing lot
14 occupancy right now is 70?

15 MR. PARKER: Including the court, yes.

16 MEMBER MANN: Including the court, okay.

17 VICE CHAIRPERSON MILLER: I'm sorry, and
18 under the proposal, though, the lot occupancy would
19 come up to 80 percent, is that right?

20 MR. PARKER: Correct. Because the court
21 expands as well.

22 VICE CHAIRPERSON MILLER: So in determining
23 whether it could come under 223, the Architect would
24 have to submit drawings also that changed to bring it
25 down to 70, correct?

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1 MR. PARKER: You're talking about changing
2 the plans to use the court for the addition?

3 VICE CHAIRPERSON MILLER: Right.

4 MR. PARKER: Using the court for the
5 addition, and not expanding further into the rear
6 yard, it would be under 70.

7 VICE CHAIRPERSON MILLER: Okay.

8 COMMISSIONER HILDEBRAND: Just to make sure
9 I understand, as well, the exceptional condition of
10 this property is that the court happens to be six
11 inches smaller than the cutoff limit of feet?

12 MR. PARKER: I think the exceptional
13 situation is that this is, this property was built
14 before these regulations were contemplated and each
15 and every one of the regulations that would allow this
16 project to proceed easily, and perhaps as a matter of
17 right, has hard and fast limits.

18 And this project is inches away from those
19 limits in several ways. And I think that, in and of
20 itself, testifies to the fact that the proposed action
21 is in line with the intent of the zoning regulations.

22 And it's a special situation in and of the
23 fact that it's so close to the intent of the
24 regulations in multiple ways.

25 COMMISSIONER HILDEBRAND: Do you know how

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1 those limits were established when the regulations
2 were created?

3 MR. PARKER: No. The five feet versus four
4 feet, no, I don't know if there was any specific
5 reason for five feet or whether that was an arbitrary
6 number.

7 COMMISSIONER HILDEBRAND: Thank you.

8 VICE CHAIRPERSON MILLER: With respect to
9 the variance application that's before us, in your
10 opinion does that allow the Applicant to do what she
11 would be allowed to do under 223, if she were inches
12 away from this limits? Or does it go beyond that?

13 MR. PARKER: I'm sorry, can you repeat the
14 question?

15 VICE CHAIRPERSON MILLER: Okay. The
16 variance application that's before us.

17 MR. PARKER: Correct.

18 VICE CHAIRPERSON MILLER: Okay, for a few
19 variances. Does it allow the Applicant to do what she
20 would be able to do, were she not inches away from
21 these regulations for 223?

22 Or does it go beyond what she would be
23 allowed to do under 223?

24 MR. PARKER: The lot occupancy of the
25 house, without the court, after the addition, is

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1 approximately 70 percent. So if this were a five foot
2 court, this plan in front of you would work under 223.

3 VICE CHAIRPERSON MILLER: Okay.

4 MR. PARKER: It's also important, one thing
5 to take into account is that the court is on an alley.

6 There's an alley next to this building. So the
7 intent of the court is to leave, you know, if the
8 intent of the court is to leave space between
9 buildings for, whether maintenance or air, light,
10 etcetera, there's a permanent alley on the east side
11 of this building that would, there will never be a
12 party wall.

13 There will never be another building
14 constructed there. That's something to keep in mind.

15 VICE CHAIRPERSON MILLER: So if the court
16 were five feet, the Applicant would be allowed to
17 proceed with the addition under 223?

18 MR. PARKER: Correct.

19 VICE CHAIRPERSON MILLER: Okay, thank you.
20 Do you have any questions for the Office of Planning,
21 Ms. Keys?

22 MS. KEYS: You're using the term court,
23 what -

24 MR. PARKER: The area that you and I talked
25 about on the side of your house, the unbuilt area,

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1 that's the term, that's what we're discussing as the
2 court.

3 MS. KEYS: Okay.

4 VICE CHAIRPERSON MILLER: Okay, Mr.
5 Spalding.

6 MR. SPALDING: I do have a question for Mr.
7 Parker. You said that the current existing rear deck
8 was not counted towards the existing lot coverage.

9 MR. PARKER: Correct.

10 MR. SPALDING: And what is the actual
11 difference in height? Is this a three foot, six high
12 deck, and it doesn't count because it's not four feet
13 high?

14 MR. PARKER: Correct. The number that I
15 have from the Architect is that the deck is three
16 feet, six inches, approximately, in height.

17 If the deck were six inches higher, it
18 would count towards existing lot occupancy, making
19 this a matter of right project that would be just
20 enclosing the existing deck.

21 MR. SPALDING: And do you know what the
22 square footage of the existing deck is?

23 MR. PARKER: Not off the top of my head,
24 but it's larger than the addition.

25 MR. SPALDING: Exactly. And in the

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1 proposed changes to this property, is there a deck as
2 part of that design.

3 MR. PARKER: The existing deck will remain
4 and not be expanded, so part of the existing deck is
5 being, is going to become the addition and the
6 remainder of the deck will remain.

7 MR. SPALDING: So, in essence, if this deck
8 were actually six inches taller, this would be moot?

9 MR. PARKER: Exactly. Again, and that was
10 my point. That's one of the ways that this very close
11 to a matter of right or special exception project.

12 MR. SPALDING: That's all.

13 VICE CHAIRPERSON MILLER: Thank you.

14 MEMBER MANN: The deck is, is it at the
15 same grade or the same finished level as the -

16 MR. PARKER: Do you mean the floor of the
17 house?

18 MEMBER MANN: Yeah.

19 MR. PARKER: Yes.

20 MEMBER MANN: You know, do you know when
21 the deck was, do you know how old the deck is? Was
22 the deck -

23 MR. PARKER: I'd have to ask Mrs. Keys
24 that. Do you know when the deck was built?

25 MS. KEYS: No, I do not. The deck was

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1 there when I moved in.

