

GOVERNMENT  
OF  
THE DISTRICT OF COLUMBIA

+ + + + +

BOARD OF ZONING ADJUSTMENT

+ + + + +

PUBLIC HEARING

+ + + + +

WEDNESDAY

JUNE 20, 2018

+ + + + +

The Regular Public Hearing convened in the Jerrily R. Kress Memorial Hearing Room, Room 220 South, 441 4th Street, N.W., Washington, D.C., 20001, pursuant to notice at 9:30 a.m., Frederick Hill, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

FREDERICK L. HILL, Chairperson  
LESYLLEE M. WHITE, Board Member  
CARLTON HART, Vice Chairperson (NCPC)  
LORNA JOHN, Board Member

ZONING COMMISSION MEMBER PRESENT:

ANTHONY HOOD, ZC Chair

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY, Secretary

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

HILLARY LOVICK, ESQ.

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## OFFICE OF PLANNING STAFF PRESENT:

BRANDICE ELLIOT  
CRYSTAL MYERS

ELISA VITALE  
MAXINE BROWN-ROBERTS  
STEVEN COCHRAN  
STEPHEN MORDFIN

The transcript constitutes the minutes from the  
Public Hearing held on June 20, 2018.

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

9:43 a.m.

CHAIRPERSON HILL: Good morning. The hearing will please come to order. We're located in the Jerrily R. Kress Memorial Hearing Room at 441 4th Street, N.W. This is the June 20th public hearing of the Board of Zoning Adjustment of the District of Columbia. My name is Fred Hill Chairperson. Joining me today are Carlton Hart, Vice Chair; Lesyllee White and Lorna John, Board Members; and representing the Zoning Commission is Anthony Hood.

Copies of today's hearing agenda are available to you and located in the wall bin near the door.

Please be advised this proceeding is being recorded by a court reporter and also web cast live. Accordingly, we must refrain -- we must ask you to refrain from any disruptive noises or actions in the hearing room.

When presenting information to the Board, please turn on and speak into your microphone first stating your name and home address. When you're finished speaking please turn your microphone off so that your microphone is no longer picking up sound or background noise.

All persons planning to testify either in favor or in opposition must have raised their hand and been sworn in by the secretary. Also, each witness must fill out two witness cards. These cards are located on the table near the

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1 door and on the witness table. Upon coming forward to speak  
2 with the Board please give both cards to the reporter sitting  
3 at the table to my right.

4           If you wish to file written testimony or  
5 additional supporting documents today, please support one  
6 original and 12 copies to the secretary for distribution.  
7 If you do not have the requisite number of copies, you can  
8 reproduce copies on an office printer in the Office of Zoning  
9 located across the hall. Please remember to collate your set  
10 of copies.

11           The order of procedures, special exceptions and  
12 variances as well as appeals is also listed in the bin as you  
13 walk into the room.

14           The record shall be closed at the conclusion of  
15 each case except for any materials specifically requested by  
16 the Board. The Board and the staff will specify at the end  
17 of the hearing exactly what is expected and the date when the  
18 persons must submit the evidence to the Office of Zoning.  
19 After the record is closed no other information shall be  
20 accepted by the Board.

21           The District of Columbia Administrative Procedures  
22 Act requires that the public hearing on each case be held in  
23 the open before the public pursuant to § 405(b) and 406 of  
24 that act. The Board may, consistent with its rules and  
25 procedures and the act, enter into a closed Mr. Hinkle on a

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1 case for purposes of seeking legal counsel on a case pursuant  
2 to D.C. Official Code § 2-575(b)(4) and/or deliberating on  
3 a case pursuant to D.C. Official Code § 2-575(b)(13), but  
4 only after providing the necessary public notice, and in the  
5 case of an emergency closed meeting after taking a roll call  
6 vote.

7           The decision of the Board in cases must be based  
8 exclusively on the public record. To avoid any appearance  
9 to the contrary the Board requests that persons present not  
10 engage the Members of the Board in conversation.

11           Please turn off all beepers and cell phones at  
12 this time so as not to disrupt the proceeding.

13           Preliminary matters are those which relate to  
14 whether a case will or should be heard today such as requests  
15 for a postponement, continuance or withdrawal, or whether  
16 proper and adequate notice of the hearing has been given.  
17 If you're not prepared to go forward with a case today or if  
18 you believe that the Board should not proceed, now is the  
19 time to raise such a matter.

20           Mr. Secretary, do we have any preliminary matters?

21           SECRETARY MOY: Good morning, Mr. Chairman and  
22 Members of the Board.

23           I do very quickly. This is for the record. As  
24 to today's docket Case Application No. 19774 of Philip Qui  
25 & Associates, LLC has been rescheduled to July 11th, 2018.

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1           Second, there are two case applications where  
2 there is a motion requesting postponement. This is to  
3 Applications No. 19731 of 1766 Lanier NW, LLC, and Case  
4 Application No. 19770, 3554 10th Street, LLC.

5           Other applications with preliminary matters staff  
6 would suggest that those are addressed when I call the case.

7           CHAIRPERSON HILL: All right, Mr. Moy. Let's see  
8 the preliminary matters during the hearing portion. And then  
9 I just want to do the meeting first.

10           (Whereupon, the above-entitled matter went off the  
11 record at 9:47 a.m. and resumed at 10:20 a.m.)

12           CHAIRPERSON HILL: Mr. Moy, whenever you want to  
13 call the next one. Oh, actually there are preliminary  
14 matters, right?

15           SECRETARY MOY: Yes, sir. As I said earlier in  
16 my earlier statement there are two case applications where  
17 there is a motion to -- requesting postponement. The first  
18 of the two is Case Application No. 19731 of 1766 Lanier NW,  
19 LLC. This is on the hearing docket, caption advertised for  
20 a special exception under Subtitle Y, § 320.2 to construct  
21 a rear three-story addition and convert an existing  
22 residential building into a three-unit apartment house, RF-1  
23 Zone, at premises 1766 Lanier Place, N.W., Square 2580, Lot  
24 481.

25           Also, Mr. Chair, as the Board is aware, there's

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1 a request for party status in this application, and I believe  
2 she is present today.

3 CHAIRPERSON HILL: Okay. Thanks.

4 Could the applicant and the party status people  
5 come forward, please?

6 Good morning. If you could just please introduce  
7 yourself. Just push the button there and --

8 MS. STAINES: Good morning. My name is Meg  
9 Staines. I live at 1768 Lanier Place, N.W. next door to the  
10 property in question.

11 CHAIRPERSON HILL: Okay, Ms. Staines. Thank you.

12 MR. SULLIVAN: Good morning, Mr. Chair, Members  
13 of the Board. My name is Marty Sullivan on behalf of the  
14 applicant.

15 CHAIRPERSON HILL: Okay. So, Mr. Sullivan, you  
16 requested a postponement. Could you tell us why we should  
17 grant you a postponement?

18 MR. SULLIVAN: Yes, there's significant concerns  
19 in opposition on some very specific issues and the Office of  
20 Planning report just came out as well, too, and we think that  
21 there is -- there may be an opportunity to adjust the plan  
22 to possibly satisfy the Office of Planning's concerns.

23 And there also has been an issue raised, an issue  
24 of interpretation that would impact this as well and we'd  
25 like to talk to the Zoning Administrator and get that

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1 interpretation as well. Otherwise it might make going  
2 forward a waste of time --

3 CHAIRPERSON HILL: Okay.

4 MR. SULLIVAN: -- if we don't get that --

5 (Simultaneous speaking.)

6 CHAIRPERSON HILL: Okay. So the -- and the date  
7 that you're requesting is a time past September 25th? At  
8 least that's what you got in your letter.

9 MR. SULLIVAN: Yes, and that's what we assumed it  
10 would be --

11 (Simultaneous speaking.)

12 CHAIRPERSON HILL: Yes, okay. So this is your  
13 client's third request for a postponement, is that correct?

14 MR. SULLIVAN: Yes.

15 CHAIRPERSON HILL: Okay. Do you know -- and I --  
16 now I'm just curious. Do you know why you didn't think you  
17 were -- do you know why you waited until inside the seven  
18 days for asking for the postponement?

19 MR. SULLIVAN: I don't know why. No, I mean, we  
20 had been recommending this to them for a while and --

21 CHAIRPERSON HILL: To the client?

22 MR. SULLIVAN: Yes, and --

23 CHAIRPERSON HILL: Okay.

24 MR. SULLIVAN: -- they didn't give us the final  
25 decision until --

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1 CHAIRPERSON HILL: Okay.

2 MR. SULLIVAN: -- the last minute.

3 CHAIRPERSON HILL: So I mean, as you know, I mean,  
4 you know, the third postponement is kind of like after that  
5 we're just like what are we doing wasting time? And as far  
6 as your client goes; and now I'm just kind of making a  
7 personal comment I suppose, when it's inside the seven-day  
8 window we all have to still review the stuff. And so to keep  
9 having reviewing it and then getting it pushed back -- and  
10 I'm sure the -- also the neighborhood wants to get this kind  
11 of resolved or move forward. So if you could ask your client  
12 to go ahead and try to figure out what they want to do and  
13 then we'll see. I mean, I'll let the Board chime in on it  
14 so -- because like I read it again. But I'll let the Board  
15 chime in in terms of the postponement.

16 But, Ms. Staines -- it's Staines, correct?

17 MS. STAINES: Yes.

18 CHAIRPERSON HILL: So you've requested party  
19 status. And we did read your request. And you're the  
20 immediate adjoining neighbor, correct?

21 MR. SULLIVAN: That is correct.

22 CHAIRPERSON HILL: Okay. So I don't really have  
23 any issues granting Ms. Staines party status. Does the Board  
24 have any thoughts?

25 VICE CHAIRPERSON HART: The only thought I had was

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1 just timing. I mean, right now we're looking at what, about  
2 five weeks delay? Is that sufficient time to be able to do  
3 this and -- I mean, are you going to work with the ANC on  
4 understanding this? Are we going to get something from the  
5 ANC on a revised design, Mr. Sullivan? I just -- I'm just  
6 trying to figure out -- we're -- right now we are kind of  
7 artificially putting -- not -- we're pushing this to -- if  
8 we approve it, pushing it to the end of July. Is the end of  
9 July an adequate amount of time?

10 MR. SULLIVAN: End of September.

11 VICE CHAIRPERSON HART: I'm sorry. End of  
12 September. Actually is that enough time as well?

13 MR. SULLIVAN: It has to be. I mean, it -- and  
14 I won't ask for another postponement. And I understand your  
15 concerns, but -- and it should be plenty of time. I mean,  
16 we would have taken August if there was an August, but so  
17 that's --

18 CHAIRPERSON HILL: Okay.

19 MR. SULLIVAN: But --

20 CHAIRPERSON HILL: Well, I think jammed up  
21 actually in September, so we'll see what the secretary has  
22 to say actually, but -- so on the question of party status  
23 does the Board have any thoughts on granting Ms. Staines'  
24 request?

25 MEMBER WHITE: My thought would be that I think

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1 she's the adjacent owner and kind of uniquely positioned to  
2 be more impacted probably than other people in the  
3 neighborhood. I haven't received any testimony from her, but  
4 I don't have a problem with granting the party status.

5 MEMBER JOHN: Mr. Chairman, I would concur.

6 CHAIRPERSON HILL: All right, Ms. Staines. So  
7 we're going to go ahead and grant your party status. Okay?

8 And then, Mr. Moy, when can we postpone this to?

9 SECRETARY MOY: To be honest, Mr. Chair, I thought  
10 that we had a full docket on the 26th of September. I was  
11 actually looking at October 3rd, but in fact we have one  
12 appeal and an application. So the Board could move this to  
13 September 26th, if you wish.

14 CHAIRPERSON HILL: Okay. Mr. Sullivan, do you  
15 want the 26th or do you want the 3rd?

16 MR. SULLIVAN: Either one is fine. Whatever is  
17 convenient.

18 CHAIRPERSON HILL: Okay. Then we'll put it the  
19 26th. Okay.

20 (Pause.)

21 CHAIRPERSON HILL: Okay. Great. Thank you, guys.

22 SECRETARY MOY: Okay. So the second case  
23 application where there is a request for a postponement.  
24 This is from the applicant, is to Case Application No. 19770  
25 of 3554 10th Street LLC. This is a request for a special

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1 exception under the residential conversion requirements,  
2 Subtitle U, § 320.2, which would construct a three-story rear  
3 addition to an existing principal dwelling unit and convert  
4 it to a three-unit apartment house, RF-1 Zone, at premises  
5 3554 10th Street, N.W., Square 2832, Lot 52.

6 CHAIRPERSON HILL: Okay. Great. Is the applicant  
7 here?

8 (No audible response.)

9 CHAIRPERSON HILL: Okay. Great. I got worried  
10 there for a minute. I was like -- if you'd please introduce  
11 yourself?

12 MS. GIORDANO: Cynthia Giordano with Saul Ewing  
13 Law Firm.

14 CHAIRPERSON HILL: Okay, Ms. Giordano. You  
15 requested for a postponement. Could you explain why we  
16 should grant the postponement?

17 MS. GIORDANO: Yes, the ANC just met one week ago  
18 from today, and it was our second meeting with them. And a  
19 new issue came up about a curb cut which we didn't understand  
20 from the first meeting was an issue for them, so they were  
21 opposed to the application. And I actually wasn't there  
22 myself, but we need some additional time to work with them  
23 and clarify the relationship between the curb cut and this  
24 special exception.

25 In addition, the Office of Planning has not yet

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1 submitted a report.

2 CHAIRPERSON HILL: Yes, so you're going to need  
3 a postponement.

4 This is your first request I think for a  
5 postponement, correct?

6 MS. GIORDANO: That's correct.

7 CHAIRPERSON HILL: And I'm going to ask the same  
8 question of you: Do you know why you asked for the  
9 postponement inside the seven-day window?

10 MS. GIORDANO: Yes. Again, the ANC meeting was  
11 just last week, seven days ago, and so --

12 CHAIRPERSON HILL: Okay. All right. Okay. I  
13 don't have an issue granting this postponement. We don't  
14 really have much we can go on anyway. So does the Board have  
15 any further thoughts?

16 (No audible response.)

17 CHAIRPERSON HILL: Okay. The only thing is I  
18 guess I don't know whether we're going to be able to move it,  
19 Mr. Moy, to the 18th or the 25th of July due to our current  
20 load, right? I mean, literally I think we're going to be  
21 here 12 hours both of those days. So whoever the  
22 commissioner is --

23 MS. GIORDANO: I requested those dates just  
24 because they were at least seven days after the next ANC  
25 meeting, but we're not wedded to --

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1 (Simultaneous speaking.)

2 CHAIRPERSON HILL: Okay. Well, then, yes, I mean,  
3 we are on recess in August.

4 MS. GIORDANO: I know.

5 CHAIRPERSON HILL: Yes. Which I'm looking forward  
6 to.

7 MS. GIORDANO: Me, too.

8 SECRETARY MOY: Okay, Mr. Chair. So again, the  
9 next available date would be in September. We've just added  
10 another case application to the 26th of September. We could  
11 add a third. We could make this the third. So it would be  
12 two case applications and one appeal, so that's doable --

13 CHAIRPERSON HILL: Okay.

14 SECRETARY MOY: -- for September 26th.

15 CHAIRPERSON HILL: Ms. Giordano, is that good?

16 MS. GIORDANO: That's great. Thank you.

17 CHAIRPERSON HILL: Okay. All right. September  
18 26th.

19 MS. GIORDANO: Thank you.

20 CHAIRPERSON HILL: Enjoy your holiday. Enjoy your  
21 month off.

22 MS. GIORDANO: Yes, same to you. Bye-bye.

23 CHAIRPERSON HILL: All right, Mr. Moy. Whenever  
24 you'd like.

25 SECRETARY MOY: Thank you, sir. So if I could

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1 have parties to the table to Case Application No. 19644 of  
2 Meenakshi Kankani.

3           This application is amended for special exceptions  
4 under Subtitle D § 5201 from the lot occupancy requirements  
5 of Subtitle D § 304.1, rear yard requirements of Title D §  
6 306.2, side yard requirements of Subtitle D § 307.1, to  
7 construct a rear deck addition to an existing one-family  
8 dwelling, R-1-B Zone, 1315 Delafield Place, N.W., Square  
9 2808, Lot 30. This has been continued; I want to say this  
10 for the record, postponed from February 28th, April 11th, May  
11 30th and now June 20th.

12           CHAIRPERSON HILL: Okay. If you could please  
13 introduce yourself for the record?

14           MS. DAVIS: My name is Beth Davis for the  
15 applicant, Ms. Kankani.

16           CHAIRPERSON HILL: Okay. Great. So, Ms. Davis,  
17 I remember you again now that you came walking up here, but  
18 -- so if -- we've read everything that's new to the record  
19 and I guess somebody finally got convinced to do something  
20 different. So, but if you could provide -- since this is --  
21 well, since this was so long ago actually, if you could  
22 provide a little information as to what has happened since  
23 the last time you were here and then even go over the -- a  
24 little bit of the application as to the relief you're  
25 requesting and how you're meeting the standard for us to

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1 grant the relief.

2           And I'm going to put 10 minutes on the clock, Mr.  
3 Moy, just so I know where we are.

4           And you can begin whenever you like.

5           MS. DAVIS: Thank you. Initially we were  
6 requesting a variance. The property with the additional deck  
7 -- the property owner is looking to build a deck at the rear  
8 of the house and initially the deck was going to be over 50  
9 percent -- it would create over 50 percent lot occupancy and  
10 the Office of Planning was not amenable to that. So I have  
11 been going back and forth between the applicant and the  
12 architect over the last many months and we finally agreed to  
13 the new set of plans that have been submitted.

14           It does have the three-foot setback on -- in the  
15 side yard. According to the Office of Planning's request  
16 they have included closed lattice on that side for neighbor  
17 privacy. We have submitted neighbor support letters from  
18 both the neighbor to the right and the left and a unanimous  
19 support from the ANC on the currently submitted deck plans.

20           CHAIRPERSON HILL: Okay. Does the Board have any  
21 questions of the applicant?

22           (No audible response.)

23           CHAIRPERSON HILL: Okay. I'm going to turn back  
24 to the Office of Planning, if you could.

25           MS. MYERS: Hello, Crystal Myers for the Office

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1 of Planning. The Office of Planning is recommending approval  
2 of this case and stands on the record of our June 8th and our  
3 January 26th staff reports.

4 CHAIRPERSON HILL: Okay. Thank you. Does the  
5 Board have any questions for the Office of Planning?

6 VICE CHAIRPERSON HART: Just a quick question.  
7 The applicant just reduced the size of the deck and that was  
8 it?

9 MS. MYERS: Yes, our recommendation had always  
10 been to bring the lot occupancy down so it could be a special  
11 exception case, and so they have agreed to do this now.

12 VICE CHAIRPERSON HART: Thank you.

13 CHAIRPERSON HILL: Okay. Does the applicant have  
14 any questions for the Office of Planning?

15 MS. DAVIS: We do not.

16 CHAIRPERSON HILL: Okay. I think I did this the  
17 last time, but we're going to do it again just in case. Is  
18 anybody here from the ANC?

19 (No audible response.)

20 CHAIRPERSON HILL: Is there anybody here wishing  
21 to speak in support?

22 (No audible response.)

23 CHAIRPERSON HILL: Is there anyone here wishing  
24 to speak in opposition?

25 (No audible response.)

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1 CHAIRPERSON HILL: Okay. Ms. Davis, you have  
2 anything else?

3 MS. DAVIS: I do not.

4 CHAIRPERSON HILL: Okay. I'm going to close the  
5 hearing unless the Board has any other questions.

6 (No audible response.)

7 CHAIRPERSON HILL: Going to close the hearing.  
8 Is the Board ready to deliberate?

9 (No audible response.)

10 CHAIRPERSON HILL: Okay. I can start. Yes, I  
11 mean, we originally heard this on February 7th and then there  
12 were three postponements. There was the OP supplemental --  
13 there is an OP supplemental report that has provided the  
14 analysis that this is -- be approved now as a special  
15 exception now that it is no longer a variance.

16 I would have been in favor, or I should say in  
17 support of the variance, but now that they've decreased the  
18 size of the deck to below 50 percent lot occupancy, I would  
19 be in agreement with the analysis that was provided by the  
20 Office of Planning.

21 The applicant has further stated again that there  
22 is letters of supports from either neighbor as well as the  
23 support of the ANC. So I would also -- I did welcome the  
24 ANC's input and analysis and I would be in favor of this  
25 application.

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1 Does anyone have anything else they'd like to add?

2 MEMBER JOHN: No, Mr. Chairman.

3 CHAIRPERSON HILL: Okay. I'm going to go ahead  
4 and make --

5 ZC CHAIR HOOD: Mr. Chairman --

6 CHAIRPERSON HILL: Sure.

7 ZC CHAIR HOOD: -- before you make your motion,  
8 I have reviewed the record and am ready to participate and  
9 I would be voting in favor of this case.

10 CHAIRPERSON HILL: Okay. Thank you, Chairman  
11 Hood.

12 I'll go ahead and make a motion to approve  
13 Application No. 19644 as captioned and read by the secretary  
14 and ask for a second.

15 MEMBER WHITE: Second.

16 CHAIRPERSON HILL: The motion has been made and  
17 seconded. All those in favor, aye?

18 (Chorus of aye.)

19 CHAIRPERSON HILL: All those opposed?

20 (No audible response.)

21 CHAIRPERSON HILL: The motion passes.

22 Mr. Moy?

23 SECRETARY MOY: Staff would record the vote as 5  
24 to 0 to 0. This is on the motion of Chairman Hill to approve  
25 the application for the relief being requested. Seconding

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1 the motion, Ms. White. Also in support: Commissioner Anthony  
2 Hood, Ms. John and Vice Chair Hart. Motion carries?

3 CHAIRPERSON HILL: Thank you, Mr. Moy. Summary  
4 order?

5 SECRETARY MOY: Yes, sir.

6 CHAIRPERSON HILL: Thank you. I hope they enjoy  
7 the deck in about a year now since it's, you know -- okay?

8 MS. DAVIS: Thank you.

9 CHAIRPERSON HILL: Yes, have a good day.

10 SECRETARY MOY: The -- if I can have parties to  
11 the table to Case Application No. 19712 of Newton Park  
12 Apartments Condominium Unit Owners, as amended for a special  
13 exception under the residential conversion regulations of  
14 Subtitle U § 320.2, and pursuant to Subtitle X, Chapter 10,  
15 for a variance from the residential conversion requirements  
16 of U § 320.2(d), to allow a three-unit apartment house in the  
17 RF-1 Zone at premises 452 Newton Place, N.W., Square 3036,  
18 Lot 89.

19 And, Mr. Chair, I would ask if the applicant  
20 wouldn't mind for clarity going over the relief that's being  
21 requested.

22 CHAIRPERSON HILL: Okay. If you could please  
23 introduce yourselves for the record?

24 MR. SULLIVAN: Thank you, Mr. Chair and Members  
25 of the Board. My name is Marty Sullivan with the Law Firm

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1 of Sullivan & Barros on behalf of the applicant.

2 MS. WILSON: Alexandra Wilson on behalf of the  
3 applicant.

4 MR. MANNING: Bryan Manning, one of the owners of  
5 452 Newton Place, owner of Kane Development.

6 MR. AKIN: Serhat Akin. I'm one of the owners as  
7 well.

8 CHAIRPERSON HILL: All right, Mr. Sullivan. I  
9 guess you're going to be presenting to us?

10 MR. SULLIVAN: Yes, sir.

11 CHAIRPERSON HILL: Okay. So just to start off  
12 again, you know where you are, but like the Office of  
13 Planning's original and supplemental is in denial. And then  
14 I don't see anything from the ANC yet, so maybe you can go  
15 ahead and speak to that as you're going through your  
16 presentation. I see that you have a PowerPoint slide pack  
17 ready to go for us, so is 20 minutes okay for now?

18 MR. SULLIVAN: Yes, I think that should be plenty  
19 of time.

20 CHAIRPERSON HILL: Okay.

21 MR. SULLIVAN: Yes.

22 CHAIRPERSON HILL: All right.

23 Mr. Moy, if you'd put 20 minutes on the clock?

24 And then, Mr. Sullivan, you can begin whenever you  
25 like.

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1 MR. SULLIVAN: Thank you, Mr. Chair, Members of  
2 the Board. So the relief that we're requesting is special  
3 exception relief pursuant to Subtitle U § 320.2 in order to  
4 convert an existing single-family or flat into three units.

5 We are also requesting variance relief from one  
6 of the requirements of U § 320.2.

7 CHAIRPERSON HILL: Mr. Sullivan?

8 MR. SULLIVAN: Yes?

9 CHAIRPERSON HILL: I'm sorry to interrupt you.  
10 As we were kind of going over this and some discussion, if  
11 you could also clarify how many units are in there now?

12 MR. SULLIVAN: So right now -- that's an  
13 interesting question.

14 (Laughter.)

15 MR. SULLIVAN: And it's part of the case --

16 CHAIRPERSON HILL: Okay. You can go ahead and go  
17 through this.

18 MR. SULLIVAN: -- itself because --

19 CHAIRPERSON HILL: That's all right.

20 MR. SULLIVAN: Well, there's what it -- it's two  
21 units now technically, but it only has a C of O I think for  
22 one because of this outstanding issue with the units.

23 CHAIRPERSON HILL: Okay.

24 MR. SULLIVAN: But I'll go --

25 CHAIRPERSON HILL: Okay. I just --

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1 MR. SULLIVAN: -- through that.

2 CHAIRPERSON HILL: That's okay.

3 MR. SULLIVAN: Yes.

4 CHAIRPERSON HILL: That's why we were kind of  
5 confused. But I'm glad to see that there's a reason why we  
6 were confused. Okay. Thank you.

7 MR. SULLIVAN: Yes, that's -- there's some  
8 explaining on that one for sure.

9 So, but just I'll do a quick summary and then I'll  
10 go into more detail about the variance relief, because that's  
11 the more complicated part of this, of course.

12 We'll be asking for a variance of 40 feet. We're  
13 40 feet shy of the 2,700 square foot that would be required  
14 for the special exception. And -- oh, let's go past this.

15 I want to talk about the general special exception  
16 requirements first. The conversion will not adversely affect  
17 the only adjoining row home to the east as the applicant has  
18 not changed the building footprint and they haven't done a  
19 vertical addition either. The only exterior addition was at  
20 the front of the building on top of the existing porch. So  
21 this wasn't a pop-up and it wasn't a rear addition as well  
22 either. The footprint wasn't added to.

23 The requirements of U § 320.2, the property needs  
24 to be limited to 35 feet in height. We're at 28 feet.  
25 There's no fourth dwelling unit. This was an existing

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1 single-family residential building. The minimum amount of  
2 900 square feet. That's what we'll be asking for the  
3 variance relief for. And the addition must not extend more  
4 than 10 feet past. There was no addition. And so the other  
5 requirements are not applicable as well. Because there was  
6 no addition other than on the front, there's no impact on the  
7 light and air or privacy to neighboring properties.

8           Regarding the variance test. So I'll give you a  
9 little bit of history here. And the owners are here of  
10 course to fill in the details and answer any questions.

11           But in spring of 2015 on April 26th the owner was  
12 granted a minor deviation request from the Zoning  
13 Administrator because the 40 square feet was under 2 percent.  
14 And so based on that -- and then if you see two slides -- the  
15 next slide shows an email from the Zoning Administrator  
16 granting the minor deviation request.

17           Subsequent to that then on October 22nd, 2015 DCRA  
18 issued a building permit to the owner allowing the three-unit  
19 conversion. This was October 2015, so it was after the June  
20 2015 date when the regulations were changed, the R-4  
21 regulations were changed, and these conversions were no  
22 longer permitted as a matter of right.

23           So in reliance on that permit the owner undertook  
24 renovations eventually resulting in the three-unit  
25 configuration that was approved by DCRA. Now the renovation,

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1 interior renovation had been going on even before the October  
2 permit was issued because they had a matter of right permit  
3 issued and they were doing what renovation they could in  
4 anticipation of eventually getting the three-unit building  
5 permit, which they got in October of 2015.

6 In December of 2015 DCRA realized their error and  
7 they revoked the building permit. At this point the  
8 renovation was substantially complete and it was three units  
9 at that point. And this is December of 2015.

10 So in answer to your question of what it is now,  
11 when the owner was presented with a revoked building permit,  
12 frankly, the way I'd describe it is they panicked and instead  
13 of challenging it at that time, which I think they had a  
14 couple different ways of challenging it: either in a BZA case  
15 or an appeal, they converted it back to two units. And they  
16 can explain how they did that physically. But they didn't  
17 do a full reconfiguration. They just opened it up so that  
18 it was -- so the bottom floor and the first floor were one  
19 unit.

20 The subsequently -- after -- and that's how they  
21 got their approval and they got their C of O. They  
22 subsequently went back and they tried to get rid of that  
23 unit. It was a four-bedroom/four-bath unit. And they  
24 couldn't get rid of that unit. They couldn't sell it in that  
25 configuration. And that's when they panicked and they rented

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1 it out separately as if it was a third unit.

2           And then -- so then it was three units again and  
3 now it's back to two units, although there's only a C of O  
4 for one unit because we've got the outstanding issue of the  
5 first and second floor. So that all happened separate from  
6 this. And so I'll explain the ANC's position as well.

7           The ANC did vote. We went to them last week. It  
8 was a 6 to 1 vote opposing. And the biggest hurdle for us  
9 because there weren't opponents that showed up for that --  
10 and we haven't -- we don't have anything in the file from  
11 opponents, I don't think. The biggest hurdle was they did  
12 not want to be seen as rewarding the applicant for actions  
13 that they took after this -- the building permit was revoked  
14 in December 2015. Understandable, of course.

15           I think -- from a technical standpoint I think  
16 that the variance case, the elements of the variance case  
17 were in place in December 2015 when DCRA revoked the permit  
18 and the applicant had already constructed the property in a  
19 three-unit configuration in reliance on that building permit.

20           There's one other aspect of the extraordinary  
21 condition that's a minor aspect of it I think. I think the  
22 big thing is the reliance and estoppel element, but the size  
23 of the property; it's on the corner of Warder and Newton,  
24 it's 40 feet short of the 2,700. And you can see the rest  
25 of the block is around 2,000 square feet. Nothing else comes

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1 close to even 2,400 square feet. And then in the square  
2 there are some larger properties across the alley. So it is  
3 unique in that sense, but we're relying primarily on the  
4 reliance and estoppel argument.

5 The practical difficulty as a result of that is  
6 that the applicant's left with a four-bedroom/four-bath unit,  
7 which it has been unable to sell at any price which would  
8 allow any reasonable recovery from its reliance on the issued  
9 three-unit building permit.

10 And resolution would require either selling a unit  
11 with four bedrooms and four baths, a configuration not  
12 desired by the market in this area, for a price way below  
13 market or reconfiguring the bedroom and bath situation to  
14 combine the two units into one and something that would  
15 require complete renovation of the entire space because you  
16 would change the location of everything including taking away  
17 the kitchen rough and reducing the number of bedrooms and  
18 relocating the bedrooms, the kitchen and the bathrooms.

19 We believe the relief can be granted without  
20 substantial detriment to the public good and without  
21 substantially impairing the intent, purpose and integrity of  
22 the Zone Plan. It's the only property in this square that's  
23 close to the 2,700 square feet. There are a few larger, but  
24 mostly a lot smaller. And then the permitting history is  
25 very unique and this Board has found in the past, and the

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1 Office of Planning has found in the past that the reliance  
2 and estoppel arguments by an applicant can be considered a  
3 unique condition that leads to a practical difficulty.

4 And finally, the degree of the relief is minimal.  
5 It's just a 1.5 percent deviation, just the 40 square feet.

6 For some background on cases in the past where the  
7 Board has looked at similar issues, Case 18570 of 1845 North  
8 Capitol Street; it was about four or five years ago, I think,  
9 was virtually identical to this case. In that case the owner  
10 -- and the one place where it's not identical, that lot was  
11 only 1,311 square foot. So it was a very small lot. The  
12 owner requested and received a building permit for a  
13 conversion to three units in that case, and they went forward  
14 with the renovation. When they were finished and then  
15 applied for a C of O, DCRA said, well, we can't give you a  
16 C of O for three units because you're not permitted to have  
17 three units here.

18 And so we asked for BZA relief for that, and that  
19 variance relief would have been over 50 percent compared to  
20 the present case, which is 1.5 percent. In that case the  
21 Office of Planning recommended approval stating, quote,  
22 "There is an exceptional situation as the applicant  
23 demonstrated good faith and reliance on the actions of city  
24 officials." And OP further stated that, quote, "The  
25 applicant relied on DCRA's issuance in error of the building

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1 permit for a three-unit apartment building."

2           And in that case the Board found that the zoning  
3 history of a property including past actions of governmental  
4 authorities can constitute the events extraneous to the land  
5 which create the requisite exceptional situation or  
6 condition, from the Monaco case. And in Monaco a zoning  
7 history which implicitly approved a use and thereby gave rise  
8 to good faith detrimental reliance by the property owner  
9 helped to establish the necessary exceptional situation.

10           And there were a couple other cases, too, that we  
11 found recently that dealt with the situation of reliance and  
12 estoppel, although this case was the most direct.

13           In response to the Office of Planning I don't know  
14 if Office of Planning looked at or considered our reliance  
15 or estoppel argument. They didn't address it in their  
16 report. And I think that's where there's a disconnect. But  
17 they have supported that situation in the past.

18           So the owners are here. I'm sure you would have  
19 questions about some of the process and what went on here or  
20 any other questions related to the presentation. Thank you.

21           CHAIRPERSON HILL: All right. Thank you, Mr.  
22 Sullivan.

23           Does the Board have any questions of the applicant  
24 or the owner at this point?

25           VICE CHAIRPERSON HART: Yes, Mr. Chairman.

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1           Mr. Sullivan, I'm a little bit unclear about  
2 something. In December of 2015 you said the DCRA wrote the  
3 permit because they realized their mistake in granting the  
4 permit, the building permit for three-units. Correct?

5           MR. SULLIVAN: Yes.

6           VICE CHAIRPERSON HART: Okay. So you said that  
7 the owner was whatever -- they didn't challenge the revoked  
8 permit, but they changed the building to a flat. Is that  
9 correct, too? If I heard you correctly. I'm just trying to  
10 make sure that I heard what you said correctly, because the  
11 part that I'm trying to --

12           MR. SULLIVAN: Yes, they did whatever they needed  
13 to do to get a Certificate of Occupancy issued for two units.  
14 Yes. And you might want to explain specifically what you  
15 did.

16           VICE CHAIRPERSON HART: Yes, and actually just one  
17 -- the question that I'm trying to figure out is they did  
18 what they needed to do to make it into a two-unit -- into a  
19 flat, but at some point I thought you said that they actually  
20 rented it out as a three-unit apartment. So I'm a little  
21 confused. How do you -- I don't know how you do both of  
22 those things. How do you make it so that you can get a C of  
23 O and then are able to then retroactively change something?  
24 I'm confused as to how that works.

25           MR. SULLIVAN: Yes, I think they can explain

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1 specifically what they did physically to the building in  
2 order to do that.

3 Right?

4 MR. AKIN: Okay. They gave us the stop work order  
5 and they revoked the permits. They said we can only have a  
6 duplex unit. We were upside-down, of course, with the 99  
7 percent completion. We took it and I said we're going to  
8 sell it. And we applied as a duplex unit with four  
9 bedroom/four bathroom. We did what we supposed to do. We  
10 take the second unit and the basement unit. There was a  
11 range. We took it out. And then we just make it like a  
12 room. There's a wet bar there. And we put in the market  
13 with two different real estate agent. One of them was a --

14 VICE CHAIRPERSON HART: So -- I'm sorry. So you  
15 said there was a -- like a range for people to cook, like --

16 MR. AKIN: No, we removed it because --

17 VICE CHAIRPERSON HART: No, but I'm saying like  
18 there was one and you removed that?

19 MR. AKIN: There was one, correct.

20 VICE CHAIRPERSON HART: And so the DCRA saw that  
21 change as you didn't have a second kitchen? Is that what --  
22 is that why you removed the range?

23 MR. AKIN: They said that we -- you cannot have  
24 a second kitchen here.

25 VICE CHAIRPERSON HART: Yes, because that would

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1 be another unit.

2 MR. AKIN: Correct.

3 VICE CHAIRPERSON HART: That's what I'm -- so --

4 MR. AKIN: And then we corrected by removing the  
5 range.

6 VICE CHAIRPERSON HART: Okay. But I mean, there's  
7 a sink, there's other kind of infrastructure there. What did  
8 you do with the other stuff?

9 MR. AKIN: I mean, there was a sink as a wet bar  
10 and that was it. And we removed the refrigerator as well.

11 VICE CHAIRPERSON HART: Okay. And so that was  
12 then a wet bar area and you just had that on one level and  
13 then the actual kitchen on the other level?

14 MR. AKIN: Top level is the actual kitchen. Yes,  
15 sir. That's correct.

16 VICE CHAIRPERSON HART: Okay. Go ahead.

17 MR. AKIN: And then we hired a real estate agent.  
18 We put it on the market as a duplex unit with four bedroom,  
19 four bathroom. Stayed in the market pretty much 150 days.  
20 No single offer. It wasn't a high price because it was tough  
21 to sell it. It isn't -- everybody -- they were coming and  
22 looking at and then they said it is not, you know, suitable  
23 for our use, even though there were two parking, which is not  
24 street parking. We have our own parking for each unit.

25 Then we changed the real estate agent to Long &

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1 Foster. Still nothing happened. In the meantime the bank  
2 was pressuring me and my partner. You need to close the  
3 construction loan and then you need to do whatever you're  
4 supposed to do. And then we refinance it. We made it in our  
5 own unit. There was no construction loan anymore.

6 So to answer your question, we get the C of O as  
7 one duplex unit. There was no -- as a two flat.

8 VICE CHAIRPERSON HART: Yes, I guess the part that  
9 I'm trying to kind of figure out is how did you access -- if  
10 you have two units -- if you have three units, then there  
11 should be a way to kind of seal off, separate the units.

12 MR. SULLIVAN: Correct.

13 VICE CHAIRPERSON HART: So did you have stairs?  
14 I mean, how --

15 MR. SULLIVAN: There were -- there was a stairs,  
16 yes.

17 VICE CHAIRPERSON HART: Okay. So did you put a  
18 door in front of one of the units so that -- you see what I'm  
19 going? I'm trying to figure out how do you -- did you remove  
20 something so that you can -- so it would be seen as being one  
21 unit? Otherwise you'd have a stair that would have -- I  
22 don't know, I'm just trying to understand that. That's all.

23 MR. AKIN: Okay. There was a stair always. And  
24 then that's the case as like two unit being accessible inside  
25 the building. So what happen was we got the C of O as a

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1 duplex unit. And then that was fine. And then we put on the  
2 market to try to sell it.

3 MR. MANNING: May I speak?

4 VICE CHAIRPERSON HART: Sure. Go ahead.

5 MR. SULLIVAN: Do you see -- in the presentation  
6 first page do you see the front door there? You walk in that  
7 front door and you have access to that middle level. Okay?  
8 If you walk up the steps above the porch, you access the top  
9 level. Both of them are individual. Okay? The downstairs  
10 basement originally had a door down there that you can't see  
11 and it remained there. That's the access-way to the basement  
12 level.

13 You're asking how do you get from the middle level  
14 to the basement. There was a stairway, an open air space  
15 from up to down to convert it into one unit flat. Does that  
16 make sense?

17 (No audible response.)

18 MR. MANNING: And you're asking how do you access  
19 the middle level to the basement. There was a set of stairs  
20 there. We had to remove the -- we removed the stairs and you  
21 had access to the basement individually and you had access  
22 to that front door to the middle level individually. We had  
23 to reverse engineer everything to be in compliance with the  
24 DCRA.

25 But our concept here was to make affordable living

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1 within the community, and by this duplex here with the four  
2 bedroom, four full bath just priced us right out of the  
3 market. We did try to sell it and we lowered it  
4 significantly many times over just to get out of debt,  
5 because we were in financial duress at the time. I don't  
6 know if that answers your question, Mr. Hart, as far as the  
7 units in question?

8 VICE CHAIRPERSON HART: No, it -- I mean, it --  
9 I'm going to go through the plans a little bit more to  
10 understand that.

11 MR. MANNING: NO, that's fine. It's very  
12 confusing, yes.

13 VICE CHAIRPERSON HART: So I mean, it doesn't have  
14 to be. So how long was it -- were you -- did you put it on  
15 the market to sell?

16 MR. MANNING: It was about 160 days with two  
17 different real estate agents.

18 VICE CHAIRPERSON HART: Okay.

19 MR. MANNING: It was on the market and staged.

20 VICE CHAIRPERSON HART: And that was in 2016?

21 MR. MANNING: Correct.

22 VICE CHAIRPERSON HART: And was -- that was not  
23 160 days -- that was 160 days total? That wasn't a  
24 continuous period of time?

25 MR. MANNING: It was a continuous period of time.

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1           When did we put it on the market?

2           MR. AKIN:   As soon as we got the C of O.

3           MR. MANNING:   Which was like December 25th,  
4 something like that.

5           MR. AKIN:   Something like that, yes.

6           MR. MANNING:   It was on the market for quite some  
7 time.

8           VICE CHAIRPERSON HART:   Okay.   And then at some  
9 point in the middle of 2016 you decided that you were going  
10 to rent out this space.   But when you did that then you  
11 rented it out as three units?

12           MR. AKIN:   No, one unit and -- the top unit is  
13 totally sold and there's a different tenant -- I mean, the  
14 owner there, but the unit that belongs to us is a duplex.  
15 We eliminated the staircase and close off and then turn into  
16 the two units and rented out.

17           VICE CHAIRPERSON HART:   Okay.   And so that has  
18 been -- that was then rented out for how long?   For a year?

19           MR. AKIN:   Until -- less than a year.   It was like  
20 last year by Thanksgiving the DCRA send us the notice.   So  
21 it was rent out on -- one lease was April and the other one  
22 was May.

23           VICE CHAIRPERSON HART:   Oh, so they were short-  
24 term rentals?

25           MR. AKIN:   Yes, a one-year lease I did.

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1 VICE CHAIRPERSON HART: Okay. Thank you.

2 CHAIRPERSON HILL: Okay. Anyone else?

3 MEMBER WHITE: Yes. So just so I'm clear, how  
4 many units are in there?

5 MR. AKIN: So right now one unit is owned by an  
6 owner on the top unit.

7 MEMBER WHITE: Yes.

8 MR. AKIN: And then there is -- a duplex unit is  
9 divided. Is already in the plan that we asked for three  
10 units. So there are two units in the duplex.

11 MEMBER WHITE: Okay. Thank you.

12 CHAIRPERSON HILL: But now I'm going back -- but  
13 you don't have a C of O for one unit?

14 MR. AKIN: That was correct.

15 CHAIRPERSON HILL: Right. Okay.

16 VICE CHAIRPERSON HART: Just actually one more  
17 question: So you said you sold the top unit?

18 MR. AKIN: Yes.

19 VICE CHAIRPERSON HART: So you only have -- you  
20 have a C of O for one unit and that unit is for -- that is  
21 right now you have a four-bedroom/four-bath unit that you  
22 have a C of O for?

23 MR. SULLIVAN: No, it's the C of O for the top  
24 unit.

25 What's on the top floor?

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1 MR. AKIN: This --

2 MR. SULLIVAN: What's the size of the top --

3 (Simultaneous speaking.)