2 MR. PARKER: It's a very old deck. It may
3 have been there in some form or another prior to the
4 zoning regulations.

5 MEMBER MANN: Okay.

6 VICE CHAIRPERSON MILLER: Do you have any
7 other questions, Mr. Spalding?

8 MR. SPALDING: For Mr. Parker, no.

9 VICE CHAIRPERSON MILLER: Who else is
10 there? You didn't have any more questions for the
11 Applicant? We went through that.

12 MR. SPALDING: Not for the Office of
13 Planning, no. But, do you want, is this my time to
14 speak?

15 VICE CHAIRPERSON MILLER: Your time, yes,
16 it is.

17 MR. SPALDING: Fine, and I do -

18 VICE CHAIRPERSON MILLER: I just -

19 MR. SPALDING: - I do have some things
20 that I think can answer these questions that have been
21 raised. I would just remind you that the ANC did vote
22 unanimously in support of this application, and we
23 will stand on that.

24 And I will try to answer a few things that
25 I heard brought up. I did speak with Steve Colcott at

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1 Historic Preservation, about this specific project.

2 And, although we did not discuss actually
3 the alternative of building, using the court, as
4 opposed to the rear, Historic Preservation was not
5 terribly concerned because the location of the
6 addition is actually almost invisible from both the
7 alley and the street.

8 The reason that it's so invisible is that
9 the rear or south alley-line running to the property
10 and the property line running to the south, on the
11 rear of the property, are both fenced.

12 The alley-line that faces the alley, has
13 garage doors on it at a seven-foot height, and there
14 is fencing that goes to the rear of the property. So,
15 from the alley, those fences, in essence, screen the
16 view of where this rear addition would be.

17 If the addition were to move to the court,
18 than that would actually be visible and would be
19 probably subject to further review by the Office of
20 Historic Preservation staff.

21 I would also point out that in this
22 unusual kind of squashed square, that leads to
23 nonconformities, there is not alley-access to
24 properties to the south of Ms. Keys that exist on W
25 Street.

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1 But there are island properties between
2 the properties existing on Florida and the properties
3 existing on W. They're very small there. I think
4 about ten or 12 feet long and about six feet wide.
5 And they are owned by someone out of state.

6 And they have been used, traditionally,
7 and currently, by property owners on both the south
8 and the north side to get access to the alley shown on
9 the Surveyor's map.

10 If the proposed idea of using the court to
11 expand this property, to allow the bathroom, or to be
12 offered, that would close off the current, I don't
13 know whether it's legal or illegal, right of way that
14 people are currently using to access this alley.

15 They're using it for pedestrian and
16 bicycle access to the alley. So building in the court
17 might disadvantage a number of property owners along W
18 and also a couple along Florida Avenue, just to the
19 west of Ms. Keys' property.

20 COMMISSIONER HILDEBRAND: Just to make sure
21 I understand that.

22 MR. SPALDING: Certainly.

23 COMMISSIONER HILDEBRAND: I'm looking at
24 the square, which is Exhibit 8. Mrs., you said that
25 the side property line of Mrs. Keys' property from, is

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1 completely fenced at the end of the alley?

2 MR. SPALDING: Where the alley makes its
3 turn to the north. At that intersection from that
4 point to the southerly boundary of her property is
5 fenced.

6 And the properties along the south side of
7 that alley, have garage-structure entrances. Not to
8 garages, but those doors with the two pieces on the
9 side that allow it to go up and down.

10 COMMISSIONER HILDEBRAND: So when people
11 are getting to those island spaces, which are shown on
12 this plat, do they go through Mrs. Keys' property or
13 through -

14 MR. SPALDING: They do access along Ms.
15 Keys' property.

16 COMMISSIONER HILDEBRAND: So they come into
17 her backyard and go down to the -

18 MR. SPALDING: It is and has traditionally
19 been a fenced corridor. There are two fences there.

20 COMMISSIONER HILDEBRAND: Hmm.

21 MR. SPALDING: They are accessing over, to
22 the best of my knowledge, although there is, looking
23 at it really closely, it's hard to determine exactly
24 where the lines are, because I think some of the
25 garages may have, on the alley, may have built over

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1 the line, as well.

2 COMMISSIONER HILDEBRAND: Hmm.

3 MR. SPALDING: They are accessing,
4 predominantly, over Mrs. Keys' rear property.

5 COMMISSIONER HILDEBRAND: Thank you.

6 VICE CHAIRPERSON MILLER: Do you have
7 knowledge whether Ms. Keys' property is unique or
8 exceptional in the area?

9 MR. SPALDING: I can't say that it is
10 unique or exceptional. I can only say that because of
11 the avenue structure intersecting a number of the
12 squares in our Commission, we have a number of
13 properties that are nonconforming.

14 They were constructed prior to the
15 adoption of the zoning regulations. They have a
16 number of odd configurations, square footage and
17 existing structures that really have a difficult time
18 working with the current regulations.

19 Adapting them has generally been supported
20 by the Commission and by the community members near
21 these properties. Because we understand that they are
22 difficult.

23 They don't have the kind of expanse that
24 you saw in your first case this morning, going from 42
25 to 44 percent of the lot coverage. We already have,

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1 you know, 60-70, 75-80 percent of lot coverage in a
2 number of these nonconforming lots.

3 Small additions to make them more usable
4 for contemporary standards, seems to be something that
5 the community is more than willing to allow.

6 VICE CHAIRPERSON MILLER: And without
7 really looking at the specifics of a case, you would
8 have no idea of whether they could do it by 223 or
9 not, right?

10 MR. SPALDING: Now I'm not going to try to
11 parse 223, no.

12 VICE CHAIRPERSON MILLER: Right, okay.
13 Okay, let us finish here. I don't see anybody in the
14 audience here to testify in support or opposition.
15 Ms. Keys, do you want to make any more remarks and
16 then the Board is just going to briefly discuss and
17 decide how we want to proceed.

18 MS. KEYS: Not really, except to say that I
19 really need this project because of aging and not
20 being able to make those steps with my health issues
21 right now.

22 And I very much would like to remain in
23 the house as long as I could.

24 VICE CHAIRPERSON MILLER: Okay, thank you
25 very much.

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1 MS. KEYS: Thank you.

2 VICE CHAIRPERSON MILLER: Okay, we're ready
3 to deliberate on this. So, we're going to do that
4 now. And I think we should deliberate under a motion,
5 so I'm going to move to grant Application Number 17336
6 of Lois F. Keys, pursuant to 11 DCMR Section 3103.2,
7 for a variance from the lot occupancy requirements
8 under Section 403.

9 A variance from the rear yard requirements
10 under Section 404. A variance from the open court
11 requirements under Section 406. And variance from the
12 nonconforming structure provisions, to allow rear
13 additional to an existing, single-family, row dwelling
14 and premises at 1428 Florida Avenue, N.W. Do I have a
15 second?

16 MEMBER MANN: Second.

17 VICE CHAIRPERSON MILLER: Okay, I want to
18 start that I think that this hearing was extremely
19 helpful in flushing out what a uniqueness is in this
20 property, in particular.

21 Because I think when we first came into
22 this hearing, it was difficult for us to really see
23 that. And I think Mr. Parker did an excellent job, in
24 particular, of explaining what's unique here.

25 And basically, I think, as Mr. Parker

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1 said, what seems to be unique to me is, and we haven't
2 seen this in other cases, so it is pretty exceptional,
3 that a property comes so close, in so many ways, to
4 qualifying for relief under 223, that so many
5 nonconforming properties can get without having to
6 make a very difficult test for a variance.

7 Because the regulations do intend to
8 provide that kind of relief for those properties that
9 were constructed before 1958, and are, in effect, not
10 in compliance even in their existing state with the
11 regulations.

12 The fact that it's inches away, as Mr.
13 Parker said, if the court were five feet, this would
14 be allowed to proceed under a 223 provision, in which
15 case the relief would certainly be granted, because
16 we, the regulations are intended for these kind of
17 properties where there's no adverse impact on your
18 neighbors and there's no evidence of that.

19 Second, the practical difficulty, Ms. Keys
20 has certainly demonstrated that she needs to do the
21 addition in order to stay within the home, with the
22 process of aging and there is not substantial
23 detriment on the public.

24 And, in fact, the ANC and Office of
25 Planning support this for people to be able to stay in

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1 their homes, to stay in their neighborhood, as they
2 age, as long as there's no adverse impact on the
3 public. So that's basically how I see this case.

4 COMMISSIONER HILDEBRAND: The only thing
5 other I'd like to mention is that, you know, we
6 discussed the idea of building in the court as an
7 option. And I think the photographs presented by the
8 Applicant were very persuasive in that that would, in
9 fact, have a larger impact on the character of the
10 historic district, than the proposed addition.

11 And that went a long way with me in
12 supporting this application, in that the addition
13 that's proposed, even though it's inches away from
14 meeting the strict requirement to be under 223, it
15 actually has a lesser impact on the overall neighbor
16 by being in the rear of the house, as opposed to being
17 adjacent to the alley.

18 VICE CHAIRPERSON MILLER: That's right. I
19 think that even before we came in here, and that's why
20 we pursued that route. And in addressing the
21 practical difficulty test, it's a practical difficulty
22 in complying with the regulations and that's why we
23 were trying to pursue whether or not an addition could
24 be built that met some of your practical difficulties,
25 in accordance with 223.

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1 And I think we were convinced upon hearing
2 the testimony today that the court was not really a
3 viable option. Any other comments?

4 (No response.)

5 VICE CHAIRPERSON MILLER: Okay, in which
6 case, all those in favor, say aye.

7 (Chorus of ayes.)

8 VICE CHAIRPERSON MILLER: All those
9 opposed?

10 (No response.)

11 VICE CHAIRPERSON MILLER: All those
12 abstaining?

13 (No response.)

14 VICE CHAIRPERSON MILLER: Ms. Bailey, would
15 you like to call the vote?

16 MS. BAILEY: Madame Chair, the vote is 3-0-
17 2 to approve the application. Mrs. Miller made the
18 motion, Mr. Mann seconded, Mr. Hildebrand is in
19 agreement. Board members Etherly and Griffis are not
20 here today. And you're doing a Summary Judgement?

21 VICE CHAIRPERSON MILLER: Ms. Keys, we have
22 the option of doing a Summary Order, in which case we
23 could, since there are no parties in opposition, do my
24 Board members have any opposition?

25 (No response.)

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1 VICE CHAIRPERSON MILLER: A Summary Order
2 would be very brief, like one page, one and a half
3 pages. You'd probably get your order today or
4 tomorrow. Otherwise, you could wait months for a full
5 order.

6 (Laughter.)

7 VICE CHAIRPERSON MILLER: So, okay, you
8 have no objection to a Summary Order?

9 MS. KEYS: I don't know what a Summary
10 Order is.

11 VICE CHAIRPERSON MILLER: Okay, it's -

12 MS. KEYS: It's something -

13 VICE CHAIRPERSON MILLER: It would grant
14 your relief today. Okay, in which case then, I think
15 by consensus of the Board we'll waive the rules and
16 issue a Summary Order in this case.