4 MR. AKIN: The same size. Everything is like a  
5 cookie cutter. They're not --

6 MR. SULLIVAN: So it's two bedrooms?

7 MR. AKIN: Two bedroom and two bathroom, correct.

8 MR. SULLIVAN: So two-bedroom/two-bath on each  
9 level. And the top level has a condo buyer --

10 VICE CHAIRPERSON HART: Okay.

11 MR. SULLIVAN: -- and then this one was bought  
12 between the owners. They developed it, but then they also  
13 bought the bottom unit. So there's two condominium units in  
14 there now, but only one is permitted to be used, the top unit  
15 at this time. And they did allow the tenant to stay --

16 CHAIRPERSON HILL: Now, I've got it. Now I'm  
17 getting it.

18 (Laughter.)

19 CHAIRPERSON HILL: So the top unit that you have  
20 the C of O for is the top unit that you sold, right? So  
21 that's gone. So you don't have a C of O right now for --

22 MR. MANNING: No, we do.

23 CHAIRPERSON HILL: You do have a C of O --

24 MR. MANNING: The entire --

25 CHAIRPERSON HILL: -- for the unit that you own

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1 below?

2 MR. MANNING: The entire --

3 CHAIRPERSON HILL: Right?

4 MR. MANNING: The entire building is a C of O for  
5 two.

6 CHAIRPERSON HILL: Okay.

7 MR. MANNING: So when we sold the top unit --

8 CHAIRPERSON HILL: You sold one. Right.

9 MR. MANNING: -- that's one --

10 CHAIRPERSON HILL: Right. Right.

11 MR. MANNING: -- C of O. The remaining C of O --

12 CHAIRPERSON HILL: Is your C of O?

13 MR. MANNING: -- is ours.

14 MR. MANNING: Right. I understand.

15 MR. MANNING: Got it?

16 CHAIRPERSON HILL: Yes.

17 SECRETARY MOY: Yes, that --

18 CHAIRPERSON HILL: And right now you have that  
19 divided up into two units?

20 MR. MANNING: Correct.

21 CHAIRPERSON HILL: Okay. There you go. Right.

22 So in the building there are three units there right now?  
23 Right?

24 MR. AKIN: Correct.

25 CHAIRPERSON HILL: Yes, okay. Just trying to

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1 understand.

2 MR. MANNING: Got you.

3 CHAIRPERSON HILL: All right. Yes, Mr. Hart?

4 VICE CHAIRPERSON HART: (No audible response.)

5 CHAIRPERSON HILL: Okay. Anyone else right now?

6 (No audible response.)

7 CHAIRPERSON HILL: Okay. Going to turn to the  
8 Office of Planning.

9 MS. VITALE: Good morning, Mr. Chair and Members  
10 of the Board. Elisa Vitale with the Office of Planning. As  
11 stated in our report, the Office of Planning did not find  
12 that the applicant met the burden of proof for the variance  
13 test.

14 With respect to the reliance on a permit issued  
15 in error, I think the case that the applicant cited for the  
16 prior BZA case was a bit of a different situation in that the  
17 permits had been issued many years prior to the applicant in  
18 that case taking ownership. I don't think that's necessarily  
19 a relevant example here. So we didn't find that argument  
20 compelling.

21 OP would also note that the Zoning Administrator  
22 does not have the ability to grant flexibility from the 900  
23 square foot requirement, and that is laid out in the Zoning  
24 Administrator flexibility language that was called out in §  
25 407 of the 1958 regulations. And then that was specified

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1 also in Subtitle A in, let's see, Deviations and  
2 Modifications Permitted by the Zoning Administrator in § 304  
3 of Subtitle A. So I wanted to just note that.

4 And then finally I think the applicant seems to  
5 be making the case today that there was an inability to sell  
6 or rent the property in a flat configuration, but again, I  
7 think the top unit has sold. The lower level four-  
8 bedroom/four-bath unit I believe has been rented at times.  
9 I don't feel like the applicant again has demonstrated that  
10 the property in a flat configuration would not be marketable.  
11 So we continue to recommend denial of the applicant's  
12 request. And I can answer any questions at this time. Thank  
13 you.

14 CHAIRPERSON HILL: Okay. Just a quick one for me.  
15 So then the Zoning Administrator made an error by saying that  
16 he could do the deviation?

17 MS. VITALE: I believe that's correct.

18 CHAIRPERSON HILL: Okay. Does anybody have any  
19 questions for the Office of Planning?

20 VICE CHAIRPERSON HART: So the applicant is also  
21 saying that they are -- they had a -- I don't know, it seems  
22 fairly fluid in being able to move from three and two units.  
23 Are you aware of this? It just seems like it's -- it seems  
24 like there should be a fairly definitive way of saying, okay,  
25 this is definitely a flat or this is definitely a three-unit

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1 apartment building. And right now I think they could kind  
2 of move between the two and it just seems a little bit odd  
3 to be able to -- oh, yes, we took out the range and the  
4 refrigerator and it's no longer a unit, but we've got  
5 everything else there. So I'm just a little bit -- I know  
6 this is not -- I think is probably more of an enforcement  
7 issue than an OP issue, but --

8 (Simultaneous speaking.)

9 MS. VITALE: Yes, and I would agree. I think this  
10 -- that would be an issue related to DCRA and enforcement of  
11 the permit. I'm not -- actually not sure if it's in the  
12 record. I have the Zoning Administrator notices that relate  
13 to the issuance and then subsequent revocation of  
14 Certificates of Occupancy. And those are based on DCRA  
15 investigations.

16 I believe DCRA was at the property in November of  
17 2017 and that's when they determined that there were three  
18 units, and that was based on unit numbers as well as  
19 entrances. And then at that time the DCRA investigation  
20 revealed three separate electrical meters, rental  
21 information, and then they noted at that time that the  
22 basement unit included a full kitchen, so a stove, a  
23 microwave, a refrigerator, a disposal and a dishwasher. So  
24 based on the rental ads, the electrical meters, the mailboxes  
25 and then the presence of the full kitchen in the basement --

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1 I think that's how DCRA made the determination that there  
2 were three units in the property, that the Certificate of  
3 Occupancy that had been issued most recently -- let me go to  
4 my timeline -- the December 30th, 2016 Certificate of  
5 Occupancy, that was issued for a two-unit flat.

6 And so when DCRA went in in November of 2017, they  
7 obviously noted that the configuration reflected three units  
8 versus the two units which were approved on the Certificate  
9 of Occupancy. And that's when DCRA issued its notice to  
10 revoke the C of O unless the property was brought into  
11 compliance. And then that's -- that gets to the issue of  
12 fluidity. What would meet the DCRA determination of  
13 compliance? Is that just taking the stove out, which is what  
14 the applicant seems to indicate.

15 VICE CHAIRPERSON HART: And the applicant also  
16 said that they -- the revocation was just for the one unit,  
17 not the top unit. So I mean, it's kind of all one building,  
18 so it's a little bit --

19 MS. VITALE: Yes, that I'm -- I can't speak to  
20 that. The Certificate of Occupancy that was issued in  
21 December of 2016 was for a two-unit flat located at 452  
22 Newton Place. So that would contemplate the entire building.

23 VICE CHAIRPERSON HART: That's the part that I was  
24 trying to also grapple with is how do you have a condo and  
25 then your C of O has been -- I don't know. I'll ask the

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1 applicant. Thank you.

2 CHAIRPERSON HILL: Okay. Please, Ms. White? I  
3 mean, Ms. John.

4 MEMBER JOHN: So between the time when the permit  
5 was first issued and the revocation was there a change in the  
6 regulations or something? I don't understand how or why the  
7 permit was revoked from -- they had permission to build a  
8 three-unit structure and I still don't understand why that  
9 permit was revoked.

10 MS. VITALE: I think the issue was -- I believe  
11 1411 was a Zoning Commission case that addressed conversions,  
12 and so I think it may have been during -- well, 1411 also  
13 addressed kind of the pop-ups and third-story additions in  
14 the -- what was the R-4 Zone and is now the RF-1 Zone. So  
15 I am not -- I can't speak to what happened at DCRA in terms  
16 of the issuance of the permit and subsequent revocation. I  
17 would just note that around this time the Zoning Commission  
18 was contemplating Case 1411, which did modify some of the  
19 regulations in the R-4 Zone.

20 CHAIRPERSON HILL: Okay. So I got a question  
21 then. So, Ms. Vitale, I mean, I guess you're going to say  
22 no anyway to this, but I mean, as far as the argument that's  
23 being made about the reliance and estoppel, I mean; and I'm  
24 going to ask the applicant to kind of walk through this  
25 again, it sounds as though they were 99 percent -- I mean,

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1 they're saying they were 99 percent complete and then this  
2 was revoked. So the Office of Planning again just doesn't  
3 have -- does not -- cannot get behind their argument for the  
4 variance based upon the reliance and estoppel.

5 MS. VITALE: That's correct.

6 CHAIRPERSON HILL: Okay. Anyone else for the  
7 Office of Planning?

8 MEMBER WHITE: Were there ever any discussions  
9 about appealing the decision to revoke the permit by either  
10 I guess the applicant, or --

11 MS. VITALE: That --

12 MEMBER WHITE: -- did that ever come up?

13 MS. VITALE: Not that I'm aware of.

14 MEMBER WHITE: That was not at issue at all?  
15 Okay. So the permit was revoked November 2017. Okay.

16 CHAIRPERSON HILL: All right. So, well, I don't  
17 know what -- does somebody have a question for the applicant?  
18 I have a question for the applicant, but, okay, you guys can  
19 all have at it then. Who wants to go first?

20 MEMBER JOHN: Okay. I'll go first.

21 CHAIRPERSON HILL: Okay.

22 MEMBER JOHN: So I'm having trouble with the  
23 timeline. So the building permit was revoked --

24 CHAIRPERSON HILL: Mr. Sullivan, could you bring  
25 up that timeline slide again, if you don't mind? Could you

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1 actually -- and I didn't mean to get -- continue to ask your  
2 question. I was just going to also ask them run through this  
3 thing again.

4 MEMBER JOHN: So if the building permit was  
5 revoked in late-2015, I'm not sure how the building was 99  
6 percent complete at that time. That's what I'm having  
7 trouble with because there's a lot of work pursuant to  
8 permits in 2016. So I'm not sure if that was part of the  
9 conversion back to a three-unit. I mean, I just don't  
10 understand how 99 percent was completed at that time.

11 MR. MANNING: I'll answer the way I perceive it,  
12 but I think you should hear from the owner, too, as well,  
13 with the details.

14 But there had been -- because the time period  
15 between issuance of the three-unit building permit and  
16 substantial completion is only six weeks. But what they did  
17 and what a lot of people do is while they're waiting for an  
18 approval or where they're moving forward they did have a  
19 permit to do renovations. And they were doing renovations  
20 a single-family and they were -- with an eye towards getting  
21 the three-unit approval.

22 And in that sense in April they knew they were  
23 headed for a three-unit approval. They were just processing  
24 the building permit. But they already had an approval to do  
25 renovations. And when the Zoning Administrator granted the

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1 minor flex in April of 2015, minor flex at that point was  
2 still permitted, at least for one more month. And --

3 CHAIRPERSON HILL: But I thought minor flux was  
4 permitted at all for the 900 square feet.

5 MR. MANNING: It was stopped when the R-4  
6 regulations were changed. It was --

7 CHAIRPERSON HILL: Oh, so it was --

8 (Simultaneous speaking.)

9 MR. MANNING: -- permitted before. I don't know  
10 -- exactly sure when it --

11 CHAIRPERSON HILL: Office of Planning, I'm just  
12 trying to clarify.

13 MR. MANNING: Yes.

14 CHAIRPERSON HILL: So at one point the Zoning  
15 Administrator could do the deviation for two percent at 900  
16 square feet?

17 MS. VITALE: That was not my understanding. In  
18 the 1958 regulations, 407.1, "The Zoning Administrator is  
19 authorized to permit a deviation to exceed two percent of the  
20 area requirements." And it lists those out.

21 CHAIRPERSON HILL: Okay.

22 MS. VITALE: And it ultimately says, "The  
23 flexibility or deviation shall not be applicable for any  
24 calculation for determining compliance with § 330.7 or 336."  
25 And that was the conversion language.

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1 CHAIRPERSON HILL: Okay.

2 MS. VITALE: And that was --

3 (Simultaneous speaking.)

4 CHAIRPERSON HILL: So, Mr. Sullivan, Office of  
5 Planning is disagreeing with you there. Regardless, you have  
6 the email where he said that you could do it. So you're  
7 still -- we're still following along with that point. So  
8 continue.

9 MR. SULLIVAN: Right. And I just don't want to  
10 -- I don't think he made a mistake because it -- Chairman  
11 Hood will remember 1521 Barnham was an appeal very  
12 specifically about the -- we got seven units when it was six,  
13 but we got minor flex to get a seventh unit in that property.  
14 It's a project that's by the wayside now, but --

15 (Laughter.)

16 CHAIRPERSON HILL: That was here today earlier.

17 MR. SULLIVAN: Yes, right.

18 CHAIRPERSON HILL: Yes.

19 MR. SULLIVAN: So that was --

20 ZC CHAIR HOOD: Mr. Sullivan --

21 MR. SULLIVAN: -- the issue in that case.

22 ZC CHAIR HOOD: -- let me just --

23 (Simultaneous speaking.)

24 MR. SULLIVAN: -- too, right?

25 ZC CHAIR HOOD: I'm not going to say anything

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1 about minor flex. I won't get started --

2 MR. SULLIVAN: Yes, right.

3 ZC CHAIR HOOD: -- but you called my name. But  
4 you know what? I'm not going to do that. Continue. I'm not  
5 going to --

6 (Laughter.)

7 CHAIRPERSON HILL: So, Mr. Sullivan --

8 MR. SULLIVAN: So, and but calling --

9 (Simultaneous speaking.)

10 CHAIRPERSON HILL: -- so to the applicant, like  
11 when did you guys start construction? Because now the  
12 argument over here is that you're -- you're following along  
13 with this timeline here, right, because we're trying to get  
14 to where your argument is -- and that you get the permit on  
15 April 26th and then you're 99 percent complete by December  
16 2015. Mr. Sullivan is saying you were doing all the stuff  
17 ahead of time because -- so please explain that part. When  
18 did you start construction?

19 MR. MANNING: The day we got our original business  
20 -- I mean, our building application is the day we started  
21 construction.

22 CHAIRPERSON HILL: So when was that? Just around.

23 MR. MANNING: I thought it was -- I don't know the  
24 exact date or month. I mean, we're talking --

25 CHAIRPERSON HILL: Which year?

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1 MR. MANNING: 2014 is when we bought the property,  
2 right?

3 MR. AKIN: Yes.

4 MR. MANNING: We started in about April. There  
5 you go, February of 2015. February of 2015 is when we  
6 started?

7 CHAIRPERSON HILL: February?

8 MR. MANNING: We got -- of course we'd seen -- we  
9 had some emails from Zoning to proceed to do the three units.  
10 We were trying to stay ahead of the game and --

11 VICE CHAIRPERSON HART: But this is also with your  
12 -- with the understanding that you kind of go at your own  
13 risk for some of this stuff before you get your permits?

14 MR. SULLIVAN: Sure. But at the time it was  
15 matter of right. Well, no, it wasn't matter of right. But  
16 I mean, no, you -- the minor flex was required, yes. So  
17 until April --

18 VICE CHAIRPERSON HART: I'm just saying that you  
19 were --

20 MR. SULLIVAN: Yes.

21 VICE CHAIRPERSON HART: -- also waiting for  
22 something. So --

23 MR. SULLIVAN: I'm -- right, I would say from  
24 April --

25 VICE CHAIRPERSON HART: -- there's always a risk

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1 that you --

2 MR. SULLIVAN: Right.

3 VICE CHAIRPERSON HART: -- undertake when you are  
4 moving forward with something when you haven't actually  
5 gotten the -- yes, the final okay that you can move forward  
6 with it.

7 MR. SULLIVAN: Yes.

8 VICE CHAIRPERSON HART: Because otherwise, you'd  
9 be able to do it without anybody --

10 MR. SULLIVAN: Right.

11 VICE CHAIRPERSON HART: -- you'd just be kind of  
12 moving forward with all of this. I understand that there's  
13 that -- timing and all that other stuff and you get money now  
14 and you're raring to go and waiting for stuff, but just  
15 wanted to make sure that we were understanding that, too.

16 MR. SULLIVAN: I think the issue in this case is  
17 that generally if they had only been -- if the Zoning  
18 Administrator had made the -- or DCRA had made the correct  
19 decision because -- and to Board Member John's question, the  
20 law was changed in June of 2015 and there was no real vesting  
21 period, but I think there was some confusion about that and  
22 DCRA ended up issuing the permit. But on June 24th, 2015  
23 that was the drop-dead date and they were not supposed to  
24 issue building permits any time after that date regardless  
25 of when the -- unless it was applied for a year before, which

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1 obviously it wasn't.

2           But at the crux of this case is if they knew they  
3 could only do two units, they would have completely designed  
4 it differently. So it's not just the construction. And  
5 going from two units to three or three to two back is --  
6 that's easy. That's a door, a stairs. But if they had not  
7 been granted a three-unit building, they would have  
8 completely designed it differently in order to sell it as a  
9 two-story unit and not a four-bedroom/four-bath unit with two  
10 kitchen roughs.

11           ZC CHAIR HOOD: Mr. Sullivan, can I just  
12 interrupt? There was a stop order June 2015 as well, right?

13           MR. SULLIVAN: There was, yes, and that was  
14 unrelated to this and they could answer questions about that,  
15 or explain that.

16           ZC CHAIR HOOD: Was it unrelated? Okay.

17           MR. SULLIVAN: Well, it was --

18           VICE CHAIRPERSON HART: If you don't mind. I just  
19 want to know about that stop order.

20           MR. MANNING: Sure, I can answer that. So we have  
21 our building plans, our building set in front of us stamped,  
22 and that's what we're building by, the plan sets. Three  
23 units, quite clear, three kitchens. It's cookie cutter.  
24 Each level's the same, no pop out, no extensions.

25           We got a stop work order because the building

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1 permit, which was oversight on our end too, was for a single  
2 unit, one dwelling. And the inspectors see the plan sets and  
3 notice that it's three separate units, cookie cutter.

4 We explained to them that it's three units. We  
5 weren't trying to hide anything. She said the building plan,  
6 your stamped plan don't match your building permit. I have  
7 to put a stop work order.

8 First thing came to my mind, we need an emergency  
9 hearing. I don't want to stop construction. I can't afford  
10 to waste the time. So we had it literally a week later, paid  
11 the fines, explained our situation.

12 And everybody was kind of baffled at the hearing,  
13 and they told us after we paid the fine immediately, they  
14 told us the stop work order is lifted because we paid the  
15 fines and that our plan set wasn't going through ProjectDocs  
16 at the time. You're familiar with ProjectDocs?

17 It's a walkthrough process. From here on out it's  
18 a walkthrough process, so everybody has to put their hands  
19 on it and touch it. Mr. Whitescarver in inspections wanted  
20 the plan sets to go back through a review to all the  
21 departments, mechanical, zoning, everybody.

22 But in the meantime, continue, your stop work  
23 order is lifted, which we did. We took our original plan  
24 sets and continued business as usual. But we didn't want to  
25 lose time, so we doubled up the work crew. So you're asking,

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1 how come we finished it so quick? When it's a cookie cutter  
2 --

3 CHAIRPERSON HILL: That's right. So then you're  
4 saying when it went back through again, that's when zoning  
5 caught this one again?

6 MR. MANNING: That's when zoning corrected, yes --

7 ZC CHAIR HOOD: So you kept proceeding with  
8 construction?

9 MR. MANNING: Correct.

10 ZC CHAIR HOOD: Not really knowing what the  
11 outcome, you didn't have all the necessary signatures. You  
12 had to go back through ProjectDocs. You had to continue to  
13 get those signatures. So you proceeded at your own risk?

14 MR. MANNING: Correct. We proceeded at our own  
15 risk, hoping for the good faith with the emails from Zoning  
16 and moving forward and pleading our case at the hearing on  
17 we have, you know, originally a three-unit stamped plan set  
18 from day one. How can this happen?

19 When we paid our fines, we were told we could  
20 continue. The stop work order was lifted. We could continue  
21 building as plan sets state. But they wanted to double check  
22 and run everything through the process again.

23 And as you can see on the plan sets, it got passed  
24 by all the departments again, on the same plan set, no  
25 deviations, and we were issued the correct building permit

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1 for three units.

2 So we were on schedule, on time, business as  
3 usual, as planned in the original plan set. And then, you're  
4 correct, we're 98 percent complete ready to go to market,  
5 ready to stage and then all of a sudden we get a stop work  
6 order I believe from Zoning. And now we have a zoning issue.

7 CHAIRPERSON HILL: That's the --

8 MR. MANNING: They threatened us that we have to,  
9 you know, they're going to revoke our building permit.

10 CHAIRPERSON HILL: Is that the December 2015?

11 MR. MANNING: That is correct. At that time,  
12 we're 99 percent done, we're at the end of the term with our  
13 construction loans with the bank, we're in duress. What can  
14 we do to get this on the market as quick as we can? And that  
15 was the decision to go with the two-unit CFO versus the  
16 three.

17 CHAIRPERSON HILL: And so now that you can't sell  
18 the one that's the four bedroom, four bath, you're back here  
19 again to try to figure this out?

20 MR. MANNING: On good faith, we tried selling the  
21 four-unit --

22 CHAIRPERSON HILL: Well, not in good faith. You  
23 were stuck with it. You had to figure out what to do.

24 MR. MANNING: Yes. We tried. We tried. I mean,  
25 it just didn't make sense in the neighborhood. We got a nice

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1 school across the street. We were trying to make a three-  
2 unit flat for small families, make it affordable.

3 We just lost that site. Again, if it was a two-  
4 unit flat, we would have done one of two things, either not  
5 bought the property or we would have configured it totally  
6 different.

7 CHAIRPERSON HILL: Sure.

8 MR. MANNING: Instead of having 900 square foot,  
9 it could have been 1,500 or whatever. It would just make  
10 more sense if that was the case. But we were building off  
11 a three-unit permit that was issued to us. Does that answer  
12 your question a little bit?

13 CHAIRPERSON HILL: Yes. No, you guys are having  
14 a --

15 MR. MANNING: Thank you.

16 CHAIRPERSON HILL: -- tough time. I'm just  
17 struggling with it, that's all. Does anybody have more  
18 questions? I mean, I keep looking at the Office of Planning.  
19 So the Office of Planning again, this argument just isn't  
20 holding -- I mean, the only thing I can do back now is, I  
21 can't do anything today at this moment if we get to where  
22 we're getting.

23 I'm going to go back and study this timeline again  
24 and really try to understand, because from a practicality  
25 standpoint even, you know, I'm thinking if somebody again is

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1 going to have, you know, I don't get the sense as though, and  
2 I'm going to go back and look at the variance and the  
3 reliance, the stop work order and all that stuff, right, to  
4 get to the prongs of the test.

5 But, you know, you would never have developed it  
6 this way, you know, I mean, and that's why I'm just confused  
7 as to, and I understand, I mean, they are 40 square feet shy  
8 of the 900 foot rule and I guess I just, you know, everything  
9 that has been said here just continues not to change the  
10 opinion of the Office of Planning.

11 MS. VITALE: That's correct.

12 CHAIRPERSON HILL: Okay. Okay. All right, so  
13 does anybody have more questions before we go to the, I'm  
14 sure there's plenty of people here wishing to speak in  
15 opposition, support, ANC, I'm sure they'll all be here for  
16 this case.

17 MEMBER WHITE: One question.

18 CHAIRPERSON HILL: Sure.

19 MEMBER WHITE: Again, my one question for Office  
20 of Planning is are there any alternative recommendations that  
21 you've kind of suggested to the Applicant to get them to meet  
22 the either special exception or variance test so that they  
23 could move forward with the project, or at this point you're  
24 not working with them with respect to those types of  
25 discussions?

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1 MS. VITALE: We have not had those discussions,  
2 no.

3 MEMBER WHITE: Okay.

4 CHAIRPERSON HILL: Sure. Hang on one second. Go  
5 ahead, Mr. Chairman?

6 ZC CHAIR HOOD: I forgot the gentleman here, I  
7 forgot your name, Rob? Bryan.

8 MR. MANNING: I just wanted to make note in the --  
9 oh, sorry, go ahead.

10 ZC CHAIR HOOD: Go ahead. I have a question for  
11 you but go ahead. Why do you want to make the note? This  
12 might answer my question. Go ahead.

13 MR. MANNING: In the original plan sets, three  
14 meters for electric, three gas meters, one for each unit.  
15 We got gas cards. Everything passed all the checks and  
16 balances with the DCRA, so when you're saying there's three  
17 electrical meters in a two-unit CFO, well, three units were  
18 part of the plan.

19 They were passed. They passed Washington Gas.  
20 They passed Pepco. So I just wanted to make note that we  
21 just didn't add a third unit just to add it. I believe we  
22 don't have to take a unit away.

23 It was in the plan set with the three electrical  
24 meters and the three gas meters. I know that was an issue  
25 at one point, because we were told we have to remove meters.

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1 So I just wanted to make note in the plan --

2 CHAIRPERSON HILL: Did you remove the meter?

3 MR. MANNING: No, we did not --

4 CHAIRPERSON HILL: Right, yes, okay.

5 MR. MANNING: Yes, the meters are still there.

6 CHAIRPERSON HILL: Right.

7 MR. MANNING: I mean, they had to --

8 CHAIRPERSON HILL: Chairman Hood, you had a  
9 question?

10 ZC CHAIR HOOD: Yes, I've heard an argument  
11 similar to that, I just can't remember how the Board ruled  
12 on that. Let me see, I think you mentioned affordable  
13 housing in your comment.

14 I just want you to help me understand. I think  
15 you said if you get that extra unit, it would help with  
16 affordable housing. Did I mishear that, or are my signatures  
17 creating a scuffle?

18 MR. MANNING: No. You heard exactly right, more  
19 affordable housing. In other words --

20 ZC CHAIR HOOD: How? How? Help me go down that  
21 line. How would it be more, because let me just explain to  
22 you what I hear, what I see. I know what I hear, and I hear  
23 what you just said.

24 But what I see is people developing additional  
25 units and charging the same they would for one unit, and

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1 they're getting it three times. So explain to me how you  
2 work that out as being affordable housing?

3 If you don't have an answer, you can give me a  
4 paragraph later.

5 MR. MANNING: No, no, no. I mean, just think of  
6 it as this. We have three parking spots blessed by the DDOT,  
7 so we have off-street parking. When I say affordable  
8 housing, it's easier to sell a two-bedroom, two-unit flat  
9 for, I'm just going to be hypothetical, say \$400,000 rather  
10 than trying to get a family in there to pay for times two  
11 maybe \$850,000 or \$900,000.

12 When I say affordable housing, more realistic  
13 mortgage payments by separating the two. I don't want to  
14 create a situation where we have a group home because it  
15 doesn't get separated. That's the last thing I want in that  
16 community is to sell the unit and have a group home there.  
17 I've seen it so many times, and I don't want that.

18 So when I say affordable housing, I'm just trying  
19 to keep the price points down in being realistic to a  
20 homeowner. I mean, right now, we own the property. What we  
21 would like to do is to sell the property. Right? Depending  
22 on, you know, the outcome.

23 ZC CHAIR HOOD: Okay. All right.

24 MR. MANNING: But I mean, did I answer your  
25 question?

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1 CHAIRPERSON HILL: Okay.

2 ZC CHAIR HOOD: We can go back around, and I think  
3 your rendition on affordable housing may be a little  
4 different from mine, but you come from a different  
5 perspective from me. But I kind of understand what you're  
6 saying, I just don't, I can't get there. Okay.

7 CHAIRPERSON HILL: You just used a loaded word,  
8 that's all. Yes, it's okay. Bryan, that's all right.  
9 Affordable means a whole other thing in this area.  
10 Affordable housing, yes. So --

11 MEMBER JOHN: Mr. Chairman?

12 CHAIRPERSON HILL: Yes, of course, Ms. John.

13 MEMBER JOHN: So, oh, I just answered my question  
14 as I was about to ask it.

15 CHAIRPERSON HILL: I wish I could do that more  
16 often.

17 MEMBER JOHN: Anyway, but I had another question,  
18 and it had to do with your being able to prove that you were  
19 99 percent complete when you got the stop work order. Are  
20 you able to do that?

21 Do you have any evidence that at the time you  
22 received the stop work order in December 2015 that the  
23 renovations were 99 percent complete, and that you were ready  
24 to go to staging?

25 MR. MANNING: I do. I mean, I don't have it here

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1 with me, but I have emails, I have pictures, I have staging  
2 pictures. I have a timeline.

3 MEMBER JOHN: In December 2015?

4 MR. MANNING: Yeah, I can tell you where every  
5 single nail is in that building. I got thousands of  
6 pictures. So yes, I have a timeline and emails and staging  
7 and so forth with pictures, with proof. I just don't have  
8 it with me today.

9 MEMBER JOHN: Okay.

10 CHAIRPERSON HILL: Okay, anybody else?

11 VICE CHAIR HART: Just to clarify this. I thought  
12 I had heard the Office of Planning say that the CFO was  
13 revoked for the entire building in December of 2017? Is that  
14 correct? I don't know who's going to answer, but --

15 MR. MANNING: I believe the CFO was yanked for the  
16 entire building.

17 VICE CHAIR HART: Okay.

18 MR. MANNING: Is that correct?

19 MR. SULLIVAN: And at that point, I think the  
20 condo buyer upstairs was already there. So they, in  
21 consideration of her situation, they then gave her --

22 VICE CHAIR HART: DCRA gave the certificate of  
23 occupancy to the condo unit --

24 MR. SULLIVAN: For the condo.

25 VICE CHAIR HART: -- but there is no, now there's

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1 nothing for the whatever you want to call the seller in the  
2 first floor.

3 MR. SULLIVAN: They acknowledged the tenant that  
4 was in the lower unit, one tenant, but said, don't renew the  
5 lease for that tenant, and go to BZA or solve the situation.  
6 Either turn it into one unit, or go to BZA and they'll wait  
7 for that, but don't -- in any event, don't renew the lease  
8 for the existing tenant.

9 VICE CHAIR HART: Okay.

10 MR. MANNING: I just want to let you know, sorry,  
11 the inspection cards for our building final is also part of  
12 proof of completion at the time you were asking for.

13 MEMBER JOHN: Is it in the record? It's not in  
14 the record, is it? No?

15 MR. SULLIVAN: I'm not sure if it is or --

16 MEMBER JOHN: I didn't see it.

17 MR. SULLIVAN: Yes, it must not be. Yes, we  
18 probably need, I need to fill in more details on that  
19 obviously.

20 CHAIRPERSON HILL: Okay. Could you tell me your  
21 names again?

22 MR. MANNING: Bryan Manning.

23 MR. AKIN: Serhat Akin.

24 CHAIRPERSON HILL: Akin. Manning, Akin. Okay.

25 Do you have other projects, or is this your only project?

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1 MR. MANNING: We have another project, 1435 Perry  
2 Place Northwest.

3 CHAIRPERSON HILL: Okay. Is that going better?

4 MR. MANNING: It's done.

5 CHAIRPERSON HILL: Okay, okay, finished.

6 MR. MANNING: We're good.

7 CHAIRPERSON HILL: Okay, good. Well, at least  
8 one's done. Okay, I guess we'll go through and see if  
9 there's anybody here. Is there anybody here from the ANC?  
10 Is there anybody wishing to speak in support? Is there  
11 anybody here wishing to speak in opposition? Okay. So just  
12 to let you all know, we're going to take a break after this,  
13 so there you go.

14 I don't know where the Board is. I mean, Mr.  
15 Sullivan, the Office of Planning is against you. Right? The  
16 ANC is against you. Right? I've been here three-and-a half  
17 years. I've never voted against both -- hey, I got nothing.  
18 Right?

19 So, you know, I mean, I'm just like I don't know  
20 what to do, you know, and so, you know, I mean, it would be  
21 great if you could kind of figure out something with the  
22 Office of Planning and try to talk with them again and see  
23 if there's something to do.

24 I mean, what I'd like to see I guess, and again  
25 I'm really having a hard time and again, you know, I'm sorry

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1 that you're in this situation. I believe you that, you know,  
2 you didn't build this for this situation.

3 I mean, I see the timeline. I mean, you never  
4 build this for this situation. Right? It's just stupid.  
5 And so, no, you don't have to say anything, that's okay. And  
6 so if you can kind of provide, I see your timeline here.

7 If you can provide some kind of a timeline again  
8 that's a little bit more clear as to how you got to here,  
9 including maybe when the construction started and even your  
10 rationale for how you've gone through doing all of what you  
11 did so that you can explain how you finished everything in  
12 12 weeks.

13 That's basically what is a little bit of a  
14 discussion, I guess. Board Member John was interested in  
15 seeing if you have some kind of proof that you're 99 percent  
16 complete by the time that you're done here.

17 But, I mean, it's a struggle. I mean, you know,  
18 the Office of Planning is making a very good case in terms  
19 of how they're getting to where they are, and I just don't  
20 know what's going to happen. I mean, I really don't.

21 I mean, you've got your, and I see you got your  
22 four bedroom, four bath, and I can see how you're turning it,  
23 you know, into two, and all your plans were stamped for three  
24 units.

25 It was stamped for three units, you got three

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1 meters. I mean, somebody should have told you along the way  
2 that you're not going to get three, you know. And I guess  
3 maybe further proof to bolster the argument that you can't  
4 sell the four-bedroom, four-bath thing, you know.

5 I mean, I don't know what, I guess you could show  
6 some diagrams or something as to what that four-bedroom,  
7 four-bath thing looks like. I can't even imagine it right  
8 now, you know, because I know what you're doing.

9 You're kind of like throwing up a door when you  
10 can, and I don't fault you for it. You know, you're doing  
11 whatever you can do. Right? And so we're not here, we're  
12 not the whatever the police was. I forget what word they  
13 used. But does anybody else have anything they want to,  
14 because I don't know what to do.

15 MEMBER JOHN: I have nothing.

16 ZC CHAIR HOOD: Mr. Chairman, I would suggest the  
17 information that you just asked for provide and also to show  
18 that to the Office of Planning, especially the proof part.  
19 Maybe they'll have another look at it.

20 Because you're exactly right. I look at the  
21 recommendations that we have for us, and it's a very heavy  
22 lift. Anyway, that's where I am.

23 CHAIRPERSON HILL: Yes and to think, I don't want  
24 to be like another case that gets talked about like Monaco  
25 forever about, you know, that this happened or that happened

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1 and now, you know, they'll be looking back at this.

2           And so, you know, if you can go with the Office  
3 of Planning and you can figure out something, and I tell you  
4 for the Applicant, that's what I would also try to figure  
5 out. Like if you can get to the Office of Planning and  
6 figure out something with the Office of Planning, whatever  
7 that is, and if you still end up with a no then I guess you  
8 can see what happens with us in the decision.

9           MR. SULLIVAN: If I might ask a cross-question  
10 then since I wasn't offered a time, I think that might be  
11 helpful.

12           CHAIRPERSON HILL: Oh, did I neglect to ask you  
13 if you had any questions for the Office of Planning?

14           MR. SULLIVAN: I was ambivalent at the time, but  
15 I think it might help clarify -- that's okay, no.

16           CHAIRPERSON HILL: I apologize, Mr. Sullivan. Do  
17 you have any questions for the Office of Planning?

18           MR. SULLIVAN: Thank you. Just one. Is the  
19 Office of Planning's position that reliance is not present  
20 here, or that it's just not a valid argument in any  
21 situation?

22           MS. VITALE: I think it hasn't fully been  
23 demonstrated.

24           MR. SULLIVAN: Okay. Okay, that's helpful.

25           CHAIRPERSON HILL: Okay. So does anyone else want

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1 to hear anything or see anything from the Applicant? Okay.  
2 So as of now, it's just empty. You can say, yes. That'll  
3 be okay. Oh, never mind. I forgot. Never mind, never mind.  
4 As of now, what is there right now?

5 MR. AKIN: I don't want to lie. It's not empty,  
6 but the tenants are leaving.

7 CHAIRPERSON HILL: Okay. All right. So it will  
8 be. The reason why I'm asking is because we're not going to  
9 get to a decision until after August probably. So I just  
10 wanted to know how much you are going to be suffering while  
11 we kind of hash this out. Okay?

12 So it's going to be empty. That's what you're  
13 telling me? It's going to be empty. Okay.

14 MR. AKIN: The tenants are leaving.

15 CHAIRPERSON HILL: Okay.

16 MR. AKIN: So we're going to be suffering more,  
17 but that's okay. We've suffered enough.

18 CHAIRPERSON HILL: Okay. So Mr. Sullivan, you  
19 know what you're going to try to present to us? So you're  
20 first going to go to the Office of Planning and figure out  
21 if there's any way that you can get them to agree.

22 I'm, you know, you can see that, well, you can see  
23 that I'm struggling. And I know that, you know, the other  
24 board members are really going to have a hard time, because  
25 again, I'm going to vote against the Office of Planning and

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1 the ANC.

2           It's not that it's going to be the first time,  
3 because I do see your argument, but at the same time I see  
4 the argument that, you know, you went at your own risk to a  
5 certain extent along some of the lines, even though, right,  
6 even though you had stamped plans also. I mean, I'd be  
7 sitting down there with you, you know.

8           Okay. All right. Then Mr. Moy, when can we come  
9 back and figure out when we can get all this stuff and then,  
10 I mean, Mr. Hood is back with us on September 22nd? You said  
11 you were here the week before.

12           ZC CHAIR HOOD: I don't even know when I'm here  
13 in July. I don't know what day I'm here in September.

14           CHAIRPERSON HILL: Oh, I thought you said you were  
15 here in September?

16           ZC CHAIR HOOD: I think, I don't know. Am I here  
17 in September?

18           SECRETARY MOY: I don't have a listing for --

19           ZC CHAIR HOOD: If not, I can pass this on to one  
20 of my colleagues. I'm sure --

21           CHAIRPERSON HILL: Okay. No, they don't want to  
22 watch all this. They'd have to watch all this. So Mr. Moy,  
23 I mean, I forget what date we were looking at before when we  
24 were loading it up the last time. It was the 26th of  
25 September?

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1 SECRETARY MOY: That's correct. It would be the  
2 26th. If this is a continued hearing --

3 CHAIRPERSON HILL: Yes.

4 SECRETARY MOY: -- then you would have, this would  
5 be the fourth case plus an appeal.

6 CHAIRPERSON HILL: On the 26th?

7 SECRETARY MOY: On the 26th.

8 CHAIRPERSON HILL: Probably it's going to be on  
9 the 26th.

10 SECRETARY MOY: Otherwise, the next date I would  
11 suggest would be October 3rd. So it's --

12 CHAIRPERSON HILL: This would be the fourth case  
13 plus an appeal?

14 SECRETARY MOY: One, two, three, this would be the  
15 fourth application. The next --

16 CHAIRPERSON HILL: Right. So then we wouldn't  
17 probably schedule anything, because this will again take  
18 time.

19 SECRETARY MOY: I wouldn't.

20 CHAIRPERSON HILL: So this will be the last thing  
21 that we'll schedule for that day.

22 SECRETARY MOY: For the 26th? Yes.

23 CHAIRPERSON HILL: Yes, okay. And you don't know  
24 if Chairman Hood's going to be with us or not?

25 SECRETARY MOY: I don't know unless he --

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1 CHAIRPERSON HILL: Okay.

2 SECRETARY MOY: -- picks that date.

3 CHAIRPERSON HILL: Okay.

4 ZC CHAIR HOOD: The 26th.

5 CHAIRPERSON HILL: Okay, great, because then all  
6 the other two that we've already kicked down to the 26th,  
7 Chairman Hood, you'll have already, you know --

8 ZC CHAIR HOOD: If it hasn't already been  
9 assigned, I'll see if I can get them.

10 CHAIRPERSON HILL: Okay. All right. Okay. So  
11 the 26th, Mr. Sullivan?

12 MR. SULLIVAN: Okay. That's great.

13 CHAIRPERSON HILL: Okay.

14 MR. SULLIVAN: And was there a filing date for --

15 SECRETARY MOY: Yes, I was going to get to that.  
16 So this is a continued hearing. So when can the Applicant  
17 provide the requested supplemental by?

18 MR. SULLIVAN: We have plenty of time, so whatever  
19 gives everybody enough time. Three weeks prior?

20 CHAIRPERSON HILL: Chairman, we'd have to get a  
21 supplemental from the Office of Planning.

22 SECRETARY MOY: So if I can suggest then while  
23 she's thinking. So if this is continued to the 26th of  
24 September, let's say at least a week for the OP to file,  
25 which would be the 19th of September.

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1           So at that point if the Applicant can provide  
2 materials to OP to complete their report let's say two weeks  
3 before. So we're looking at September 5th. Would that be  
4 adequate?

5           CHAIRPERSON HILL: Okay, Mr. Sullivan, so yes,  
6 make it easy also for us, like really clear, you know, the  
7 timeline, the argument, the whatever, and really have a good  
8 meeting with the Office of Planning. Okay?

9           All right. Okay. See you all in September.  
10 Okay, we're going to take a break. Thank you.

11           (Whereupon, the above-entitled matter went off the  
12 record at 11:43 a.m. and resumed at 12:03 a.m.)

13           CHAIRPERSON HILL: All right, let's get started  
14 here again. We're going to switch the order up a little bit,  
15 which will be -- there you go, serves you right for thinking  
16 you were going home.

17           So we're going to switch the order up here a  
18 little bit, and unfortunately then some of you are going to  
19 be happy and some of you are not, and I know who will not be  
20 probably at this point.

21           We're going to go, the next one we're going to do  
22 is 19747 of Van Buskirk. Hopefully I'm pronouncing that  
23 correctly. Then we're going to go Application Number 19767  
24 of Compass Coffee. Then we're going to go Application Number  
25 19778 of Calvin Coolidge.

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1           Then we're going to go Application Number 19753  
2 of Brendan and Claire Smullen. And then we're going to  
3 finish with, unfortunately who thought they were going to go  
4 next, Application Number 19722. And the reason is because  
5 two of the members aren't on that case.

6           ZC CHAIR HOOD: Actually, --

7           CHAIRPERSON HILL: Oh.

8           ZC CHAIR HOOD: -- there was some misinformation  
9 that I am on that case.

10          CHAIRPERSON HILL: Oh, so you are on that case?

11          ZC CHAIR HOOD: My memory failed me and so did  
12 somebody else's --

13          CHAIRPERSON HILL: I see.

14          ZC CHAIR HOOD: -- who brought it to my attention.

15          CHAIRPERSON HILL: I see. I'm not on that case,  
16 so I'm going to get to leave. That's how that all happened.  
17 But I didn't do it. Somebody else suggested that and so  
18 right now, there you go. So Mr. Moy?

19          SECRETARY MOY: Yes, sir. If we can have parties  
20 to the table to Case Application Number 19747. This is of  
21 Deborah Van, is it Buskirk or Buskirk? Yes, I'm sorry, thank  
22 you.

23                 Captured and advertised for a special exception  
24 under Subtitle E, Section 5201. This is from the accessory  
25 building gross floor area limitation. Subtitle E, Section

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1 5004.2(b), an accessory building rear set back requirement.  
2 Subtitle E, Section 5004.1.

3 And pursuant to Subtitle F, Chapter 10 for a  
4 variance from a lot occupancy requirement. Subtitle E,  
5 Section 304.1 to permit an existing one-story accessory  
6 building RF-1 zone 445 15th Street Southeast, Square 1062,  
7 Record Lot 52.

8 This was last convened before the Board at hearing  
9 on May the 16th, and Mr. Chair --

10 CHAIRPERSON HILL: One further item of note just  
11 before people, I see people kind of leaving, we're going to  
12 take a lunch break after three cases go, so I just want to  
13 make sure everybody knows what's happening in terms of the  
14 timeline.

15 Mr. Moy, I'm sorry to interrupt you, what did you  
16 have to finish saying?

17 SECRETARY MOY: No, that's good. We're ready to  
18 go.

19 CHAIRPERSON HILL: Okay, thank you. All right.  
20 Could you please introduce yourselves for the record?

21 MR. SULLIVAN: Thank you, Mr. Chairman. Marty  
22 Sullivan on behalf of the Applicant.

23 MS. WILSON: Alex Wilson on behalf of the  
24 Applicant.

25 MS. VAN BUSKIRK: Deborah Van Buskirk, the

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1 Applicant.

2 CHAIRPERSON HILL: Mr. Sullivan, you were just up  
3 here.

4 MR. SULLIVAN: I was.

5 CHAIRPERSON HILL: Okay. Mr. Sullivan, I think  
6 you're going to be presenting to us. Is that correct?

7 MR. SULLIVAN: That's correct. This is a  
8 continued hearing.

9 CHAIRPERSON HILL: Yes.

10 MR. SULLIVAN: I think we went through everything  
11 and --

12 CHAIRPERSON HILL: Yes. Just if you could, I  
13 know, you know, we've read, we've reread the record and also  
14 all of the things that you put in there, and I found this one  
15 actually really interesting.

16 So if you could kind of tell us what happened  
17 since the last time you were here and then that might be  
18 enough.

19 MR. SULLIVAN: Thank you. Well, the first thing  
20 we did was the Applicant found, and she had had it before,  
21 but she discovered a copy of the old permit, which she had  
22 found in her previous research from 1921, which showed in  
23 this footprint that there was a building here. So there's  
24 some history of this building being there.

25 And then we also got cost estimates for a garage

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1 demolition and also an explanation that we couldn't  
2 practically reduce the size of the garage to be within the  
3 70 percent as well.

4 And with those things, and then also provided  
5 additional discussion of the case law of approvals of  
6 existing nonconformities that Chairman Hood had asked for.  
7 And based on these, I believe we've got the Office of  
8 Planning support now.

9 CHAIRPERSON HILL: Okay. Does the Board have any  
10 questions for the Applicant? Okay. May I turn to the Office  
11 of Planning to hear about their supplemental report, please?

12 MS. BROWN-ROBERTS: Yes. Good morning, Mr.  
13 Chairman and members of the Board, Maxine Brown-Roberts for  
14 the record.

15 Based on the information that the Applicant  
16 submitted, I think that the building permit that was approved  
17 for the site in 1921 showing that the building was there from  
18 that time and has existed, that was an exceptional situation  
19 resulting in a practical difficulty.

20 And so we thought that based on that, they met the  
21 standards for the variance as outlined in our report, and we  
22 recommend approval. Thank you, Mr. Chairman.

23 And I must say and then we also continue to  
24 recommend approval of the special exceptions that were also  
25 requested.

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1 CHAIRPERSON HILL: Okay, great, thank you. Mr.  
2 Sullivan, do you have any questions for the Office of  
3 Planning?

4 MR. SULLIVAN: No. Thank you.

5 CHAIRPERSON HILL: Okay. I think we've done this  
6 anyway, but we're going to do it again. Is there anybody  
7 here from the ANC? And is there anyone here which can speak  
8 in support? Is there anyone here which can speak in  
9 opposition? Mr. Sullivan, do you want to finish up with  
10 anything else?

11 MR. SULLIVAN: We have nothing further. Thank  
12 you.

13 CHAIRPERSON HILL: Okay. Is the Board, well,  
14 before I close, so Ms. Van Buskirk, again. Right? Where did  
15 you find the permit?

16 MS. VAN BUSKIRK: The title company.

17 CHAIRPERSON HILL: Okay. All right. You should  
18 give them a big kiss.

19 CHAIRPERSON HILL: Okay. I'm going to close the  
20 hearing. Hearing's closed. Is the Board ready to  
21 deliberate? I can start. Again, I can't believe they found  
22 the permit, and so because of the permit, it was easier to  
23 get to the variance test. And then also the fact that I do  
24 agree with the analysis that the Office of Planning has  
25 provided.

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1           In addition to that, I think the Commissioner was  
2 here and spoke directly on this last time in support, and  
3 they actually had somebody from the ANC coming here in  
4 support. And the ANC was in support 8-0 and didn't have any  
5 issues or concerns.

6           I would be now in favor of this application, where  
7 before I thought it was kind of difficult to get behind.  
8 Does anyone have any other thoughts?

9           MEMBER WHITE: I concur with you, Mr. Chair. And  
10 the records full. This is a great example of how circling  
11 back with the Office of Planning and working through the  
12 issues and discovering a title that's very old can be very  
13 helpful in putting the pieces together. So I'm comfortable  
14 that they've met the criteria.

15           ZC CHAIR HOOD: I would concur, Mr. Chairman, and  
16 I appreciate the work that was put into it and also providing  
17 the information that was asked for.

18           CHAIRPERSON HILL: Okay, great. So with that I'm  
19 going to go ahead and make a motion to approve Application  
20 Number 19747 as captioned and read by the Secretary and ask  
21 for a second.

22           ZC CHAIR HOOD: Second.

23           CHAIRPERSON HILL: Motion made and seconded, all  
24 those in favor, aye?

25           (Chorus of aye.)

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1 CHAIRPERSON HILL: All those opposed? The motion  
2 passes, Mr. Moy.

3 SECRETARY MOY: Staff would record the vote as 5-  
4 0-0. This is on the motion, Chairman Hill, to approve the  
5 application for the relief being requested. Seconding the  
6 motion, Commissioner Hood. Also in support Ms. White, Ms.  
7 John and Vice Chair Hart. Motion carries.

8 CHAIRPERSON HILL: Summary order, Mr. Moy?

9 SECRETARY MOY: Yes, sir.

10 CHAIRPERSON HILL: Thank you. Thank you, all.

11 MS. VAN BUSKIRK: Thank you.

12 SECRETARY MOY: Okay. All right. The next case  
13 application is Number 19767 of Compass Coffee. Captured and  
14 advertised for special exception under, this is what has been  
15 advertised for special exception under Subtitle U, Section  
16 513.1(n), N as in November, from the use requirements of  
17 Subtitle U, Section 513.1(d)(3) to permit a coffee/prepared  
18 food shop with more than 18 seats in the MU-4 zone. This is  
19 at 1351 Wisconsin Avenue Northwest, Square 1243, Lot 75.

20 CHAIRPERSON HILL: Okay. Good afternoon,  
21 gentlemen. If you could please introduce yourselves from  
22 right to left?

23 MR. HAFT: Hello. My name is Michael Haft.

24 MR. SUAREZ: And I'm Harrison Suarez. We're both  
25 cofounders of Compass Coffee.

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1 CHAIRPERSON HILL: I almost got coffee from you  
2 all's place today on the way over, but like I forgot. Let's  
3 see, okay. So I guess Mr. Haft or which one of you is going  
4 to present?

5 MR. HAFT: Sure, I'll take care of it.

6 CHAIRPERSON HILL: Okay. So again, if you can  
7 tell us what you're trying to do and how you're meeting the  
8 regulations in order for us to approve. And you can start  
9 whenever you like.

10 MR. HAFT: Sure. So we are leasing a space at  
11 1351 Wisconsin Avenue Northwest. It has historically been  
12 a retail space. It used to be a movie theater, then a  
13 jewelry store and anyway, it was a weird jewelry bazaar.

14 But anyway, the building has been renovated. It's  
15 about 3,000 feet, so having 18 seats in a 3,000 square foot  
16 space just seemed weird and uncomfortable. You couldn't  
17 really run a coffee shop with those types of requirements.

18 We went out. We met with the ANC. We've met with  
19 neighbors and come up with a plan. So we're happy to answer  
20 any questions.

21 CHAIRPERSON HILL: Okay. Does anybody have any  
22 questions for the Applicant?

23 MEMBER WHITE: We just were handed a letter. I  
24 don't know if you've talked to Judith Rogers. But she  
25 appears to have registered some opposition to your business.

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1 I just wondered if you had any thoughts, or if you'd read it  
2 or if you had any thoughts with respect to it.

3 MR. HAFT: We haven't seen the letter.

4 MEMBER WHITE: I'm just seeing it too, so --

5 MR. HAFT: We weren't aware that anybody was  
6 opposed.

7 CHAIRPERSON HILL: Okay. I'll let you go ahead  
8 and read the letter there while I go to the Office of  
9 Planning. And then we'll kind of run through and see who  
10 else is here. Anyone else? Okay. Can I turn to the Office  
11 of Planning, please?

12 MR. MORDFIN: Good afternoon. For the record, I'm  
13 Stephen Mordfin. And the Office of Planning supports this  
14 application finding conformance with the requirements of the  
15 zoning regulations and therefore recommends approval of the  
16 application. Thank you.

17 CHAIRPERSON HILL: Okay, thank you. Mr. Haft, do  
18 you have any questions for the Office of Planning?

19 MR. HAFT: No. Thank you.

20 CHAIRPERSON HILL: Okay. Is there anyone here  
21 from the ANC? Is there anyone here who wishes to speak in  
22 support? Is there anyone here who wishes to speak in  
23 opposition? Okay.

24 VICE CHAIR HART: Excuse me, Mr. Chairman?

25 CHAIRPERSON HILL: Sure.

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1           VICE CHAIR HART:     Just a little point of  
2 clarification. I see that the OP report was filed late, and  
3 I guess we just needed to waive the filing deadline.

4           CHAIRPERSON HILL: I appreciate that, Vice Chair  
5 Hart, thank you. I did remember that that was something that  
6 had been pointed out, and that I didn't have any issues with  
7 the Office of Planning's report.

8           I mean, the ANC is in support of the application  
9 and so I didn't see an issue with their report being late.  
10 So we'll go ahead and admit that into the record at this time  
11 unless there's any other thoughts by the Board.

12          CHAIRPERSON HILL: Okay. All right. Thank you,  
13 Mr. Hart.

14          VICE CHAIR HART: And actually I just had one  
15 question.

16          CHAIRPERSON HILL: Sure.

17          VICE CHAIR HART: And this is kind of going to the  
18 letter that we just received. The letter, part of it says  
19 that the application refers to a coffee/prepared food shop  
20 with more than 18 seats, but there is kind of no upper limit.  
21 There is a number that the Applicant has proposed.

22                 I didn't know if the Office of Planning had a  
23 recommendation on the number or just, I don't know, if we  
24 have an upper limit to the number of people or seats for the  
25 coffee shop?

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1 MR. MORDFIN: I think the number that you would  
2 permit is related to the size of the space and how it's being  
3 used. And the Office of Planning has no issues with the  
4 number that has been proposed by the Applicant based on the  
5 space.

6 CHAIRPERSON HILL: What's the number that you guys  
7 proposed?

8 MR. HAFT: 112.

9 CHAIRPERSON HILL: Okay. All right. Did you have  
10 any further questions, Ms. White, yes?

11 MEMBER WHITE: Well, just your response to the  
12 letter. I see you did a little speed reading there. If you  
13 could just address the concerns voiced, maybe just in terms  
14 of what your thoughts are in terms of how to make your  
15 neighbor feel more comfortable with your proposed business.

16 MR. HAFT: They're all reasonable concerns,  
17 especially with regard to trash. I know Georgetown sort of  
18 has a rat problem. And we've built a trash room inside our  
19 space to hold all of our trash essentially.

20 We keep it inside during the day. We take it out  
21 front at night. Trash guys come pick it up every day. And  
22 we bring the bins back inside just like anybody else.

23 MEMBER WHITE: Okay. That's all.

24 CHAIRPERSON HILL: Okay. All right. Does anyone  
25 have any more questions? Does the Applicant --

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1           ZC CHAIR HOOD:  Sorry.  So this coffee shop is  
2 like the ones I go to now where I can sit there and do my  
3 computer, do my thing, even I can come telework at your  
4 coffee shop?  Okay.  What else is going on?  Anything else?  
5 I can drink coffee.

6           MR. SUAREZ:  Coffee, tea, pastries.  We have great  
7 WiFi, lots of seating because we want people to stay awhile.

8           ZC CHAIR HOOD:  Okay.

9           MR. SUAREZ:  And I mean, we do community events  
10 after hours sometimes, but --

11          ZC CHAIR HOOD:  Okay.  I got you.

12          MR. SUAREZ:  No alcohol.  Pretty important about  
13 both of us.

14          ZC CHAIR HOOD:  Okay.  Great.  Thank you, Mr.  
15 Suarez.

16          CHAIRPERSON HILL:  Okay.  So you're taking over  
17 that whole movie theater on Wisconsin?

18          MR. HAFT:  Yes, that's correct.

19          CHAIRPERSON HILL:  Okay.  Okay, great.  All right,  
20 do you have anything further you'd like to add?  Okay.  I'm  
21 going to close the hearing.  Is the Board ready to  
22 deliberate?  Okay.  I can start.

23                 I thought it was pretty straightforward.  I think  
24 that they're meeting the criteria for us to grant this  
25 special exception.  I also agree with the analysis that the

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1 Office of Planning has supported.

2 I also am taking into account the support that  
3 they received from the ANC. I know that particular ANC is  
4 actually pretty active. And Chairman Gibbons there does a  
5 good job with, you know, keeping the ANC moving along.

6 And so I would be in support of this application.  
7 Does anyone else have anything they'd like to add?

8 VICE CHAIR HART: Only, I mean, I would concur  
9 with your statement, Mr. Chairman. The only question I had  
10 was whether or not there should be a limit on the number of  
11 seats. And I understand from the Office of Planning that  
12 that's kind of connected to the use of the site.

13 I mean, I don't have a particular issue with it,  
14 but I just didn't know if we were approving it for 112 or we  
15 were just approving it.

16 You know, if there is a set number of seats that  
17 are allowed or it's just as allowed by, you know, whatever  
18 the building, you know, regulations would be, what am I  
19 thinking, the building code would allow?

20 CHAIRPERSON HILL: I'm going to ask the Office of  
21 Planning, is that how that works?

22 MR. MORDFIN: I don't know what the building code  
23 or the fire code would restrict this use to for the number  
24 of seats, but the Applicant did submit a floor plan showing  
25 how it would be laid out and that, you know, the space can

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1 accommodate that number of seats.

2 And so therefore, the Office of Planning  
3 recommended approval as the application was filed, which is  
4 for 112 seats.

5 CHAIRPERSON HILL: So I guess Vice Chair Hart, I  
6 mean, I understand what you're saying. In this particular  
7 case, I guess, it was a big movie theater that they had  
8 there, and I don't what, I guess we could go back to the  
9 Applicant and figure out something if there's something you  
10 would like in terms of a condition outside of just whatever  
11 the regulations are going to allow.

12 VICE CHAIR HART: No. It was more just as we were  
13 kind of going through this, I wasn't sure if we were saying  
14 -- if the Applicant decides that they wanted to have 150  
15 seats, do they have to come back to us or not?

16 And my understanding is that they don't because  
17 we're not providing a limit. And I didn't know if we wanted  
18 to do that or not. That's what I was trying to get to.

19 SECRETARY MOY: Mr. Chair, if I may, if I  
20 understood what OP just said, if the floor plans show a  
21 maximum of 112 seats, if they went beyond that, they would  
22 have to come back before the Board to revise or modify the  
23 plans that would be approved today. Is that correct?

24 CHAIRPERSON HILL: OP?

25 MR. MORDFIN: I believe so, yes.

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1 MR. HAFT: That's how we understand it as well.

2 MS. LOVICK: I don't believe so, because the  
3 relief that you're granting is a special exception to exceed  
4 the 18 seats that is permitted as a matter of right. So if  
5 you want to impose a condition to limit the number of seats  
6 to 112, I think you would need to do that. Otherwise, they  
7 could exceed that amount.

8 Now, obviously, I'm not sure. I don't know what  
9 the fire code or the building code restrictions would be.  
10 And so I would assume there would be a point at which there  
11 would be a danger to the overall safety and well-being of  
12 patrons if they exceeded 400 or something, but if you want  
13 to limit the number of seats, you would have to impose a  
14 condition to do so.

15 CHAIRPERSON HILL: And so, I mean, we can keep  
16 talking about this and it's fine, like I don't have an issue  
17 with the number of seats, but if you want to, we can go back  
18 and figure it out.

19 VICE CHAIR HART: I was just trying to understand  
20 what that limitation was. I mean, we can keep it at 112, but  
21 the, yes, we can keep it at whatever the plan shows.

22 CHAIRPERSON HILL: Yes, but we'd have to make that  
23 a condition is what is being clarified now.

24 VICE CHAIR HART: That's what I'm thinking.

25 CHAIRPERSON HILL: So your concern is that you

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1 would like a top level somewhere?

2 VICE CHAIR HART: Well, I think that the letter  
3 that we received or just in general, you know, the letter  
4 that we received from Ms. Rogers just brings up an issue  
5 about there is no upper limit that has been discussed or at  
6 least set.

7 And so I just didn't know if it made sense to make  
8 a condition that is, you know, if they have 120, give them  
9 120, so that we at least know that they have some room to  
10 play with. They have eight more seats or something, you  
11 know, beyond the 112 that they already have so they wouldn't  
12 have to come back to us if they wanted that changed from the  
13 112, you know, if you understand what I'm saying.

14 ZC CHAIR HOOD: Mr. Chairman, can I just ask this?  
15 Do you have, well forgive me for not knowing, because every  
16 time I go by a coffee shop there's not that many people in  
17 there. Do you normally have 120? And if you do, I need to  
18 check you all out and see what you all are doing?

19 MR. HAFT: This would be our largest location.

20 ZC CHAIR HOOD: Okay. So you're trying to draw  
21 120? I think the Vice Chair is exactly right. We may need  
22 to put that as a condition even though I don't think it's  
23 going to be necessarily a major problem, but I would agree  
24 that we probably need to do that.

25 And here's the thing, if it does become a

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1 potential problem, which I don't think it will, then there  
2 needs to be some kind of revenue, I think this is where Ms.  
3 Rogers is going, to come back to, some kind of venue to come  
4 back and try to reevaluate.

5 I'm not saying put a time limit, but I do think  
6 we need to put the limit, as he mentioned, 120 or 112 or  
7 whatever's suitable.

8 MR. HAFT: We're happy to have a limit.

9 CHAIRPERSON HILL: Okay. And I'm now, because  
10 we're just talking about this in the open here in terms of,  
11 and the only reason why I'm even talking about or struggling  
12 with this upper limit.

13 It's a big movie theater, so you guys were going  
14 to do public events and things like that and have people from  
15 the community come. And so if you had a limit of 120, I  
16 would think you could put more than 120 in there. No?

17 MR. HAFT: Probably not chairs, honestly.

18 CHAIRPERSON HILL: Okay, so it's the chairs?

19 MR. HAFT: Right? It's the seats that, right.  
20 Occupancies can be much, much higher.

21 CHAIRPERSON HILL: Okay, okay. So 120 would be  
22 fine.

23 MR. HAFT: Yes.

24 CHAIRPERSON HILL: Chairs?

25 MR. HAFT: Yes.

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1 CHAIRPERSON HILL: Okay. All right, so does  
2 anybody else have anything? Okay. So Vice-Chair Hart, would  
3 you like to make the motion and your condition in there as  
4 well that you have your condition in there?

5 VICE CHAIR HART: Sure, sure. I can do that. So  
6 I'll make a motion to approve Application Number 19767 of  
7 Compass Coffee as read by the Secretary, read and captioned  
8 by the Secretary and with the condition that there are, with  
9 a limit of 120 seats for the establishment. Do I have a  
10 second?

11 ZC CHAIR HOOD: Second.

12 CHAIRPERSON HILL: The motion being made and  
13 seconded, all those in favor, aye.

14 (Chorus of aye.)

15 All those opposed? The motion passes, Mr. Moy.

16 SECRETARY MOY: Staff would record the vote as 5-  
17 0-0. It is on the movement of Vice-Chair Hart to approve the  
18 application for the relief with the condition on limitation  
19 of 120 seats. Seconding the motion, Commissioner Hood. Also  
20 in support, Ms. White, Ms. John and Chairman Hill.

21 CHAIRPERSON HILL: Okay. You got a summary order,  
22 Mr. Moy?

23 SECRETARY MOY: Thank you, sir.

24 CHAIRPERSON HILL: Thank you. And gentlemen,  
25 we're starting to get more casual up here as well, so like,

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1 you know, we'll be kind of like the same way the next time  
2 you come. All right. Thank you all very much. Bye, bye.

3 SECRETARY MOY: The next case application is  
4 Number 19778 of Calvin Coolidge Presidential Foundation, Inc.  
5 captioned and advertised for a special exception under the  
6 use provisions of Subtitle U, Section 203.1(n) and pursuant  
7 to Subtitle X, Chapter 10 for variances from the gross floor  
8 area or FAR.

9 Requirements of Subtitle U, Section 203.1(n)(2).  
10 This would permit the use of an existing residential building  
11 by a nonprofit organization in the R-20 zone at 3425 Prospect  
12 Street Northwest, Square 1221, Lot 96.

13 CHAIRPERSON HILL: Okay. If you could please  
14 introduce yourselves for the record?

15 MR. HUGHES: Good afternoon, Mr. Chair. My name  
16 is Dennis Hughes with the firm of Holland & Knight here on  
17 behalf of the Calvin Coolidge Presidential Foundation.

18 MS. SHLAES: Good afternoon, Mr. Chair and members  
19 of the Board. I am Amity Shlaes, the Chairman of the Board  
20 of the Coolidge Foundation.

21 MR. DENHART: Good afternoon. I'm Matt Denhart,  
22 the Executive Director of the Coolidge Foundation. Thank  
23 you.

24 MR. FIRESTONE: Good afternoon. I'm Russell --

25 CHAIRPERSON HILL: You need to push the microphone

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1 button, sir.

2 MR. FIRESTONE: There you go. Good afternoon.  
3 Russell Firestone. I'm Senior Vice-President TTR Sotheby's  
4 International Realty.

5 CHAIRPERSON HILL: Okay, great. I love that the  
6 coffee people came in in t-shirts and shorts and the Calvin  
7 Coolidge people come in in suits and ties. So we all know  
8 what we're supposed be wearing. This is great.

9 All right. Mr. Hughes, are you going to be  
10 presenting us?

11 MR. HUGHES: We'll take the lead from the Board,  
12 from the chair. We believe we have a very complete record,  
13 but we're certainly here ready to give you a full  
14 presentation.

15 CHAIRPERSON HILL: Okay. If you could just, Mr.  
16 Hughes, why don't you go ahead and just briefly summarize why  
17 you're here and the relief you're asking for so that we are  
18 clear about that and then also how you're meeting the  
19 criteria just briefly.

20 And if we have questions after that, we'll go  
21 ahead and do that. I'll put ten minutes on the clock just  
22 so I know where we are, and you can begin whenever you like.

23 MR. HUGHES: Thank you. And, Mr. Chair, as a  
24 preliminary matter, Mr. Firestone will be available to answer  
25 questions, especially if you have any questions regarding the

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1 variance component of our application. I don't know if we  
2 need to qualify him as an expert.

3 CHAIRPERSON HILL: No. I appreciate it. Now,  
4 with Firestone and also there was a Rich Marcus?

5 MR. HUGHES: Mr. Marcus has previously been  
6 approved as an expert by the Board. He is en route.

7 CHAIRPERSON HILL: Okay. That's right. I thought  
8 they weren't sure if he was in our book or not, but I looked  
9 at the resume of Mr. Firestone and Mr. Marcus and I didn't  
10 have any issues with having them added to our book of  
11 experts. Did anyone else have any issues with that or any  
12 questions they'd like to ask?

13 I don't know if we're going to have any questions  
14 of Mr. Firestone or not. However, now you're in the book so  
15 that would be just something you don't have to do again.

16 MR. HUGHES: Okay, thank you.

17 CHAIRPERSON HILL: You're welcome. With that, Mr.  
18 Hughes, you can again begin whenever you like.

19 MR. HUGHES: Thank you. We're here today to  
20 request special exception approval pursuant to Subtitles X,  
21 Section 901.2 and U, Section 203.1(n) in order to utilize a  
22 historic residence at 3425 Prospect Street for nonprofit  
23 organization use by the Calvin Coolidge Presidential  
24 Foundation, which is a recognized 501(c)(3) organization.

25 We're requesting a related area variance pursuant

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1 to Subtitle X, Section 1000.1 from one of the criteria  
2 relating to the nonprofit special exception, that is namely  
3 the 10,000 square foot gross floor area threshold.

4 And I'll leave it to our witnesses to give a bit  
5 more flavor as to what the purposes and mission of the  
6 foundation is and how the building would be operated as a  
7 nonprofit.

8 CHAIRPERSON HILL: Actually, I think, Mr. Hughes,  
9 I'm just going to kind of cut to the chase a little bit. I  
10 guess I would like to hear a little bit about the variance  
11 relief and --

12 MR. HUGHES: Okay.

13 CHAIRPERSON HILL: -- the gross floor area.  
14 Although, you know, I would appreciate learning more about  
15 President Coolidge, you're in between us and lunch.

16 MR. HUGHES: Okay. So the special exception, if  
17 I'll just go through the criteria, the residence, it's  
18 203.1(n). First criterion is the building is listed in the  
19 inventory of historic sites or located within a historic  
20 district.

21 This building is both an individual landmark on  
22 the D.C. and National Register and within the Georgetown  
23 Historic District, so it meets that criterion.

24 The second is that the GFA of the building in  
25 question, not including other buildings on the lot, is 10,000

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1 square feet or greater. We are 11,000 square feet of  
2 finished floor area, but only about 8,500 of that is gross  
3 floor area because a portion of it is considered cellar  
4 space. Very well, extensively and nicely finished, but  
5 nonetheless, cellar space technically.

6 The third criterion, the use of existing  
7 residential building and land by a nonprofit shall not  
8 adversely affect the use of neighboring properties. Mr.  
9 Denhart can get into that a bit more with more specificity.

10 But it'll operate during normal office hours or  
11 operating hours, business hours, what have you. There's a  
12 very small staff. President Coolidge was a very quiet  
13 president, and the foundation follows his lead.

14 And I think the Office of Planning report, we  
15 really appreciate the effort they went to, and I think it  
16 lays out as well how we meet that criterion.

17 In terms of the amount and arrangement of parking  
18 spaces being adequate and located to minimize traffic impact,  
19 we have no parking spaces within the property nor can they  
20 be provided, and we don't believe that there's going to be  
21 an impact on that.

22 The few staff that will be at the building will  
23 not drive. We've agreed not to have any staff register for  
24 residential parking. They will arrive by public transit.  
25 The only few larger events, those over 100+ attendees will

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1 be valet parked, and we've been in coordination with some  
2 parking operators to try to establish letters of intent on  
3 that front in terms of off-site parking.

4           The two more criteria very quickly. No goods,  
5 chattel wares or merchandise shall be commercially created,  
6 exchanged or sold, except for the sale of publications,  
7 materials or other items related to the purposes of the  
8 nonprofit organization. They satisfy that.

9           And then the last is any additions to the building  
10 or major modifications to the exterior or to the site shall  
11 require approval of this Board and the Historic Preservation  
12 Review Board. There is no exterior modification proposed as  
13 part of this application nor contemplated.

14           So backing up to the second criterion in terms of  
15 the gross floor area and how we meet that, we do request a  
16 variance. There are a number of aspects of the property that  
17 make it exceptional.

18           It's extraordinarily large, both for the city, but  
19 more specifically to this neighborhood. It is at the same  
20 time a property that doesn't have a lot of the amenities one  
21 would expect of a property of that size.

22           I think it has nine bedrooms and nine baths, and  
23 I feel like I should be passing this on to others, but it is  
24 also at the corner of a very busy part of this neighborhood.  
25 It's across from a Georgetown University dormitory.

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1           It is essentially wrapped in the evening rush hour  
2 by traffic coming down 35th and then across to Prospect and  
3 then turning right down 34th to get to the Key Bridge.

4           So it's very difficult to get in and out of the  
5 residence, the building, especially in the evenings, in the  
6 afternoons, when families, if there were going to be single  
7 family use of this house, larger families would likely need  
8 to get out and they can't.

9           It's one block from the M Street commercial  
10 corridor. And we put into the record I think most recently  
11 early this week, we've been discussing with the Office of  
12 Planning a bit more detail about the efforts that have gone  
13 into continuing the property's use as a single-family  
14 residence.

15           It was on the market for nearly four years as a  
16 single-family residence marketed as such, and despite  
17 significant price reductions received no reputable  
18 expressions of interest or offers.

19           And so we don't believe that it's got a lot of  
20 market or likelihood of continuing to be used for single  
21 family residence.

22           CHAIRPERSON HILL: Mr. Hughes, I'm sorry, who owns  
23 it now? Did the foundation purchase the property?

24           MR. HUGHES: No, it's owned by the Taylor's.

25           CHAIRPERSON HILL: I see, okay. And so they're

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1 selling it or you guys -- I'm just curious.

2 MR. HUGHES: The Taylor's are selling it, and it's  
3 being sold to a benefactor of the foundation, and it's going  
4 to be leased to the foundation.

5 CHAIRPERSON HILL: I see, based upon this?

6 MR. HUGHES: Correct.

7 CHAIRPERSON HILL: Okay. All right. Does anybody  
8 have any questions for the Applicant?

9 VICE CHAIR HART: Yes. I'm sorry, I think I  
10 missed it. How many staff are going to be here? I kind of  
11 saw that there were like five Coolidge Scholars and that  
12 there were two to three staff initially, but I wasn't sure  
13 how many staff were going to be there. I'm not sure who's  
14 answering it.

15 MR. HUGHES: I'll ask Mr. Denhart to answer that.

16 MR. DENHART: Sure. Thanks. I can provide if you  
17 want, I can talk at greater length about the types of events  
18 and that sort of thing or I can answer just specifically your  
19 question about --

20 VICE CHAIR HART: Just specifically on the staff.

21 MR. DENHART: Yes. So currently we're based in  
22 Plymouth Notch, Vermont. We're headquartered there. We'll  
23 continue to be headquartered there. So this is really an  
24 expansion for our foundation rather than a move.

25 Right now, we're a lean staff. We only have four

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1 full-time, you know, that's our staff in Vermont. So we see,  
2 you know, two or three staff members probably in this  
3 facility, and they also won't be there year-round.

4 They'll be there quite a bit but not all the time,  
5 especially in the summer. We have a heavy slate of events  
6 at our site in Vermont that we operate. You know, over time,  
7 you know, it's hard to project too far forward, but you know,  
8 we assume we would grow some but don't anticipate this ever  
9 having, you know, an exceedingly large number of staff on-  
10 site.

11 Your question about the Coolidge Scholars. These  
12 are students who were recipients of our full-ride  
13 scholarship. It's our biggest program that we run.  
14 Currently, three or four students a year win the scholarship.

15 They're then at universities around the country,  
16 but we envision providing guest accommodations for them for  
17 a short period of time during an internship or something like  
18 that. But at any given time, there would never be more than  
19 one or two of them likely at the property itself.

20 VICE CHAIR HART: Yes, the only reason I was  
21 asking was I was looking through the Office of Planning  
22 report, and they just said that they knew how many staff were  
23 going to be there kind of in the interim but were not sure  
24 what that number was, and honestly I was trying to figure  
25 that out, too.

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1           Part of what I'm, the reason I was asking was  
2 really to understand, you know, are we talking about ten  
3 people that are going to be, you know, staff here? Are they  
4 going to actually have offices there? And I think you  
5 answered the question. I was just trying to kind of --

6           MR. DENHART: Sure.

7           VICE CHAIR HART: -- gauge what that was like.  
8 I'm thinking some of this may lead to, you know, I know that  
9 the DDOT had a condition that they included, but I think that  
10 there may be some conditions around if we do approve it,  
11 around what the, you know, how it can be used and some of  
12 these things about, you know, the hours of operation, and all  
13 that other stuff.

14          MR. DENHART: Sure.

15          VICE CHAIR HART: So I just was trying to figure  
16 out if there's, you know, five staff that we should be saying  
17 or, you know, or less.

18          MR. DENHART: Yes, yes. So currently, I'd say two  
19 to three and in the future, you know, I don't have a crystal  
20 ball and in the four years that I've been the director, we've  
21 added two staff, you know, but probably, you know, a handful  
22 more.

23          VICE CHAIR HART: Okay. Thank you.

24          MR. DENHART: Yes.

25          MEMBER WHITE: So there was a similar case where

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1 you had a nonprofit, you know, setting up an organization  
2 within one of these residential neighborhoods like this. So  
3 there was a lot of push back because they have events  
4 periodically.

5           It sounds like this one is totally different, that  
6 you've gotten a lot of neighborhood support. But my question  
7 is whether or not you've gotten any feedback or any  
8 recommendations from the neighbors because you said you did  
9 have events periodically.

10           So I don't know if this is just a total different  
11 area, but it is extremely busy.

12           MR. DENHART: Sure.

13           MEMBER WHITE: So like what do you do on July 4th,  
14 on Calvin Coolidge's birthday?

15           MR. DENHART: Luckily we're in Vermont.

16           MEMBER WHITE: Right, right. You would be in  
17 Vermont, yes.

18           MR. DENHART: That's good, very good.

19           MEMBER WHITE: Yes, so, just sort of curious what  
20 kind of feedback you've gotten.

21           MR. DENHART: Yes, sure. Okay for me to take  
22 this?

23           MR. HUGHES: Sure.

24           MR. DENHART: We presented the concept to the ANC  
25 2E in early October. We didn't ask for an resolution, that

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1 was just to put it on their radar, alert the neighborhood,  
2 gather feedback.

3 And we worked closely with the Commissioners, Rick  
4 Murphy especially. Mr. Firestone was kind enough to take  
5 Chairman Gibbons through the property as well leading up to  
6 that meeting.

7 We then appeared again earlier this month and got  
8 a resolution in support, and I also have spoken with other,  
9 you know, Commissioners of the ANC as well, including one who  
10 represents the single-member district across the street from  
11 where we would be.

12 The feedback has really been positive. There's  
13 been, you know, we've had really no push-back on it. In  
14 fact, felt kind of welcomed, you know, at these meetings.

15 But in my discussions, you know, they of course  
16 said, you know, they of course said, you know, the issues  
17 would be what neighbors would care about, you know, parking,  
18 traffic and noise and congestion of course.

19 One of the big recommendations from the  
20 Commissioner, Palmer I believe is her last, Lisa Palmer, who  
21 represents the other side of the street where Halcyon House  
22 is located, is that we coordinate with Halcyon House so that  
23 we don't host, you know, large events on the same night,  
24 which of course we would certainly do.

25 We're also committed to have a neighborhood

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1 liaison, you know, who's a member of our staff, to alert  
2 neighbors to events and when they'll be and certainly to  
3 invite the neighbors to come when appropriate, because we  
4 want to be part of the community as well and invite people  
5 to take part in our events.

6           The 4th of July, yes we are in Vermont. We have  
7 a big celebration there at Coolidge's birthplace and  
8 fireworks even this year, but certainly not in Georgetown.  
9 We'd continue to have that in Vermont.

10           I think the more typical type of event would be  
11 an evening lecture. We're a, you know, pretty kind of quiet  
12 scholarly type of organization, a speaker series, you know.  
13 Maybe once a month have a lecture on Coolidge or some area  
14 of Coolidge policy or history.

15           We have a list of events and materials that you've  
16 probably seen. We do propose a fundraiser or two per year,  
17 and we certainly would coordinate very closely with neighbors  
18 so that they knew when that was taking place, and we'd  
19 schedule that to minimize impact.

20           MEMBER WHITE: Okay. I'm good. Thank you.

21           CHAIRPERSON HILL: Okay, just one thing for the  
22 Applicant. I guess DDOT had a condition the Applicant obtain  
23 a Public Space permit to either close or reuse the existing  
24 circular driveway curb cuts within public space on 35th  
25 Street Northwest. You're in agreement with that?

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1 MR. HUGHES: Yes, reluctantly yes, Mr. Chair.

2 CHAIRPERSON HILL: Okay, good. Yes is the right  
3 one, there you go.

4 MR. HUGHES: I understand.

5 CHAIRPERSON HILL: I'm going to turn to the Office  
6 of Planning?

7 MS. ELLIOT: Good afternoon, Mr. Chairman, members  
8 of the Board. I'm Brandice Elliot representing the Office  
9 of Planning. I'm not sure that I have too much to add to  
10 OP's report.

11 We are recommending approval of the requested  
12 special exception, as well as the variance for the 10,000  
13 square foot threshold. The Applicant has already gone  
14 through a lot of the criteria, but I'm happy to add anything  
15 if there are any questions.

16 CHAIRPERSON HILL: I don't know. This is the  
17 first time I've ever seen anybody try to get more FAR, you  
18 know, just to qualify. Like usually people are trying to get  
19 less FAR, you know. They're not trying to claim it, I  
20 suppose. This is unique for me.

21 Does anybody have any questions for the Office of  
22 Planning?

23 VICE CHAIR HART: Just the question regarding,  
24 actually the OP report has, which I thought was very well  
25 laid out. I just had the question around, it almost seemed

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1 like they were, I don't know.

2           You didn't call them conditions. You just called  
3 them, this is what they were kind of saying that they were  
4 doing and laid it out, which I thought was great. I just  
5 thought that in some ways it almost would be helpful to have  
6 these as conditions.

7           That, you know, that they were going to be, you  
8 know, having certain hours, they were having the number of  
9 events, the number of personnel, and I just didn't know why  
10 you didn't feel that that was necessary.

11           MS. ELLIOT: I think that in the past these would  
12 have been included more typically as conditions. OP has been  
13 advised that if something is included in the application that  
14 it isn't necessarily required to be conditioned, because that  
15 has been provided as part of the application.

16           Certainly, if the Board wants to include any of  
17 these as conditions, I mean, we've laid it out in the report,  
18 these are the facts presented by the Applicant, we would not  
19 object to that. We leave that, you know, at your discretion.

20           VICE CHAIR HART: Thank you.

21           CHAIRPERSON HILL: Okay, anyone else? Does the  
22 Applicant have any questions for the Office of Planning?

23           MR. HUGHES: No questions, but thank you again.

24           CHAIRPERSON HILL: Okay. Is there anyone here  
25 from the ANC? Is there anyone here who wishes to speak in

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1 support? Is there anyone who wishes to speak in opposition?  
2 Okay. Mr. Hughes, I'm going to turn back to you. Is there  
3 anything else you'd like to add?

4 MR. HUGHES: Mr. Chair, if we've discussed the  
5 variance and the special exception compliance, I don't  
6 believe there's anything we'd like to add other than if the  
7 Board would like to review these elements that are referenced  
8 in the OP report and referenced in our statement as part of  
9 an approval.

10 CHAIRPERSON HILL: I'm fine with it being in the  
11 application. I don't have to turn them into conditions  
12 unless Mr. Hart wants to read them into the record.

13 MR. HUGHES: Then we will ask for the Board's  
14 approval.

15 VICE CHAIR HART: I don't know. I just, in  
16 thinking on how we've gone through --

17 CHAIRPERSON HILL: Things in the past --

18 VICE CHAIR HART: -- applications like this.

19 CHAIRPERSON HILL: Right, sure.

20 VICE CHAIR HART: Yes, just trying to see if, I'm  
21 not sure if I want all of them. That's the problem. Some  
22 of them are just kind of, they're just statements, and so I  
23 didn't think that that was necessary. And I was trying to  
24 figure out which ones might actually be, you know, kind of  
25 applicable.

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1 CHAIRPERSON HILL: Well, we can kind of, and I  
2 don't mean to interrupt you, but I am curious about the  
3 Office of Planning and how, I understand what you're saying,  
4 Mr. Hart.

5 And the Office of Planning, if you could clarify  
6 again, this is in the application, so therefore, this is what  
7 the Applicant is agreeing to do and if they didn't do this,  
8 then the community would have some kind of actionable, they  
9 could do something about it. Is that correct?

10 MS. ELLIOT: I may need to refer to, or defer to  
11 OAG on --

12 CHAIRPERSON HILL: The question is and what Mr.  
13 Hart is getting to is that if this is just in the  
14 application, they're not necessarily conditions, then if they  
15 were in violation of any of these things, the community  
16 wouldn't have any recourse unless they were conditions.

17 MS. LOVICK: I think that's a correct statement,  
18 but the conditions that you impose should only be conditions  
19 that would mitigate the adverse impacts of the relief that  
20 you're granting. So there are some conditions that would be  
21 outside of the scope of what's relevant to you.

22 CHAIRPERSON HILL: All right, Mr. Hood, I mean,  
23 Mr. Hood, Mr. Hart, I'm back with you over here, which I  
24 don't disagree with your statements, but I don't know which  
25 ones you want to pull that, I mean, I can clearly see like,

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1 you know, the amplified music, the speaking lectures, the  
2 number of participants per the events.

3 MEMBER JOHN: Mr. Chairman, if I might, I can see  
4 where just looking at some of these conditions, these  
5 statements, perhaps Number 1, the operating hours would be  
6 relevant.

7 I would maybe put a limit on staff, maybe up to  
8 20 or something. Perhaps the Applicant could suggest that.  
9 Item 6, as that would pertain to noise and traffic and so on,  
10 6 and 7, 8 and 12.

11 CHAIRPERSON HILL: I'm sorry, what did you say  
12 again? One --

13 MEMBER JOHN: My thoughts were --

14 CHAIRPERSON HILL: Your thoughts were 1, 2 --

15 MEMBER JOHN: One, 2, some limit on staff --

16 CHAIRPERSON HILL: Six --

17 MEMBER JOHN: Some limit on staff, whatever they  
18 think is appropriate, maybe up to ten or something. Six,  
19 noise to conclude before 9:00, no third-party rentals, such  
20 as weddings and receptions, and loading and unloading, Number  
21 12.

22 VICE CHAIR HART: I think these would go to  
23 U203.1(n)(3) because it's the use of existing residential  
24 buildings and land by a nonprofit organization should not  
25 adversely affect the use of the neighboring properties.

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1 MEMBER JOHN: Right.

2 VICE CHAIR HART: I think that's kind of what  
3 these things go to. And I actually, I was kind of going  
4 through the list as well, and I think that I would agree from  
5 the OP report, which is Exhibit 38, I would agree with what  
6 you've looked at.

7 I'm not sure if you did the scholars as well? I  
8 actually kind of said five staff, because I thought it would  
9 have kind of encompassed them, but I understand that it's,  
10 I do have a sense that it's five or 20 or ten.

11 MEMBER JOHN: Right.

12 CHAIRPERSON HILL: I mean my problem now as we get  
13 into this is like it just turns into a discussion as to what  
14 we're going to do and what we think. And so, you know, like  
15 I'd rather then, these are all the things that were in the  
16 application, and I think you could make the argument then  
17 that all of these, you know, are to U301.2.

18 And if the Applicant agrees to all of these, then  
19 we just make these the conditions. And so, you know, I don't  
20 see anything -- it would be more interesting as to what you  
21 think in here is not necessarily a condition for adverse  
22 impact, and I'd say that all of them, you know, could be, and  
23 that's the easier way to even do the conditions. Okay?