17 MS. BAILEY: Thank you.

18 MS. KEYS: I'd like to thank the Board, Mr.
19 Parker and Mr. Spalding.

20 VICE CHAIRPERSON MILLER: Ms. Bailey, do we
21 have any other business for this morning?

22 MS. BAILEY: Not for the morning session,
23 Madame Chair.

24 VICE CHAIRPERSON MILLER: Thank you, then,
25 this hearing is adjourned until we'll pick up in the

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1 afternoon at 1:00.

2 (Whereupon, the foregoing matter
3 went off the record at 11:02
4 a.m., and went back on the
5 record at 1:43 p.m.)
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AFTERNOON SESSION

1:12 p.m.

VICE CHAIRPERSON MILLER: Good afternoon, ladies and gentlemen, this is a public hearing of the Board of Zoning Adjustment of the District of Columbia. My name is Ruthanne Miller, I'm the Vice Chair of the Board of Zoning Adjustment.

Our esteemed Chairman, Mr. Griffis, is unable to be with us this afternoon, so I will be presiding over this proceeding with my colleague, to my left is Mr. John Mann, representing the National Capital Planning Commission.

And to my right is Mr. Curtis Etherly, Mayoral Board member. Mr. Kevin Hildebrand from the Zoning Commission. Mr. Clifford Moy from the Office of Zoning. Ms. Lori Monroe from the Office of Attorney General. And Ms. Beverly Bailey from the Office of Zoning.

Copies of today's hearing agenda are available to you and are located to my left in the wall bin near the door. Please be aware that this proceeding is being recorded by a Court Reporter and is also webcast live.

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1 Accordingly, we must ask you to refrain
2 from any disruptive noises or actions in the hearing
3 room. When presenting information to the Board,
4 please turn on and speak into the microphone, first
5 stating your name and home address.

6 When you are finished speaking, please
7 turn the microphone off so that your microphone is no
8 longer picking up sound or background noise.

9 All persons planning to testify, either in
10 favor or opposition, are to fill out two witness
11 cards. These cards are located to my left on the
12 table near the door and on the witness tables.

13 Upon coming forward to speak to the Board,
14 please give both cards to the Reporter seated to my
15 right. The order of procedure for appeal applications
16 will be as follows.

17 One, statement and witness of the
18 Appellant. Two, the Zoning Administrator or other
19 government officials case. Three, case for the owner,
20 lessee or operator of the property involved, if not
21 the Appellant.

22 Four, the ANC within which the property is
23 located. Five, Intervener's case, if permitted by the
24 Board. Six, rebuttal and closing statement by
25 Appellant.

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Pursuant to Sections 3117.4 and 3117.5, the following time constraints will be maintained. The Applicant, Appellant, persons and parties, except an ANC, in support, including witnesses, 60 minutes collectively.

Appellant, persons and parties, except an ANC, in opposition, including witnesses, 60 minutes collectively. Individuals, three minutes. These time constraints do not include cross examination and/or questions from the Board.

Cross examination of witnesses is permitted by the Applicant or parties. The ANC within which the property is located, is automatically a party in a special exception or variance case.

Nothing prohibits the Board from placing reasonable restrictions on cross examination, including time limits and limitations on the scope of cross examination.

The record will be closed at the conclusion of each case, except for any material specifically requested by the Board. The Board and the staff will specify at the end of the hearing exactly what is expected and the date when the persons must submit the evidence to the Office of Zoning.

After the record is closed, no other

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1 information will be excepted by the Board. The
2 Sunshine Act requires that the public hearing on each
3 case be held in the open before the public. The Board
4 may, consistent with its rules and procedures, and the
5 Sunshine Act, enter Executive Session during or after
6 the public hearing on a case for purposes of reviewing
7 the record or deliberating on the case.

8 The decision of the Board in these
9 contested cases must be based exclusively on the
10 public record. Do avoid any appearance to the
11 contrary, the Board request that persons present not
12 engage the members of the Board in conversation.

13 Please turn off all beepers and cell
14 phones at this time, so as not to disrupt these
15 proceedings. The Board will make every effort to the
16 conclude the public hearing as near as possible to
17 6:00 p.m.

18 If the afternoon cases are not completed
19 at 6:00 p.m., the Board will assess whether it can
20 complete the pending case or cases remaining on the
21 agenda.

22 At this time, the Board will consider and
23 preliminary matters. Preliminary matters are those
24 that relate to whether a case will or should be heard
25 today.

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1 Such as, requests for postponement,
2 continuance or withdrawal, or whether proper and
3 adequate notice of the hearing has been given. If
4 you're not prepared to go forward with a case today,
5 or if you believe that the Board should not proceed,
6 now is the time to raise such a matter. Does the
7 staff have any preliminary matters?

8 MS. BAILEY: Madame Chair, and to everyone,
9 good afternoon. There is, Madam Chair, as you are
10 aware, there is one case on the docket for this
11 afternoon, Application Number 17311 of the Palisades
12 Citizens Association.

13 And there are two requests associated with
14 this case. The first of which is the Appellant is
15 requesting that the hearing be postponed. And,
16 secondly, the property owner is requesting that the
17 appeal be dismissed. So those matters are before the
18 Board at this time.

19 VICE CHAIRPERSON MILLER: Thank you, Ms.
20 Bailey. I think what we'll do is hear those
21 preliminary matters when we call the case.

22 MS. BAILEY: Good enough. Appeal Number
23 17311 of the Palisades Citizens Association, and it's
24 pursuant 11 DCMR 3100 and 3101, from the
25 administrative decision of the Zoning Administrator of

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1 the Department of Consumer and Regulatory Affairs.

2 The Appellant alleges that the Zoning
3 Administrator erred by issuing Building Permit
4 B468560, dated December 20th, 2004, for the
5 construction of a single-family dwelling that does not
6 comply with the Wesley Heights Overlay District, by
7 exceeding the gross floor area requirements, lot
8 occupancy requirements and height and story
9 limitations.