24 So Mr. Hughes, and Mr. Hart's enjoying his  
25 conditions today apparently, you know, but you do have the

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1 Office of Planning's report. Right? And all of those things  
2 that are listed in the Office of Planning's report are things  
3 that you would agree to as conditions?

4 MR. HUGHES: Yes. There is some direction in a  
5 couple of these points that the Office of Planning has  
6 inserted that would look odd if they were just picked and  
7 pulled into an order. But, yes, for instance, the end of --

8 MR. DENHART: Three.

9 MR. HUGHES: -- three and the end of five, the  
10 last sentences of both, if those were deleted then the  
11 remainder I believe is what the Applicant provided to the  
12 Office of Planning.

13 CHAIRPERSON HILL: So the last sentence in three  
14 would be struck, "The Applicant should identify maximum  
15 number of staff that would be accommodated on site."?

16 MR. HUGHES: That's, yes.

17 VICE CHAIR HART: It's a comment.

18 CHAIRPERSON HILL: Okay, okay.

19 VICE CHAIR HART: It's a comment. It's not a --

20 CHAIRPERSON HILL: I see.

21 MR. HUGHES: And the same for the last sentence  
22 in Paragraph 5.

23 CHAIRPERSON HILL: Okay.

24 MR. HUGHES: They're OP comments.

25 VICE CHAIR HART: I'm fine with it. I wasn't sure

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1 if it was two or three staff in Number 3, so I mean, we could  
2 go three for it, but you know, that's why I also asked the  
3 question about how many that they were looking for.

4 So I would have been okay with like five staff to  
5 kind of cover if there's, you know, as you move forward,  
6 there may be more staff that you're --

7 MR. HUGHES: I think in the short-term that's what  
8 they're looking at, but I'm concerned about handcuffing them  
9 --

10 VICE CHAIR HART: I know, that's why I was saying  
11 --

12 MR. HUGHES: -- down the road.

13 VICE CHAIR HART: -- giving them a little bit  
14 more.

15 MR. HUGHES: I had heard 20. We're certainly not  
16 at 20, but is half of that acceptable?

17 VICE CHAIR HART: I mean, I'm fine with ten.

18 MR. HUGHES: Or 12?

19 VICE CHAIR HART: I just wanted it not to be, you  
20 know, there were --

21 MR. HUGHES: Sure.

22 VICE CHAIR HART: -- you're going to make this  
23 into an office space and you're closing the Vermont space and  
24 this is going to be the --

25 MR. HUGHES: That's correct. That is not what's

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1 going to happen.

2 VICE CHAIR HART: I know but, you know, ten years  
3 from now or 20 years from now, somebody might say, you know,  
4 we're going to do this.

5 MR. HUGHES: Right.

6 VICE CHAIR HART: And so I wanted to understand  
7 what that was. I'm fine with ten, but right now, it just  
8 says two or three and --

9 MR. HUGHES: Ten would be --

10 VICE CHAIR HART: -- it's always good to have a  
11 limit.

12 MR. DENHART: Sure, yes. We certainly don't plan  
13 to leave Vermont, just for the record. But, you know, we're  
14 very happy there. But, yes, certainly we don't intend to  
15 make this a major office building.

16 And we certainly intend to keep the historic, you  
17 know, layout of the property. It's a major reason we like  
18 this property.

19 VICE CHAIR HART: I'm fine with the rest of them.  
20 I just wanted to make sure that we had that, and that I think  
21 we should have five scholars, the Coolidge Scholars, which  
22 is the next, Number 4. I thought that was fine, too. So ten  
23 staff and five scholars would be --

24 MEMBER JOHN: Mr. Chairman, I don't know if I  
25 would want to limit the number of scholars. I think it's

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1 sort of limiting on your operations -- on the Applicant's  
2 operations. And I think that's perhaps too intrusive. I  
3 know --

4 CHAIRPERSON HILL: I don't disagree.

5 MEMBER JOHN: And so --

6 CHAIRPERSON HILL: And I'm really, I think that  
7 this is something that we have to kind of figure out moving  
8 forward exactly how we're going to do this with the Office  
9 of Planning and what's going to happen in terms of  
10 conditions.

11 Because we can be up here all day talking about,  
12 you know, the numbers and what we want to do. I mean, that's  
13 where I'm trying to kind of -- and we'll just talk about this  
14 now apparently, because nobody's hungry.

15 And so, you know, we're just going to keep going.  
16 So, you know, the other is like, you know, they've gone  
17 before the ANC. They've said all these things to the ANC and  
18 now we're changing all these things, right, or some of them  
19 or whatever. And we're doing it in a generous way. I mean,  
20 I don't think --

21 VICE CHAIR HART: We're actually making it more  
22 definitive that that is what the ANC agreed to. I mean,  
23 granted that the number of the personnel is maybe an  
24 increase, but I don't think, well, anyhow.

25 CHAIRPERSON HILL: I guess the point that Ms.

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1 John's making and again, I'm also in agreement, I was like  
2 I would want to limit them now, because they'd have to come  
3 back again to whatever it is. I mean, it has nine bedrooms.  
4 Right? The house has nine bedrooms.

5 MR. HUGHES: Correct.

6 CHAIRPERSON HILL: It's a big home.

7 VICE CHAIR HART: I'm less concerned about the  
8 scholars than I was the staff.

9 CHAIRPERSON HILL: Okay.

10 VICE CHAIR HART: Not really concerned, just  
11 because the staff are there all the time, but the scholars  
12 are there --

13 CHAIRPERSON HILL: So how many possible scholars  
14 do you think you guys could have in the next --

15 VICE CHAIR HART: I can withdraw that. We don't  
16 have to talk about the scholars anymore if we don't want to.

17 CHAIRPERSON HILL: Well, it does say, maximum of  
18 five. That's the --

19 MR. DENHART: I think it's a little hard to know  
20 for certain just because of the nature of the operation. The  
21 program's three years old. We currently have ten total in  
22 the program. We award three or four a year. And these would  
23 be --

24 CHAIRPERSON HILL: So you said ten scholars, ten  
25 scholars?

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1 MR. DENHART: I think --

2 VICE CHAIR HART: Go with ten scholars?

3 MR. DENHART: I think that would be fine, yes.

4 CHAIRPERSON HILL: Okay. Ten scholars.

5 ZC CHAIR HOOD: Mr. Chairman?

6 CHAIRPERSON HILL: Yes?

7 ZC CHAIR HOOD: Can I make a suggestion? Can we  
8 let Mr. Hughes have about five minutes to come up with some,  
9 frame his conditions, so we can move forward? I know you all  
10 have been discussing for a while. Typically it's sometimes  
11 not good when you do stuff off the cuff. Not saying that's  
12 what you all are doing.

13 CHAIRPERSON HILL: No.

14 ZC CHAIR HOOD: But if we can have five minutes,  
15 let him work it out and then come back to us. If we can go  
16 through this and deal with this today, I think it would be  
17 more efficient in time. That's just my suggestion, but I'm  
18 sitting here willing to go whatever the Board decides.

19 CHAIRPERSON HILL: Okay. So Chairman Hood made  
20 another suggestion over here, and Vice Chair Hart was making  
21 another suggestion over here. So I don't know, Mr. Hughes,  
22 do you want to take five minutes to try to write up your  
23 conditions that you think? I mean, I think we're looking at  
24 trying to understand the upper limit.

25 So we're not, again, handcuffing you to these now

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1 conditions. And even with the hours, I mean, the hours, you  
2 know, it's 8:00 to 8:30. I mean, you're going to have to  
3 then close at 8:30. So that's another thing that like I  
4 personally am not terribly thrilled with making you close at  
5 8:30.

6 I mean, I don't know what is kind of, you know,  
7 these are now, as you know because this is what you do, these  
8 are now going to be conditions that if you're in violation  
9 of, somebody could, you know, point it out to you, and you'd  
10 be having to deal with them. So do you want to take five  
11 minutes?

12 MR. HUGHES: At the maximum, yes.

13 CHAIRPERSON HILL: Sure.

14 MR. HUGHES: Likely less.

15 CHAIRPERSON HILL: Okay. Let's take a break.

16 MR. HUGHES: Thank you.

17 CHAIRPERSON HILL: And then we'll take a break for  
18 lunch. So just so everybody knows.

19 (Whereupon, the above-entitled matter went off the  
20 record at 12:58 p.m. and resumed at 1:08 p.m.)

21 CHAIRPERSON HILL: All right. We'll go ahead and  
22 start. So we're back. Mr. Hughes, what did you figure out?

23 MR. HUGHES: Got a number of edits to the items  
24 listed in the appeal.

25 CHAIRPERSON HILL: Okay. Okay.

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1 MR. HUGHES: Would you like me to read those?

2 CHAIRPERSON HILL: Why don't you just read them  
3 out loud?

4 MR. HUGHES: Okay.

5 CHAIRPERSON HILL: And then we'll decide if we  
6 agree that they should be conditions.

7 MR. HUGHES: Okay.

8 CHAIRPERSON HILL: So go ahead.

9 MR. HUGHES: The first, we'd like to say normal  
10 employee hours will be Monday through Friday, 8:00 a.m. to  
11 8:30 p.m., with occasional weekend hours of 9:00 a.m. to 5:00  
12 p.m.

13 CHAIRPERSON HILL: I'm looking to the Board.

14 MR. HUGHES: That's fine.

15 CHAIRPERSON HILL: Mr. Hart? Are you writing them  
16 down?

17 VICE CHAIRPERSON HART: Yes.

18 CHAIRPERSON HILL: Oh. Okay. He's going to read  
19 -- oh, then you're going to re-read them?

20 VICE CHAIRPERSON HART: I'm just trying to.

21 CHAIRPERSON HILL: Okay. Great. This is going  
22 to take longer.

23 MR. HUGHES: Sorry. Shall I --

24 CHAIRPERSON HILL: And I say, no. It's okay.  
25 Please.

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1 MR. HUGHES: Shall I go to the next? Okay.

2 CHAIRPERSON HILL: Yes.

3 MR. HUGHES: The Coolidge Exhibit operating hours  
4 will be from 9:00 a.m. to 4:30 p.m., three days per week.

5 VICE CHAIRPERSON HART: Two. You said two. What  
6 was the end time? 4:30?

7 MR. HUGHES: 4:30 p.m. That's unchanged from  
8 what's in the OP Report. We're just -- clarified it to be --  
9 we had said two, to two or three. We just decided three days  
10 per week.

11 VICE CHAIRPERSON HART: Okay.

12 MR. HUGHES: The third is, the proposed location  
13 would accommodate a limited number of staff. Initially, two  
14 or three members of staff would have offices at the property.  
15 A maximum number of ten staff may work on site. If I were  
16 doing this clean, it might be a little bit better. But I'm  
17 trying to minimize the changes.

18 MEMBER JOHN: Maximum number of staff shall be  
19 limited to ten.

20 MR. HUGHES: Better. Fourth is, temporary  
21 accommodation will be provided for three to four Coolidge  
22 scholars, during the summer or academic year internships.

23 Temporary accommodation would also be provided for  
24 professors or other professional scholars conducting -- or  
25 will be, I should say, not would be. And in both cases

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1 temporary -- I'm going to start over.

2 Temporary accommodation will be provided for three  
3 or four, three to four Coolidge scholars, during the summer  
4 or academic year internships. Temporary accommodation will  
5 also be provided for professors or other professional  
6 scholars conducting research on the presidency of Calvin  
7 Coolidge.

8 And then, finish that with, no single scholar will  
9 remain in residence for longer than three months. And not  
10 have a maximum on the number of scholars.

11 May I go forward? Number five, Coolidge  
12 Foundation trustees, special guests, and program participants  
13 may be provided temporary accommodation that would not exceed  
14 a few nights at one time. That's the extent of that  
15 condition.

16 Number six, rephrase it as, special events are  
17 limited as follows. And then have the A and B remain as  
18 shown on the OP report. And I can read that, if you'd like.

19 Okay. So special events are limited as follows.  
20 And then those are itemized. Seven would remain unchanged.  
21 Eight would remain unchanged.

22 I think the only change to nine, would be to  
23 change would to will. No parking spaces will be provided on  
24 site. And I guess the last sentence is, that employees will  
25 not be eligible to receive residential parking permits. Am

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1 I going too fast?

2 Paragraph ten -- the only changes would be, event  
3 invitations, instead of would, is will advise guests that  
4 there is no on-site parking available and will suggest that  
5 guests arrive by other means. Complimentary valet parking  
6 will be provided for events involving more than 100 persons  
7 and will occur along Prospect and 35th Streets.

8 And then the last sentence will change up  
9 slightly, to say the applicant commits to engaging nearby  
10 parking garage operators, to ensure there is a capacity for  
11 special event parking. So just some woulds to wills. Eleven  
12 would remain unchanged.

13 And then 12, the last one, loading/unloading will  
14 occur between the hours of 10:00 and 4:00 p.m. -- 10:00 a.m.  
15 to 4:00 p.m., and between 7:00 p.m. and 10:30 p.m. Vendor  
16 breakdowns will occur before 10:30 p.m., or on the following  
17 day, between 10:00 a.m. and 5:00 p.m. Vendors will be  
18 notified that idling their vehicles is prohibited. And that  
19 would be the extent of it.

20 CHAIRPERSON HILL: And then, the DDOT condition.

21 MR. HUGHES: That is -- That's outside of the --  
22 it's another process. If you want to put the will --

23 CHAIRPERSON HILL: No, no. I'm just saying, it's  
24 a condition. That's all I meant to say.

25 MR. HUGHES: Oh. Okay.

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1 CHAIRPERSON HILL: Yeah.

2 VICE CHAIRPERSON HART: For us.

3 CHAIRPERSON HILL: For us.

4 MR. HUGHES: Okay. Yes. Fine.

5 CHAIRPERSON HILL: Okay. So we don't have any  
6 questions? Did I ask ANC? Yes. ANC is support position.  
7 Do you have anything you'd like to add in conclusion?

8 MR. HUGHES: No, sir.

9 CHAIRPERSON HILL: Okay. Ms. Shlaes? Is it  
10 Shlaes? How do you say it please?

11 MS. SHLAES: Shlaes.

12 CHAIRPERSON HILL: Shlaes. You're the executive  
13 director?

14 MS. SHLAES: I'm the chairman. This is the  
15 executive --

16 CHAIRPERSON HILL: You're the chairman? Oh.  
17 Okay. I was going to try to learn a little bit more about  
18 Calvin Coolidge. But now I realize that I'm going to then  
19 extend it more. And so, I'll look it up. But I would --  
20 it's okay. Oh. Yes. Anything else, Mr. Hughes?

21 MR. HUGHES: No, sir.

22 VICE CHAIRPERSON HART: So just, if the Board is  
23 so inclined to approve the application, if we could have a  
24 summary report?

25 CHAIRPERSON HILL: Okay. Okay. So I don't know,

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1 now. I'm going to close the hearing. Unless the Board has  
2 any questions for the Applicant?

3 I don't know if we need to reread the conditions.  
4 Or how would that -- and I'm even actually, I guess, looking  
5 to Mr. Moy. Like, when the report is written -- I'm sorry.  
6 When the order is written, will they go back and look at the  
7 transcript?

8 SECRETARY MOY: Oh, absolutely. And plus, you  
9 know we're -- plus, with my notes, and with the transcript,  
10 I --

11 CHAIRPERSON HILL: Ask in the interview.

12 SECRETARY MOY: I don't see an issue, which, this  
13 is what we normally do, anyways.

14 CHAIRPERSON HILL: Okay. All right. Okay. Then  
15 I'm going to go -- okay. So then, I am ready to deliberate.  
16 Is the Board ready to deliberate?

17 So again, I think that the Office of Planning has  
18 provided a good analysis as to how the Applicant is meeting  
19 the criteria for the special exception in the variance.

20 I did, again, think it was interesting that this  
21 is the first time that I can recall somebody trying to claim  
22 more FAR than -- usually it's the other way around,  
23 obviously. Or not obviously, but the other way around.

24 So this is kind of unique for me. The ANC, it  
25 sounds like they have done quite a bit of community outreach.

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1 Again, that ANC is very active with, as mentioned earlier,  
2 Chair Gibbons. And they have supported this, five to zero  
3 to zero.

4 And I think that the conditions now, that have  
5 been read into the record, can help alleviate more certainly  
6 any adverse impact on the community. And I would be in favor  
7 of this application. Would anyone else like to add anything?

8 VICE CHAIRPERSON HART: Only, Mr. Chair, I know  
9 that I've spent a lot of time about the conditions. I just  
10 felt that we needed to at least have some way of  
11 understanding kind of where we were, with regard to the  
12 trying to limit some of the impacts on the community.

13 I think this is that the conditions that the  
14 Applicant, Mr. -- or, in this case, Mr. Hughes provided, is  
15 sufficient for me to be able to understand, and kind of deal  
16 with the minimal impacts.

17 I also felt that I agreed with the Office of  
18 Planning report. And the Applicant's information, as they  
19 provided, regarding how they met the criteria for the zoning  
20 regs. So I would be in support of the application as well.

21 CHAIRPERSON HILL: Please.

22 MEMBER WHITE: Yes, Mr. Chair. I'm supportive of  
23 the work that the Foundation is doing, as well as the  
24 application, and the -- for a special exception and variance.

25 It's clear that they've got a good deal of

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1 community support. But even though they're long, I  
2 understand that the conditions could be very helpful, and  
3 helping you to maintain your good relationship in the  
4 community. So I wish you luck.

5 MEMBER JOHN: Mr. Chairman, I would just like to  
6 say that I appreciate the analysis of the Office of Planning.  
7 I thought that the Applicant met the most important test,  
8 which was the variance test, based on several factors cited  
9 in the application. In particular, the location of the  
10 building, I thought was sort of persuasive.

11 And so, I support what everyone else has said.  
12 And I would be in favor of supporting the application.

13 ZC CHAIR HOOD: Mr. Chairman, I would move that  
14 we approve zoning commission -- I mean, I'm sorry.  
15 Application number 19778, pursuant to 11 DCMR, Subtitle X,  
16 Chapter 9, for special exception under the use provisions of  
17 Subtitle U, 203-1(n).

18 And pursuant to Subtitle X, Chapter 10, for  
19 variance for the gross floor area requirements of Subtitle  
20 U, 203.1 and 2, to permit the use of an existing residential  
21 building by a non-profit organization in an R-20 Zone, at  
22 premises 303425 Prospect Street, North West, Square 1221, Lot  
23 96.

24 And also, add that we also be inclusive of the  
25 conditions as noted, as well as the DDOT condition, as well.

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1 And anything else I left out, my colleagues can add to it.

2 But anyway, that's my motion. And I would ask for a second.

3 MEMBER WHITE: Second.

4 CHAIRPERSON HILL: Motion made and seconded. All  
5 those in favor Aye?

6 (Chorus of aye.)

7 CHAIRPERSON HILL: All those opposed?

8 (No audible response.)

9 CHAIRPERSON HILL: The motion passes, Mr. Moy?

10 SECRETARY MOY: Thank you. Staff would record the  
11 vote as five to zero to zero.

12 This is on the motion of Commissioner Anthony Hood  
13 to approve the application for the relief requested, along  
14 with the 12 conditions as cited. Second, the motion of Miss  
15 White, also in support. Miss John, Chairman Hill, Vice Chair  
16 Hart. The motion carries.

17 CHAIRPERSON HILL: Thank you. Summary order, Mr.  
18 Moy?

19 MR. HUGHES: Thank you, sir.

20 CHAIRPERSON HILL: Thank you.

21 MR. HUGHES: Thank you very much.

22 CHAIRPERSON HILL: You're welcome. Thanks a lot.

23 MS. SHLAES: Thank you.

24 MR. HUGHES: Thank you. Thank you.

25 CHAIRPERSON HILL: We're good. Okay. Well, I

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1 didn't know what was happening. But now, I guess, I know  
2 what's happening. We're going to do one more.

3 And then we're going to take a break-ish, and  
4 then, the last case. So Mr. Moy, whenever you want to call  
5 the next one, because, I guess, they're here.

6 SECRETARY MOY: Yes. Thank you, sir. That would  
7 be application number 19753, of Brendon and Claire Smullen.

8 This application is captioned and advertised for  
9 a special exception under Subtitle D, Section 5007 and 5201,  
10 from the accessory building height requirements of Subtitle  
11 D, Section 5002, to construct a two-story accessory dwelling  
12 R-1B Zone. This is at 2214 Douglas Street, North East,  
13 Square 4254, Lot 35.

14 CHAIRPERSON HILL: Okay. If you could please  
15 introduce yourselves?

16 MR. SMULLEN: I'm Brendon Smullen.

17 MS. SMULLEN: And I'm Claire Smullen. Good  
18 afternoon.

19 CHAIRPERSON HILL: Good afternoon. Okay. Which  
20 one of you will be presenting to us? Okay. Mr. Smullen?  
21 All right. Okay.

22 So I'll go ahead and let you begin your  
23 presentation. I mean, I don't know how far along in this  
24 process you've kind of been, or understand, in terms of,  
25 like, you know, the Office of Planning.

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1           They believe that this should be a variance, and  
2 not a special exception. So we're kind of going to be going  
3 through that, I guess, a little bit?

4           And so, then, I guess you could clarify -- well,  
5 you can tell us about what you're trying to do. Right? And  
6 then, what you think the relief is, that you're trying to  
7 get. Okay? In order to do what you're trying to do.

8           And then, I suppose we can kind of go through the  
9 Office of Planning's report. But you have read the report  
10 from the Office of Planning, I would assume?

11           And the other thing that you need to, kind of  
12 like, clarify is, I -- either it came in late, or there was  
13 no ANC report. I don't know if I saw an ANC report. So you  
14 can kind of talk about your community outreach.

15           So I'm going to put ten minutes on the clock, just  
16 so I know where we are. And you can begin whenever you like.

17           MR. SMULLEN: Great. So our residence at 2214  
18 Douglas Street, North East, we're looking to build more  
19 livable space.

20           Instead of doing, like, a pop up, or expanding  
21 upwards, as many of our neighbors have, the thought was with  
22 the R-1A and R-1B exceptions for the access -- for accessory  
23 dwellings, that we would build a small space in the back, in  
24 order to have more livable space there.

25           Now, some of the designs that we looked through,

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1 having someone come through and do, like, a unique design for  
2 the space, is cost prohibitive.

3 We also have some water issues in the back yard.  
4 We abut a back alley. And a lot of the water runoff from the  
5 neighborhood will come in through our back yard. We've  
6 experienced some of those issues in the main house.

7 And as part of the design, we picked one that had  
8 a pier foundation, so as to avoid some of that issue. Some  
9 of the costs involved, as well, were, along with demolition,  
10 this is a space that already was a parking port or spot, that  
11 we'd like to turn that into a livable space there.

12 We've talked with our neighbors. We have done  
13 some outreach with our ANC. He sent an email in support.  
14 We're willing to provide that. I apologize for not getting  
15 that in beforehand.

16 But the goal here, is for us to make this space,  
17 the accessory dwelling, as comfortable for use as possible.  
18 And that, to us, means having those piers, to avoid the water  
19 issue.

20 And also, like, having enough, you know, space,  
21 ceiling -- appropriate ceiling height for a two-story  
22 dwelling. We noted that a lot of the livable space is cut,  
23 if the height restriction were -- or the height were to come  
24 down. We're just trying to maximize the amount of livable  
25 space there.

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1           We've already looked at, you know, the time --  
2 different times of day. Like, where the light would be  
3 falling from that space. The back alley there has, like, a  
4 very robust bamboo forest, that's already shading our  
5 neighbors. It wouldn't be a substantial, you know, loss of  
6 light or air quality for our immediate neighbors.

7           And they have been talking to us through this  
8 process that we go through, the permitting. No one's in the  
9 dark about this. We've done our outreach. Everyone that's  
10 along the street, within 200 feet of the build site, has been  
11 contacted personally by it -- by us.

12           We don't see a substantial detriment to public  
13 good. The streetscape along Douglas Street remained largely  
14 unchanged. And then, the build itself is shielded by larger  
15 houses that aren't -- you know, aren't neighbors have there,  
16 which keeps it from being within sight lines for some of the  
17 properties along 22nd and 24th Street, as well.

18           So with all those in minds, I guess our intention  
19 here, is just to maximize the amount of livable space. And  
20 we're open to any comments on what those limits might be,  
21 from OP.

22           We have read the document. We do agree that, you  
23 know, this our first time going through this process. And  
24 we want to respect the code.

25           But it would be very helpful for us, as homeowners

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1 that have to go outside the homeowner's office for this  
2 application, to have some idea of where those limits lie.  
3 You know, with reference to the fact that, you know, these  
4 are set in advance. So if OP could comment on that, as well?

5 CHAIRPERSON HILL: Okay. So Mr. Smullen, do you  
6 -- are you here -- I'm a little confused again. Are you  
7 applying for a special exception, or a variance?

8 MR. SMULLEN: So we applied with a special  
9 exception. We got our BZA memo. And then we received the --  
10 a report from OP, saying that it was -- it should have been  
11 a variance, and not a special exception.

12 CHAIRPERSON HILL: Okay. Because the argument you  
13 made was for a variance argument. It seemed as though -- but  
14 in your -- well, I thought you were arguing for a special --  
15 I mean, variance.

16 But you're currently listed as special exception,  
17 is what I'm hearing from the OAG, over there. And so -- But  
18 what I thought I was hearing in your argument, was that  
19 you're arguing for a variance. But maybe I didn't understand  
20 that clearly enough.

21 So I will go ahead and turn to the Office of  
22 Planning, because there are a lot of other things that need  
23 to happen, if you, in fact, are applying for a variance.

24 And the Office of Planning has already -- does not  
25 think you're meeting -- it's a very high bar, to actually get

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1 a variance.

2           So, you know, there are 3 prongs to the test, in  
3 order for us to grant the variance. And the Office of  
4 Planning does not think you've met that test. Right? So  
5 that's one thing that we're going to have to kind of talk  
6 through.

7           The second is that, you know, if you did apply as  
8 a special exception, and now you're actually applying as a  
9 variance, you would have to repost again, because you're  
10 applying for more relief than a special exception. And that  
11 could, maybe, kick you back to the ANC again.

12           But let's just see, since the Office of Planning  
13 seems to have provided their analysis for a variance. It  
14 already seems like you're not going to get the variance.

15           So at least -- or I should say, their opinion is  
16 -- just one second -- their opinion is that you don't --  
17 you're not meeting the standards for the variance. Thank  
18 you. Yes, OAG?

19           MS. LOVICK: I just wanted to clarify. This was  
20 a ZA referral case. So the ZA has determined that the  
21 relief, the appropriate relief, is a variance.

22           And because this was originally on the expedited  
23 review calendar, there's -- I mean, the relief hasn't  
24 changed. The standard to obtain the relief has changed, from  
25 a special exception to a variance.

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1 But when something comes off the expedited review  
2 calendar, the Office of Zoning can put it onto the regular  
3 public hearing calendar, as they choose. So there's no need  
4 for new notice.

5 CHAIRPERSON HILL: So the -- now I'm just -- so  
6 just understanding the posting. So this was posted?

7 MS. LOVICK: Well, yes. It was posted as a  
8 special exception for height relief. The standard has  
9 changed. But the substantive relief in terms of height --

10 CHAIRPERSON HILL: Right.

11 MS. LOVICK: -- has not changed. Now, if you want  
12 to require posting because of the variance change, you could  
13 do that.

14 CHAIRPERSON HILL: I understand. I guess, in the  
15 past, the fact that this was on the expedited review  
16 calendar, I think, is making it a little bit more unique.

17 Because in the past, when we've had people that  
18 have gone from a special exception to a variance, I thought  
19 they had to repost, and/or go back. It's not -- It hasn't  
20 been always the same, and/or then gone back to the ANC,  
21 because they were now asking for a variance. As to where  
22 before, they were asking for a special exception.

23 What you seem to be telling us, or at least, I  
24 understand now, is that since it was on the expedited review,  
25 the Office of Zoning can now just put it onto the -- our

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1 docket.

2 MS. LOVICK: Right. But I -- it's within your  
3 discretion to determine whether you think a new posting is  
4 warranted, in this situation. I'm just pointing out to you  
5 that the relief has not changed. There's no new relief.

6 It's just that the standard is a higher bar,  
7 because it changed from a special exception to a variance.  
8 So the community is aware of the fact that height relief was  
9 requested.

10 You can certainly decide that you want to require  
11 a reposting, because it's now a higher bar of variance  
12 relief. But I just wanted to point that out to you.

13 CHAIRPERSON HILL: Okay.

14 MS. LOVICK: That you don't have to do that.

15 CHAIRPERSON HILL: And I appreciate that. I'm  
16 looking to my fellow board members. Yes?

17 ZONING COMMISSION - ANTHONY HOOD, ZC CHAIR

18 ZC CHAIR HOOD: Mr. Chair, I think it's better for  
19 us to be safe, than sorry. Because I'm also concerned about  
20 -- and for the record, this is my ANC. I'm also concerned  
21 about us going from special exceptions to the variance. And  
22 I kind of align myself with your comments.

23 I know when it comes off the consent calendar,  
24 typically when -- at least, from my recollections, and I'm  
25 sure Ms. Levitt can correct me if I'm wrong. When it comes

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1 off the consent calendar, if it's a special exception, it  
2 comes off.

3 To me, that's a little different. And we keep it  
4 as a special exception, that was coming off the consent  
5 calendar, from going from a special exception to a variance.  
6 So I'm saying the same thing that you were saying.

7 And I think, proceed with caution, so they won't  
8 have any problems going down the line. They don't -- And it  
9 may be better for us to repost to the full commission.

10 And I know that -- I believe their neighbor, or  
11 the SED Commission, has responded. But I'm -- The issue is  
12 about the full commission, because that's where the great  
13 weight comes in. So those are just my comments. And this  
14 is to save you work later on down the line, just in case  
15 something comes up. Okay?

16 CHAIRPERSON HILL: Okay. So again, to follow  
17 along that. Now we're just kind of having a discussion with  
18 the Board, here, in that what I was trying to understand, was  
19 again, what we have done in the past.

20 And in the past, we have asked them to repost.  
21 Or, I think, we've also asked them just to go back to the  
22 ANC, and re-present as a variance, rather than a special  
23 exception.

24 Or, we have gone ahead, and, you know, just moved  
25 forward. I mean, and it has been up to the discretion of the

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1 Board as to how we have handled that. So I was just trying  
2 to -- I don't know what we're doing yet, but I'm just having  
3 kind of an open discussion. Ms. John, you had a comment?

4 MEMBER JOHN: Just a clarification, that Exhibit  
5 34 is an Amended Burden of Proof Statement for a variance.  
6 Just to let you know, it's in the record. And I don't know  
7 if they have amended their certification. Or, I guess, it's  
8 the ZA? Okay.

9 CHAIRPERSON HILL: Okay. All right. So with  
10 that, I'm going to turn to the Office of Planning.

11 OFFICE OF PLANNING - JONATHON KIRSCHENBAUM

12 MR. KIRSCHENBAUM: Jonathon Kirschenbaum, for the  
13 Office of Planning. So just quick background. This was  
14 referred to us as a special exception.

15 Upon review, we did talk to DCRA, and questioned  
16 if this really should be a variance, given that the zoning  
17 code does not require a deviation from height through a  
18 special exception. They agreed.

19 It took a little time to get an updated referral  
20 letter. The referral letter was issued by DCRA as a  
21 variance, with the same design requested relief on June 6,  
22 2018. So, DCRA also believes this should be for a variance.  
23 And our report reflects that this is for a variance.

24 And our recommendation is a denial. And that is  
25 based on, we don't feel, at this point, that there has been

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1 an exceptional situation, resulting in practical difficulty,  
2 on this site.

3 We do note that it's a regularly shaped lot. And  
4 it's similar in size to the other lots in the area. No  
5 evidence was entered into the record, at this point, to show  
6 sort of any area flooding that might be an issue, or that  
7 might, you know, particularly negatively impact this site.

8 So we would suggest that some sort of evidence be  
9 entered into the record. And we also have some concerns  
10 about the sort of character of the neighborhood, with  
11 introducing additional height, that would sort of be located  
12 within the middle of the square.

13 And finally, regarding notice of central harm to  
14 the zoning regulations. We also do have concerns that the  
15 proposed accessory dwelling unit would be similar in height  
16 to the principal building, which is the main house on the  
17 property. Thank you.

18 VICE CHAIRPERSON HART: Mr. Chairman?

19 CHAIRPERSON HILL: Sure.

20 VICE CHAIRPERSON HART: Mr. Kirschenbaum, have you  
21 looked at Exhibit 34?

22 MR. KIRSCHENBAUM: Yes. We did review Exhibit 34.

23 VICE CHAIRPERSON HART: And is that included in  
24 your report?

25 MR. KIRSCHENBAUM: It is not, because it was

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1 submitted after our report was due to the Office of Zoning.

2 VICE CHAIRPERSON HART: Okay. And does that  
3 change any of your analysis?

4 MR. KIRSCHENBAUM: At this point, no. We stand  
5 on our recommendation right now, and sort of the comments  
6 that I just provided.

7 VICE CHAIRPERSON HART: And the last question is,  
8 the ZA amended, what is it?

9 MR. KIRSCHENBAUM: The referral letter?

10 VICE CHAIRPERSON HART: Yes. You said there was  
11 a referral letter?

12 MR. KIRSCHENBAUM: There was. It's not on IZIS.  
13 But it --

14 VICE CHAIRPERSON HART: Okay.

15 MR. KIRSCHENBAUM: It was --

16 VICE CHAIRPERSON HART: Okay.

17 MR. KIRSCHENBAUM: It was provided. Yes. And I  
18 can certainly email it to the Applicant, if for some reason  
19 they do not have it. Yes.

20 VICE CHAIRPERSON HART: Yes. It'd be helpful to  
21 --

22 MR. KIRSCHENBAUM: Sure.

23 VICE CHAIRPERSON HART: -- have that in the  
24 record, as well.

25 MR. KIRSCHENBAUM: Sure.

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1 CHAIRPERSON HILL: Any more questions for the  
2 Office of Planning? Okay. Does the Applicant have any  
3 questions for the Office of Planning?

4 MR. SMULLEN: And we're happy to provide -- this  
5 is a comment to start. Just, evidence of the area flooding,  
6 if it would help make a determination or a change the opinion  
7 of the Office of Planning. You noted the -- a similarity in  
8 height, from the principal dwelling, and the accessory  
9 dwelling. Where does that reasoning come from?

10 MR. KIRSCHENBAUM: So that is under the general  
11 provisions for accessory dwelling building regulations.  
12 That's in Subtitle D, Section 5000.3. And that is a sort of  
13 -- it's -- yeah. It's a general provision sort of finding  
14 for accessory buildings.

15 ZC CHAIR HOOD: Mr. Chair, may I ask a question?  
16 Have you all met with the Office of Planning?

17 MR. SMULLEN: No.

18 ZC CHAIR HOOD: Okay. That's the first problem.  
19 Okay? Yeah. I'm just saying this -- I understand we can  
20 have the meeting here. But typically, you want to meet with  
21 the Office of Planning.

22 And I can tell that, you know, I hear -- I know  
23 that it's your first time. And I'm going to make sure we try  
24 to accommodate you. But I think one of the first things you  
25 want to do, is meet with the Office of Planning first, even

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1 before you come here.

2           And then, also work with the ANC. I don't -- you  
3 know, I don't know what's going to happen here. But you want  
4 to have that meeting with them offline, not with us. Okay?  
5 Just trying to help you.

6           CHAIRPERSON HILL: Okay. Let me just kind of keep  
7 running through this hearing, real quick. And then we'll get  
8 back around to more questions.

9           Is there anybody here from the ANC? Is there  
10 anybody here wishing to speak in support? Is there anybody  
11 here wishing to speak in opposition?

12           Okay. So, Mr. and Mrs. Smullen, what I think is,  
13 if you could go back and work with the Office of Planning,  
14 and see -- I mean, they're here. They'll help you figure out  
15 when to meet with them. Right? And they can help you  
16 understand better, what you can and can't do. At least, with  
17 -- in their opinion.

18           And then, if you do still end up with this  
19 project, and I don't even know if you're going to end up with  
20 this project. But if you still end up with this project,  
21 requiring a variance, then I don't know -- I don't  
22 necessarily think a reposting is something that I would need.

23           But I mean, Chairman Hood, I'm just kind of  
24 talking out loud on this. But then, we're going back to the  
25 ANC, and letting them now know that it's a variance, and not

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1 a special exception, even if the relief hasn't changed.  
2 Right?

3 So that they're at least aware that it's a higher  
4 standard for them to process the request. Right? Because  
5 they've now looked at all the criteria as a special  
6 exception. And they haven't looked at the criteria as a  
7 variance.

8 And so, that would be something that, at least,  
9 I would like you to do, before you come back to us. So I  
10 guess, I would be looking again to put this off, so that you  
11 have time to meet with the Office of Planning. And then also  
12 have time to go back to the ANC, with your new application  
13 as a variance.

14 And then, since we've been doing a lot of dates  
15 all day long, I know that probably October 3rd is when we  
16 would be back here again, because we're off in August. And  
17 so, I think that's enough time for you to do everything you  
18 need to do --

19 ZC CHAIR HOOD: Mr. Chairman?

20 CHAIRPERSON HILL: Yes?

21 ZC CHAIR HOOD: I know y'all don't want to put  
22 anything -- well, I don't necessarily need to be on this  
23 case. Because I was just thinking, I'm here on the 26th.  
24 So I know y'all won't put nothing else on the transfers.

25 CHAIRPERSON HILL: Right. Now the now's on the

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1 26th. And I don't think, I think.

2 ZC CHAIR HOOD: I can't come every week, so --

3 CHAIRPERSON HILL: We haven't done a lot.

4 ZC CHAIR HOOD: In this year.

5 CHAIRPERSON HILL: We'd love to see you every  
6 week, Chairman Hood.

7 ZC CHAIR HOOD: But I'm here. Right?

8 CHAIRPERSON HILL: We haven't done a lot yet, with  
9 this, really. So I think somebody else can pick it up pretty  
10 easily. So why don't we do it on October 5th. 5th? 3rd.  
11 October 3rd.

12 So then, you would meet -- we would need a  
13 supplemental report. So Mr. Moy, I'm going to let you work  
14 through the dates, because I don't have a calendar in front  
15 of me.

16 ZC CHAIR HOOD: I say, that if they're going back  
17 to the ANC, I do know that the ANC meet the third Wednesday  
18 of every month. So I don't know if they'll get there July.  
19 I don't know if Commissioner Manning can get them in  
20 September. So I know it's the third Wednesday that they  
21 meet. So you'd only really have one shot. And that's going  
22 to be in July, to get on the agenda. Okay?

23 SECRETARY MOY: Yes. The third Wednesday, then,  
24 would be September 19th. So you -- as you can probably  
25 guess, you may -- should want to contact the ANC tomorrow,

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1 to get on their agenda. So then, continued hearing, October  
2 3rd.

3 Back into file, materials into the record by --  
4 gosh. September 26th? And while you're in touch with ANC,  
5 you may want to remind them that you submitted a letter into  
6 the record, after their meeting with you. Would the Board  
7 care for a supplemental from the OP?

8 CHAIRPERSON HILL: Yes, please.

9 SECRETARY MOY: Then to allow them time, then I  
10 suspect, let's make the latest, Monday, October 1st.

11 CHAIRPERSON HILL: Okay. So you guys know the  
12 dates, and what you're trying to do?

13 MR. SMULLEN: Yes.

14 CHAIRPERSON HILL: Okay. All right. Well, thank  
15 you very much. We'll see you then.

16 So as mentioned before, we're going to take an  
17 extended break, to try to get a little bit of lunch, or  
18 something like that. Is 25 minutes enough?

19 MEMBER WHITE: Yes.

20 VICE CHAIRPERSON HART: Say 2:15.

21 CHAIRPERSON HILL: So 2:15. 2:15. Thank you.

22 (Whereupon, the above-entitled matter went off the  
23 record at 1:42 p.m. and resumed at 2:28 p.m.)

24 VICE CHAIRPERSON HART: Okay. I think we'll bring  
25 the Board back to order. Mr. Moy, if you could, call our

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1 last case.

2 SECRETARY MOY: Thank you, Mr. Vice Chair. Let's  
3 see. The time we're reconvening is 2:27. All right. So the  
4 parties are at the table.

5 This is case application number 19722 of Kline  
6 Operations, as amended for special exceptions under Subtitle  
7 I, Section 205.5, from the rail yard requirements; Subtitle  
8 I, Section 205.1, penthouse use requirements of Subtitle C,  
9 Section 1500.3(c).

10 And under Subtitle C, Section 1504, from the  
11 penthouse setback requirements of Subtitle C, Section  
12 1502.1(c)(4). And pursuant to Subtitle X, Chapter 10,  
13 variances from the loading berth requirements; Subtitle C,  
14 Section 909.2, loading access requirements; Subtitle C,  
15 Section 909.3, court requirements; Subtitle I, Section  
16 207.1(n), from the interior height requirements of Subtitle  
17 I, Section 612.4, which would construct a new 11-story hotel,  
18 D-4R zone. Premises 925 5th Street, North West, Square 516,  
19 Lots 827, 828, 829 to 833.

20 VICE CHAIRPERSON HART: Okay. Thank you very  
21 much, Mr. Moy. So welcome, everyone, this afternoon. If we  
22 could just go through introductions from my right to left?

23 MR. BROWN: ANC Commissioner Anthony Brown, 6002.

24 MR. FILLAT: Peter Fillat, architect.

25 MS. MOLDENHAUER: Good afternoon. Merideth

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1 Moldenhauer, from the law firm of Cozen O'Connor, on behalf  
2 of the Applicant.

3 MR. KLINE: Good afternoon. Brad Kline, Managing  
4 Member of the developing entity, Kline Operations, LLC.

5 MR. ANDRES: Good afternoon, Vice Chair Hart.  
6 Erwin Andres, with Gorove/Slade Associates.

7 MR. VARGA: Stephen Varga, Director of Planning  
8 Services at Cozen O'Connor.

9 VICE CHAIRPERSON HART: Welcome everyone. Thank  
10 you for being patient today. So we have, I think, a  
11 preliminary matter that is a party status? Or is -- are they  
12 here?

13 MEMBER WHITE: Yes.

14 SECRETARY MOY: Yes.

15 VICE CHAIRPERSON HART: I just want to make sure.  
16 I didn't think they were. But I wanted to at least make sure  
17 that I saw that. So there was a Request for Party Status in  
18 Opposition, that was made.

19 It was Exhibit 79. And I understand that the  
20 Applicant is objecting to this, asking the Board to deny,  
21 based on untimeliness. With the Board, I just wanted to kind  
22 of deal with the -- kind of this particular issue. And then  
23 get to the actual hearing.

24 Now that the party that was requesting the party  
25 status in opposition is actually not here, I don't think that

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1 we should be granting that. But I would just like to know  
2 your thoughts on that.

3 MEMBER WHITE: I agree with you, Mr. Vice Chair.  
4 But that doesn't prevent him from testing that -- testifying  
5 as an individual, if he shows up as we get further down the  
6 line with the case. But since he's not here, I don't think  
7 we should grant the request, at this time.

8 MEMBER JOHN: Mr. Vice Chair, I also agree that  
9 we should not grant the request, because the party is not  
10 here. The requester is not here. And the request is also  
11 untimely.