10 The property is located at 4825 Dexter
11 Terrace, N.W., Square 1381, Lot 806.

12 VICE CHAIRPERSON MILLER: Ms. Bailey, I'd
13 also, perhaps before we get into those motions,
14 request that all of the individuals wishing to testify
15 today, to please rise to take the oath.

16 MS. BAILEY: Certainly.

17 VICE CHAIRPERSON MILLER: Ms. Bailey, would
18 you administer the oath?

19 (Witnesses are sworn.)

20 VICE CHAIRPERSON MILLER: Thank you. Would
21 the Applicant and DCRA and any other parties, come
22 forward and identify yourselves. Ms. Gates, would you
23 like to come forward, as well, it seems to be, you
24 might want to weigh in on these motions.

25 Could you identify yourselves for the

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1 record. Why don't we start on my right, with Mr.
2 Aguglia.

3 MR. AGUGLIA: Richard Aguglia for the
4 property owners in this case.

5 VICE CHAIRPERSON MILLER: Would you give
6 your name and address, please?

7 MR. AGUGLIA: Richard Aguglia,
8 Rockville, Maryland. Law firm, Hunts and Williams,
9 representing the property owners, Frank and Dina, in
10 opposition to the appeal. And we have a preliminary
11 motion to dismiss the appeal.

12 VICE CHAIRPERSON MILLER: Right, okay.

13 MS. GATES: Alma Gates, 4911 Ashby Street,
14 N.W., Washington, D.C. 20007. I'm the Chair of ANC-
15 3D.

16 VICE CHAIRPERSON MILLER: Thank you.

17 MS. BELL: Good afternoon, I'm Lisa Bell.
18 I'm with the General Counsel's Office for the
19 Department of Consumer and Regulatory Affairs. We're
20 at 941 North Capital Street in Washington, D.C.

21 MS. RIEDY: Good afternoon, my name is
22 Marion Riedy, I'm with the law firm of Bodie and
23 Granier, 1150 Connecticut Avenue, N.W., Washington,
24 D.C. 20036. I'm representing the Palisades Citizen
25 Association. And if I may up front say I've not

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1 appeared in this forum before, so if I make any
2 procedural errors, please forgive me.

3 And I'm here to argue the motion to
4 continue this matter.

5 VICE CHAIRPERSON MILLER: Thank you, thank
6 you. We're a little more casual here, so you don't
7 have to be too concerned. Okay, the Board is aware
8 that there are two motions before us.

9 One is a request for postponement until
10 after the decision on Appeal Number 17285, which is
11 scheduled for July 5th, that's the Appellant's motion.

12 And then there is the Intervener's motion
13 to dismiss the appeal. And we are going to let you be
14 heard. Let me just say this, as a preliminary matter,
15 I mean as a preliminary note, they are very connected.

16 We think that the fact that there is a
17 motion to dismiss pending, there's a reason to
18 continue the case in general until we deal with the
19 motion to dismiss.

20 But that's where we're coming from at this
21 point. So, we understand that the Appellant has a
22 request for postponement, based on your view that we
23 should decide the other case first, if they're
24 related.

25 And I, we understand that. So, but

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1 separate from that, I think we need to focus on the
2 motion to dismiss, and you're going, I'll let you
3 address both motions. I don't think we have to really
4 separate them, because, as I was saying, I think the
5 fact that there's a motion to dismiss is a reason to
6 continue, regardless.

7 So, Mr. Aguglia, maybe you should start
8 with your motion to dismiss.

9 MR. AGUGLIA: Yes, I'm a little
10 confused, Madame Chair.

11 VICE CHAIRPERSON MILLER: Sorry.

12 MR. AGUGLIA: To the extent that the
13 cases are connected on the merits, does not mean
14 they're connected on my motion to dismiss as untimely.

15 VICE CHAIRPERSON MILLER: That's correct.
16 I think what we're saying, let me fill in a little bit
17 more. You have filed a motion to dismiss. Before we
18 would deal with the merits of your motion to dismiss,
19 we would give the Appellant an opportunity to respond
20 to your motion to dismiss.

21 And that was just filed, July, wasn't it
22 June 16, or so?

23 MR. AGUGLIA: That's correct.

24 VICE CHAIRPERSON MILLER: Okay, so there
25 hasn't been adequate enough time, in our view, for the

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1 Appellant to respond to your motion to dismiss.

2 MR. AGUGLIA: Well, you know, they filed
3 this February 23rd, their appeal on February 23rd of
4 `05, and it was their responsibility to file any
5 supplemental documents, 14 days in advance of the
6 hearing, and I was waiting for that.

7 And not having got that, I filed my motion
8 to dismiss, and it was hand-delivered on the 16th. You
9 know, our position is that this house was under roof,
10 and I submitted an Affidavit in November of `03.
11 November of 2003.

12 The applicable building permit was issued
13 in July of `03.

14 VICE CHAIRPERSON MILLER: Without going to
15 your merits, let's just look at the timing. So what
16 date was their, it was 14 days prior to June 21st, is
17 what, June 7th?

18 MR. AGUGLIA: June 7th or 8th.

19 VICE CHAIRPERSON MILLER: Okay, June 7th or
20 8th. And you filed your motion -

21 MR. AGUGLIA: June 16th.

22 VICE CHAIRPERSON MILLER: And is it your
23 position that they should not have an opportunity to
24 respond, or there's -

25 MR. AGUGLIA: Well, their appeal says

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1 that it's filed timely, but it doesn't say how it was
2 appealed timely. So one would expect them to at least
3 have presented that in their 14-day submission.

4 VICE CHAIRPERSON MILLER: Okay. I'm sorry,
5 what is your last name?

6 MS. RIEDY: Marion Riedy, Marion Riedy.

7 VICE CHAIRPERSON MILLER: Okay, Ms. Riedy.

8 MS. RIEDY: A couple points to that. The
9 appeal itself, which I did not draft, however the
10 timing of it is evidenced by the permit to which, from
11 which the appeal is taken, which is December 20th,
12 2004.