12 VICE CHAIRPERSON HART: I just want to get a  
13 little feel from OAG about the fact that they're not here.  
14 We don't necessarily -- I don't know. I don't know the  
15 terminology. It's not deny. We --

16 MS. LOVICK: Right. You would deem it withdrawn.

17 VICE CHAIRPERSON HART: Withdrawn?

18 MS. LOVICK: Yes.

19 VICE CHAIRPERSON HART: Because they're not here?

20 MS. LOVICK: Right.

21 VICE CHAIRPERSON HART: Okay. I thought there was  
22 another avenue that we were supposed to go down. And I  
23 couldn't recall that -- what that was.

24 So I think that what we should do, is to actually  
25 deem this withdrawn, because the Applicant -- the person that

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1 was requesting party status, is not at the hearing. So  
2 that's it. Thank you. Miss Moldenhauer, we're back with  
3 you.

4 MS. MOLDENHAUER: Good afternoon. I would ask,  
5 I hopefully will be under it, but for 40 minutes on the  
6 clock, if you want to.

7 VICE CHAIRPERSON HART: You want 40 whole minutes?

8 MS. MOLDENHAUER: Hopefully, we won't need that  
9 all. But I'd rather, just, simply put that on the clock, and  
10 then allow us to walk through our presentation. We -- I can  
11 jump right in, or --

12 VICE CHAIRPERSON HART: No. I -- One of the  
13 questions I -- that was, what I really wanted to kind of  
14 focus on, was the response to the Office of Planning.

15 Because I think that, you know, the -- there are  
16 certain things that they are not in favor of. And I think  
17 we should focus on that.

18 MS. MOLDENHAUER: Yes.

19 VICE CHAIRPERSON HART: As opposed to going  
20 through all of it. I think we've heard a lot of this,  
21 already.

22 MS. MOLDENHAUER: Okay.

23 VICE CHAIRPERSON HART: And I didn't want to --  
24 because we've had a lot of conversation to date. There were  
25 a couple of parties in opposition. You all can sit. You all

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1 can come to the table, as well.

2 And I -- it looks like we only have a few seats.  
3 So it's -- if one of each of you would be coming up here,  
4 that would great. So I don't know if that changes your --  
5 the presentation, or the presentation timeline?

6 MS. MOLDENHAUER: I think if we can just put that  
7 on the clock, we will try to, obviously, be as concise as  
8 possible. Our presentation is focused only on, you know, the  
9 penthouse, which is the main question. Otherwise, OP has  
10 supported all other areas of relief.

11 VICE CHAIRPERSON HART: Agreed.

12 MS. MOLDENHAUER: And we also have ANC's support.  
13 But we have issues that we would like to, obviously, discuss,  
14 in regard to the penthouse, the revisions that were made.  
15 And then, responses to the party in opposition, in regard to  
16 some of the privacy concerns.

17 And, obviously, we also filed on Monday, a  
18 revision which will go through Mr. Fillat, from the  
19 architect. And the project would walk through how we made  
20 those additional revisions to the project. So I think it  
21 will be helpful. We just want make sure the Board --

22 VICE CHAIRPERSON HART: How about we get, like,  
23 we start with, like, 30 minutes?

24 MS. MOLDENHAUER: 30 minutes.

25 VICE CHAIRPERSON HART: And let's go from there.

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1 MS. MOLDENHAUER: Wonderful. Thank you.

2 VICE CHAIRPERSON HART: Mr. Moy, if you could,  
3 please. It's all your --

4 MS. MOLDENHAUER: Okay. Thank you very much. So  
5 we are here on a continued hearing. One of the requests at  
6 the last hearing, was to simply identify very clearly the  
7 reliefs being requested.

8 Here we are asking for a variance relief from the  
9 number of loading berths. Two are required. One would be  
10 provided. DDOT is in support of that. They have also filed  
11 a second supplemental report, as well.

12 We are also asking for loading access  
13 requirements, because an 11.5 access, the location to where  
14 we actually have access to the alley, there's a 12-foot  
15 requirement.

16 We are requesting variance relief based on that  
17 unique condition, of where our property actually abuts the  
18 alley. And DDOT and OP and ANC are support -- sorry, not OA  
19 -- DDOT and the ANC are -- DDOT and OP are supportive of that  
20 relief.

21 We are asking for court dimensions, which we --  
22 having exhaustively discussed at the last hearing, so we will  
23 not really touch on that today.

24 Floor to ceiling clearance under the Mount Vernon  
25 Triangle subarea relief, which we also discussed more at the

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1 last hearing. We will not be going into detail today on  
2 that.

3 And special exception relief from penthouse use,  
4 in a cocktail lounge, which the ANC and OP are supportive of.  
5 I will be focusing most of our testimony on the penthouse  
6 setback, and briefly, then, on the rear yard.

7 We have done extensive community outreach and have  
8 also had extensive modifications to the design. We have  
9 worked with DDOT since the last hearing. And they have filed  
10 a supplemental report.

11 And OP supports all of the area's relief, but for  
12 the penthouse setback relief. Our testimony will be reduced,  
13 in this area of the presentation. So we'll first turn it  
14 over to Mr. Kline, just, I believe, who had a brief  
15 introduction.

16 MR. KLINE: Good afternoon. I'll try to make it  
17 short. I think I said this before. I've been developing in  
18 Washington, D.C., for 35 years. I think I did the first  
19 condominium project in Dupont Circle area, off 18th Street,  
20 in the early '80s.

21 Also bought my first hotel property in the early  
22 '80s. Developed property on Connecticut Avenue. And also,  
23 had property at 13th and U, 9th and F, and other areas.

24 We've brought together a great team. We've  
25 listened to you. We've worked hard on all the issues of

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1 transportation and design. And we're going to turn over to  
2 the experts for you.

3 I had an individual that was going to testify  
4 today, Thomas Perry. He had to leave, unfortunately. He is  
5 with Donohoe Companies. Donohoe is not only doing the  
6 construction design with me. They also will be involved as  
7 a development consultant. They built my last building, and  
8 they're excellent. They know hotel business.

9 They own, for 19 years, the hotel that is located  
10 at 9th and F. It was a Courtyard Marriott, very similar type  
11 hotel that we're building. It was 180 rooms.

12 They had issues with the apartment building behind  
13 them. A series of meetings, and I've never had any issues  
14 before. There wasn't any issues. There were concerns they  
15 wanted addressed, in their noise ordinances. They were  
16 addressed. And their numbers for what their deliveries are  
17 for a select service hotel, are from experience.

18 And he was here to testify today. But he does  
19 have a letter of record, which has that information on it.  
20 And I think we will continue to work with the apartment units  
21 behind us, in the same fashion. And I'm very comfortable  
22 with Donohoe on my side. With that, I can turn it back over,  
23 I think.

24 MS. MOLDENHAUER: At this point, we'll turn over  
25 to Mr. Erwin Andres.

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1 MR. ANDRES: Good afternoon, Vice Chair Hart,  
2 members of the Board. Again, Erwin Andres for Gorove/Slade  
3 Associates. In the interest of time, you know, we had  
4 appeared April 4th, before you.

5 Or I had appeared April 4th, before you. And  
6 there was extensive discussion. DDOT had provided a review  
7 letter, and the rub supporting the approval. We had provided  
8 testimony at the last hearing. There was also additional  
9 testimony from the opponents. Given sort of the short time  
10 frame, we had reviewed what was initially submitted.

11 We provided our response on May 3rd. DDOT  
12 responded with their own secondary review letters,  
13 essentially reconfirming their initial support letter. And  
14 in that, I think there are two specific elements that we  
15 wanted to highlight.

16 The first was, the opponents had asserted that we  
17 were required to do a more robust traffic study. And in our  
18 response letter, well, which DDOT confirmed, essentially said  
19 no.

20 They don't have to do a revised or an adjusted  
21 traffic study, because of the fact that the zoning action  
22 which is require -- requesting loading variance, does not,  
23 in its action, doesn't generate additional traffic.

24 You know, case in point, we appear -- I appeared  
25 before this Board in 2015, for a Capitol Point project, where

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1 the project was incredibly large. It was probably close to  
2 600,000 square feet.

3 We didn't do traffic study, because the request  
4 was for a loading and a parking variance. So DDOT has been  
5 consistent in their approach to evaluating those projects.  
6 And we followed that consistently for years.

7 So in that, you know, we -- I wanted to sort of  
8 put that issue to rest, where no. We are not required to do  
9 a full traffic study, because of variance. And the zoning  
10 action itself does not require it.

11 The second item that was raised, referred to truck  
12 activity in the alley. You -- I've been back there. I  
13 actually used to live across the street. And in it, there  
14 is activity back there, we -- the opponents provided  
15 exhibits, but showed trucks back there.

16 So, you know, the -- it is our assertion, and our  
17 coordination, that although it is tight, and, you know,  
18 nobody's -- and nobody's oppose -- nobody is questioning  
19 that, that given the urban condition of the site, and of the  
20 alley, that trucks do go back there.

21 But if you notice, in some of the exhibits, there  
22 are things back there that shouldn't be back there. There  
23 are cars back there that are parked. There are storage  
24 containers that are back there, that are parked.

25 And I think, with the redevelopment of not only

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1 this site, but some of the other development sites that are  
2 served by that alley, there are going to be more eyes on that  
3 alley, that will force the enforcement of some of that.

4           You know, the reason why some of that, you know,  
5 some of that takes place, is because A, it's not either a  
6 problem. Or B, you know, nobody really cares that it's there  
7 in the alley.

8           So with more activity in the alley, yes. You  
9 know, I think there are opportunities to manage the  
10 activities in the alley. Some of the other elements that I  
11 think are missed in some of the subsequent filings, are that,  
12 you know, the development site, you know, even if it were a  
13 matter of right, would generate loading activity consistent  
14 with what we're generating with the hotel.

15           So, you know, if there were, you know, there are  
16 roughly, I believe, three store fronts on that front 5th  
17 Street. If they were residential developments, mixed use,  
18 with residential up top, and retail on the bottom, they would  
19 still have similar loading demands.

20           And DDOT would, as you would know, which is  
21 consistent with their driveway design manual, is that all of  
22 the access, the -- essentially, their access policy is that,  
23 if you have access to an alley, you must use the alley.

24           So we have been complying with all of DDOTs  
25 regulations. We've gone through the process. And we've

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1 followed the methodology, to which we study these projects  
2 consistently for years. So with that, I'm available for  
3 questions. Thank you.

4 MS. MOLDENHAUER: So now, we turn it over to Peter  
5 Fillat, to go through the rear yard, and some of the updates  
6 to the plan since our last hearing.

7 MR. FILLAT: Good afternoon. Thank you for  
8 allowing us to give you this presentation this evening. This  
9 afternoon. We have done some substantial redesign to the  
10 building. Some of which are in response to the concerns on  
11 the rear of the building.

12 In particular, there are some -- there were some  
13 units that looked directly into the building, to the east.  
14 We have changed the orientation of those rooms, so that there  
15 is no window-to-window view anymore. And -- And that should  
16 alleviate some of the concerns.

17 The balance of the windows that do look east, look  
18 into the courtyard. And these windows, like all hotel room  
19 windows, have curtains and black out shades. And so, that  
20 would help mitigate any additional views into those windows.

21 We've prepared a sun study, and shadow study, as  
22 requested. It's on the next couple of exhibits. We prepared  
23 this study using a computer program, called SketchUp. It  
24 identifies the location of the site. The latitude and the  
25 longitude. This particular location on the planet.

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1           And it takes into account the heights of the  
2 buildings, and the times of the day. The studies that you  
3 see are in the worst case in the winter, and the best case  
4 in the summertime.

5           You'll see that there is some impact on the at-  
6 risk windows, that are on the property line of the property  
7 next door. But it is a minimal kind of impact. And we'll  
8 go through that if you have further questions.

9           In particular, the penthouse side setback relief  
10 is what we want to talk about today. And if we go to that  
11 floor plan, you'll see that we did a fairly major redesign  
12 of the building.

13           Previously, we had the staircases on the exterior  
14 wall of the building. We moved them to the interior of the  
15 building. And that will -- that enabled us to allow those  
16 stairs to go all the way up to the penthouse, and still be  
17 set back from the facade, as it rises above the side courts.

18           The next slide, I believe, shows you kind of the  
19 previous roof top configuration, where the penthouse was  
20 basically a zero-lot line on the south. And then, sort of  
21 a continuation of a facade of the courtyard, that was  
22 intentional.

23           And it was something that the committee expressed  
24 concern about. As well as -- I'm sorry, the Board expressed  
25 concern about, as well as OP.

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1           So in the redesign, we have taken that footprint,  
2 and we've stepped it back from the side yards, as well as  
3 from the street, and the rear yard. The street and the rear  
4 yard are, as designed, compliant.

5           It's the court -- the facades, that sort of the  
6 extension of the courts, are the parts that are not  
7 compliant. We have done studies to show that if we did a  
8 non-occupied penthouse, we still are not compliant.

9           So there would be a request for a relief, whether  
10 we occupy the penthouse or not. And so, what we are  
11 proposing though, is, is to allow us to continue to have that  
12 occupied penthouse level, and then the mechanical on top of  
13 that.

14           And so, as you look at the design on the next  
15 series of images, you can sort of see the before and -- you  
16 can see the before and after. The image to your left is the  
17 last iteration. And the image on the right is what we're  
18 proposing.

19           You can see that we've dramatically set the  
20 penthouse back. We've also, as a response to the HPRB, and  
21 I think maybe one or two of you on the Board also thought  
22 that the material should change, as we moved to the  
23 penthouse, so there's a change of materials.

24           That's also shown on this drawing. And this --  
25 as well as some other changes that HPRB asked. We made those

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1 changes. And the design that you see was approved by HPRB  
2 a couple weeks ago.

3 VICE CHAIRPERSON HART: And Mr. Fillat, what I'm  
4 also looking at is the proposed facade, is actually not  
5 taller. You've just incorporated the third floor? Second  
6 floor?

7 MR. FILLAT: Yes.

8 VICE CHAIRPERSON HART: Into the body --

9 MR. FILLAT: Into the body of the building.  
10 Right.

11 VICE CHAIRPERSON HART: Yes. And so, that makes  
12 it look a little bit, looks like it kind of pulled it down  
13 a little bit more --

14 MR. FILLAT: You know, if --

15 VICE CHAIRPERSON HART: -- visually. Because it  
16 looks like the -- at one point, I thought that the penthouse  
17 on the left -- the initial penthouse was -- you reduced the  
18 side, you reduced the height.

19 But that wasn't -- that's not necessarily -- it --  
20 some of this is kind of a visual change, because of how  
21 you've made changes on the bottom levels.

22 MR. FILLAT: That's probably true. Yes.  
23 Absolutely.

24 VICE CHAIRPERSON HART: And so, the building  
25 massing has a different look, because of those changes.

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1 MR. FILLAT: I wonder --

2 VICE CHAIRPERSON HART: I want to make sure I'm  
3 understanding that correctly.

4 MR. FILLAT: Yes. No. And it's completely true,  
5 because -- and that was one of the comments that HPRB said.  
6 And actually, what we proposed, what the current proposal is,  
7 is what our original proposal was.

8 And there was a discussion with the HPO staff,  
9 that said, maybe it was too close. When we showed them this,  
10 and at the same time we showed them this, we showed the HPRB  
11 Board, they all said, you know what? Maybe you've gone too  
12 far.

13 Would you look at bringing it back? And so,  
14 that's what we did. And, you know, it's just much more  
15 successful. There's -- We could talk about that a lot.  
16 We're very happy with where it is, right now.

17 And then, also, that you can see the substantial  
18 change to the penthouse design. It's clearly not as looming  
19 on this slide.

20 And then, I think on the next slide, you can see  
21 how it, you know, we -- again, we intentionally made that the  
22 first time around. And now the second time around, this  
23 current design does set back, and does step back, and allows  
24 the penthouse to read as a penthouse.

25 And albeit, one that will hopefully have a

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1 cocktail lounge in it, if you guys agree. But it is  
2 definitely something that sits on the roof and sets back from  
3 the roof.

4 And then, the rest of the diagrams really are just  
5 kind of architectural diagrams, that talk about before and  
6 after. In other words, this shows the 20-foot-high wall,  
7 that sets back 20 feet from the side on either side.

8 Now, what you can really see here is, in section,  
9 that we've stepped it twice. So we've stepped it 15 feet,  
10 and then another five feet. So it's still 25 feet back. But  
11 we've tried to maximize the -- or minimize the impact, by  
12 sort of stepping back again.

13 And then, the next slide sort of shows the  
14 difference between an all mechanical solution. So we --  
15 we're showing a ten-foot-tall, one level, mechanical.

16 And that's because of the height of the mechanical  
17 units that are on that level, the generator, and the larger  
18 air handling units. And then, the elevator override, and the  
19 staircase.

20 And in the final drawing -- or, no. Let's see.  
21 So the next slide is kind of technical. Again, it talks  
22 about the exact areas where we have problems.

23 Those two dimensions, instead of being six-foot-  
24 four, would really need to be ten feet. On -- And on the  
25 other -- on the drawing to the right, they are, I think,

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1 five-foot-eight. And that also would need to be ten feet.

2 So those dimensions are the dimensions that you  
3 can see, whether we have a one level roof, which is only  
4 mechanical, or if we have a two -- a stepped penthouse, which  
5 is, again, the lounge and mechanical, in the same location,  
6 we have -- we would have to have relief for this project.

7 And that's due to the narrowness of the site, and  
8 the proportions of the site. The site is actually wider, as  
9 it hits the street. It steps back. It goes in and out.  
10 It's a typical kind of agglomeration of row house property  
11 lines, to make a new parcel, that happened previously.

12 VICE CHAIRPERSON HART: And actually, with this  
13 image, can you just tell me again, what is the -- I'm trying  
14 to understand the numbers.

15 MR. FILLAT: Okay.

16 VICE CHAIRPERSON HART: What are the numbers?  
17 What units are we talking about?

18 MR. FILLAT: Fair enough. It's a lovely number.  
19 The number really wants to be .5. Okay?

20 VICE CHAIRPERSON HART: Okay.

21 MS. MOLDENHAUER: Yes.

22 MR. FILLAT: Because it's a ratio of .5 of the  
23 height.

24 VICE CHAIRPERSON HART: You're -- this is what  
25 you're talking about, is the actual -- is the setback ratio?

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1 That's what I'm -- that's what this is supposed to be?

2 MR. FILLAT: You got it.

3 VICE CHAIRPERSON HART: Okay. Now, I just  
4 couldn't figure, was -- I'm like, I don't know what the  
5 numbers are.

6 MR. FILLAT: Yes. It's a setback.

7 VICE CHAIRPERSON HART: Okay.

8 MR. FILLAT: Ratio.

9 VICE CHAIRPERSON HART: Okay. Okay.

10 MS. MOLDENHAUER: As a one-to-one.

11 VICE CHAIRPERSON HART: It just doesn't say it  
12 anywhere, that's all.

13 MS. MOLDENHAUER: It's required. Yes.

14 MR FILLAT: One-to-one is a requirement.

15 VICE CHAIRPERSON HART: Yes.

16 MR. FILLAT: And then there's been cases where  
17 you've allowed .5 to one.

18 VICE CHAIRPERSON HART: No. I get this, now. I  
19 just...

20 MR. FILLAT: Okay.

21 VICE CHAIRPERSON HART: I didn't get it before,  
22 because I'm -- I just wasn't sure what these were.

23 MR. FILLAT: Fair enough. No.

24 VICE CHAIRPERSON HART: Units were. They're not  
25 in units. It's just that actual -- it's just a ratio. And

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1 this is the unit.

2 MR FILLAT: This is a ratio number.

3 VICE CHAIRPERSON HART: Yes.

4 MR. FILLAT: Yes.

5 VICE CHAIRPERSON HART: Got you.

6 MR. FILLAT: Okay. Let's go to the next slide.

7 And this sort of shows you the cross section. This is, like,  
8 the most -- sort of, most important comparative section. The  
9 original design is all the way on the left. The all  
10 mechanical design is in the middle. And our proposed design,  
11 or preferred redesign, is to the right. And it --

12 VICE CHAIRPERSON HART: And this, again, the all  
13 mechanical, is if you don't have any occupied space?

14 MR. FILLAT: Correct.

15 VICE CHAIRPERSON HART: And that's not really the  
16 -- was going to -- it's not right up -- it's not right --  
17 it's not the by right. It is, what would you call that?

18 MS. MOLDENHAUER: So the --

19 MR. FILLAT: Program.

20 MS. MOLDENHAUER: All mechanical space would still  
21 require areas of special exception relief. So it would --  
22 one of the aspects of the reason why we're providing this,  
23 is because it shows that even an all mechanical space would  
24 require this Board to find that we'd need the same special  
25 exception relief.

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1           And that the relief that we're requesting is  
2 driven by the mechanical, and the mechanical needs of the  
3 site, not by any other request.

4           VICE CHAIRPERSON HART: You can proceed. Thank  
5 you.

6           MR. FILLAT: Yes. I think that that's -- that  
7 pretty much ends my conclusion.

8           MS. MOLDENHAUER: Can you just talk a little bit  
9 about why a -- the proposed design is more desirable, and a  
10 better design?

11          MR. FILLAT: There are numerous reasons. And I  
12 could talk about this for a long time. But I won't. I'll  
13 just go, you know, briefly.

14          VICE CHAIRPERSON HART: Thank you.

15          MR. FILLAT: Obviously, you know, the city is  
16 important, as it meets the street, as well as it meets the  
17 sky. And, you know, having people enjoy the light and air  
18 that one can only achieve by the -- being on the roof of a  
19 building, when you're in the middle of a city. Or, let's  
20 say, uniquely take advantage of.

21                 So in this way, I really feel like the design is  
22 a better project as a hotel, and probably better as a  
23 residential building, maybe a better as use of all buildings,  
24 if there's occupiable roof space.

25          MS. MOLDENHAUER: What about the distance from the

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1 --

2 MR. FILLAT: Okay. She wants me to talk about the  
3 -- this diagram, which says that the -- on both cases, we are  
4 able to create a legal setback on the roof, on the -- facing  
5 the street and the alley.

6 But in -- on our proposed -- it's actually larger.  
7 In other words, the building set the roof, that the penthouse  
8 sets back further, and is less visible from the street on our  
9 proposed design.

10 MEMBER WHITE: And can you tell me again, whether  
11 or not OP's kind of walked through this proposed, is this  
12 revised design, with you?

13 MR. FILLAT: Yes. They have.

14 MEMBER WHITE: Okay.

15 MR. FILLAT: Yes. And we had. We worked with  
16 them. We had several meetings. And -- yes. They're going  
17 to talk about it.

18 MEMBER WHITE: Take -- good.

19 MR. FILLAT: And they were great to work with, by  
20 the way. So it's all a very positive situation.

21 MEMBER JOHN: Can you go back over the setback on  
22 the east and the west side? I believe those are the two  
23 you're not meeting? Is that right?

24 MR. FILLAT: No. The north and the south --

25 MEMBER JOHN: You're meeting the north --

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1 MR. FILLAT: Are what we're not --

2 MEMBER JOHN: Okay. It's by orientation. Could  
3 you go over the ones that you're not meeting, and explain  
4 again why you can't meet those? I may have missed something.

5 MR. FILLAT: So, yes. Okay. So if you go to the  
6 diagram that is --

7 MEMBER JOHN: It's up.

8 MR. FILLAT: It's up?

9 MEMBER JOHN: Yes.

10 MR. FILLAT: Let me go there. Okay. Excuse me.  
11 Okay. So all the lines kind of look the same. So I  
12 apologize for that. But the diagram to your left, okay, is  
13 the one level mechanical penthouse. Okay? That diagram  
14 shows a dimension --

15 VICE CHAIRPERSON HART: I think we have two  
16 different -- we have a diagram on the screen, that I think  
17 is different than what you're talking about.

18 MR. FILLAT: Ooh. Okay. I happen to have this,  
19 too.

20 VICE CHAIRPERSON HART: Great.

21 MR. FILLAT: So the blue on this design would need  
22 to be on the north feet. The blue needs to be ten feet. And  
23 I can't read any of these dimensions. And it's somewhat less  
24 than that.

25 VICE CHAIRPERSON HART: Okay. So as opposed to

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1 one-to-one, it should be, okay.

2 MS. MOLDENHAUER: This is -- has to be the only  
3 one-to-one. This is regular.

4 MR. FILLAT: These all have to be one-to-one.  
5 Right. So on the north side, it's .5, as opposed to one-to-  
6 one. The north A2 is .7. And the reason for that, is that  
7 the space of the mechanical penthouse is as small as it  
8 possibly can be, in this configuration.

9 VICE CHAIRPERSON HART: And what are the letters  
10 that you have? A1, A2, B1, B2? What do those refer to?

11 MS. MOLDENHAUER: So A1 refers to this diagram,  
12 the blue circles, here. B1 refers to the green on the north  
13 side. C refers to the purple.

14 VICE CHAIRPERSON HART: Okay.

15 MS. MOLDENHAUER: And then, A1 refers to this  
16 section, here. B1 to the green section, and then C to the  
17 blue. A and C are the same.

18 VICE CHAIRPERSON HART: What do you mean, A and  
19 C are the same?

20 MS. MOLDENHAUER: Gracias. So this section here,  
21 the dimensions are the same. So you can see the dimensions  
22 on A and C are the same. So there are two blues.

23 VICE CHAIRPERSON HART: Oh. You're saying --  
24 okay. Okay.

25 MS. MOLDENHAUER: On the right-hand side. The

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1 south side. Or this side.

2 VICE CHAIRPERSON HART: And then, the dotted lines  
3 that are here, are -- is the setback for the --

4 MS. MOLDENHAUER: In the key to -- the second  
5 ones.

6 MR. FILLAT: Second setback.

7 VICE CHAIRPERSON HART: And that would be, like,  
8 20 feet?

9 MS. MOLDENHAUER: Yes.

10 MR. FILLAT: Yes.

11 VICE CHAIRPERSON HART: And that is less than 20  
12 feet?

13 MS. MOLDENHAUER: Correct. So if you can see, on  
14 the A2s, any of the twos are all for your second floor. So  
15 those were typically at a closer one-to-one ratio. You can  
16 see that you even have one at a .89 to one. So on the second  
17 floor, by doing the step design, we have gotten as close as  
18 possible to the one-to-one.

19 We're at, you know, .89 down here, in this section  
20 here. We are at .86 on the second floor in this area. And  
21 you can see, the most constrained area is around the court.  
22 And Peter, maybe just walk through the mechanical desk there.

23 MR. FILLAT: So what we did was, as opposed to  
24 going straight up with the mechanical wall, we stepped it  
25 back to increase that ratio, to make it a little less

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1 apparent. Right? As opposed to going up the full 20 feet,  
2 right at the first line.

3 And that's how we kind of created this sort of  
4 ziggurats style, that attempts to create as close to the  
5 letter of law as possible.

6 MS. MOLDENHAUER: And Peter, are you as tight as  
7 possible on all of the different mechanical equipment that  
8 is shown on this penthouse?

9 MR. FILLAT: Yes. Yes. This is as tight as it  
10 can possibly get.

11 MS. MOLDENHAUER: And provide all building code  
12 circulation around the VRFs and other equipment?

13 MR. FILLAT: Yes. Exactly. There's minimal  
14 clearances.

15 ZC CHAIR HOOD: Mr. Chairman? Can I ask a  
16 question?

17 VICE CHAIRPERSON HART: Sure. Because you had --

18 ZC CHAIR HOOD: Are you as tight as you could  
19 possibly get? Or are you as tight as you possibly want to  
20 go?

21 MR. FILLAT: No, no. It's a function of being  
22 able to service the units and having the right amount of air  
23 circulation around the units. And so, what we've done here  
24 is, we've taken the taller units. And we've put them in the  
25 middle of the -- in the 20-foot-tall piece. Right?

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1           Then we've taken the shorter units, the -- which  
2 are the VRF units. They are approximately five and a half  
3 feet tall. So we've ringed those on the outside, in order  
4 to allow the building to sort of step back.

5           So we -- you know, we created this stepping, that  
6 still takes into consideration the height requirements,  
7 masking the height requirements of the taller units. And  
8 even though it's not as we would like, it's what's needed in  
9 terms of the -- in order for the mechanical equipment to  
10 function properly.

11           ZC CHAIR HOOD: So we did some moving around. I  
12 think I mentioned this previously in one of the other  
13 sessions. But -- So you've done some moving around already,  
14 to come up with this result. Correct?

15           MR. FILLAT: Right.

16           ZC CHAIR HOOD: Okay. So --

17           MR. FILLAT: Yes. We planned the building. We  
18 re-planned the building below. And then we brought that up.  
19 So in other words, you can see where the stair is, on this  
20 drawing. Right? Previously the stair was on the outside  
21 wall of the building.

22           So according to our previous design, that wall  
23 would have had to go straight up. But we've redesigned the  
24 building. And we've made it so that the stairs are more  
25 towards the middle of the building, like an office building.

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1 MS. MOLDENHAUER: And can you move the stairs in  
2 any other location? Or what are the restraints there?

3 MR. FILLAT: We can't move them any closer  
4 together. And we can't move them in the middle, because a  
5 hotel, typically, is a double-loaded corridor. So there's  
6 a corridor that runs down the middle.

7 And so, in this case, there's the elevator on one  
8 side of the corridor, and the stair on the other side of the  
9 corridor. And an east to west version, they're as far apart  
10 as could possibly can be, because we have, again, hotel rooms  
11 on the exterior of the building.

12 ZC CHAIR HOOD: Okay. Maybe, I'm not nowhere with  
13 you. But maybe I can get there. Well, I don't know where,  
14 now.

15 MR. FILLAT: Well, if you go to this drawing here,  
16 go back to this one here. Yes. Is there a pointer or  
17 anything like that?

18 MS. MOLDENHAUER: Yes. Right here.

19 ZC CHAIR HOOD: I mean, I see what you -- I've  
20 seen where this was done. But go ahead. You can explain it.  
21 But --

22 VICE CHAIRPERSON HART: Yes. Explain.

23 MR. FILLAT: So here are the stairs, as previously  
24 shown. This is the stair on the exterior wall, here. And  
25 this is the stair on the exterior wall, here. Here's the

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1 corridor between the -- that runs down the building.

2           And then, what we did was, we changed the location  
3 with the stair. We put a guest room here. And we put -- we  
4 changed these two. We split these two. They were both  
5 facing this way. One is now rotated sideways. This one is  
6 rotated sideways. And we took that stair, and we put it  
7 here.

8           Same thing here, where we took these two. This  
9 stair was oriented in this direction. We changed this room  
10 to run this way and we put the stair here. So this is the  
11 location of the two stairs. They're as far apart as they can  
12 be, from here to here, and function. And they -- and we need  
13 space here, for the corridor.

14           ZC CHAIR HOOD: Okay. Fine. Thank you.

15           MR. FILLAT: Got it?

16           VICE CHAIRPERSON HART: Good.

17           ZC CHAIR HOOD: Thank you.

18           MEMBER JOHN: So to summarize for me, you are  
19 closer to the setback provision on the second floor, for the  
20 mechanical floor, than on the floor that you would use for  
21 the penthouse? Because you stepped it back?

22           MR. FILLAT: So I'm --

23           MEMBER JOHN: So the setback is greater on the  
24 second floor, than on the first floor?

25           MR. FILLAT: Right.

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1 MEMBER JOHN: Okay. And the reason for that is  
2 because of the courts?

3 MR. FILLAT: Is because of the courts.

4 MEMBER JOHN: And if you could make that tie-in  
5 for me, that would be great.

6 MR. FILLAT: So --

7 MEMBER JOHN: I understand the stairs. And I  
8 understand that you had to pack all of the mechanical  
9 equipment in the middle, to get the height.

10 MR. FILLAT: Right.

11 MEMBER JOHN: I'm not making the connection with  
12 the courts.

13 MR. FILLAT: So the courts are required to have  
14 light and air for the rooms that face the courts. Okay? So  
15 they're set in from the property line. Right?

16 In this case, we've reached agreement that the  
17 dimension that we've put for the courts, which is five feet,  
18 is acceptable. Okay? So beyond that -- So what we  
19 originally had thought, was it would be great to maximize the  
20 size of the roof penthouse and continue the wall of the court  
21 straight up. Right?

22 You've asked us to not do that, and to set it back  
23 as much as possible. Okay? So that's what we've done.  
24 We've taken the wall of the penthouse, and we've pushed it  
25 as far away from that courtyard setback -- court wall as

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1 possible. And that's where we need relief. And that's the  
2 ratios that we discussed earlier.

3 MEMBER JOHN: Okay. Thank you.

4 MR. FILLAT: Is that clear?

5 MEMBER JOHN: Yes. Better.

6 MR. FILLAT: Okay. Thanks. Thank you. I wanted  
7 to make sure you understand.

8 MEMBER JOHN: Yes. Thank you.

9 MS. MOLDENHAUER: Peter, can I just ask one quick  
10 question? So the VRFs that are located here, along the  
11 stepped back portion. Is there any other place that they  
12 could go? If they went on the setback, would they meet the  
13 one-to-one ratio for the height? What's the height of --

14 MR. FILLAT: No. They wouldn't, because you have  
15 to have an enclosure, a wall, in front of those VRFs. And  
16 we'd be back to where we were before. So in other words, we  
17 would have a wall that would be continuous from that. It  
18 wouldn't be set back at all.

19 MS. MOLDENHAUER Yes. And then, the same is true  
20 for any other location, where you've kind of looked to figure  
21 out where you can locate those? Is there any other place  
22 where you can locate them, where you would then be able to,  
23 you know, reduce the size of the overall penthouse?

24 MR. FILLAT: No.

25 MS. MOLDENHAUER: Okay. At this point in time,

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1 we were going to turn to Mr. Varga, to simply provide some  
2 additional testimony regarding the penthouse setback  
3 standard.

4 MR. VARGA: Thank you. Again, Stephen Varga,  
5 Planning Services Director at Cozen O'Connor. I was accepted  
6 as an expert in zoning in land use at the April 4, 2018  
7 hearing on this matter and provided testimony.

8 As Peter has already discussed, the size of the  
9 penthouse is driven by the mechanical requirements. It has  
10 been reduced substantially. Indeed, those setbacks are at,  
11 approximately, as you've heard, one-to-one half.

12 First, the purpose of the penthouse setbacks is  
13 to limit the views of the penthouse from the street, so that  
14 the penthouse reads distinctly, and not as an additional  
15 building story. That has happened here. Since the last  
16 hearing, we've taken Vice Chair Hart's direction, and made  
17 the update.

18 Second, while not directly determinative, it  
19 should give the Board some comfort that side setback relief  
20 has been granted three times on this square. In 2010, it was  
21 granted for the penthouses at 450 K Street. In 2015, for 901  
22 5th Street, North West, and in 2016 for the Cloak Room.

23 I raise these other cases, because OP and the BZA  
24 have found that granting the relief, which, like the current  
25 case, was half the setback required, and would not impair the

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1 intent of the zoning regulations, or adversely affect  
2 neighboring property.

3           Indeed, in the 450 K Street case, OP supported the  
4 relief, because the penthouse was, "already set back  
5 substantially from the surrounding streets." As is the case  
6 here, as well. The penthouse is significantly setback from  
7 the street and the alley.

8           And based on the revised design, is set back from  
9 the courts, as well, as Peter indicated. In the 5th Street  
10 case, the relief was associated was also a habitable  
11 penthouse.

12           Turning back to our case, I should take a moment  
13 to step back, and remind the board that the land use element  
14 of the CONPLAN, as well as several recommendations from  
15 multiple other planning documents, prioritize this area for  
16 the city's greatest concentration of higher density  
17 development, as well as hotel, restaurant, and bar uses, that  
18 invite night life, weekend, and holiday visitors, to the  
19 district.

20           A qualitative element, that would be lost without  
21 the habitable space here. I bring this up, because OP is in  
22 support of the habitable restaurant use for the penthouse.  
23 But they're not in support of the relief that would be  
24 necessary to accommodate that use.

25           I guess, at the end of it, in my expert opinion,

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1 if the relief were being driven by the habitable penthouse,  
2 I acknowledge that would be a concern.

3           However, as we've noted, everything that Applicant  
4 has provided, shows that the mechanical requirements are the  
5 driving force behind the requested relief. Because OP  
6 appears to be supportive of an all mechanical penthouse, the  
7 mere fact that we propose habitable space doesn't impair the  
8 zoning regulations, in and of itself, or negate the special  
9 exceptions standard.

10           Therefore, I find that the proposed habitable  
11 penthouse satisfies the special exception test. And I urge  
12 the board to grant us relief. I'm available for any  
13 questions, as well. Thank you.

14           MS. MOLDENHAUER: Thank you. That concludes our  
15 testimony. I would reserve time for a closing. But we will  
16 obviously be available for questions.

17           VICE CHAIRPERSON HART: Thank you. Does the board  
18 have any questions for the Applicant? The parties in  
19 opposition? Do you have questions for the -- as a rebuttal,  
20 or excuse me, cross examination? Any questions?

21           MR. FEOLA: Thank you Mr. Vice Chair. Phil Feola  
22 for 450 K Cap, LLC, one of the parties in this case. I just  
23 have one factual question for Mr. Fillat, if I could ask?

24           VICE CHAIRPERSON HART: Sure.

25           MR. FEOLA: What's the dimension from the edge of

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1 the historic wall that you're restoring, to the south  
2 property line? It's not on the plans. I just want to know  
3 what that dimension is.

4 VICE CHAIRPERSON HART: Of the -- you could -- the  
5 dimension of the which one?

6 MR. FEOLA: The facade, the front facade of the  
7 building.

8 VICE CHAIRPERSON HART: Okay.

9 MR. FEOLA: From the portion of the restored wall  
10 that's being kept, and the property line to the south.  
11 There's a new -- there's new construction in there. I just  
12 want to know the dimension. And it could be approximate.  
13 I don't --

14 MR. FILLAT: I'm going to say, it's approximately  
15 12 feet.

16 MR. FEOLA: Okay.

17 MR. FILLAT: We can get back to you with the exact  
18 dimension.

19 MR. FEOLA: That's close enough. I have no other  
20 questions.

21 MS. HENRY: Good afternoon. I'm Jeanett Henry,  
22 counsel for Aubrey Stevenson, who is the owner of the  
23 adjacent property at 460 and 462 K Street. I have no  
24 questions at this time for the Applicant. Thank you.

25 VICE CHAIRPERSON HART: Welcome. Thank you. And

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1 I know that this was -- there was quite a bit of discussion  
2 during the, I guess, changing of the penthouse requirements,  
3 regarding kind of what that top would look like, you know?

4           If it's -- And I think there was some discussion  
5 about whether or not, and I hate to bring up the term, but  
6 that the wedding cake was always, you know, the kind of  
7 stepping you've, Mr. Flint, you described as a ziggurat,  
8 which, you know, that's fine.

9           And I just don't know how to respond to that. Or  
10 I don't know if you all have a response for that. We've  
11 gotten from kind of, like, a flat roof, which was the all  
12 mechanical, to one that is now kind of stepping up, as it,  
13 you know, as it rises.

14           And I don't know. I'm not exactly sure what the  
15 question is. It's more just trying to understand how that --  
16 if that's preferential. To have that.

17           MR. FILLAT: So a ziggurat is a more architectural  
18 term. So --

19           VICE CHAIRPERSON HART: Oh. I know. I know.

20           MR. FILLAT: That's why I use it.

21           VICE CHAIRPERSON HART: Oh. No.

22           MR. FILLIAT: A wedding cake is a great graphic  
23 description.

24           VICE CHAIRPERSON HART: Well, but it's just, like,  
25 I mean, I know it's been used. And it just kind of, you

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1 know, I'm not sure how I kind of come down on that.

2 In some ways, I'm appreciative of the effort that  
3 you all have gone through, to look at that again, in more  
4 detail, and finding ways of making that really read as a  
5 separate kind of entity. Changing color helps. And also,  
6 the way in which you've kind of manipulated it, and looked  
7 to shrink that.

8 I did have, actually, a question regarding the  
9 penthouse itself. Can you talk about how much kind of  
10 percentage-wise, the penthouse has changed? Been reduced?  
11 Or has it been reduced?

12 MR. FILLAT: So it has been reduced.

13 VICE CHAIRPERSON HART: And I don't know if  
14 that's, like, it's been reduced ten percent? Or I don't know  
15 what that --

16 MR. FILLAT: I'm going to graphically give you  
17 that answer. Okay?

18 VICE CHAIRPERSON HART: That's fine.

19 MR. FILLAT: Just because -- and I won't be that  
20 far off. I'm going to go with, like, 15 percent, probably?  
21 15 to 20 percent reduction in footprint.

22 VICE CHAIRPERSON HART: I appreciate that. I know  
23 that it's not, you know, that can get a little bit hard to  
24 figure out, sometimes. And I probably should've done this  
25 before, but I just started thinking about it. Since this has

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1 been late in the day, did everyone get sworn in?

2 MEMBER JOHN: Yes.

3 MS. MOLDENHAUER: Everybody was here at 9:30.

4 VICE CHAIRPERSON HART: Okay. I kind of figured  
5 as much. I just, you know, it's been a long day. And I know  
6 that. But I just wanted to make sure that we had that taken  
7 care of, anyhow.

8 MS. MOLDENHAUER: And just from a procedural, I  
9 mean, we also are assuming that the qualifications of experts  
10 follow through.

11 VICE CHAIRPERSON HART: We're fine.

12 MS. MOLDENHAUER: Yes. From the last hearing,  
13 correct?

14 VICE CHAIRPERSON HART: Yes. Yes. I didn't have  
15 any issue with that. But I appreciate that as well. So I  
16 understood that 15 to 20 percent. That's good, to kind of  
17 have a ball park.

18 I didn't need the exact number. I was just trying  
19 to understand. Did I perceive a change? Or did it actually  
20 change? And it's helpful to know that.

21 MR. FILLAT: No. It actually changed.

22 VICE CHAIRPERSON HART: Yes. Do we have any other  
23 questions? Okay. I was going to go to the Office of  
24 Planning.

25 MR. COCHRAN: Thanks, Mr. Chair.

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1 VICE CHAIRPERSON HART: Good afternoon.

2 MR. COCHRAN: Good afternoon.

3 We are reiterating most of the recommendations of  
4 our April 14 testimony. OP recommends that you all approve  
5 all of the variances, and all of the special exceptions,  
6 other than the one for the setback requirements for the  
7 penthouse. That's from C1502.C4.

8 We'd note, with respect to a recommendation that  
9 wasn't quite making its way to being a condition in one of  
10 our earlier reports, that previously, the applicant had said  
11 that, for windows facing east, that were directly across from  
12 windows at 450 K Street, that they would provide louvers.

13 It seems like some clarity would need to be  
14 provided, now that the filing of Monday night changed the  
15 location of some of those windows. And there may not be  
16 windows any longer, directly across from 450 K Street. So  
17 that should probably be clarified.

18 Now, let me focus on the penthouse. The Applicant  
19 has gone -- we've worked with the Applicant. The Applicant  
20 has gone a long way to improving the penthouse and coming  
21 closer to satisfying the criteria that are set out in the  
22 zoning regulations, for when you can improve a special  
23 exception for penthouse setbacks.

24 Originally, the penthouse started as something  
25 that went straight up from the then six-foot-deep north and

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1 south side setbacks. So it looked like an extension of the  
2 building wall, straight up two stories, full out mechanical  
3 and habitable space.

4 Okay. They addressed that criterion. It clearly  
5 does not look like an extension of the building anymore.  
6 Hence, the ziggurat, which we see throughout the city.

7 And OP of course agrees with Mr. Varga's  
8 statement, that for a planning perspective, we want downtown  
9 to be as lively as possible. We like occupied penthouses.  
10 They do contribute to the life of the city.