13 So that evidence is the timeliness of the
14 appeal, insofar as the Appellant is concerned.

15 VICE CHAIRPERSON MILLER: Would you like an
16 opportunity to address that motion in writing?

17 MS. RIEDY: Yes, that's another reason, to
18 add to the other reasons to continue this, would be
19 that you give us an opportunity to respond to the
20 motion to dismiss.

21 VICE CHAIRPERSON MILLER: Okay. Ms. Bell,
22 do you have anything to add?

23 MS. BELL: You know, the government is a
24 little concerned about the progress of this case and
25 related cases. We agree with the property owner,

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1 inasmuch as this particular permit that has been
2 raised by the Palisades, the December permit is
3 actually a technical of an early permit. So it is not
4 a permit that was issued in which work was approved,
5 or that work that was approved as part of the permit,
6 was allowed to continue.

7 It was a procedural, technical correction.

8 So, you know, I think the government has an argument
9 that it's not even sort of the permit of notice as to
10 the construction of a new house.

11 The second thing is there has been a lot
12 of discussion in the earlier appeal and as well as in
13 Mr. Aguglia's motion, that indicated that this
14 community had notice of this particular project much
15 earlier than February of this year.

16 And I think that he's documented that
17 pretty sufficiently. I also think that there is
18 documents or evidence of that fact, aside from what
19 Mr. Aguglia has provided in his motion, in this
20 court's proceeding in the earlier, in the other,
21 quote/unquote, related BZA appeal.

22 But, that aside, the government did not
23 receive notice of this petition when it was filed. We
24 had no idea about what the substance of the appeal is
25 for the purposes of the Palisades.

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1 And I understand that they went out and
2 got a lawyer, after the fact. But that being said, it
3 was filed in February. It was certainly filed
4 contemporaneously with Mr. Carone appeal, which the
5 community was well aware of, because as I said, not
6 only has there been a lot of information out in the
7 public about it, but it's certainly been, and we can
8 document this for the purposes of the Board, but it's
9 certainly been reported rather frequently and rather
10 extensively in the Northwest Current.

11 So here we have two appeals that are
12 similar. This appeal is for the house that is before,
13 the project before the retaining wall. The reason why
14 the government can not agree with Mr. Aguglia in its
15 entire, is we actually believe that there are two
16 separate issues here.

17 The retaining wall project is a completely
18 separate, different project than the house, and
19 whatever concerns there may be about the house.

20 So we would argue, and I would be glad to
21 brief it, that it's not only untimely, but that they
22 are two very separate issues.

23 VICE CHAIRPERSON MILLER: So do you have an
24 objection to continuing this for the reason to rule on
25 the motion to dismiss and allow the parties to brief

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1 it?

2 MS. BELL: No, I don't object to that. But
3 I do object to a postponement, because I don't think
4 that this case should be postponed until the Board has
5 made a determination on the wall.

6 Because as I said, we believe the permits
7 that were issued for the retaining wall, had a
8 completely different approval process. It had
9 different zoning matters and zoning considerations
10 than this, than this permit that they are raising
11 today.

12 I would also say, as I said earlier, we
13 weren't given notice of this particular appeal, and I
14 would say that in taking a look at the appeal that
15 was filed by the Palisades, it is not definite in its
16 terms.

17 If I can use a Superior Court term of art,
18 definite in the terms in which it has properly
19 identified, either for the Board or for the
20 government, what error they believe the Zoning
21 Administrator has made, with regard to the issuance
22 of the technical correction permit, as I said.

23 Because really, in effect, I guess there
24 are two permits that they seem to take issue with.
25 The technical correction and then the original permit

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1 that was issued.

2 If you take a look at the permit at issue
3 indicates that this permit is on file to technically
4 correct Permit B452180. I might add that's an actual
5 error. It's actually 452810, which was granted for
6 amended alteration and repair permit, but which should
7 have been indicated, but which should have indicated a
8 new building construction.

9 So the permit that they're apparently here
10 about, is the 468560, which they're saying was issued
11 12-20-04, and then the correction that it seemed to be
12 referring back to, is the 452810, which was actually
13 issued July 2nd, 2003.

14 VICE CHAIRPERSON MILLER: Okay, Ms. Bell,
15 from what I think you're saying is, number one, you
16 wouldn't agree to continue the case based on the
17 reasons that the Appellant cited, that it was related
18 to the other case.

19 MS. BELL: That's right.

20 VICE CHAIRPERSON MILLER: But you would
21 agree to continue to consider a motion to dismiss.
22 There's one already filed by Mr. Aguglia.

23 MS. BELL: Actually, I wouldn't call it a
24 postponement. I think the case can go forward and
25 just, could the Board, obviously in its authority, can

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1 set up a briefing schedule in which we can brief for
2 the motion to dismiss.

3 But I would not be in agreement for a
4 continuance or a postponement. I think that we can
5 just go forward on a motion to dismiss.

6 VICE CHAIRPERSON MILLER: Are you saying
7 you would have a hearing today?

8 MS. BELL: I would like to have a hearing
9 today, if the parties are not able to orally argue it
10 and then, and provide some issues later, then I guess
11 we'll have to make another date.

12 MS. RIEDY: May I be heard from on that?

13 VICE CHAIRPERSON MILLER: Sure.

14 MS. RIEDY: I would certainly appreciate
15 the opportunity to brief the motion to dismiss, but
16 also, referring back for a moment, if I may, to the
17 motion to continue, one of the, some of the overlaps
18 between this and the other appeal, are not necessarily
19 apparent because, perhaps, we didn't draft the
20 original appeal.

21 And I apologize for the fact that you
22 weren't served, I didn't have anything to do with
23 that. But one of the major areas of overlap, again,
24 is taking a quick look at the motion to dismiss, is
25 that we should have known long before the 16th day

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1 period.

2 And one of the complaints made about the
3 property is that the house, with the wall, is larger
4 than applicable requirements for the lot. So before,
5 however the decision is made on the wall, it renders
6 this appeal probably moot.

7 Therefore saving everybody a lot of time
8 and energy, even briefing it, because if we're out of
9 time, if the wall is out of time, I mean I'm not
10 conceding that fact, but if the wall is out of time,
11 probably the house and the wall are out of time,
12 because the house was built first.

13 So that I think is one of the strongest
14 arguments to continue it for the very short period of
15 time, as I understand the Board is going to make the
16 decision on the other appeal.

17 When that's, again, when that's decided,
18 if that's, that's, depending upon the decision this
19 appeal may very well go away, because of the
20 timeliness issue.

21 Because in one of the arguments made
22 herein, is that the house, with the wall, exceeds lot
23 requirements. And we couldn't have known about that
24 until the wall was done and the arguments and the
25 other appeal were that we couldn't have known about

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1 the wall.

2 So, again, this may all go away, very
3 shortly, depending upon the results of the other
4 appeal. That's the main reason for our motion to
5 continue, that it's very likely, very likely, that it
6 will not have to be briefed at all, if we continue it.

7 But if it's not continued, I certainly
8 would request a reasonable period of time to brief the
9 motion to dismiss.

10 VICE CHAIRPERSON MILLER: Ms. Gates, do you
11 have a position on this?

12 MS. GATES: I do have a position. The
13 Commission has not heard this case from Palisades,
14 specifically, because we were waiting for the decision
15 on the walled structure.

16 I'm not sure I would agree with Ms. Riedy
17 that the walled structure decision will make this case
18 moot. However, it has not been heard. There are a
19 number of issues here. The permit that was referred
20 to for December, was actually, what I have referred to
21 as a forgive it all permit.

22 A permit was never issued to construct a
23 new house. A permit was issued to renovate an
24 existing house. And it was that December permit that
25 was issued to construct a new house, that then brings

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1 into play lot occupancy.

2 So that's where I'm coming from. And I
3 would ask that this case be continued, please.

4 MR. AGUGLIA: May I have one minute of
5 clarification.

6 VICE CHAIRPERSON MILLER: Sure.

7 MR. AGUGLIA: DCRA is correct and ANC-3D
8 is incorrect. The permit of notice was dated July 2nd,
9 '03, and it corrected an earlier permit. The first
10 permit was for renovation and addition to a single-
11 family house.

12 The July, '03 permit, which is in the file
13 that I gave you, clearly says it's a correction and
14 new plans were required to be filed because the
15 neighbors said it was really construction of a new
16 house, a new single-family dwelling, because the old
17 house had been raised.

18 So there is in the file, the original
19 permit for a new family construction. That was July
20 of '03. Here's what we had. We have an appeal by the
21 Palisades in February of '05, with a house under roof
22 and Thanksgiving of '03, it's clearly dismissible as
23 untimely.

24 That issue is not at all related to the
25 retaining wall. So my dismissal issue has no

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1 reference to the retaining wall. It's really unfair
2 to the family. The family has moved in, they want
3 closure on this. This has been hanging over their
4 heads like, for many, many months, starting with the
5 retaining wall and now this.

6 And I just think the case is right for
7 dismissal, and this is just a delaying tactic.

8 VICE CHAIRPERSON MILLER: Yes.

9 MS. RIEDY: I certainly don't want to
10 disagree with my ANC Commissioner. I wasn't
11 representing, by any means, I want to make clear, that
12 it would be moot, but that's one of the reasons for
13 the grounds for continuance.

14 It may be, you certainly have the
15 alternative argument that this re-permitting
16 effectively re-instituted the 60-day period. In other
17 words, it is complicating matters because the other
18 one was, either the other may resolve some of the
19 complications once it's decided, and/or we certainly,
20 well again I think it's clear that this will be an
21 opportunity to brief what he's going forward, because
22 it is complicated.

23 VICE CHAIRPERSON MILLER: Okay, any other
24 comments before we go weigh in on this?

25 MS. GATES: The permit that Mr. Aguglia

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1 referred to, was issued on December 6th of 2004, long
2 after the permit to construct a new drawing was
3 issued. We have a number of issues here.

4 VICE CHAIRPERSON MILLER: Okay, anything
5 else?

6 (No response.)

7 VICE CHAIRPERSON MILLER: Okay, I'll just
8 start the deliberations, then. Since, we've had an
9 opportunity to review both motions and to hear from
10 you all on this issue.

11 And basically I would suggest, I think the
12 Board is of the view that we ought to allow the
13 Appellant and DCRA and the ANC to respond to the
14 motion to dismiss, and that it makes sense to continue
15 this case until after they've had that opportunity.

16 And I think that that also coincides with
17 our decision on the other case. We will be deciding
18 Case Number 17285 on July 5th. And I know our
19 regulations may not specify an exact amount of time
20 for a motion, and an opposition to a motion and
21 possibly a reply.

22 But if we look to the courts for guidance,
23 we would allow ten days for an opposition to a motion
24 to dismiss, and the parties have not had that
25 opportunity at this point.

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1 So, I would propose that we set a briefing
2 schedule on the motion to dismiss, and, well, let me
3 hear from my other Board members before we set any
4 schedules to make sure they are in agreement on this.

5 (No response.)

6 VICE CHAIRPERSON MILLER: Okay, not hearing
7 anything, okay. So, what we'd like to do is set a
8 schedule, a briefing schedule on the motion to
9 dismiss.