11 But when the Zoning Commission passed the  
12 regulations in ZR16, or thereabouts, that allowed for  
13 occupied penthouses, they didn't make it an entitlement.  
14 They gave permission, if you meet all of the other criteria,  
15 which this design does not do.

16 OP were the ones that suggested that, well, maybe  
17 the Applicant would want to look at what would happen if you  
18 had an all mechanical penthouse? Would you then still have  
19 to ask for setback requirements?

20 And the architect did several designs, that  
21 demonstrated to our satisfaction that, at least, if they're  
22 asking for a one story, just mechanical penthouse, they would  
23 still have to come in, and ask for some setback requirements.

24 They didn't explore what would happen if it were  
25 the ziggurat, two story, all mechanical penthouse. So I

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1 can't say whether they could meet the requirements, if they  
2 went up two floors, with just a mechanical.

3           And we had thought, okay. Maybe if they meet the  
4 mechanical, if there's some left-over space, and they could  
5 demonstrate that, since they have to get the setbacks for  
6 mechanical anyway, for one level, maybe if there's left over  
7 space it -- they might be able to demonstrate that some of  
8 that left-over space could be occupied space.

9           But that's not what they're doing here. I'm going  
10 to use a literary analogy. Some of you may remember from  
11 your childhood, Winnie the Pooh. There is a point at which  
12 Pooh --

13           VICE CHAIRPERSON HART: I never thought I'd bring  
14 that up in front of D.C. BZA.

15           MR. COCHRAN: I know. I didn't either. But it's  
16 a long day.

17           VICE CHAIRPERSON HART: Go for it. Please.

18           MR. COCHRAN: So Pooh ate too much at Rabbit's  
19 once. And he got stuck in Rabbit's exit, the rabbit hole.  
20 So Pooh was stuck there for a week.

21           And after a while, Rabbit got tired of seeing Pooh  
22 there, and said, look. If you're there anyway, can I use  
23 your hind legs as towel racks?

24           All we've got here, is a mechanical penthouse,  
25 that's now asking to use something for habitable space, a

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1 kind of analogous thing.

2 But it's a privilege. It's not an entitlement.  
3 And that's why we're just recommending that you not approve  
4 this setback. Thank you.

5 VICE CHAIRPERSON HART: So someone's going to have  
6 to bring up the Winnie the Pooh defense at some point, I  
7 think. So actually, I did have a question for you. So what  
8 I'm trying to kind of get.

9 I mean, I understand the point that you're  
10 bringing, which is, they don't meet. They want something  
11 extra, even though they don't meet the actual -- the zoning  
12 regs that are in place now. And I kind of get that.

13 But the question then -- then I kind of beg the  
14 question. Well then, I don't think that anybody would be  
15 able to, you know, get any sort of zoning. In this -- This  
16 should never be, you should never allow this, on any case.  
17 If they don't meet that first, you don't -- you see where I'm  
18 going with that?

19 I mean, it's the zoning regs. The variance is  
20 because they don't meet a particular aspect of it. And it  
21 seems as though, that they are looking for relief, because  
22 they're not meeting that.

23 But I understand where you're coming from. It --  
24 I just, I think that there's a piece that's somewhat circular  
25 in that. And I can't get my head around --

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1 MR. COCHRAN: The Chair of the Zoning Commission  
2 can correct me, if I have misinterpreted what their  
3 intentions were. But --

4 VICE CHAIRPERSON HART: So you're bringing the --  
5 okay. Chairman Hood, are you listening to all of this?

6 MR. COCHRAN: I am not comparing the Chair to any  
7 character in Winnie the Pooh.

8 ZC CHAIR HOOD: He's exactly correct. Let me just  
9 say this. He's exactly correct from my standpoint. And I'm  
10 glad to see the Office of Planning is upholding something  
11 that we had many hearings on.

12 Because I can't get over -- again, it's a heavy  
13 lift. And I don't think we've done it, at least since I've  
14 been here. I don't think I've been on the side of approving  
15 anything that goes outside of -- make sure it's the one-one  
16 setback. I don't think I've done that.

17 So I appreciate that, Mr. Cochran. And know that,  
18 we sit down here at night, and go through these rules and  
19 regulations. We do it for a reason and Office of Planning  
20 is upholding. So I thank you for that. And that's all I'm  
21 going to say on that case.

22 MR. COCHRAN: The idea on the occupied space is,  
23 if -- okay. If you either get in there by right. If you're  
24 in there by right, then you can have occupied space.

25 But the setback provisions deal with accommodating

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1 the kinds of equipment that a building has to have. Only  
2 after that is accommodated, do you have the privilege, in  
3 effect, of having occupied space.

4 So the test isn't the -- whether you need to ask  
5 for setback requirements, in order to have occupied space.  
6 The test is, do you need to ask for setback relief in order  
7 to have the mechanical space for a building?

8 At which point, you may then be entitled to the  
9 privilege of having habitable space. And, by the way, with  
10 respect to some of the numbers you've been asking about  
11 today, OP is empathetic with your concern about what the  
12 ratios are. What the numbers are. We've asked the Applicant  
13 to do it in a simple diagram. Several times.

14 VICE CHAIRPERSON HART: Yeah. I mean, it just,  
15 it was, I was just trying to kind of gauge it. Because I was  
16 looking at, they didn't seem to kind of scream out at me as,  
17 oh. This is what you're looking at.

18 But I mean, I get it now, that they've understood  
19 it. But it took a little bit of describing to -- for me to  
20 get there. Okay. I mean, I get what you're getting to.

21 I just am a little bit concerned about -- I mean,  
22 I don't know if it's a little bit. I'm just concerned about  
23 the ability to get any relief if -- I don't where we, you  
24 know, I don't know if there's a point that you're kind of  
25 just saying, no. You can't get it, regardless. And that's

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1 the part that I'm --

2 MR. COCHRAN: I'm assuming that you're saying,  
3 that you're thinking, that maybe we're going to say, you  
4 can't get it for habitable space? Or you -- that you can't  
5 get it for mechanical?

6 Because clearly, there are tests that you can  
7 demonstrate you meet for mechanical. And we're all -- you  
8 know, we have no problem with that, at all.

9 VICE CHAIRPERSON HART: And you're telling them  
10 that they need to -- that they are responding to the wrong  
11 thing? That they should be responding to how to meet the  
12 mechanical, to kind of prove that they can't make the -- do  
13 the mechanical space setback?

14 And then, they might be able to be allowed to get  
15 the occupied space within it? And I'm -- maybe I'm confusing  
16 it. And maybe that's the --

17 MR. COCHRAN: That's the part where you'll wind  
18 up using the hind legs as a towel rack.

19 VICE CHAIRPERSON HART: Okay. Okay.

20 MR. COCHRAN: They have to demonstrate that they  
21 meet -- that they meet the test for the mechanical.

22 VICE CHAIRPERSON HART: Okay. Okay. Thank you.

23 MEMBER JOHN: So --

24 MR. COCHRAN: You don't ask for relief for  
25 habitable.

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1           MEMBER JOHN: So that's the question that I have.  
2 So you're saying, you can't get relief for habitable space,  
3 if you don't meet that one-to-one setback?

4           MR. COCHRAN: It's my understanding, that the  
5 Zoning Commission intended for habitable space to be  
6 permitted only if you're either by right or have satisfied  
7 the relief tests for the other space.

8           You don't come in and ask for relief, setback  
9 relief, in order to accommodate habitable space. The  
10 provision is in the zoning regulations to accommodate space  
11 that is not habitable.

12           MEMBER JOHN: So if they, in a hypothetical  
13 situation, could move the mechanical equipment, maybe, to one  
14 side? It might not be practical, on one level. Could the  
15 other part of that space be used as habitable space? Let's  
16 say -- think about it. Is there some place that --

17           MR. COCHRAN: Is there a special exception that's  
18 needed, in the situation your positing?

19           MEMBER JOHN: Yes. Let's say -- I think we have  
20 seen something like this but --

21           VICE CHAIRPERSON HART: I think you need to move  
22 your microphone closer.

23           MEMBER JOHN: Oh. I'm -- think I've seen  
24 something like this. But I can't remember the case. So  
25 let's say, that they were able to move the equipment to one

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1 location within the same space, and still have room left over  
2 for a wet bar, or something like that. Would that be  
3 possible, under the new regs?

4 MR. COCHRAN: It's a hypothetical?

5 MEMBER JOHN: Yes. It is. I'm just trying to  
6 understand how the two things work together.

7 MR. COCHRAN: I can't give you a definitive  
8 answer. I believe that you might be able to allow occupied  
9 space, if there is that demonstration for the mechanicals on  
10 the setback relief.

11 MEMBER JOHN: Okay. Thank you.

12 MR. COCHRAN: But not if they -- not if the  
13 habitable also requires setback relief.

14 MEMBER JOHN: Right. Okay. I've got it.

15 VICE CHAIRPERSON HART: Commissioner Hood?

16 ZC CHAIR HOOD: Mr. Chairman, I -- in the  
17 PowerPoint, they were showing the -- and when he was  
18 explaining to me how you moved it around. Can you pull that  
19 slide back up? Had the green, the blue line? Yes. The  
20 other one. Near that one. What exhibit is that?

21 MS. MOLDENHAUER: This is part of our PowerPoint  
22 pre-hearing -- supplemental filing. And I'll pull up the  
23 exhibit number in a moment.

24 ZC CHAIR HOOD: Is that 68? Actually, been up  
25 here, trying to find that exact page.

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1 MS. MOLDENHAUER: Yes. It's 68.

2 ZC CHAIR HOOD: And I've been looking around for

3 --

4 MS. MOLDENHAUER: 68.

5 ZC CHAIR HOOD: Is it 68.A? Is it A? I have to  
6 mention, I'm having computer problems. But I want to make  
7 sure I can --

8 MS. MOLDENHAUER: You've got it. Mine is --Yes.  
9 76.

10 ZC CHAIR HOOD: 76.

11 MS. MOLDENHAUER: 76.

12 ZC CHAIR HOOD: Okay.

13 MS. MOLDENHAUER: 76. Page 19, in that document.

14 ZC CHAIR HOOD: Okay. That's all I need. Thank  
15 you.

16 MS. MOLDENHAUER: You're welcome.

17 VICE CHAIRPERSON HART: Do you have a question,  
18 Commissioner Hood?

19 ZC CHAIR HOOD: No.

20 VICE CHAIRPERSON HART: Okay.

21 ZC CHAIR HOOD: That was my question. I was  
22 trying to find that.

23 VICE CHAIRPERSON HART: You wouldn't -- where this  
24 was. That's what I was -- I didn't think it was more than  
25 that. Ms. Moldenhauer, do you have any response for the --

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1 or any questions for the Office of Planning?

2 MS. MOLDENHAUER: Response? No.

3 VICE CHAIRPERSON HART: A question for the Office  
4 of Planning?

5 MS. MOLDENHAUER: So I have a couple of questions  
6 for the Office of Planning. I understand that your pulling  
7 your interpretation based on the zoning's intent. But is  
8 there anything in the regulations, that state a difference  
9 between mechanical and habitable? Does it say you're not  
10 allowed to obtain special exception only for habitable?

11 I'm looking at C1504.1. And I just -- I don't see  
12 the word habitable anywhere in the conditions. Is there a  
13 specific section that excludes this Board's authority?

14 VICE CHAIRPERSON HART: There were. We'll just  
15 wait for that. I think he heard the question.

16 MR. COCHRAN: You're correct that the word  
17 habitable does not appear in Section 1504.1. It does refer,  
18 however, to every effort being made for the housing for the  
19 mechanical equipment to be in compliance, the operating  
20 difficulties, which implies to me mechanical and building  
21 code requirements. That's D.

22 MS. MOLDENHAUER: So, and let's just --

23 MR. COCHRAN: The application ---

24 (Simultaneous speaking.)

25 MS. MOLDENHAUER: Okay. There's actually --

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1 MR. COCHRAN: -- would be requirements of  
2 resulting construction, some duly restricted, where the costs  
3 are unreasonable. Well, that usually refers to the building,  
4 as opposed to something optional, like habitable space. So  
5 no. It's, habitable isn't in there. But the implication is  
6 certainly in there, from my perspective.

7 MS. MOLDENHAUER: So, A, in regards to strict  
8 application of the requirements of this chapter would result  
9 in construction, I'm just going to jump, that is  
10 unreasonable. Unreasonable's a fairly broad standard,  
11 reasonable or --

12 MR. COCHRAN: If that were the only criteria, yes,  
13 it would be.

14 MS. MOLDENHAUER: Okay.

15 MR. COCHRAN: But it isn't.

16 MS. MOLDENHAUER: It's not. So then --

17 MR. COCHRAN: It's also unduly restrictive,  
18 prohibitively costly, and inconsistent with the --

19 MS. MOLDENHAUER: Or --

20 MR. COCHRAN: -- building codes.

21 MS. MOLDENHAUER: Or in each --

22 MR. COCHRAN: Or inconsistent.

23 (Simultaneous speaking.)

24 MS. MOLDENHAUER: --- should be one or the other.

25 VICE CHAIRPERSON HART: Okay, hold on.

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1 MS. MOLDENHAUER: Right?

2 VICE CHAIRPERSON HART: We're reading from?

3 MR. COCHRAN: 1504.1.

4 MS. MOLDENHAUER: 1504.1.

5 MR. COCHRAN: Subtitle C.

6 MS. MOLDENHAUER: They're all ors. Is that  
7 correct?

8 MR. COCHRAN: Well --

9 MS. MOLDENHAUER: So, in A --

10 MR. COCHRAN: Or is before unreasonable. So, yes.

11 MS. MOLDENHAUER: It's a comma, yes, comma or, or.

12 MR. COCHRAN: You're correct.

13 MS. MOLDENHAUER: Okay.

14 MR. COCHRAN: Or trumps the other three that  
15 precede it.

16 MS. MOLDENHAUER: So then, the --

17 MR. COCHRAN: The other two that precede it.

18 MS. MOLDENHAUER: So, to satisfy A the Board would  
19 just have to find that strict application would be  
20 unreasonable.

21 MR. COCHRAN: To -- yes, I agree.

22 MS. MOLDENHAUER: Okay. So, that's A. B, from  
23 your report on July 12th, you find that the roof structure,  
24 without the appearance to be an extension of the building  
25 will not be satisfied --

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1 MR. COCHRAN: You've skipped to C?

2 MS. MOLDENHAUER: B. No, I was at B. B. We  
3 satisfy the extension of the building wall will not appear  
4 as an extension of the building wall. And you're reporting  
5 --

6 MR. COCHRAN: Well, no. You're cert -- Okay. It  
7 wouldn't appear as an extension of the building wall.

8 MS. MOLDENHAUER: Okay.

9 MR. COCHRAN: But would it result in a better  
10 design of the roof structure? Well, it results in a roof  
11 structure that's now two stories, not one story.

12 MS. MOLDENHAUER: Okay, but you say the applicant  
13 meets this criteria.

14 MR. COCHRAN: It meets the criteria in that it  
15 doesn't appear as an extension of the building wall.

16 MS. MOLDENHAUER: Okay. And then, for C, the less  
17 intrusive criteria, you reference that HPRB has approved the  
18 concept.

19 MR. COCHRAN: HPRB's criteria are different than  
20 the Board of Zoning Adjustments' criteria.

21 MS. MOLDENHAUER: But you reference it in your  
22 report. Is that correct?

23 MR. COCHRAN: That's correct.

24 MS. MOLDENHAUER: Okay. And then, D, this is  
25 another one of these where we have a whole bunch of ors, or

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1 commas and then ors. So, if you can just help me walk  
2 through this.

3 You reference the operational difficulty. And  
4 then requirements of roof access, and stairwell separation,  
5 or elevator stacks' locations, achieving a reasonable  
6 efficiency. And then there's semicolon.

7 So, you could, that could be one element. Or you  
8 could have the size of a building, or other conditions. So,  
9 any of those three. It doesn't just have to be operational  
10 difficulties. Is that your reading, which would then create  
11 compliance with unduly then be restricted, prohibitively  
12 costly, or again, unreasonable.

13 MR. COCHRAN: Just to be careful, would you mind  
14 repeating what you're asking me?

15 MS. MOLDENHAUER: So, my question is, there are  
16 three different things that could create unreasonableness  
17 here. Is that your interpretation? One, it could be  
18 operational difficulties. Two, size of the building lot.  
19 Or three, other conditions relating to the building. And  
20 that's kind of a two tiered one, building or surrounding  
21 areas. So, it's not just operational difficulty.

22 MR. COCHRAN: Okay. Roof access stairwell,  
23 separation of elevator stack.

24 MS. MOLDENHAUER: That's --

25 MR. COCHRAN: You've demonstrated that for the

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1 lower floors. No question. Size of the building lot. It's  
2 a narrow lot. Other conditions relating to the building or  
3 surrounding area make full compliance unduly restrictive.  
4 You've demonstrated that for the mechanicals, yes.

5 MS. MOLDENHAUER: That isn't the question. Is the  
6 term, size of the building; is a semicolon. So, that can be  
7 read separately as something that this Board could find, that  
8 the size or the narrowness of this lot creates an  
9 unreasonableness for compliance.

10 MR. COCHRAN: Yes.

11 MS. MOLDENHAUER: That they don't have to find  
12 that it's operational difficulty to satisfy D?

13 MR. COCHRAN: Correct.

14 MS. MOLDENHAUER: Okay. No further questions.

15 MEMBER JOHN: Well, I have a question. And it's  
16 late. So, the way I read that, everything after such as is  
17 an explanation or an example of what operating difficulties  
18 are. And we always view such as, as doing just that, giving  
19 examples. And it's just not limited to those things that are  
20 listed after such as. So, I don't know how we've, you know,  
21 interpreted those in the past. But I see them as examples  
22 of operating difficulties.

23 VICE CHAIRPERSON HART: Who was a question for  
24 her?

25 MEMBER JOHN: I do --

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1 VICE CHAIRPERSON HART: Just a general question?

2 MEMBER JOHN: In terms of the interpretation, I  
3 don't know how that --

4 VICE CHAIRPERSON HART: Well --

5 MEMBER JOHN: -- affects how OP looks at operating  
6 difficulties. But I would think that anything that comes  
7 after that is an example. And so, you know, I don't see them  
8 as each one is exclusive. I see them as a listing of  
9 different things that could create operational difficulties.

10 MR. COCHRAN: But those would be for anything  
11 before the first semicolon. So, after the first semicolon  
12 then, I mean, the way that I was reading it was, operational  
13 difficulties, size of the building lot, other conditions  
14 relating to the building or surrounding area make full  
15 compliance unduly restrictive, prohibitively costly, or  
16 unreasonable.

17 It just seems like they're saying operating  
18 difficulties, size of building lot, or other conditions  
19 relating to the building, you know. I understand what you're  
20 saying. I just want to make sure that we're on the same page  
21 with that.

22 VICE CHAIRPERSON HART: Okay. Are there any other  
23 questions for the Office of Planning?

24 MEMBER WHITE: No other questions.

25 VICE CHAIRPERSON HART: Do the parties in

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1 opposition have any questions for the Office of Planning?

2 MS. HENRY: No questions. Thank you.

3 MR. FEOLA: I have one for my friend, Mr. Cochran.

4 MR. COCHRAN: Sure.

5 MR. FEOLA: How long did it take you to think up  
6 the Winnie the Pooh analogy?

7 MR. COCHRAN: I've been waiting for the  
8 appropriate moment for years.

9 MR. FEOLA: That's what I thought.

10 VICE CHAIRPERSON HART: And fortunately for all  
11 of us we get to have this on tape forever. Thank you, Mr.  
12 Cochran.

13 MR. COCHRAN: Oh. Thank you.

14 VICE CHAIRPERSON HART: And thank you, Mr. Feola  
15 for that question. Okay. Where are we? Wow. Yes. I guess  
16 it is, isn't it? You will have a chance to give a  
17 presentation as well. So, they had -- Well, let's just  
18 start. How long would you need for a presentation?

19 MS. HENRY: I would say, on behalf of Ms.  
20 Stevenson, about five minutes. But I --

21 VICE CHAIRPERSON HART: Five whole minutes? So --

22 MS. HENRY: But I would ask if the Board, I would  
23 defer, with the Board's permission --

24 VICE CHAIRPERSON HART: Sure.

25 MS. HENRY: -- to Ogden's group, and then, we

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1 would go last, if that's --

2 VICE CHAIRPERSON HART: That's fine. I'm just  
3 moving down the --

4 MS. HENRY: Yes.

5 VICE CHAIRPERSON HART: -- table.

6 MS. HENRY: Thank you.

7 MR. FEOLA: Phil Feola. I think about 12, ten to  
8 12 minutes most.

9 VICE CHAIRPERSON HART: And that's fine. I just,  
10 I mean, you all have as much time as they had combined. So,  
11 you know, that's a total of, well, 30 plus minutes. But  
12 you're talking about, about 20 minutes, less than 20 minutes  
13 now. So, you can start at any point. And Mr. --

14 MR. FEOLA: We need --

15 VICE CHAIRPERSON HART: -- Moy's not here. So.

16 MR. FEOLA: Yes. Well, you need --

17 VICE CHAIRPERSON HART: Significantly.

18 MR. FEOLA: The computer doesn't move. Can we use  
19 a thumb drive on the computer?

20 VICE CHAIRPERSON HART: Yes, you can.

21 MR. FEOLA: Okay.

22 VICE CHAIRPERSON HART: Ms. Moldenhauer, can they  
23 have a, I don't think, I'm not sure if it will stretch over  
24 there.

25 MR. FEOLA: It won't stretch. Yes, yes.

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1 VICE CHAIRPERSON HART: Yes. If we could just  
2 change seats to allow them --

3 MR. FEOLA: Yes. Maybe we'll just move.

4 VICE CHAIRPERSON HART: -- a chance to get over  
5 there.

6 MR. FEOLA: Why don't we just --

7 VICE CHAIRPERSON HART: Appreciate it.

8 MR. FEOLA: -- do that.

9 VICE CHAIRPERSON HART: Oh. They need 12 minutes.  
10 Yes, please. No. The one second's fine. Thanks. I can  
11 do it then. That's fine. Okay. I think we can give them  
12 that one extra second.

13 MR. FEOLA: Thank you, Mr. Vice Chair. We really  
14 have two witnesses. And we'll bring Mr. Joe Mehra first,  
15 while we play with the computer here, to give a summary of  
16 his reports.

17 VICE CHAIRPERSON HART: Thank you.

18 MR. FEOLA: Mr. Mehra.

19 VICE CHAIRPERSON HART: Whenever you're ready.

20 MR. FEOLA: Okay. Go ahead, Joe. Go ahead.

21 MR. MEHRA: Yes. My name is Joe Mehra, with MCV  
22 Associates. The address is 4605 Pinecrest Office Park Drive,  
23 Alexandria, Virginia. I have reviewed the Gorove/Slade  
24 traffic studies, the one that was submitted back in March,  
25 and the updated one in May, and also looked at the DDOT

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1 report also.

2 I still believe that the comprehensive  
3 transportation study that was done is incomplete. And I'm  
4 going to use Gorove/Slade traffic report to justify that  
5 fact.

6 Their main report states, and I'm going to quote  
7 that, "it does not exceed the number of trips that would  
8 typically require additional regular study (25 trips in peak  
9 direction), per CTR guidelines. Because no additional  
10 regular study was required by DDOT, and none conducted for  
11 this report."

12 So, basically they're saying that if the site does  
13 not generate more than 25 trips during the peak hour a DDOT  
14 study is not required. So, does this site generate more than  
15 25 peak car trips?

16 Gorove/Slade spent a lot of resources trying to  
17 estimate the number of trips that occurred during the peak  
18 hour. They used a study from WMATA's door open ridership  
19 study for the hotel use. And they said, based on that study  
20 this site does not generate more than 25 trips.

21 I'm going to quote another statement from their  
22 study. It says, "the hotel plan for this site was deemed to  
23 fall under a similar category as hotel sites formed in  
24 WMATA's door open related ridership survey."

25 The WMATA survey had four different hotels. One

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1 of them was a Marriott with 600 rooms approximately, 140  
2 suites, 40,000 square feet of conference center. Does that  
3 look like a similar hotel? Obviously not.

4           What I did was, I looked at two hotels which are  
5 in the WMATA survey, which are very similar to the ones that  
6 is being proposed. These two hotels were located  
7 approximately one-third mile from a metro station, which is  
8 approximately the same distance where this hotel is located.

9           And when you do the computations it shows that  
10 more than 25 trips are being generated by, during the peak  
11 hour. So, based on the CTR guidelines a detailed study  
12 should be done, is required, and must be done. This is based  
13 on their own study, not my own study.

14           The second reason to show that this hotel is  
15 generating more than 25 trips is that DDOT did their own trip  
16 relation study for hotels. They surveyed three different  
17 hotels in the District.

18           And then, I used their data, DDOT's data to  
19 estimate the trips. It comes to more than 25 trips. So that  
20 again supports the fact that this hotel will generate more  
21 than 25 trips. Therefore, a more detailed study should have  
22 been done.

23           VICE CHAIRPERSON HART: So, I do have a question  
24 about that. The applicant is stating that DDOT is linking,  
25 DDOT's not asking for any further study. I understand that

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1 you're using your expertise to be able to state that they  
2 should be required to do more study.

3 DDOT seems to be saying that because the relief  
4 that's requested does not relate to the traffic impacts, that  
5 there shouldn't, that there doesn't need to be further  
6 traffic impact study going on, necessary.

7 And you're saying that they should, that there  
8 should be additional traffic study. But that is counter to  
9 what DDOT, because DDOT's looked at this --

10 MR. MEHRA: Right.

11 VICE CHAIRPERSON HART: We have two reports from  
12 DDOT about this. So that they are, it's not that they are  
13 kind of like, oh, we just didn't think about it and, you  
14 know, we're not agreeing.

15 We're just, you know, they're actually very  
16 focused on looking at this. And they have not said that they  
17 needed to do that. So, I just don't know how to reconcile  
18 with what DDOT is saying that they, that is kind of necessary  
19 for this, and what you're stating here.

20 MR. MEHRA: Okay. It's --

21 MR. FEOLA: Mr. Hart, if I may interrupt. The,  
22 yes, we don't dispute the applicant's position that DDOT's  
23 taken that position. I guess our position is that the  
24 comprehensive transportation review requirements of DDOT,  
25 which I'm going to put in the record right now, make no

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1 distinction between what kind of relief, or whether relief  
2 is needed for parking or loading, and when that traffic study  
3 is made.

4 VICE CHAIRPERSON HART: So, you're saying that  
5 DDOT's just wrong?

6 MR. FEOLA: DDOT didn't follow its own guidelines.

7 VICE CHAIRPERSON HART: That's what --

8 MR. FEOLA: That's what I'm saying.

9 VICE CHAIRPERSON HART: Okay.

10 MR. MEHRA: And the other thing is, and to respond  
11 to your question, I'm stating the statement from  
12 Gorove/Slade's traffic study submitted in May, that study  
13 says, the only reason they did not do a detailed study was  
14 because they were generating less than 25 trips. Nowhere  
15 does it say that we are not generating any trips. Therefore,  
16 we are not doing a detailed study.

17 VICE CHAIRPERSON HART: NO. Sure, sure.

18 MR. MEHRA: And that's --

19 VICE CHAIRPERSON HART: I understood that. I was  
20 just making sure that I understood --

21 MR. MEHRA: Right.

22 VICE CHAIRPERSON HART: -- the point that you were  
23 bringing up too.

24 MR. FEOLA: And in the interest of time, just so  
25 we can move along, Mr. Mehra's summarizing reports that he

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1 has in the record in Exhibit 78 of the record. So just  
2 would, so we can move along. We won't delay.

3 VICE CHAIRPERSON HART: That's fine. I appreciate  
4 it.

5 MR. MEHRA: Because the second issue is the  
6 loading docks. As per the guidelines, I guess requirements  
7 you need two loading berths. The applicant is providing one  
8 loading berth. And even that loading berth does not meet the  
9 standards. Instead of the standard 12 feet, it's 11 and a  
10 half feet.

11 The Gorove/Slade provided auto turns for truck  
12 access into and out of the site back in March. And then they  
13 provided a new set in May. Now, it so happens that the March  
14 study shows that the truck can go in and out without doing  
15 any maneuvering to access the loading dock.

16 The auto turn that was used now in May study shows  
17 that the truck, when it comes to the location where the east,  
18 west, and the north side rarely meet, cannot make the turn  
19 without going back and forth. So, the two supposedly auto  
20 turns done using the same software are ending up with two  
21 different results.

22 Another thing which is a little, I guess  
23 contradictory, is that in the May hearing illustrated that  
24 the hotel will be generating six truck trips per day. The  
25 new study in May is showing now that the hotel will generate

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1 only two trips, two truck trips per day. And again, that's  
2 kind of difficult to understand which number is correct.

3           And finally, I think, what's happening is that the  
4 trucks that will go into the loading docks are going to go  
5 through congested conditions in the alley. Then, when they  
6 reach the loading dock, because of the restrictive space the  
7 truck will have to back into that space, and may need even  
8 guidance to sort of be guided into the loading dock.

9           UPS, FedEx delivery trucks are going to find it  
10 easier to just pull up on 5th Street, and park on the area  
11 there, or double park, depending on the parking conditions.  
12 And run in and out to, you know, drop off their deliveries  
13 or pick up their stuff.

14           And I think primarily, basically in conclusion,  
15 that the CTR needs to be complete. And the loading dock is  
16 really not accessible to trucks making deliveries there.  
17 Thank you.

18           VICE CHAIRPERSON HART: Thank you.

19           MR. SCHWAB: Hi. Good afternoon. Lester Schwab,  
20 from 450 K Cap, LLC. Thank you, Vice Chairman, and Members  
21 of the Board, for this opportunity to speak.

22           So, we stated before that we do support the  
23 improvement of the neighborhood. And we're eager to see  
24 development on this vacant site. But as we see, the sheer  
25 number and scope of the variations requested by the applicant

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1 here demonstrate that the site, that the project is simply  
2 too large for this little site.

3           Specifically, and regarding the rear yard light  
4 and air, we oppose the project because it does not provide  
5 appropriate rear yard, and creates an adverse impact on our  
6 property at 450 K.

7           As this photo shows, this is the building on our,  
8 on the right is our building, 450 K, and the left is the  
9 proposed building fronting on 5th Street. And that the  
10 person standing between them with his arms outstretched  
11 represents the ten foot gap, the eight and a half foot gap  
12 between the property lines, and the foot and a half gap that  
13 the project is now set back from the property lines since its  
14 original proposition.

15           The zoning requirement that would be as of right  
16 for this would look like this. It would be, it would show  
17 a rear yard that would be set back 20 feet, eight inches,  
18 plus the other eight and a half feet.

19           And if the hotel met this requirement, you know,  
20 there would be a nice light well between the hotel's rear  
21 wall, excuse me, and the windows of our residential tenants.  
22 This would be sufficient light and air in an urban  
23 environment.

24           But the applicant is proposing that he would only  
25 do a foot and a half. And we would go back to, you know,

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1 what we saw. This one. And again, I mean, just to, I mean,  
2 if you don't mind a little show and tell I guess, you know,  
3 this ten feet you want is, ten feet is -- Would you mind  
4 holding this just for a second?

5 VICE CHAIRPERSON HART: You need a mic. We don't  
6 need to show, I need, I know what ten feet is. Yes. Well,  
7 that's right. And I understand that --

8 MR. SCHWAB: Yes.

9 VICE CHAIRPERSON HART: You know. But I do  
10 appreciate it.

11 MR. SCHWAB: So, you know, and just another, let  
12 me go down a little further here to show you some more. So,  
13 this is, and indeed, this is a woman, this is a window. This  
14 is originally, before they place it.

15 So now, if you want to look to the left and see  
16 that this is what a wall would like ten feet from a window  
17 in 450 K. And this is what it would like with 30 feet. You  
18 know, we do appreciate that the privacy may not be a little  
19 bit better. But still, a brick wall ten feet away is a brick  
20 wall ten feet away.

21 We don't believe there's a justification to grant  
22 the applicant a 73 percent variance from rear yard  
23 requirements for this property. If approved it will create  
24 severe adverse conditions for our residents, by greatly  
25 diminishing the light, air, and quality of the residents who

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1 face the rear of the building.

2           We've had, you know, the applicant discuss the  
3 alley. And it's how they would like to see it working. And  
4 Joe explained a bit of it. Traffic and loading in the rear  
5 will create problems for our building's daily operations.

6           And in fact, these problems will also enter to the  
7 applicant's building as well. The collateral damage,  
8 including both operational and functional, will be  
9 significant to all the buildings that use the alleys in that  
10 square, as well as 5th Street.

11           The alley, and especially the project's proposed  
12 11 and a half foot loading entrance at the end of a multi-  
13 point turn, makes it factually untenable to believe that  
14 deliveries will go smoothly, timely, and safely.

15           The proposed narrow loading entrance at the end  
16 of the alley would require such extremely difficult  
17 maneuvering by trucks that they may not choose to use the  
18 loading dock, and park in the alley. Thereby blocking  
19 others, and potentially creating even worse noise  
20 disturbances for all the neighbors facing the alleys.

21           We believe the applicant has understated vehicular  
22 traffic that would cause ongoing daily operations in the  
23 alley. I'd just like to show you a few pictures of how I get  
24 back to that.

25           450 K actually, if you don't mind, we got the

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1 pictures there. Can I show you something real quick. I'll  
2 get the --

3 VICE CHAIRPERSON HART: You're going to have to,  
4 there's a camera over here. Mr. Moy, can you tell him where  
5 the camera is? They have to see it on the camera over here  
6 to the left, or to your right.

7 There's an easel that you need to put the, or you  
8 could have somebody stand there. Either one. And you need  
9 to have a mic, so that they can actually hear you. There's  
10 a --

11 MR. SCHWAB: My IT friend could just show me again  
12 how to -- That's okay. Thank you. I appreciate the time.

13 VICE CHAIRPERSON HART: Yes. The reason I say you  
14 have to be on the mic is because we have a court reporter.

15 MR. SCHWAB: No. Understood. And again, I wish  
16 I knew how to work the computer better.

17 VICE CHAIRPERSON HART: It's okay.

18 MR. SCHWAB: So, this is what the alley looks  
19 like. This is the back of our building. This is the  
20 building across the road. This is generally just a basic  
21 view of what we're looking at. Getting down, the project is  
22 down this way. Let me see the other one then for a second.  
23 No. Actually the, take out --- I don't need that one.

24 This is really what the property, this is, really  
25 gives you, and I'm sorry it doesn't show this side. This is

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1 how the truck is going to have to fit in. Basically, this  
2 is the edge of the property of 925 into their loading dock.  
3 And the other side is just, if you would, right on the edge  
4 of that. This is how narrow that is, and how you have to get  
5 into it.

6 To get past it, and this is, I guess important to  
7 see. This is the corner of 450 K. This truck is not yet  
8 being able to cut, to get into the little loading dock area  
9 that is frankly off, if you will, at like 3 o'clock, to this  
10 picture right in here. So, I just tell you, this is just not  
11 practical, really not tenable.

12 MR. FEOLA: Those images are reduced, and  
13 encompassed in Exhibit 78 of the record.

14 VICE CHAIRPERSON HART: Thank you, Mr. Feola.

15 MR. SCHWAB: So, 450 K in a supplemental  
16 submission, the applicant proffers that the hotel will only  
17 have two deliveries today. And we own a hotel in the  
18 District. And the management of that facility reports that  
19 the applicant's proposed deliveries seem to be grossly  
20 understated.

21 The Jefferson Hotel, which is not the same, still  
22 thought, it's a smaller hotel at 100 apartments, 100 units,  
23 has an average of 15 a day, four to seven times per week,  
24 okay.

25 In fact, along with our concern about the alley's

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1 operation directly impacting our building, the neighborhood  
2 has been very concerned about 5th Street. And if the loading  
3 proposed for the project does not prove viable, applicant's  
4 trucks, as Joe had mentioned, will be parking and using 5th  
5 Street.

6 And this mistaken relief will prove the  
7 community's concerns correct. And the long term adverse  
8 effect on the community will be material and permanent.

9 Our conclusion really is that we are a multi-  
10 generational buy and hold real estate company. Our  
11 investment in 450 K indicates that we are seriously vested  
12 in the neighborhood and the community.

13 We are committed to, and strong boosters of Mt.  
14 Vernon Triangle, its community improvement district, where  
15 we serve on the Board, and ANC 6E. We sponsor the NVP  
16 Farmer's Market and open space initiative, as well as the  
17 ANC's request, supported ANC financially on issues they  
18 oppose that would impact the community.

19 We are proud to be the new home of Bus Boys and  
20 Poets, who are relocating from City Vista to our building,  
21 sustaining the vibrancy of the neighborhood. You may have  
22 seen Andy Shaw here earlier. And he wanted to testify. And  
23 he asked me just to mention that he supports all these  
24 concerned, especially about the alley and loading. Because  
25 running a big operation like that --

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1           And by the way, he wasn't involved before, you  
2 know, he only signed up since this --

3           VICE CHAIRPERSON HART: I understand.

4           MR. SCHWAB: -- all came on.

5           VICE CHAIRPERSON HART: I understand.

6           MR. SCHWAB: And that Bus Boys' daily restaurant  
7 operations will have numerous truck deliveries, which too,  
8 you know, are just all going to be part of this really, you  
9 know, occluded back there.

10          VICE CHAIRPERSON HART: You're not testifying for  
11 him?

12          MR. SCHWAB: No, I'm sorry.

13          VICE CHAIRPERSON HART: You're just saying --

14          MR. SCHWAB: Yes.

15          VICE CHAIRPERSON HART: -- that -- The reason --

16          MR. SCHWAB: No, I'm --

17          VICE CHAIRPERSON HART: -- we don't --

18          MR. SCHWAB: Yes. But he said he would put in  
19 whatever. He understands he couldn't be a party. However,  
20 and just to -- that's it. And then finally, we want to see  
21 the neighborhood further developed and enhanced. But with  
22 projects that are beneficial to the neighborhood, not at the  
23 expense of it.

24                 This, just in conclusion the sheer number and the  
25 scope of the variances requested really do demonstrate to us

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1 that the project is simply too large, and out of proportion  
2 for this site. Thank you.

3 VICE CHAIRPERSON HART: Thank you. Mr. Feola.

4 MR. FEOLA: I guess just to sum up from a legal  
5 perspective. We don't, and as the Board is fully aware, the  
6 applicant has the burden of proof in all of these cases  
7 before the BZA.

8 We don't believe that the applicant, with regard  
9 to the special exception, has proved the second leg, which  
10 is that there would be no adverse impact on neighboring  
11 properties, or the neighborhood if this relief is granted.

12 With regard to the variances, I fail to see how  
13 there are exceptional conditions or situations inherent in  
14 this property that are unique to this property. It is a  
15 rectangular property. It's larger than most lots in this  
16 square. Certainly not the smallest lot.

17 It is encumbered by a wall partially on the front  
18 facade, but not the entire front facade. It's level. It  
19 doesn't present the kind of practical difficulty, it doesn't  
20 present the kind of unique situation that could lead to a  
21 practical difficulty, that would allow this Board to grant  
22 a variance.

23 And they've asked for a couple or three variances.  
24 And I won't go through the details on each one. With that,  
25 I think that ends our presentation. And I'll turn it back

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1 over to the Board.

2 VICE CHAIRPERSON HART: Thank you. Are there any  
3 questions for -- We'll get to your presentation. I just  
4 wanted to see if there were any questions for this. Any  
5 questions for Mr. Feola, or any other team that was --

6 MEMBER WHITE: Yes.

7 VICE CHAIRPERSON HART: --- involved?

8 MEMBER WHITE: Just a simple question. Just in  
9 terms of the adverse impacts. I'm just trying to get the  
10 criteria in my mind. I'm looking at the two buildings. And  
11 I'm noticing that 450 K is significantly larger, and the  
12 hotel is significantly smaller. So, I'm just trying to get  
13 your feedback on why that would be an adverse impact on a  
14 building that's significantly larger than the one that's  
15 being proposed.

16 MR. SCHWAB: Well, it's on a much, much larger --  
17 Oh, sorry. It's on a much, much larger piece of land. I  
18 mean, to be clear, I mean, to be sure. I think, my  
19 recollection is almost 25,000 square foot parcel that 450 K  
20 was built on. Yes. And the problem really is, the  
21 operational problem in the alley, which, you know, is for  
22 real. And this ten foot light well, or shaft.

23 VICE CHAIRPERSON HART: I had a, is that, I'm  
24 sorry, is that sufficient?

25 MEMBER WHITE: Yes. I'm just listening to you.

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1 I'm just trying to create these arguments in my mind to look  
2 at the criteria. So, if that's what you want me to --

3 MR. SCHWAB: I think so. Yes.

4 MEMBER WHITE: -- understand, that would be fine.

5 VICE CHAIRPERSON HART: I had a question for this  
6 as well. The images that you showed, which basically were  
7 the elevations of the two --

8 MR. SCHWAB: Yes.

9 VICE CHAIRPERSON HART: -- buildings, where do  
10 those come from?

11 MR. SCHWAB: That was done by an architect friend  
12 of ours. Yes.

13 VICE CHAIRPERSON HART: They did that?

14 MR. SCHWAB: Yes.

15 VICE CHAIRPERSON HART: Okay. They look, the  
16 scale is off on them. And I can't quite understand how.

17 MR. SCHWAB: Which ones?

18 VICE CHAIRPERSON HART: The elevation, the first  
19 page of the elevation. There's something wrong. And I can't  
20 quite figure out what it is. But --

21 MR. SCHWAB: On this one?

22 VICE CHAIRPERSON HART: Yes. If you look at this,  
23 on the left, this is the building, it's 120 feet. On the  
24 right the building is 130 feet. That's a ten foot  
25 difference. And that's not ten feet between the two.

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1           So, I don't know what's kind of wrong with it. But  
2 something is a little bit, you know, if they kind of, you  
3 know -- It's hard to gauge this, because it's, the building  
4 on the left looks really a lot smaller. But it's, I don't  
5 think it's that much smaller.

6           MR. SCHWAB: So, this is really important. If you  
7 allow me I will get you a confirmation of this any which way  
8 you want. Because this is very important for all of us.

9           VICE CHAIRPERSON HART: That's fine. I just think  
10 that it's helpful to have the --

11          MR. SCHWAB: I would hardly want to misguide this.  
12 And the, we've been rushing, you know, and this --

13          VICE CHAIRPERSON HART: I --

14          (Simultaneous speaking.)

15          MR. SCHWAB: -- the idea of doing this color one.  
16 I had a, in our earlier filings we had a schematic, which,  
17 you know, again I rushed. But in the meantime I, then I  
18 wanted to improve this. The last thing I wanted to do was  
19 make it worth.

20          VICE CHAIRPERSON HART: I mean, it's helpful. I  
21 just --

22          MR. SCHWAB: Yes.

23          VICE CHAIRPERSON HART: If we're going through  
24 this it's helpful to have something that is a kind of one to  
25 one relationship. And these are not one to one. And I don't

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1 know how they are not one to one. But it just, something has  
2 to --

3 MR. SCHWAB: Let me correct it.

4 VICE CHAIRPERSON HART: -- be corrected on the --

5 MR. SCHWAB: Let me find out, sir.

6 VICE CHAIRPERSON HART: Okay.

7 ZC CHAIR HOOD: Chairman.

8 VICE CHAIRPERSON HART: Yes, sir.

9 ZC CHAIR HOOD: May I ask you a point? I'm  
10 looking at your photographs, because the ones here were cut  
11 off.

12 MR. SCHWAB: Yes.

13 ZC CHAIR HOOD: I'm looking at the ones you  
14 mentioned at Exhibit 78. If you could make sure that you  
15 could provide us proportionate, I think it's Photo C. No,  
16 not C, because that cuts off. It's Photo B. Make sure it's  
17 proportionate.

18 Because I want to see exactly, as the Chairman  
19 said, I want to see the right side. I want to see the  
20 relationship. Because this looks like it's out of  
21 proportion. So, I need to see something proportional. And  
22 if I'm wrong, yes. I don't think that's proportional.

23 MR. SCHWAB: Okay.

24 MR. FEOLA: I'm sorry, Mr. Hood. In what sense  
25 is this --

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1           ZC CHAIR HOOD: Proportional, which means, you  
2 know, sometime you can, you just like, if I took a picture  
3 of my head --

4           MR. FEOLA: Oh.

5           ZC CHAIR HOOD: -- I could make it --

6           MR. FEOLA: I got it. I got it.

7           ZC CHAIR HOOD: -- bigger than what it is.

8           MR. FEOLA: Okay. Thank you, Mr. Vice Chair.

9           VICE CHAIRPERSON HART: And I know that you used  
10 a, Mr. Schwab, is it?

11          MR. SCHWAB: Yes.

12          VICE CHAIRPERSON HART: I know that you used a,  
13 you know, it looks like a garbage truck to, which is fine.  
14 But it would be good to just take, understand what the  
15 dimensions are.

16          MR. SCHWAB: Sure. Absolutely.

17          VICE CHAIRPERSON HART: Because it's like, okay,  
18 so what is, you know, is this larger? Is this a larger one?  
19 Or is this a regular size one? And, you know, I just, we  
20 just don't know what that is. That's all.

21          MR. FEOLA: I'm sorry. Because my friend was  
22 telling me, the truck he says is eight feet wide by 30 feet  
23 long. But --

24          VICE CHAIRPERSON HART: No, that's fine. I just,  
25 I think what I'm looking for is to have something actually

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1 on the drawing to --

2 MR. FEOLA: A tape measure. I mean --

3 VICE CHAIRPERSON HART: Or something that just  
4 shows us what the scale is.

5 MR. FEOLA: Yes.

6 MS. MOLDENHAUER: And I'll just object. I think  
7 it will bring up the question as to whether the picture is  
8 even relevant based on the current condition, during our  
9 rebuttal.

10 VICE CHAIRPERSON HART: That's fine. Any other  
11 questions for -- Okay. Cross exam -- Oh --

12 MEMBER JOHN: I did have a question. Could you  
13 respond to DDOT's comments about the loading? Because I,  
14 DDOT did address that issue and didn't have a recommendation.  
15 And so, because it's such a very important aspect of your  
16 opposition it would be good to hear your comments.

17 MR. FEOLA: I think the basic comment, Ms. John,  
18 is that DDOT supports these loading variances, both the width  
19 of the loading, of the entrance, and the elimination of a  
20 berth. Conditioned on a series of recommendations that are,  
21 at least a page long of recommendations, and single spaced.

22 Those recommendations have to be implemented on  
23 the ground by somebody. Otherwise it seems to negate DDOT's  
24 position that this would not create a problem. So, in the  
25 real world we just don't see how that would be managed.

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1           There are multiple users of this alley system, not  
2 just this proposed hotel. Is the hotel's loading dock  
3 manager going to go around with, you know, police tickets and  
4 ticket people? As Mr. Andres said, people are parked illegal  
5 in the alley. That's true.

6           But it's very hard to get a police car back there  
7 to cite a ticket, and then get it towed. So, how is it going  
8 to work in the real world? How is it going to work when  
9 you've got a list of requirements that DDOT's asking for to  
10 manage what happens back here?

11           VICE CHAIRPERSON HART: I think some of this is,  
12 some of this can be just handled through some sort of  
13 management agreement for the block. I mean, that's typically  
14 how you would deal with any of this. It's not like it's  
15 going to be a big, you know, question mark in the sky.

16           It's going to be, these are operational things  
17 that you will need to figure out, regardless who owns it.  
18 Because if anybody comes in here they're going to have to be  
19 able to --

20           If they did a building that was fully within, you  
21 know, Buy Right Development it would still have some sort of  
22 agreement that you'd have to have for that. So, I think that  
23 that's, you know, it's an issue. But it's something that  
24 will be, that can be negotiated through, you know, through --

25           MR. FEOLA: But it --

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1 VICE CHAIRPERSON HART: -- the process.

2 MR. FEOLA: It's a recommendation that supports  
3 DDOT's support for these variances.

4 VICE CHAIRPERSON HART: I understand.

5 MR. FEOLA: And so, if they don't happen, if my  
6 client and Ms. Moldenhauer's client get together and agree  
7 to it, but the other five property owners in the block don't,  
8 we still have the problem on the ground. That's my point.

9 VICE CHAIRPERSON HART: Understood.

10 MR. FEOLA: So, unless DDOT has some information  
11 that we don't have, that this agreement is in place, or they  
12 can enforce it somehow, I think it presents a problem.

13 MEMBER JOHN: So, a follow-up questions, Mr. Vice  
14 Chair. How would a matter of right structure change the  
15 loading situation back there? Let's say they change the  
16 design to a matter of right. Would you have some of the same  
17 loading issues and access issues?

18 MR. FEOLA: I don't know if we can answer that in  
19 its --

20 MEMBER JOHN: Maybe that's --

21 MR. FEOLA: -- totality.

22 MEMBER JOHN: -- a question for the applicant.

23 MR. FEOLA: They would need a second loading  
24 berth, which they only have one, and a second loading dock.  
25 They would have to figure out access to that loading dock,

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1 possibly through the alley.

2 But there's a space from the historic, the end of  
3 the historic wall to the south property line that's 12 feet  
4 wide, that's wider than the entrance that they're proposing  
5 off the alley.

6 Mr. Andres is correct. DDOT doesn't like loading  
7 off of streets. But it hasn't been proven that it can't be  
8 done here. So, there are other options. Maybe just a  
9 smaller building. Maybe it doesn't have quite as many  
10 loading requirements. I don't know. It's not --

11 MEMBER JOHN: Thank you.

12 MR. FEOLA: I can't design the building for them.

13 MEMBER JOHN: No. You've answered. Thank you.

14 VICE CHAIRPERSON HART: Ms. Moldenhauer, cross  
15 examination.

16 MS. MOLDENHAUER: Mr. Mehra, are you familiar with  
17 the reference, and I believe counsel provided a copy of the  
18 CTR guidelines to the Board. Is that correct?

19 MR. MEHRA: Well, I didn't see that. But I am  
20 familiar with the CTR guidelines.

21 MS. MOLDENHAUER: And what was the year that the  
22 CTR guidelines were issued?

23 MR. MEHRA: I don't remember the date. It's 2010  
24 or something to that effect.

25 MS. MOLDENHAUER: August 2012?

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1 MR. MEHRA: Okay. Maybe that's all right.

2 MS. MOLDENHAUER: And the, are you familiar with  
3 the DC DDOT design engineering manual?

4 MR. MEHRA: Yes, I am, yes.

5 MS. MOLDENHAUER: And do you know when the D.C. --

6 VICE CHAIRPERSON HART: Mr., could you bring the  
7 mic a little bit closer to you? It's hard to hear your  
8 responses. Just bend the mic down. That's all.

9 MS. MOLDENHAUER: Are you familiar when the  
10 District Department of Transportation's design engineering  
11 manual was recently issued?

12 MR. MEHRA: No, I'm not familiar with the exact  
13 date, no.

14 MS. MOLDENHAUER: So, June 2017. And are you  
15 familiar with Section 38 of that section?

16 MR. MEHRA: Which is?

17 MS. MOLDENHAUER: I'm asking you if you're  
18 familiar with Section 38.

19 MR. MEHRA: I mean, I don't remember the section  
20 number.

21 VICE CHAIRPERSON HART: Ms. Moldenhauer, does this  
22 have any --

23 MS. MOLDENHAUER: So, this section actually is  
24 requirements for traffic impact analysis. And this  
25 specifically says based on the size and zoning action of the

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1 proposed development an applicant may be required.

2 So, doesn't the more recent design engineering  
3 manual then trump what you provided, which is the CTR  
4 guidelines, which is how many years old, 2012? And this  
5 would only be required if zoning action was applicable.

6 MR. MEHRA: I mean, you make it seem like I  
7 provided that. I was just repeating what Gorove/Slade  
8 provided in their report.

9 MS. MOLDENHAUER: No. It's --

10 MR. MEHRA: So, they were using --

11 MS. MOLDENHAUER: -- offered in your report  
12 though.

13 MR. MEHRA: -- the same concept.

14 MS. MOLDENHAUER: But --

15 MR. MEHRA: I did not create that. They had it  
16 in their report. And I actually cited it in my report.

17 MS. MOLDENHAUER: All right. Does the design  
18 engineering manual, it only requires a CTR if zoning action  
19 then is applicable. Is our case asking for parking relief?

20 MR. MEHRA: No. It's not asking for parking  
21 relief, no.

22 MS. MOLDENHAUER: Mr. Schwab, you reference the  
23 relief that we are requesting as a variance. You are aware  
24 that we're requesting it in the standard for the rear yard  
25 as a special exception?

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1 MR. SCHWAB: I'm not sure I understand the  
2 technical --

3 VICE CHAIRPERSON HART: Can you turn on the mic?

4 MR. SCHWAB: I don't understand the technicality.

5 MS. MOLDENHAUER: One's a variance. One's a  
6 special exception. And so, you reference the rear yard as  
7 a variance. I was just wondering if you were understanding  
8 --

9 VICE CHAIRPERSON HART: Mr. Schwab, what Ms.  
10 Moldenhauer is saying is that a variance is a, a special  
11 exception is something that is within the zoning regulations  
12 themselves. They give you criteria about what you have to,  
13 how you can meet that special exception.

14 A variance is saying, here's something that's  
15 outside of the zoning relief, that is beyond the zoning  
16 relief. And there is kind of a more stringent test, or set  
17 of tests that you have to go through.

18 And what she's asking you is whether or not you  
19 understand that there is two different levels of types of  
20 relief that they're requesting. A variance being a much  
21 higher level than the special exception level. And that was  
22 it.

23 MR. SCHWAB: And I didn't, I don't understand.  
24 I really don't understand there's a difference. But in the  
25 meantime is it basically still that the special exception to

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1 get a 20 foot set back is something that is easier to get  
2 than a variance for --

3 VICE CHAIRPERSON HART: That's correct.

4 MR. SCHWAB: I see.

5 VICE CHAIRPERSON HART: That's correct. And it's  
6 just because one is saying, you don't, they don't, there's  
7 only regulations to allow something. And so, you're asking  
8 for something that is, because of something about your site,  
9 then you should be able to allow, be allowed to get that  
10 zoning variance.

11 The zoning, the special exception is something  
12 that is anticipated. And that there are certain criteria  
13 that you have to meet to be able to get there. But it's  
14 fine. A lot of people don't know the difference. But  
15 anyhow, go ahead.

16 MS. MOLDENHAUER: You've recently purchased the  
17 building? Or you've owned it for how long?

18 MR. SCHWAB: Several years.

19 MS. MOLDENHAUER: Put your mic on.

20 VICE CHAIRPERSON HART: Yes. Yes, yes, the mic.

21 MR. SCHWAB: Several years.

22 MS. MOLDENHAUER: And when you bought it you did  
23 extensive due diligence?

24 MR. SCHWAB: We did due diligence, yes.

25 MS. MOLDENHAUER: So, you are aware that your

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1 building, 450 K, went through BZA under Application 18216?

2 MR. SCHWAB: I understood that the buyer, that the  
3 seller did what they needed to do to get the building done.  
4 I honestly don't, I do not know whether or not, what the  
5 building's BZA process was. But I know that the building  
6 got, you know, whatever reliefs, or variances, or exceptions  
7 that got it built.

8 MS. MOLDENHAUER: And your building actually is  
9 built all the way to the rear of your property line. At the  
10 alley your building goes straight up. Is that right?

11 MR. SCHWAB: I think so.

12 MS. MOLDENHAUER: It goes straight up to what, 130  
13 feet?

14 MR. SCHWAB: I think so.

15 MS. MOLDENHAUER: And so they've had a zero rear  
16 yard relief?

17 MR. SCHWAB: I'm sorry?

18 MS. MOLDENHAUER: You showed an image of a  
19 condition where the truck was trying to turn, and your wall  
20 was right there. Your wall's right there because the  
21 building got rear yard relief.

22 MR. SCHWAB: I don't know. I don't know.

23 MS. MOLDENHAUER: And your building goes 194 feet  
24 along the alley at zero rear yard?

25 MR. SCHWAB: I guess so, yes.

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1 MS. MOLDENHAUER: All right.

2 VICE CHAIRPERSON HART: And, Ms. Moldenhauer, I'm  
3 assuming that your point is they've built out to their  
4 building lot. And so, you're asking for some relief, but  
5 you're asking for that relief, the reason that their building  
6 is so close is because your building got, received relief to  
7 allow it to be built out to the -- I'm just saying that  
8 that's what I think the point that's being made.

9 MR. SCHWAB: Yes. I mean, and I do think, I mean,  
10 there's some history as well. I mean, again, not that I was  
11 there. But first of all, there's a 30 foot alley between our  
12 building and the building across, which is also built right  
13 to the property line.

14 And also, there were less, this was when there  
15 were no other buildings there. So, really, truly, this was  
16 part of what was anticipated to go there then. And in the  
17 due diligence we looked at what the future held.

18 And indeed, what the future held were buildings  
19 now that had to be extensively constructed within the reality  
20 of the new environment that these other, bigger buildings,  
21 which are all around us there have now already filled in.

22 VICE CHAIRPERSON HART: Okay. Do you have any  
23 other questions?

24 MS. MOLDENHAUER: No other questions.

25 VICE CHAIRPERSON HART: Okay.

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1 MEMBER JOHN: May I have a question before you  
2 move on?

3 VICE CHAIRPERSON HART: Sure.

4 MEMBER JOHN: Where is the loading for 450 taking  
5 place now, 450 K Street? Where does loading take place?

6 MR. SCHWAB: I took the picture out. And if  
7 loading --

8 MEMBER JOHN: No. Which street is --

9 MR. SCHWAB: It takes place in the alley.

10 MEMBER JOHN: In the alley?

11 MR. SCHWAB: It takes place in the alley,  
12 basically at the edge of the building, closest to the, where  
13 the, where it will be closest to the little alley jog --

14 MEMBER JOHN: Right.

15 MR. SCHWAB: -- that this building loading will  
16 be happening.

17 MEMBER JOHN: And how close to the loading berth  
18 of the proposed structure?

19 MR. SCHWAB: Ten feet.

20 MEMBER JOHN: Okay. Thank you.

21 VICE CHAIRPERSON HART: Okay. Ms. Henry, do you  
22 have any questions for the party in opposition?

23 MS. HENRY: No questions. Thank you.

24 VICE CHAIRPERSON HART: Okay. So, I think we can  
25 move to your presentation. Or whatever, your, whatever you'd

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1 like to say for this case.

2 MS. HENRY: Okay. Thank you. Again, I'm here on  
3 behalf --

4 VICE CHAIRPERSON HART: And, Mr. Moy, just five  
5 minutes on the clock. Thanks.

6 MS. HENRY: Again, I'm here on behalf of Mr.  
7 Stephenson. And I wish to convey his regrets for not being  
8 here. As of last night he definitely planned on being here.  
9 But there was an emergency with his business this morning,  
10 which required that he not be here.

11 Mr. Stephenson purchased these, his buildings in  
12 2001 and 2003. He is an investor. He purchased it as an  
13 investment, like the neighboring properties, including the  
14 applicant here today.

15 And over the years we have the 450 K next door.  
16 And now we're having the applicant here with this comparably  
17 large building. And now, Mr. Stephenson's building will be  
18 sandwiched between these two buildings. His is just a three  
19 story building with a basement.

20 Mr. Stephenson's continuing concern is that with  
21 a special exception for rear yard requirements, despite all  
22 the changes that the applicant has made since the application  
23 has been before this Board, his concern remains, because  
24 there will be, the result will be 100 foot high building  
25 wall, which will be only about four and a half feet from his

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1 building. And I believe if you add the 1.5 feet top back  
2 maximum, six feet from his building.

3 Now, when Mr. Stephenson bought these buildings  
4 her certainly, as I said for investment purposes. And so,  
5 projecting forward he certainly had in mind that either he  
6 would develop this building, you know, using his air rights  
7 on top of his building going up. Or selling his buildings  
8 to developers who would also do that.

9 Now, with rear wall from this applicant's building  
10 so close to Mr. Stephenson's building he feels that this will  
11 have an adverse impact on the value of his property, both in  
12 terms of what he can do in terms of added construction,  
13 and/or making it attractive to other investors for sale  
14 purposes.

15 And so, he is now caught between a rock and a hard  
16 place with this diminished value. Or it portends diminished  
17 value for his property. And so, that's why he has this  
18 continuing concern and objection to this oversized project  
19 on the applicant's site.

20 In terms of the variance that's requested from the  
21 loading berth requirements, like 450 we're, he is concerned  
22 about, you know, the traffic in the back. We're concerned  
23 that the applicant initially forecasted six trucks daily, and  
24 retracted down to two. We don't think that's a feasible  
25 number.

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1           That alley that would be, it's currently being  
2 used at least for the trash and recycling trucks to pick up  
3 recycling and trash from Mr. Stephenson's property. And so,  
4 we foresee with the loading requirements that will be  
5 required for this applicant's construction, and this hotel,  
6 there's going to be a lot of traffic back there blocking.

7           There's going to be a lot of noise in Mr.  
8 Stephenson's building, specifically 462. He has his  
9 Government Contracting business located there. There are  
10 employees there doing business.

11           And we just see there's going to be a lot of  
12 noise, congestion, with all these trucks lingering in the  
13 alley. We just don't see that's feasible that there would  
14 just be two trucks doing delivery.

15           As Mr. Stephenson was looking at this alley some  
16 more he, it struck him that in looking at where the trucks  
17 would be turning, that there may be some infringement on his  
18 property.

19           And so, rather than just looking at it from a lay  
20 person's eye he consulted with a surveyor, who came. And the  
21 preliminary advice is that, or the preliminary recommendation  
22 is that there seems to be an infringement.

23           However, Mr. Stephenson has, is requesting a  
24 survey. And unfortunately he wasn't able to have that done  
25 before today's hearing, given scheduling constraints. And

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1 so, that survey is scheduled for tomorrow.

2 And so, you know, to the extent that I'm not sure  
3 if the Board is planning on making a decision today. We  
4 would ask if we could supplement the record to the extent  
5 that that has some bearing, or shows any positive or negative  
6 impact.

7 VICE CHAIRPERSON HART: I think for the, I'm  
8 speaking for myself. But I don't think that I necessarily  
9 need to have that.

10 MS. HENRY: Okay.

11 VICE CHAIRPERSON HART: It's, the property line  
12 issues are not necessarily, are really not within our  
13 purview.

14 MS. HENRY: Okay.

15 VICE CHAIRPERSON HART: It might be interesting  
16 to see that. But it's not something that we would say, no,  
17 you can't do that because you're on somebody else's property.  
18 We can't, you know, deal with that particular issue. I don't  
19 know if the Board Members have any other comments on it. But  
20 I just didn't see that as being something that was within our  
21 authority.

22 MS. HENRY: Fair enough.

23 VICE CHAIRPERSON HART: But I appreciate the  
24 information.

25 MS. HENRY: And lastly, and this perhaps may not

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1 be in your purview, but it certainly is a huge concern for  
2 Mr. Stephenson, in terms of the projected damages that could,  
3 his property could incur.

4           As the Board may be aware, at some point he, Mr.  
5 Stephenson and Mr. Kline were in discussions with, on some  
6 kind of an agreement. However, it was fortuitous that Mr.  
7 Stephenson did a pause. Because he subsequently engaged the  
8 services of an engineer.

9           And with an expert looking at the schematic  
10 drawings, you know, it was revealed to him that even though  
11 he knew there was not going to be any underground parking,  
12 but it was revealed to him that there was going to be some,  
13 I guess basement level, which would require some digging  
14 down. And that could further destabilize his building.

15           And so, these are some of the concerns that Mr.  
16 Stephenson continues to have. And these certainly would have  
17 a significant adverse impact on his properties. Mr.  
18 Stephenson is a simple man. He's a District of Columbia  
19 resident. He has invested all his years in the District of  
20 Columbia, since he migrated here from Guyana in the early  
21 '70s.

22           And as a businessman he certainly appreciates  
23 development. He certainly wants to see the site next door  
24 developed. He just believes that this property, this  
25 proposal is, for this oversized property, would negatively

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1 impact his properties. And hence, his continuing objection.  
2 Thank you for your time and attention.

3 VICE CHAIRPERSON HART: Thank you. Any questions  
4 for Ms. Henry.

5 MEMBER WHITE: A couple of quick questions. How  
6 are you? I remember Mr. Stephenson when he was here, I guess  
7 for our last hearing. So, if I'm not mistaken his building,  
8 if I'm looking at the cover page of the PowerPoint from Cozen  
9 and O'Connor, on the front page, that, his building is on  
10 the, the smaller building on the right, correct? Or am I  
11 mistaken.

12 MR. SCHWAB: It's missing. It's actually missing.  
13 You can't --

14 MEMBER WHITE: It's missing from this particular  
15 slide?

16 MR. SCHWAB: On that one you're looking it is  
17 missing. But we'll find you one.

18 MEMBER WHITE: Yes. Well, I guess part of the  
19 question was, I was just trying to get a sense of how close  
20 his building is to 450 K Street, and how close it is to the  
21 proposed hotel.

22 MS. HENRY: It's very close to 450 K Street.

23 MEMBER WHITE: Okay.

24 MS. HENRY: It's -- Excuse me, 450 is right next  
25 door. So, he's --

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1 MEMBER WHITE: You share an alley?

2 MS. HENRY: Yes. And so, his, Mr. Stephenson's  
3 building would be sandwiched on one side by 450, and on the  
4 other side by this proposed project.

5 MEMBER WHITE: Okay. And when, do you remember  
6 when 450 was constructed?

7 MS. HENRY: I remember. But I was not involved  
8 with Mr. Stephenson, and how he, the positions that he took,  
9 insofar as --

10 MEMBER WHITE: Right.

11 MS. HENRY: -- that project was concerned --

12 MEMBER WHITE: Right. So --

13 MS. HENRY: -- at that time.

14 MEMBER WHITE: So, I understand your concern about  
15 the construction damage. So, obviously that's something that  
16 can be discussed, you know, with the developer, in the event  
17 things move forward, in terms of protecting Mr. Stephenson  
18 against damage that was a result of the construction workers,  
19 or the developer that's working on that particular project.

20 And so, the other question was the valuation  
21 question. You had some concerns about the valuation of the  
22 property going down as a result of the construction. So, my  
23 question is whether or not you know if the valuation has gone  
24 up since the construction of 450 K Street, or whether or not  
25 it's gone significantly down?

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1           But obviously, you know, I can understand what his  
2 concerns would be. But I just didn't know if he was basing  
3 that on specific evidence that was done by an appraiser.

4           MS. HENRY: Okay. I certainly don't have numbers  
5 from an appraiser. And I'm not sure that any appraisal was  
6 done. I think the concern about value is more so looking at  
7 if he were planning to develop and, you know, using his air  
8 rights, and how close that other property, this project would  
9 be to his.

10           We've seen some photographs or drawings from 450  
11 K showing a woman in a window. Given where that back wall  
12 would be with this hotel, if Mr. Stephenson were to go up on  
13 his property, given the maximum six feet away, those, if  
14 there were windows there, you know, for, you know, whatever,  
15 living space, that certainly those visuals would be far more,  
16 far closer than what's presented for 450 K.

17           So, it's, the decreased value is insofar as  
18 development of Mr. Stephenson's property. It's from that  
19 vantage point that we are looking at it. From his  
20 development and/or selling to developers, or attracting sales  
21 to developers. Thank you.

22           MEMBER WHITE: And finally, you know, DDOT has  
23 some potential conditions that they're suggesting for the  
24 applicant. One being, trucks shall be restricted from  
25 queuing and loading along 5th Street NW. And so, my question

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1 is, for you as well, that kind of managed some of the  
2 potential problems that would come from the existence of that  
3 hotel there.

4 MS. HENRY: And so, yes. We've, well, we've  
5 looked at the conditions that DDOT has set forth, that should  
6 be in a loading management plan. And some of the conditions  
7 certainly address some of the concerns that Mr. Stephenson  
8 has.

9 However, we too are concerned about policing of  
10 this, this loading management plan. Because as other groups  
11 have said, there's, it's a lot of activity that would be in  
12 that area. And it's not just from the applicant. It's from  
13 others. And so, there's several different owners who would  
14 need to buy into that. And so, we're concerned about  
15 policing that management plan. Thank you.

16 VICE CHAIRPERSON HART: Thank you. Any, I guess  
17 we move to cross examination. Ms. Moldenhauer.

18 MS. MOLDENHAUER: Good afternoon. You're talking  
19 theoretically about the sale or value. Has Mr. Stephenson  
20 marketed the property to any developers?

21 MS. HENRY: He has had discussions. And the sense  
22 from his discussions is that there's concern about this  
23 property that's being built.

24 MS. MOLDENHAUER: And he's had the discussions  
25 recently? And what were the dates of those discussions?

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1 MS. HENRY: I don't have dates --

2 VICE CHAIRPERSON HART: Were they this year?

3 MS. HENRY: -- to provide.

4 VICE CHAIRPERSON HART: Do you know if the  
5 discussions were this year?

6 MS. HENRY: Some were this year.

7 VICE CHAIRPERSON HART: Okay.

8 MS. HENRY: Yes.

9 MS. MOLDENHAUER: And were those discussions with  
10 any of the parties present at the table?

11 MS. HENRY: I'm unaware. I know he has had  
12 several discussions with Mr. Kline. But I'm not sure if any,  
13 I wasn't aware if any of those discussions involved that.

14 MS. MOLDENHAUER: Did they, did Mr. Stephenson  
15 have discussions with 450 K owners?

16 MS. HENRY: About? I'm not aware of any  
17 concerning purchasing or valuation of that, or anything of  
18 that nature.

19 MS. MOLDENHAUER: And, sorry, Mr. Stephenson's  
20 property -- Sorry, just pulling this image up. What happened  
21 here? It, Mr. Stephenson's property actually goes along this  
22 line here? He doesn't actually abut the applicant's  
23 property? Is that correct? There's another building,  
24 another property line in between?

25 MS. HENRY: I'm not following you.

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1 MS. MOLDENHAUER: Does --

2 MS. HENRY: Because I'm not seeing what you're --

3 MS. MOLDENHAUER: I think --

4 MS. HENRY: I'm sorry.

5 MS. MOLDENHAUER: Sorry, it's --

6 MS. HENRY: Okay. Sorry.

7 MS. MOLDENHAUER: -- over there.

8 VICE CHAIRPERSON HART: If you could make this

9 bigger too?

10 MS. HENRY: Okay. I'm sorry.

11 MS. MOLDENHAUER: I was just trying to do that.

12 VICE CHAIRPERSON HART: Just go to --

13 MS. MOLDENHAUER: Sorry.

14 VICE CHAIRPERSON HART: Yes.

15 MS. MOLDENHAUER: The current slide. Okay.

16 MS. HENRY: Okay. And I'm sorry. Your question

17 again.

18 MS. MOLDENHAUER: The red line is the applicant's

19 property. This is Mr. Stephenson's property, correct?

20 VICE CHAIRPERSON HART: We can't see the --

21 MS. MOLDENHAUER: You can't see my cursor?

22 VICE CHAIRPERSON HART: No.

23 MS. MOLDENHAUER: I have to hit that --

24 VICE CHAIRPERSON HART: You have to go to the

25 bottom left to --

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1 MS. MOLDENHAUER: I got it. Yes.

2 VICE CHAIRPERSON HART: Yes. There you go.

3 MS. MOLDENHAUER: Sorry. So, the red line  
4 indicates the applicant's property. This portion here is  
5 another property owner, correct?

6 MS. HENRY: Yes.

7 MS. MOLDENHAUER: Okay.

8 MS. HENRY: Yes.

9 MS. MOLDENHAUER: And so your, Mr. Stephenson's  
10 property then does not specifically abut. The main building  
11 is over here. And it does not specifically abut the  
12 applicant's property. Is that correct?

13 MS. HENRY: The main building is on the other  
14 side, yes.

15 MS. MOLDENHAUER: Okay. This line is not the  
16 property line, no.

17 MR. SCHWAB: No, that --

18 MS. MOLDENHAUER: The one down the middle is the  
19 property line.

20 VICE CHAIRPERSON HART: Any further questions?

21 MS. MOLDENHAUER: Sorry. One moment. No. We'll  
22 address it in the rebuttal. Thank you.

23 VICE CHAIRPERSON HART: Thank you. Mr. Feola, do  
24 you have any questions?

25 MEMBER JOHN: Can I have --

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1 MR. FEOLA: No, sir.

2 VICE CHAIRPERSON HART: Oh, I'm sorry. Yes.  
3 That's, thank you.

4 MEMBER JOHN: So, I have a question. I'm trying  
5 to locate 450.

6 VICE CHAIRPERSON HART: Who is the question for?

7 MEMBER JOHN: Is it for us? Is it for them? We  
8 got a lot of parties here.

9 MEMBER JOHN: Thank you, Mr. Vice Chair.

10 VICE CHAIRPERSON HART: It's all right.

11 MEMBER JOHN: Anyone can answer. I'm trying to  
12 locate 450 K Street on this diagram. I guess --

13 MS. MOLDENHAUER: 450 K Street starts along here  
14 with their at risk windows. Then it goes all the way back  
15 along the alley. There is in a courtyard that occurs here.  
16 And then it comes back up and over. Anyone can correct me  
17 if I'm wrong.

18 MEMBER JOHN: I see. So --

19 MS. MOLDENHAUER: I hear no corrections. So, that  
20 is accurate.

21 MEMBER JOHN: So --

22 MR. FEOLA: And we'd be happy to put in a plaque  
23 to show the whole thing.

24 MEMBER JOHN: That would be so very helpful.  
25 Thank you very much.

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1 MS. MOLDENHAUER: I believe we have something.  
2 I have the full lot, the full square.

3 MEMBER JOHN: And I think Mr. Stephenson had  
4 testified about something about an easement in that alley.  
5 I hope I have the right case.

6 MS. MOLDENHAUER: I don't believe there's any --

7 MEMBER JOHN: But --

8 MS. MOLDENHAUER: reference to an easement.

9 MEMBER JOHN: There's no easement in the back?  
10 Okay. Thank you.

11 VICE CHAIRPERSON HART: And I do apologize for  
12 this. But Mr. Brown, I know you've been here for a long  
13 time. And I have not even asked you about any of the, if you  
14 had any questions about this stuff, if you had anything that  
15 you wanted to say.

16 I do know that there was a ANC report. I do  
17 appreciate, I should say Commissioner Brown for coming. And  
18 if you'd like to, if you have any questions for anyone here,  
19 anything that's been kind of discussed here.

20 I did realize in the ANC report, which is from,  
21 the one I see if from April, the relief has been somewhat,  
22 it's changed a little bit from what was inside of the ANC  
23 report.

24 I didn't know if you all were, one, aware of it,  
25 or if you were okay with it. I don't know. I just, was more

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1 of a curiosity than anything. Since April was now two, three  
2 months ago, two months ago. And things have evolved since  
3 that point.

4 MR. BROWN: The applicant, they've really worked  
5 hard. And they've worked with us diligently. At whatever  
6 juncture that they were at, if there was a change, or  
7 anything in the plan they have advised us, and come to  
8 present to us at every step of the way.

9 I think the last time they were with us was maybe  
10 two months ago. And at that point in time, because the  
11 Chair, Alex Marriott, had basically deemed that we had  
12 basically addressed everything that they had brought to us,  
13 we felt that any further approvals should be contingent of  
14 what the outcome of the Office of Planning, and BZA was  
15 basically asking them to do.

16 So, we could not at that point in time do anything  
17 beyond that. So, the Chair basically made that decision to  
18 withhold any further approvals until we come up with  
19 something more substantive.

20 VICE CHAIRPERSON HART: Are there any questions  
21 for the ANC Commissioner? My fellow Board Members are  
22 looking away from me. So, I guess --

23 MR. BROWN: Yes, okay.

24 VICE CHAIRPERSON HART: -- that means that there's  
25 no questions.

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1 MR. BROWN: And I'm also the Chair of the Zoning  
2 Committee.

3 VICE CHAIRPERSON HART: Oh.

4 MR. BROWN: So, they have been before us several  
5 times. And they have done their due diligence. And we  
6 appreciate if everybody else would work as hard as they have  
7 with us, that we have some smoother cases.

8 MEMBER WHITE: What's your opinion on the  
9 penthouse setback issue? Because that seems to be the  
10 biggest sticking point --

11 MR. BROWN: Okay.

12 MEMBER WHITE: -- right now --

13 MR. BROWN: Yes.

14 MEMBER WHITE: -- to get OP comfortable with that  
15 aspect of the relief. And I --

16 MR. BROWN: Okay.

17 MEMBER WHITE: -- don't know if the ANC has kind  
18 of tabled that particular issue until OP's comfortable. Or  
19 whether or not you have a strong opinion about it right now.  
20 I'd be interested in --

21 MR. BROWN: Well, as the Chair --

22 MEMBER WHITE: -- what you --

23 MR. BROWN: -- and as it's been discussed in  
24 Committee, we felt that based on the size of the lot, and the  
25 project, that it was appropriate. If there are other

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1 buildings that were built next to it you wouldn't see it.  
2 It wouldn't be an issue.

3           So, we felt that based on what was recommended  
4 originally, we felt that we could support it. Alex Marriott,  
5 who's the Single Member District Commissioner, he's in  
6 support of it. The vote was five, zero, zero. So, we fully  
7 supported it.

8           VICE CHAIRPERSON HART: Any other -- Yes.

9           MEMBER WHITE: And that, none of that includes the  
10 mechanical and the habitable space aspect of that penthouse  
11 setback?

12           MR. BROWN: Yes. My committee particularly, we  
13 had issues with the facade, and the design as well. So, we  
14 asked them to go back in and readdress that, as well as you  
15 all. And also suggested the same thing.

16           All through our various discussions and  
17 presentations at the ANC I don't recall any issues that were  
18 raised by the constituents. So, as far as we're concerned  
19 we felt that we could, supported this, and approved it from  
20 the ANC perspective.

21           ZC CHAIR HOOD: I'm sorry, you're Commissioner  
22 Brown, Anthony Brown?

23           MR. BROWN: That's right. 6D02.

24           ZC CHAIR HOOD: Okay. Well, Anthony, you're a  
25 good man.

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1 MR. BROWN: Of course, Mr. Hood.

2 ZC CHAIR HOOD: Let me just ask you --

3 MR. BROWN: Yes.

4 ZC CHAIR HOOD: And I know some of your other  
5 Commissioners as well. I've worked with them over the years.  
6 But I'm just curious. When the Zoning Commission did the  
7 regulations on the penthouse regulations, were you the Chair  
8 of the Zoning Committee at that time?

9 MR. BROWN: I believe it was Marge. Marge was the  
10 Chair then. I basically took up after Marge.

11 ZC CHAIR HOOD: But you were on the Commission  
12 though, right?

13 MR. BROWN: I was not on the Commission.

14 ZC CHAIR HOOD: You weren't?

15 MR. BROWN: I was on the Committee.

16 ZC CHAIR HOOD: Oh. Oh, you was on the Committee.

17 MR. BROWN: This is --

18 ZC CHAIR HOOD: And then now you're --

19 MR. BROWN: -- my second year.

20 ZC CHAIR HOOD: -- a Commissioner. Oh, okay.  
21 Right. Well, congratulations.

22 MR. BROWN: Thanks.

23 ZC CHAIR HOOD: So basically, from what I'm  
24 hearing, as the Vice Chair just mentioned, there was a little  
25 bit of a change since the last time you all took the vote.

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1 So, you don't have any concerns --

2 MR. BROWN: No.

3 ZC CHAIR HOOD: -- it's fine?

4 MR. BROWN: They came and presented that to us.

5 So --

6 ZC CHAIR HOOD: Because you mentioned that you all  
7 withheld any further approval.

8 MR. BROWN: They --

9 ZC CHAIR HOOD: So, I understood that to mean  
10 that, do they need to come back and address some more things  
11 to you? Or are you fine?

12 MR. BROWN: We're fine at this point. I think the  
13 Chair had basically said, we have seen this case several  
14 times. And we have given significant approvals. So, we felt  
15 that without any further action the project should go  
16 forward.

17 ZC CHAIR HOOD: Okay. All right. Thank you.

18 MR. BROWN: You're welcome.

19 VICE CHAIRPERSON HART: And I did actually have  
20 a question regarding the, you've heard a lot of conversation  
21 about the alley. Do you all have any particular concerns  
22 about, or did you have that discussion about that alley? Or  
23 just, you know, kind of alleys in the ANC in general? Or,  
24 I don't know.

25 MR. BROWN: Okay. Generally, when we have these

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1 types of projects we try to look at the full scope of  
2 everything. That point I don't believe was brought to our  
3 attention about the ten feet. And it may have. And the way  
4 it was presented to us we didn't have any issues.

5 And I have a committee of about five people on my  
6 committee, Alex Padro being one, who's very seasoned at this,  
7 myself, and three others who are very critical of everything,  
8 as far as it comes to impacting the neighborhood. So, if it  
9 came up we were in agreement with it.

10 VICE CHAIRPERSON HART: That's fine. I appreciate  
11 the information.

12 MR. BROWN: You're welcome.

13 VICE CHAIRPERSON HART: It's just we kind of hear  
14 this, you know, the kind of back and forth about it. I'd  
15 like, I just was interested in the ANC perspective of it.

16 MR. BROWN: Might as well, right.

17 VICE CHAIRPERSON HART: But it sounds like you all  
18 have looked at the, you know, looked at this thing from many  
19 different vantage point, to be able to kind of, to understand  
20 what it is, and be able to support it.

21 MR. BROWN: That's true.

22 VICE CHAIRPERSON HART: So, that's good to hear.  
23 Thank you.

24 MR. BROWN: And yes, we were aware of the recent  
25 opposition. I think that came out last week. So, we're here

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1 today basically as follow-up.

2 VICE CHAIRPERSON HART: So, you said you unaware  
3 of --

4 MR. BROWN: We were aware.

5 VICE CHAIRPERSON HART: Okay. That's like --

6 MR. BROWN: I received the information on the  
7 people that are in opposition, 450.

8 VICE CHAIRPERSON HART: Yes. They've been in  
9 opposition for awhile --

10 MR. BROWN: Okay.

11 VICE CHAIRPERSON HART: -- now.

12 MR. BROWN: Okay.

13 VICE CHAIRPERSON HART: I don't know if you, did  
14 you say you just were made aware of it, or --

15 MR. BROWN: The official document that came forth  
16 last week was the first time I saw anything official --

17 VICE CHAIRPERSON HART: -- Oh, the --

18 MR. BROWN: -- as opposition.

19 VICE CHAIRPERSON HART: There was a party status  
20 in opposition from somebody that actually didn't show up.  
21 Well, they showed up. But this lasted a long time.

22 MR. BROWN: Okay. Okay.

23 VICE CHAIRPERSON HART: So, before we got to it.

24 MR. BROWN: Okay. They're going to --

25 VICE CHAIRPERSON HART: So, they weren't able to

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1 stay for that.

2 MR. BROWN: That's --

3 VICE CHAIRPERSON HART: But there are parties in  
4 opposition --

5 MR. BROWN: Okay.

6 VICE CHAIRPERSON HART: -- like 450 K --

7 MR. BROWN: Okay.

8 VICE CHAIRPERSON HART: -- and Mr. Stephenson --

9 MR. BROWN: Okay.

10 VICE CHAIRPERSON HART: -- that we granted party  
11 status back in April, I want to say --

12 MR. BROWN: Okay. Let me --

13 VICE CHAIRPERSON HART: --- at the latest.

14 MR. BROWN: -- clarify. It was the last one from  
15 Bus Boys and Poets.

16 VICE CHAIRPERSON HART: Okay.

17 MR. BROWN: That's the one that was just brought  
18 to my attention.

19 VICE CHAIRPERSON HART: Okay. Thank you.

20 MR. BROWN: Excuse me.

21 VICE CHAIRPERSON HART: Any other questions for  
22 the ANC Commissioner? You may have questions as well. Is  
23 that no question or --

24 MS. MOLDENHAUER: Just a few questions to clarify.  
25 I think that there has been, I just want to clarify a couple

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1 of things.

2 VICE CHAIRPERSON HART: Okay.

3 MS. MOLDENHAUER: Thank you so much, Commissioner  
4 Brown, for coming down and spending all this time at this  
5 hour. So, just to start off, we worked both with yourself,  
6 Commissioner Brown, on the zoning and planning committee, as  
7 well as Mr. Marriott.

8 Are you aware that we had a meeting at 450 K with  
9 Mr. Marriott and Lester, and the ANC and community members  
10 at the beginning, back, you know, right when we filed the  
11 application?

12 MR. BROWN: I was not aware of it.

13 MS. MOLDENHAUER: Okay.

14 MR. BROWN: I was not invited to it.

15 MS. MOLDENHAUER: Okay. Alex was present.

16 MR. BROWN: Okay. Okay. Sorry.

17 MS. MOLDENHAUER: Alex and another Commissioner.  
18 And we, as indicated, there was some questions about the  
19 different relief. The ANC resolution includes the relief for  
20 the loading --

21 MR. BROWN: Yes.

22 MS. MOLDENHAUER: -- the court, the Mt. Vernon  
23 Triangle intersection area --

24 MR. BROWN: Yes.

25 MS. MOLDENHAUER: -- the rear yard, the penthouse,

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1 the penthouse use.

2 MR. BROWN: Yes.

3 MS. MOLDENHAUER: The only area that it does not  
4 include is the loading width of 11 and a half to 12. Is that  
5 correct?

6 MR. BROWN: That's correct.

7 MS. MOLDENHAUER: And, but we did go an represent

8 --

9 MR. BROWN: Yes.

10 MS. MOLDENHAUER: -- to the Zoning and Planning  
11 Commission on that issue of the 11 and a half to 12.

12 MR. BROWN: You did.

13 MS. MOLDENHAUER: Okay.

14 VICE CHAIRPERSON HART: And when did that happen?

15 MS. MOLDENHAUER: That happened in April. So --

16 VICE CHAIRPERSON HART: That happened after the  
17 ANC, after they, I mean, this letter is --

18 MS. MOLDENHAUER: This letter is April 3rd.

19 VICE CHAIRPERSON HART: Yes. So, this happened  
20 after --

21 MS. MOLDENHAUER: They had a Zoning and Planning  
22 Committee at the end of April.

23 VICE CHAIRPERSON HART: Okay. That's fine.

24 MS. MOLDENHAUER: And so we went, and what was the  
25 result of the Zoning and Planning Committee's vote on that

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1 new relief?