10 Now the courts provide ten days and then
11 five days to reply. And will that work for you all?

12 MS. RIEDY: Is that excluding weekends?

13 VICE CHAIRPERSON MILLER: Yes, excluding
14 weekends and holidays.

15 MS. GATES: It would be nice to have a copy
16 of the motion.

17 VICE CHAIRPERSON MILLER: Mr. Aguglia, have
18 you not serve the motion on the ANC?

19 MR. AGUGLIA: I mailed it on the 16th.

20 VICE CHAIRPERSON MILLER: Does the
21 Appellant have a copy?

22 MR. AGUGLIA: Yes. It was hand-
23 delivered on the 16th.

24 VICE CHAIRPERSON MILLER: Okay, Mr. Moy,
25 what date would that bring us to, if there were ten

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1 days to file an opposition to the motion to dismiss,
2 not including weekends and holidays?

3 MS. RIEDY: Is the ANC going to get the
4 extra three days for mailing, can we put that -

5 VICE CHAIRPERSON MILLER: You don't, no,
6 it's upon receipt. Do you have a copy?

7 MS. GATES: I just got it.

8 VICE CHAIRPERSON MILLER: So, no, I don't
9 think they get an extra three days. If you need more
10 time, let us know, because basically, well let me tell
11 you where we're going with this.

12 We want to set this for decision-making on
13 August 2nd, which is our August decision date. And we
14 will resolve the motion to dismiss at that time. July
15 5th, we would have resolved the appeal in the other
16 case.

17 What I want to do is, and we'll do this
18 with Mr. Moy in a few minutes, set a date for the next
19 available date for the appeal to get on the calendar.

20 If, in fact, the motion to dismiss is granted, it
21 will be pulled from the calendar.

22 But at least you're all here and we can
23 set a date that everybody can attend. Ten days. Have
24 you figured that out? Ms. Bailey, are you doing that?

25 MS. BAILEY: July 5th, Madame Chair, would

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1 be ten days from today.

2 VICE CHAIRPERSON MILLER: Okay.

3 MS. BAILEY: And then five days after that
4 would be, I think July the 11th would be best. July
5 the 11th or 12th.

6 VICE CHAIRPERSON MILLER: Okay, if
7 afternoon, umm, three days for mailing and not
8 weekends?

9 MS. BAILEY: Umm.

10 MS. BELL: Don't you mean July 12th, five
11 days, excluding weekends?

12 MS. BAILEY: July, one, two, three, four,
13 five, July 11th, would be five days, if you include the
14 three days for mailing, would be the 14th. So perhaps
15 July 15th, just to give an extra day, would be the
16 response date.

17 MS. BELL: I don't, July 5th would be the
18 tenth day, and then it's five days after that, right?

19 VICE CHAIRPERSON MILLER: But there's three
20 days for mailing and a weekend.

21 MS. BAILEY: Yes.

22 MS. BELL: Oh, so I think, Ms. Bailey, that
23 July 15th, would be right.

24 MS. BELL: July 15th, okay.

25 MS. RIEDY: The 5th, Appellant's briefs are

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1 due, right?

2 MS. BAILEY: So, Madame Chair, did you want
3 to go with those dates? That is July 5th, for the
4 response, for the submissions, and then the 15th for
5 the replies? Did you want to go with those dates?

6 VICE CHAIRPERSON MILLER: Yes. Ms. Bell, I
7 would think that, in your response, even if it's not
8 in opposition, it may be in support, that you have
9 that same opportunity to do it in support.

10 MS. BELL: Okay.

11 VICE CHAIRPERSON MILLER: And if you have
12 an additional reason that you seem to be indicating
13 today for the case to be dismissed, you could put it
14 in that filing.

15 MS. BELL: Okay. So we're actually, so our
16 submission, the first set of submissions would be if
17 you're opposing the motion, you oppose it, or if you,
18 what, you know, whatever your position. If you
19 concur, you can file a -

20 VICE CHAIRPERSON MILLER: But if you do
21 file an additional, right there, if you do file an
22 additional reason, then they would have an opportunity
23 to address that.

24 MS. BELL: On that extra, that extra -

25 VICE CHAIRPERSON MILLER: Why don't we do

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1 it that way.

2 MS. BELL: That extra day, yeah.

3 VICE CHAIRPERSON MILLER: The extra day,
4 yeah, and then close to that. Okay.

5 MS. BELL: Then we can close it out. Thank
6 you.

7 VICE CHAIRPERSON MILLER: Okay. And then I
8 guess, why don't we look at the calendar and see what
9 the next available hearing date is, in the event that
10 we go forward on this case.

11 SECRETARY MOY: The staff is pleased that
12 the next opportunity would be November the 8th, in the
13 afternoon. We have a second case that may fall off
14 and that would be a likely place to substitute this
15 case.

16 VICE CHAIRPERSON MILLER: Okay. WE have a
17 very full calendar. Are the parties available that
18 day, in the event we go forward on this case?

19 MR. AGUGLIA: Yes.

20 MS. GATES: Yes, I'm available.

21 MS. BELL: Yes.

22 VICE CHAIRPERSON MILLER: Okay, great, the
23 parties are available. And I would also remind the
24 Appellant that 14 days prior to that date you will
25 need to file a pre-hearing statement. Okay, are there

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1 any questions?

2 (No response.)

3 VICE CHAIRPERSON MILLER: All right, well,
4 thank you very much.

5 MS. GATES: Thank you.

6 MS. BELL: Thank you.

7 VICE CHAIRPERSON MILLER: Ms. Bailey, do
8 you have any other business on your calendar today?

9 MS. BAILEY: No other business in the afternoon,
10 Madame Chair.

11 VICE CHAIRPERSON MILLER: Thank you, then
12 this hearing is adjourned.

13 (Whereupon, the proceedings in
14 the above-entitled matter were
15 concluded at 1:43 p.m.)

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