2 MR. BROWN: On that new relief, that's when our  
3 Chair, Alex Marriott --

4 MS. MOLDENHAUER: The Zoning and Planning  
5 Committee, not the whole ANC.

6 MR. BROWN: Oh, I'm sorry. Our recommendation was  
7 going to be to support it.

8 MS. MOLDENHAUER: And then, subsequent to the  
9 Zoning and Planning Committee the full Committee occurs. Is  
10 that correct, the full ANC then has their --

11 MR. BROWN: Yes.

12 MS. MOLDENHAUER: -- meeting?

13 MR. BROWN: Yes, of course.

14 MS. MOLDENHAUER: At the full ANC Committee what  
15 was the result of that?

16 MR. BROWN: That's when Mr. Marriott decided to  
17 withhold his approval.

18 MS. MOLDENHAUER: So, the ANC was --

19 MR. BROWN: And took no action.

20 MS. MOLDENHAUER: So, the ANC was aware of it.

21 But they --

22 MR. BROWN: Yes.

23 MS. MOLDENHAUER: -- decided to take no action?

24 MR. BROWN: Yes.

25 MS. MOLDENHAUER: Okay. Thank you. And then, in

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1 the April 3rd ANC Report there's references to residents'  
2 concerns about traffic. And it indicates that the ANC  
3 conditions its support, and I'm reading from the exhibit  
4 right now.

5 MR. BROWN: Okay.

6 MS. MOLDENHAUER: Sorry. Exhibit 61. And ANC  
7 conditions its support on the applicants requesting three  
8 reserved parking spaces in front of the property with the  
9 Department of Transportation.

10 MR. BROWN: Yes.

11 MS. MOLDENHAUER: And so, is that, I guess, can  
12 you explain that a little bit? Was that how the ANC felt  
13 that we would be able to address the concerns?

14 MR. BROWN: I don't recall this point.

15 MS. MOLDENHAUER: Okay. Okay. But, I mean --

16 MR. BROWN: That's almost --

17 MS. MOLDENHAUER: -- that was --

18 MR. BROWN: -- a month late.

19 MS. MOLDENHAUER: I mean, that's fine.

20 MR. BROWN: Okay.

21 MS. MOLDENHAUER: You got a lot on your plate.

22 MR. BROWN: All right.

23 MS. MOLDENHAUER: And then, there were additional  
24 comments. Do you remember any recollection or any  
25 conversation regarding, you know, working with other owners

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1 for loading?

2 MR. BROWN: There was mention of a management plan  
3 for the loading of, the receiving of shipments and all.

4 MS. MOLDENHAUER: Right.

5 MR. BROWN: I believe that was addressed, as well  
6 as the traffic study and some other thing in earlier  
7 meetings. So --

8 MS. MOLDENHAUER: And is it typically the ANC's  
9 position to rely on the Department of Transportation, who is  
10 the agency that oversees that in the District?

11 MR. BROWN: Yes, yes.

12 MS. MOLDENHAUER: And then the last was, you  
13 indicated the support for the cocktail lounge and the  
14 penthouse relief in conjunction. But we had had  
15 conversations about hours of restrictions.

16 MR. BROWN: Yes.

17 MS. MOLDENHAUER: And so, I just want to make sure  
18 that the record is clear that we had agreed, based on  
19 conversations with the ANC, yourself, and Mr. Marriott to  
20 close at 1:00 a.m. on Sunday to Thursday, and 2:00 a.m. on  
21 Friday to Saturday. And that was what we, did we, we  
22 specifically negotiated that time based on ANC requests. Is  
23 that correct?

24 MR. BROWN: Yes. That's basically a general rule  
25 for the entire area.

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1 MS. MOLDENHAUER: No other questions. Thank you.

2 VICE CHAIRPERSON HART: Mr. Feola.

3 MR. FEOLA: I have no questions.

4 VICE CHAIRPERSON HART: Ms. Henry.

5 MS. HENRY: None, thank you.

6 VICE CHAIRPERSON HART: Thank you. Rebuttal.

7 MS. MOLDENHAUER: Yes.

8 VICE CHAIRPERSON HART: Okay.

9 MS. MOLDENHAUER: Do we want to take a five minute  
10 break, or just keep on going.

11 (Simultaneous speaking.)

12 VICE CHAIRPERSON HART: Yes. It sounds like we  
13 want to take a little break. So, let's do like five minutes.  
14 And how long do you need for the rebuttal? Ten minutes  
15 sounds good? Yes.

16 MS. MOLDENHAUER: Ten minutes sounds great.

17 VICE CHAIRPERSON HART: Okay. Thank you. And  
18 just so that we're kind of aware, I'm, we're not going to  
19 make a decision today. We have a lot of information which  
20 we're still trying to get.

21 We'll probably look to get findings of facts,  
22 conclusions of law, because of just all of this stuff that's  
23 been circulated. So, I just wanted to make sure everybody  
24 was kind of aware of all of that.

25 So, we'll take a five minute break. And we'll be

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1 back here. And we'll do the rebuttal and the conclusions,  
2 unless you don't want to do a conclusion. We'll talk about  
3 it after rebuttal. Thank you.

4 (Whereupon, the above-entitled matter went off the  
5 record at 4:49 p.m. and resumed at 4:59 p.m.)

6 VICE CHAIRPERSON HART: Ms. Moldenhauer, whenever  
7 you're ready. And, Mr. Moy, could we have ten minutes on the  
8 clock please?

9 MS. MOLDENHAUER: Okay, I'll first turn to Mr.  
10 Andres to address some of the traffic comments.

11 MR. ANDRES: Good afternoon again, Erwin Andres  
12 with Gorove/Slade Associates.

13 I just wanted to make some clarifying remarks.  
14 The first is, there has been some talk about the width for  
15 the loading dock being 11.5 feet wide and the comment that  
16 it's tight.

17 Just to give you a little bit of context. The  
18 minimum traveling in the District is ten feet. So vehicles,  
19 including trucks that are going upwards of 25, 30, 35 miles  
20 an hour, are driving on District streets that are ten feet  
21 wide.

22 So, the context, in putting that in context where  
23 you're going much slower and maneuvering into a space that's  
24 11.5 feet wide is relatively reasonable.

25 With respect to, there was a comment made about

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1 the loading management plan and the commitments that we have  
2 made as part of our support from DDOT, it's important to note  
3 that all of the elements in that loading management plan are  
4 things that we, as the Applicant, can control. Such as  
5 restricting viewing, requiring that no 30 foot trucks, no  
6 trucks larger than 30 feet be allowed, scheduling deliveries,  
7 things like that are things that we can control as the  
8 Applicant.

9           So, I think when all this is all said and done,  
10 I think it would be a great idea if all of the property  
11 managers and owners in a square can see how they can manage  
12 the alley better. But in terms of our commitments with DDOT,  
13 those are elements that we can control.

14           And the next item here is, again, I just wanted  
15 to stress that the CTR guidelines that was entered into the  
16 record by the opposition, is dated August 2012. DDOT had  
17 issued, had taken their feedback from the ZR16 rewrite and  
18 issued the DDOT design and engineering manual, which is dated  
19 June 17th. Which was last summer.

20           And that's when they identified that zoning action  
21 is one of the elements that they look at when requiring the  
22 traffic impact analysis. So I just wanted to make that very  
23 clear.

24           Another item that was brought up was the number  
25 of truck delivers per day. Our initial traffic study had

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1 identified that we identify about six trucks per day. That  
2 included UPS trucks, FedEx trucks, deliveries, food  
3 deliveries, trash.

4 So in our latest submittal, we have identified  
5 that we actually got a letter from a hotel operator. And in  
6 that, the hotel operator essentially identified the potential  
7 for ten truck trips a week. And so we averaged it out to two  
8 a day. So that's where you hear the number two per day.

9 That two per day, and if you look at the letter  
10 written by Donohoe, does not include UPS, FedEx or any of  
11 those other trucks. So the two per day are the deliveries  
12 that we envision going to the rear.

13 What we have seen in this neighborhood, especially  
14 for the fact that this is not an apartment building,  
15 typically you'll have UPS, FedEx go to the loading dock in  
16 an apartment building because they're delivering 30 Amazon  
17 boxes.

18 In this case, since all of the people in the  
19 building are primarily patrons and guests, they're not  
20 receiving those deliveries. So the only office that's  
21 receiving deliveries is the hotel management office.

22 So, typically what you'll see is UPS or FedEx  
23 truck pull up in the front, where we've identified a  
24 loading/valet stand, and they'll run in with their packages  
25 and run out.

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1           Frankly, if we didn't provide that loading, they  
2 will do what they do today, which is either double park,  
3 which we don't want to do, which is why we're providing them  
4 loading. Or park at the corner near the crosswalk, which we  
5 don't approve of but that's their standard operating  
6 procedure.

7           So we're actually providing UPS, FedEx and those  
8 guys an opportunity to serve some of the people on the block  
9 for that condition.

10           And then the last item on here is, we reviewed the  
11 exhibits and the photos and we appreciate sort of the on-  
12 field testing. But we believe that what they've tested out  
13 in the field is not representative of our plan.

14           And the reason for it is because the plan that  
15 we've presented in the record can't be done today. Because  
16 there's a fence in the, there's a hammerhead section of the  
17 alley where there's literally a physical fence in there that  
18 needs to be removed in order for us to do our truck turns.

19           So I'm not sure what trucks that the Opposition  
20 ran to get the photos that they presented, but our plan  
21 actually can't physically be done today. So I don't want to  
22 represent what they've done, but it's clear that it doesn't  
23 represent our plan because there is a fence in the way.

24           And with that, I believe that ends my portion of  
25 the rebuttal. Thank you.

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1 MS. MOLDENHAUER: Erwin, can I just ask you to  
2 clarify using the image, or describing the image. There's  
3 been conversations about the alley. It's up on the large  
4 screen.

5 This is PowerPoint Exhibit 7. Can you just walk  
6 through just the fact that there are multiple alley networks  
7 on this square?

8 MR. ANDRES: Yes. So, in the center of the square  
9 there is an alley that runs north/south that connects I  
10 Street to K Street.

11 MS. MOLDENHAUER: That's right. This one.

12 MR. ANDRES: I believe, it's relatively narrow.  
13 I believe it's a narrow section of the entire sort of alley  
14 network in this.

15 And then from that north/south alley, that  
16 north/south alley is actually the only way you can get into  
17 the square. So once you get into that north/south alley and  
18 you turn onto the east/west alley, which Ms. Moldenhauer is  
19 highlighting, that alley actually widens out to 30 feet.

20 And that 30 foot alley, relative to other alleys  
21 in the District, is actually relatively wide. Most alleys  
22 are anywhere between 15 and 20 feet. Or 24 feet. So this  
23 section of the alley is the wide alley.

24 And in this section in that east/west alley is  
25 where, I believe, 450 K has some roll up doors that provide

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1 access for their loading.

2           And then as you move further west, you have  
3 hammerhead condition, where the northern part of the  
4 hammerhead is where our loading dock is. And the southern  
5 end of the hammerhead is actually not accessible today  
6 because that's the fence that I was talking about. So there  
7 is an existing fence in public space that will need to be  
8 removed because it's in public space.

9           And 450 K has no access to their loading from that  
10 hammerhead. They have access to the loading from the wide  
11 section of the alley, which is a 30 foot alley.

12           So, hopefully that clarifies some of the talk  
13 about access and loading in the alley. Thank you.

14           MS. MOLDENHAUER: I believe you already talked  
15 about this, I'm just going to follow-up on it quickly. The  
16 relief that we're asking for is actually reducing the number  
17 of loading birth from two to one. A lot of the Opposition's  
18 comments were about traffic and noise.

19           Does the relief being requested, does that  
20 actually create more traffic or noise or less traffic and  
21 noise, in your opinion?

22           MR. ANDRES: So with respect to, because of the  
23 fact there is only one loading dock, there needs to be active  
24 management because not more than one truck can show up at the  
25 same time.

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1           If you have two loading docks, if you have two  
2 bays, you potentially can have one or more vendors coming at  
3 the same time, so by providing actually only one, it provides  
4 obviously a significant incentive and condition that needs  
5 to be actively managed.

6           And so actually going down to one helps minimize,  
7 or at least at a minimum, helps spread out the deliveries and  
8 the activity associated with the loading.

9           MS. MOLDENHAUER: And, Mr. Kline, if you can just  
10 briefly provide some rebuttal in regards to your experience  
11 and operations and how that would be conducted?

12           MR. KLINE: Thank you very much. I think for the  
13 record, Thomas Perry's letter is there. He's with Donohoe  
14 Company's.

15           The reason why I am working with Donohoe Company's  
16 is not for construction only, it's since they own D.C.  
17 Hotels, one specifically at 9th and F, they've owned for 19  
18 years, which had a very similar issue sharing with  
19 apartments, several meetings were had with the apartment  
20 tenants and owners, never any problems.

21           Always concerned about noise so they went through  
22 a process where they would not bring deliveries, even if  
23 they're allowed at 7:00 in the morning, most of the time they  
24 came late, mid-morning, and they never were late.

25           The truck traffic that they show on their paper

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1 that's for the record is from that hotel. So they're using  
2 vans that are 25 feet or less the majority of the time.

3 Also, I have experience, and they have experience,  
4 in managing with other owners. And we would work diligently  
5 with that.

6 We've met many times with the owners at 450 K.  
7 We have a good working relationship, other than the  
8 Opposition.

9 The hotel that they own is a magnificent hotel,  
10 I had dinner there last week. It's a different hotel. This  
11 is a select service hotel.

12 That is a luxury hotel with meeting rooms, I've  
13 been invited with Wilmington Trust and been in meetings  
14 there. It's a five-star restaurant. It clearly would have  
15 more deliveries than a select service hotel, like a Courtyard  
16 or like what we're doing here.

17 As far as the penthouse, this seems to be  
18 something that the people want. The citizens want. And  
19 that's why we're here to work with you and see if that's  
20 something that the city wants.

21 The last thing is, I think I met with Aubrey last  
22 night, Aubrey Stephenson, at 5 o'clock. He's not a simple  
23 man, he's a remarkable man. He was going to work all night  
24 on submissions to the Justice Department to the Defense  
25 Department in DOJ. He's quite a person.

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1           Excellent dialogue. I don't know if you know  
2 this, but when the 450 K was built, and not by the current  
3 owners, concrete ran into his basement. It was a nightmare  
4 for him.

5           It was worked out and worked through, so I have  
6 assured him that that would not happen with us. I've offered  
7 him written insurance policies and dialogue with him.  
8 Continue to have it. We have a very good ongoing dialogue.

9           He did state yesterday that a hotel would be a  
10 good use for value. Now, that's not to say the issue that  
11 you have with too close to the building, things like that.  
12 We didn't have time to talk in that detail. But I'll  
13 continue the dialogue with him. And we just appreciate your  
14 consideration in all this.

15           MS. MOLDENHAUER: One final question for Mr.  
16 Fillat. Sorry. Mr. Fillat, there was concerns raised by the  
17 Opposition regarding proximity and privacy. I know we've  
18 obviously have taken off the windows that actually abut, but  
19 can you just maybe describe in your experience with working  
20 with hospitality, residential and office, the difference  
21 between those uses and how hospitality use would actually  
22 have maybe a lower or a different type of privacy concern?

23           MR. FILLAT: So, an office building is used, as  
24 we all know, all day during daylight hours. And there's very  
25 important, people who work like to be near the window and

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1 look at the window and sort of rejuvenate themselves by doing  
2 that. And residential people live in their space and they're  
3 there during the day and during the evening and they're there  
4 a substantial amount of time as well.

5           The hotel user is really different than that. A  
6 hotel user in guest room primarily goes there to sleep. And  
7 then they wake up in the morning and they go off to their  
8 way.

9           Now, at least in an urban hotel with a select  
10 service brand like this, this is not a luxury hotel, there  
11 is no room in the room to linger. It's kind of, get up in  
12 the room, take a shower and go or come in late at night,  
13 watch your TV show and go to bed.

14           So, the amount of daylight hours and actual living  
15 time in this building is substantially different and less  
16 than if it were a residential use or an office use.

17           MS. MOLDENHAUER: Thank you. That concludes our  
18 rebuttal and then we would provide a closing after I guess,  
19 we probably need cross examination.

20           VICE CHAIRPERSON HART: Sure.

21           MR. FEOLA: I just have a -- excuse me, Phil  
22 Feola, I just have a couple questions. One for Mr. Andres.

23           So, the way I understand your testimony with  
24 regard to deliveries, that your truck deliveries do not  
25 include FedEx, UPS and the like, is that --

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1 MR. ANDRES: No, that's incorrect. So, from our  
2 testimony, we had submitted a memo dated --

3 MR. FEOLA: That's what you just said.

4 MR. ANDRES: No, no, no.

5 MR. FEOLA: On rebuttal.

6 MR. ANDRES: So, no. In rebuttal, what I said was  
7 that I referenced that the two trips per day did not include  
8 the UPS, FedEx --

9 MR. FEOLA: Right. Okay.

10 MR. ANDRES: -- but the six trucks that we  
11 identified did. So we assume maybe anywhere between three  
12 and four truck trips associated with those --

13 MR. FEOLA: So what I said was correct, that your  
14 two trips did not include FedEx or UPS deliveries.

15 MR. ANDRES: That's correct.

16 MR. FEOLA: Okay.

17 MR. ANDRES: Sorry about that, I didn't --

18 MR. FEOLA: So, those two trips include everything  
19 else for the hotel, it includes deliveries to the restaurant,  
20 it includes liquor for the bar, if the Board approves the bar  
21 on the roof, it includes delivery of toilet paper and laundry  
22 and bed sheets and everything else that comes to the hotel.  
23 Only two times a day will that happen at this hotel?

24 MR. ANDRES: As I mentioned in my testimony, it's  
25 an average of two times a day.

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1 MR. FEOLA: Oh, so it could be more than two times  
2 a day?

3 MR. ANDRES: Well --

4 MR. FEOLA: It could be four on Tuesday and one  
5 on Thursday?

6 MR. ANDRES: What I identified is that we  
7 referenced a letter from Donohoe, who unfortunately had to  
8 leave and was not here --

9 MR. FEOLA: I have to say, Mr. Chairman, we can't  
10 cross examine Mr. Donohoe --

11 VICE CHAIRPERSON HART: Hold on. Hold on.

12 MR. ANDRES: I was --

13 VICE CHAIRPERSON HART: Hold on.

14 MR. FEOLA: Or Mr. Perry.

15 VICE CHAIRPERSON HART: What I understood is that  
16 it's ten trips a week. They averaged it out to two trips per  
17 day and that's where we are. So, do you have another  
18 question added to that or are you just saying it could be  
19 four one day and six and then --

20 MR. FEOLA: Well, they're basing it on a letter  
21 from Mr. Perry from Donohoe who wasn't here to be cross  
22 examined.

23 VICE CHAIRPERSON HART: Okay.

24 MR. FEOLA: So, I can't ask him the question so  
25 I'm trying to get to that answer from --

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1 VICE CHAIRPERSON HART: You're trying to  
2 understand how many trucks there will be per day?

3 MR. FEOLA: Yes.

4 VICE CHAIRPERSON HART: So there could be up to  
5 ten and there could be zero.

6 MR. FEOLA: That's --

7 VICE CHAIRPERSON HART: So that's where we are.

8 MR. FEOLA: Yes.

9 VICE CHAIRPERSON HART: That's what I understand  
10 of this.

11 (Simultaneous speaking.)

12 MS. MOLDENHAUER: And, Mr. Hart --

13 MR. FEOLA: Can I ask a question.

14 MS. MOLDENHAUER: -- the reason why we obtained  
15 information was because the Board --

16 VICE CHAIRPERSON HART: Hold on.

17 MS. MOLDENHAUER: -- and Mr. Feola was not here --

18 VICE CHAIRPERSON HART: Hold on, Ms. Moldenhauer,  
19 we're going through the cross examination. Mr. Feola, if you  
20 have the, you had the question about the number of trips --

21 MR. FEOLA: Is that your answer?

22 MR. ANDRES: I just wanted to clarify where that  
23 information came from.

24 VICE CHAIRPERSON HART: Okay.

25 MR. ANDRES: As I mentioned, the Donohoe letter

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1 included a letter, it was a specific letter --

2 MR. FEOLA: I read the letter.

3 MR. ANDRES: Okay.

4 VICE CHAIRPERSON HART: Okay.

5 MR. ANDRES: And if you do the math, it says it's  
6 ten per week.

7 VICE CHAIRPERSON HART: Okay. So we have --

8 MR. FEOLA: So you're basing -- oh, excuse me.

9 VICE CHAIRPERSON HART: We have ten per week,  
10 that's where we are.

11 MR. FEOLA: Okay. So, Mr. Andres, you're basing  
12 your analysis on the letter from Donohoe?

13 MR. ANDRES: No. So, before --

14 MR. FEOLA: But you just said you were.

15 MR. ANDRES: No, I did not say that. So what I  
16 said was, we initially did our report prior to Donohoe  
17 issuing this letter.

18 MR. FEOLA: I got it.

19 MR. ANDRES: And in that report, we cited six  
20 delivery trips per day. And so then later on we got this  
21 letter and we related sort of these ten trips per day, excuse  
22 me, ten trips per week, to our initial estimation. And if  
23 anything this corroborated it because these ten trips per  
24 week did not include the UPS, FedEx and all of those courier  
25 type vehicles.

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1 MR. FEOLA: Okay.

2 VICE CHAIRPERSON HART: Okay.

3 MR. FEOLA: Thank you.

4 VICE CHAIRPERSON HART: No problem. Ms. Henry?

5 MS. HENRY: Nothing, thank you.

6 VICE CHAIRPERSON HART: Okay. Mr. Brown? The ANC  
7 is a party --

8 MR. BROWN: Nothing.

9 VICE CHAIRPERSON HART: -- so that's why I'm  
10 asking.

11 MR. BROWN: Nothing.

12 VICE CHAIRPERSON HART: Okay. So, we're at  
13 conclusions.

14 MS. MOLDENHAUER: Can I just redirect based on the  
15 conversation that just occurred?

16 VICE CHAIRPERSON HART: No. I don't want to, I  
17 think I understand where we are with it, so I don't need any  
18 other further clarity on it. I think I know more about truck  
19 traffic than I really wanted to know about truck traffic.

20 So, where we are right now is conclusions. But  
21 I'm trying to decide whether or not we want to do conclusions  
22 now. We have to go through findings of fact and conclusions  
23 of law and I'm just trying to understand if I want to close  
24 this out now or to, well, where we are.

25 Does the Board have a preference?

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1 We're definitely going to get findings of fact and  
2 conclusion of law, that's kind of a given. The question is  
3 whether or not we want to continue the hearing and have a  
4 conclusion when we continue the hearing or if we want to  
5 close the hearing, have the conclusions now, conclusion  
6 statements now, and just have a meeting and discussion later.

7 MEMBER WHITE: Yes. I just have one question.  
8 Will there be any additional filings from the Applicant  
9 regarding penthouse setback or no? That's my only question.  
10 If it's no then I'm ready --

11 VICE CHAIRPERSON HART: I mean it's --

12 MEMBER WHITE: -- to have the conclusions at this  
13 point.

14 VICE CHAIRPERSON HART: I don't think so. I think  
15 Mr. Cochran was pretty, he asked, he gave us his testimony  
16 on where he thinks the Applicant is.

17 I don't think the Applicant is going to make any  
18 other changes to their penthouse, but I'll ask, Ms.  
19 Moldenhauer, if that's something that your considering.

20 MS. MOLDENHAUER: We heard the testimony from the  
21 ANC and there is substantial support in understanding of it.  
22 And if there are any comments from the Board, obviously we  
23 would like to hear those, but we do believe that we satisfy  
24 the standard and we would like to articulate those in a  
25 closing. But we'd be open from any comments from the Board

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1 Members.

2 MEMBER WHITE: No, I have no comment, I just  
3 wanted to know just for purposes of whether or not we were  
4 ready to receive --

5 VICE CHAIRPERSON HART: Yes.

6 MEMBER WHITE: -- conclusions of law and findings  
7 and facts. Findings of fact.

8 VICE CHAIRPERSON HART: Commissioner Hood.

9 ZC CHAIR HOOD: Mr. Vice Chair, they don't want  
10 to go back and look at trying to redesign to come into  
11 compliance then I don't see any reason to hold this up. I'm  
12 ready, we can move forward and finalize our conclusions and  
13 make our decisions.

14 VICE CHAIRPERSON HART: Ms. John?

15 MEMBER JOHN: Let me try to understand what you  
16 just said, Chairman Hood.

17 ZC CHAIR HOOD: I was giving them a strong  
18 encouragement to go back and look at some redesign and come  
19 into compliance with the setback. That's what I was  
20 basically giving them.

21 (Laughter.)

22 MEMBER JOHN: That's why I was asking for the  
23 clarification.

24 ZC CHAIR HOOD: But I was trying to do it as  
25 nicely as possible.

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1 MEMBER JOHN: Okay. All right.

2 ZC CHAIR HOOD: Was that nice?

3 MEMBER JOHN: Very nice.

4 ZC CHAIR HOOD: Oh, okay.

5 MEMBER JOHN: So much so that I needed --

6 ZC CHAIR HOOD: Sometimes I don't get that.

7 MEMBER JOHN: -- clarification. Thank you so  
8 much.

9 ZC CHAIR HOOD: Okay. All right.

10 MS. MOLDENHAUER: Board Member John, is there any  
11 comments or --

12 VICE CHAIRPERSON HART: No, that was it.

13 MEMBER JOHN: No, I just didn't understand what  
14 we would be doing, so I, at one time, thought we might hear  
15 conclusions and close the hearing then set this down for  
16 decision. But based on Chairman Hood's comments and based  
17 on where I think I am, I think I'll leave it at that.

18 VICE CHAIRPERSON HART: Make things really clear.

19 (Laughter.)

20 MS. MOLDENHAUER: This is really clear information  
21 I have just received.

22 VICE CHAIRPERSON HART: Yes.

23 (Laughter.)

24 MS. MOLDENHAUER: Information from my client that  
25 we would be looking to maybe redesign and go with just the

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1 mechanical. The mechanical still needs relief, and so, but  
2 we would put forward what we have, currently is the Exhibit  
3 68, which shows just the mechanical. Which is a ten foot  
4 mechanical.

5 And currently, verbally, revise the relief only  
6 asking for the mechanical setback relief as shown in the  
7 plans. And all the plans are fully provided in the record  
8 today.

9 And then we would provide a closing now and see  
10 if the Board will be willing to move forward for deliberation  
11 or if they still felt the need to have conclusions of law.

12 MR. COCHRAN: If the Applicant were to do that OP  
13 would be happy to submit a supplemental report.

14 VICE CHAIRPERSON HART: Yes, that's what I was  
15 thinking that we, I'm actually thinking that we may not,  
16 because of what you just said, I think we may actually have  
17 to continue to the hearing. Only because I think that, to  
18 get their, OP's response to this, I just don't think that we,  
19 I want to do conclusion statements right now. I don't know.  
20 Yes.

21 ZC CHAIR HOOD: So afterwards, Ms. Moldenhauer  
22 just said, Mr. Chairman, I think, unless there may be some  
23 questions on what's submitted, if something is submitted.

24 Typically we can, I think this is a narrow issue,  
25 for me, we can discuss that. We can have a closing and

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1 discuss it and we can look at the submissions.

2           And then if that comes to a point where we need  
3 to have additional discussion, we can always open it back up  
4 on a narrow scope. But that's just my suggestion.

5           VICE CHAIRPERSON HART: We haven't done things  
6 very simply in this case so I was --

7           MS. MOLDENHAUER: It's a great time to start.

8           (Laughter.)

9           MEMBER JOHN: So, Mr. Vice Chairman, I believe  
10 there was an example of just the mechanical penthouse in the  
11 record and unless you are planning to change that  
12 drastically, then I guess it would just be, and I'm looking  
13 to OAG, perhaps to amend the request on the record and follow  
14 it up with a written request based on the diagrams that are  
15 already in the record.

16           MS. MOLDENHAUER: Well, Commissioner John, nothing  
17 would actually need to be amended. The relief is the same  
18 section --

19           MEMBER JOHN: Right.

20           MS. MOLDENHAUER: -- so the self-certification  
21 form is the same. There would be no changes self-cert form.

22           MEMBER JOHN: Right.

23           MS. MOLDENHAUER: And the Board has the authority  
24 to grant their approval based on specific plans. And the  
25 Board, if they so choose, could grant approval based on plans

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1 at Exhibit 68G, which only show the mechanical only  
2 penthouse.

3 It's already part of the record and so that's all  
4 verbally on the record. As well as part of the record in the  
5 case.

6 MEMBER JOHN: I think I agree with you but there's  
7 still a request, on the record, for habitable space. So I  
8 don't know what needs to be done to withdraw that request.

9 ZC CHAIR HOOD: Let me say this, that's what gets  
10 us in trouble a lot. So I would go back now with the Vice  
11 Chair.

12 We may have to have an additional hearing because  
13 I've actually been involved with a case with the BZA that got  
14 us in trouble and we had a mess. So we don't want to go back  
15 down that road.

16 Let them go back, Mr. Vice Chair, if you want and  
17 maybe do your way with the -- I'll withdraw my comments.

18 (Laughter.)

19 VICE CHAIRPERSON HART: Just as it has taken us  
20 20 minutes to figure out what the direction we're moving  
21 forward, I think that I would like to, while I do understand  
22 that -- I understand and appreciate the statement that you  
23 made, Ms. Moldenhauer, regarding the mechanical penthouse and  
24 wanting to do just a mechanical penthouse.

25 And I can't, actually, in this drawing that you

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1 have here, in the PowerPoint that you all presented, can you  
2 go to, actually, go back to this one. Okay.

3 MS. MOLDENHAUER: That's just a floor plan.

4 VICE CHAIRPERSON HART: Yes, I know. The problem  
5 that I have though is that we have things that say initial  
6 and proposed. And I can't recall in the elevations that you  
7 did, do you have something that says proposed and --

8 So, the issue that I have is that, one says  
9 proposed and one says mechanical only. So, if we were to  
10 take this image, then which image do we, and I understand  
11 what you're saying, you're just saying, we're only going to  
12 do the mechanical only, but it's a little confusing to have  
13 something that says proposed and that's not actually the one  
14 that you're moving forward with.

15 And so, that's the problem that I have with some  
16 of this. I get what you're trying to do and I think that  
17 it's fine to have the mechanical only, the issue that I run  
18 into is, as we go back and look at this, and OAG and the  
19 Office of Zoning staff have to then kind of take this stuff,  
20 and somebody else looks at it and says, well, they said this  
21 is proposed and it's hard to kind of differentiate those.

22 And so I just wanted to be somewhat clear on what  
23 it is that was actually before us so that then we could say,  
24 okay, we all understood that what's before us is mechanical  
25 only and not what is shown on here as proposed. And so when

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1 we go back and look at an exhibit, this one you said was 68  
2 I think --

3 MS. MOLDENHAUER: 68G.

4 VICE CHAIRPERSON HART: -- 68G, this has proposed  
5 on it that's not what you're actually proposing.

6 MS. MOLDENHAUER: This is not 68G. The PowerPoint  
7 is not 68G.

8 VICE CHAIRPERSON HART: Well, I'm just saying, the  
9 --

10 MS. MOLDENHAUER: There is something in the  
11 record. Could I just respectfully request, Vice Chair, that  
12 if we do move forward that at least we move forward with  
13 closings tonight.

14 VICE CHAIRPERSON HART: Okay.

15 MS. MOLDENHAUER: -- or this afternoon if we're,  
16 5:30 maybe, close the record. I think that the case is  
17 obviously obtained expeditiously.

18 I mean, this is a situation where we have formal  
19 opposition. The potential of this being appealed is  
20 obviously high so we'd like to move this forward so we can  
21 get forward with an order.

22 We know orders are delayed, so we would greatly  
23 appreciate any effort the Board can make in allowing closings  
24 to occur this evening --

25 VICE CHAIRPERSON HART: Okay.

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1 MS. MOLDENHAUER: -- and then allowing us to  
2 provide whatever is necessary, maybe findings of facts,  
3 conclusions of law are not necessary now, as OP would  
4 potentially be supporting all of the areas of relief as well  
5 as the ANC. And then --

6 VICE CHAIRPERSON HART: But you have opposition.

7 MS. MOLDENHAUER: But we do have opposition. A  
8 full order would be required of course --

9 VICE CHAIRPERSON HART: Yes.

10 MS. MOLDENHAUER: -- but if the Board could then  
11 obviously schedule a decision, sooner, rather than later,  
12 would be greatly appreciated.

13 VICE CHAIRPERSON HART: Okay.

14 MEMBER JOHN: Mr. Vice Chair?

15 VICE CHAIRPERSON HART: Go ahead.

16 MEMBER JOHN: May I respond?

17 VICE CHAIRPERSON HART: Sure.

18 MEMBER JOHN: I think we need revised drawings,  
19 as the Vice Chair said, before we can act on anything. So,  
20 perhaps Chairman Hood's suggestion that we have a limited  
21 hearing. Close the record, have a limited hearing tonight  
22 and then make our decision based on those drawings and the  
23 proposed findings of fact and conclusions of law. Because  
24 the record is really quite full at this time and that's the  
25 only thing that's missing.

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1 MS. MOLDENHAUER: Well --

2 VICE CHAIRPERSON HART: Well, what Ms. Moldenhauer  
3 was saying is that 68G is actually the drawings that show  
4 this penthouse as a mechanical penthouse. And so I was just  
5 trying to see which ones --

6 MEMBER JOHN: Is this 68G?

7 VICE CHAIRPERSON HART: No. What we're seeing on  
8 the screen is not 68G. But, I mean, even with these it kind  
9 of says, for these images it says, theoretical, illustrative  
10 one-story mechanical floor plan only for, oh, for BZA only.  
11 Okay.

12 So, I don't have a problem with moving forward  
13 with the conclusions now. I think that I would like to have  
14 a set that actually just shows, this is our proposed and it  
15 has, not a set, but you know, something that says it clear,  
16 this is the proposal that we're moving forward with. And  
17 that would be whatever the next exhibit is. 80 something or  
18 90 something I think now. But let's move forward.

19 How long do you have, do you need for conclusion?

20 MS. MOLDENHAUER: Five minutes. Two minutes. Two  
21 minutes.

22 VICE CHAIRPERSON HART: Okay.

23 MS. MOLDENHAUER: I'll be quick.

24 VICE CHAIRPERSON HART: Okay.

25 MS. MOLDENHAUER: Can I, just as a clarification

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1 --

2 VICE CHAIRPERSON HART: Sure.

3 MS. MOLDENHAUER: Are you going to still request  
4 findings of facts and conclusions of law? Because that would  
5 just elongate the process because we would need to wait for  
6 the transcript in order to draft those.

7 So, we would obviously respectfully request that  
8 they not be requested if you, but I would turn, obviously,  
9 to Opposition Counsel to start closings and we will end with  
10 our closing.

11 VICE CHAIRPERSON HART: Well, I was going to have  
12 you end with yours anyway.

13 MS. MOLDENHAUER: Okay.

14 VICE CHAIRPERSON HART: But I tend to like the  
15 entire case. I don't know about the other, my other Board  
16 Members. Commissioner Hood, Ms. White, Ms. John?

17 MEMBER JOHN: Mr. Vice Chair, I think the record,  
18 there's sufficient information in the record for us to make  
19 a decision, based on the most contentious issue. Which is  
20 the loading requirement and the impact on the adjacent  
21 neighbors.

22 So, I think in that case, we might not need  
23 findings of fact and conclusions of law. If we move to a  
24 request for mechanical only, because that, to me, is the most  
25 difficult lift. It's a very heavy lift. So that would be

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1 my recommendation.

2 VICE CHAIRPERSON HART: I think we would also need  
3 to have a supplemental from the Office of Planning for this  
4 as well.

5 MEMBER JOHN: Yes.

6 VICE CHAIRPERSON HART: Okay.

7 MEMBER WHITE: That would be fine if we want to  
8 just --

9 VICE CHAIRPERSON HART: Okay.

10 MEMBER WHITE: -- kind of move forward, because  
11 I think we've exhausted a lot of the discussion.

12 VICE CHAIRPERSON HART: A lot of the Board Members  
13 --

14 MEMBER WHITE: Yes.

15 ZC CHAIR HOOD: The only ask I have, Mr. Vice  
16 Chair, is if we're going to look at it if July the 18th would  
17 work?

18 VICE CHAIRPERSON HART: Okay. I don't know, we  
19 have to get there too.

20 ZC CHAIR HOOD: Yes. Well, I'm just saying if we  
21 can set it to July the 18th --

22 VICE CHAIRPERSON HART: That's fine.

23 ZC CHAIR HOOD: -- if not then --

24 VICE CHAIRPERSON HART: We're looking at past the  
25 summer. Past the August.

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1           Okay. So, Mr. Feola, I'll let you, I don't know  
2 how long you need, but five minutes?

3           MR. FEOLA: Oh, three.

4           VICE CHAIRPERSON HART: I'm so happy you said  
5 that. When you'd like to start, three minutes please, Mr.  
6 Moy.

7           MR. FEOLA: Sure. As our Client has said, we  
8 would like to encourage development of this site.  
9 Unfortunately, to use a colloquialism, it's a project on  
10 steroids.

11           It's way too big for this site. Just by seeing  
12 the number of relief that it has to get from the zoning  
13 regulations. There is six different kinds of relief.

14           And it seems to me that when the Zoning Commission  
15 put in zoning regulations it allowed variations from that,  
16 whether its variance or special exceptions, in just certain  
17 limited circumstances.

18           Now, with regard to the variances, as I said  
19 before, there's nothing unique about this site. There is not  
20 an exceptional condition or extraordinary situation, it is  
21 a rectangular site, it's bigger than its next door neighbors  
22 in size, it's vacant, it's relatively flat. It has a partial  
23 historic wall on its front facade, it doesn't even cover the  
24 entire front of the building.

25           It does not meet the variance test for the three

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1 variances that are sought. Or maybe two now, I've lost track  
2 of what we dropped and didn't drop.

3           With regard to the special exception for the rear  
4 yard, there is an impact. There's an impact on our client's  
5 property at 450 K, there's an impact on Mr. Stephenson's  
6 property.

7           They're putting a wall literally ten feet away  
8 from another wall. And it's kind of interesting that when  
9 the Zoning Commission created the section that allows the BZA  
10 to do a special exception here, it prohibits you from  
11 granting special exception if this application was for a  
12 hotel. I mean, for an office building.

13           They couldn't get that because they're not 30 feet  
14 away. If they were proposing an apartment building, they  
15 couldn't get special exception relief either.

16           But because it's a hotel, it's a different use.  
17 But I can't believe the Zoning Commission, the irony here is  
18 that the Zoning Commission either didn't think through that  
19 it should be, hotels should be held to the same standard as  
20 an office building, but that's the facts.

21           But in any event, we believe that there is going  
22 to be an adverse impact by allowing this Applicant to not  
23 provide the full rear yard that's required under the zoning  
24 regulations. And it's that simple. Thank you very much.

25           VICE CHAIRPERSON HART: Thank you. Ms. Henry.

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1 MS. HENRY: Thank you. To avoid redundancy, I  
2 rest on the comments that I have earlier made on behalf of  
3 Mr. Stephenson. And we would ask the Board to deny the  
4 special exception for the rear yard requirements and also the  
5 variance requests from the loading birth requirements. Thank  
6 you.

7 VICE CHAIRPERSON HART: Short and sweet. Ms.  
8 Moldenhauer.

9 MS. MOLDENHAUER: Good evening. We believe that  
10 the Applicant has satisfied the relief for the variances and  
11 the special exceptions.

12 The Applicant has made concerted efforts to work  
13 diligently with the ANC, as witnessed from Commissioner  
14 Brown's testimony tonight, as well as to attempt to work and  
15 resolve issues with some of their neighboring property  
16 owners, as testified by Mr. Kline. They had met with both  
17 the opposition parties. Unfortunately, sometimes resolutions  
18 cannot be found.

19 But they have also worked with DDOT and Office of  
20 Planning. At the end of the day we were in a position where  
21 Office of Planning had supported all the areas of relief.

22 And based on back and forth conversations about  
23 the mechanical penthouse, we did show them a penthouse, that  
24 while still does need relief, is something that we are  
25 comfortable that, obviously the Office of Planning can revise

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1 their statements based on Mr. Cochran's testimony tonight,  
2 and obtain relief.

3 We are asking for different areas of variance  
4 relief. As we all know, the variance standard is a situation  
5 in which we must provide a three-prong test.

6 The property is unique, as demonstrated by our  
7 filings, based on the shape. It is not a rectangle, as  
8 Opposition Counsel stated. It actually has some very unique  
9 changes in the size and the width, both in the front and the  
10 rear.

11 As well as the fact that it is narrower than its  
12 non-row house properties on this square. These squares  
13 obviously vary.

14 There is a variety of properties in this square.  
15 You have some of the row home properties and then you have  
16 the large development such as 450 K, the SLS Hotel. And this  
17 property is much smaller, much narrower than those in  
18 comparison.

19 As well as that, the property is uniquely located  
20 in a small portion of the Mount Vernon Triangle intersection  
21 sub area, as well as the unique relationship with the rear  
22 of this property, how it connects to the alley. Not at the  
23 full width of the alley, but rather only at 11.5 feet of the  
24 alley.

25 All three, sorry, four or five of those different

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1 unique factors, create a confluence of factors here which  
2 create the practical difficulty for the areas of relief that  
3 we are requesting.

4 In that regard, we have then satisfied the  
5 practical difficulty of creating and complying with both the  
6 loading requirements, as DDOT has supported, as well as the  
7 loading width by .5 feet in this case.

8 And we have also worked and had, I think,  
9 sufficient testimony in the record in regards to how the  
10 operations will be provided in compliance with the ten points  
11 that DDOT provided in their report, in order to obtain DDOT  
12 support for the loading management plan for this site.

13 We believe that the three-prong in regard to the  
14 relief would not create a substantial detriment to the public  
15 good, and without the substantial impact to the purpose or  
16 intent of the zone plan.

17 As indicated in our testimony from Mr. Varga, an  
18 expert in planning, the property is within the specific goals  
19 of the comprehensive plan to provide hotel and hospitality  
20 in the downtown zone, as well as the OP report which  
21 specifically does affirm that we would not be adverse, and  
22 to the specific use.

23 We heard testimony from opposition that the relief  
24 is just too great. That is opposition that has been heard  
25 before, and actually, the court of appeals has resolved that.

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1           In Fleischman, which is court of appeals 09-AA-  
2 1514, which is an appeal of K17837, the court of appeals  
3 said, "we are unpersuaded by the petitioner's argument that  
4 on the basis of these facts the size of the property or the  
5 number of variances requested by themselves, would impact our  
6 analysis on whether the BZA had the authority to preside of  
7 this application or whether obviously relief can be granted."

8           There are multiple cases, as we provided in the  
9 record. 450 K actually received a host of varying reliefs  
10 as well as a property down the block, which also received  
11 penthouse relief. Both of those on the square.

12           We don't believe that the number of relief  
13 requested is something that is, one, beyond the Board's  
14 authority or, a situation which would obviously not permit  
15 the granting of that relief.

16           Then, in regards to the special exceptions that  
17 we have requested, we have requested special exception for  
18 rear yard and then the penthouse setback relief. In that  
19 regard, we have provided and revised our plans. Again,  
20 working diligently, to try to address concerns by removing  
21 windows on the rear portion of the site that obviously abuts  
22 the at-risk windows.

23           I state the at-risk windows because this Board has  
24 recently, in a number of cases, addressed the question of at-  
25 risk windows.

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1           And in Case 19586, the Office of Planning, Brian  
2 Golding actually provided a very comprehensive and extensive  
3 OP report at Exhibit 49, which goes through the aspect of at-  
4 risk windows and how the Board, because it says at the end,  
5 OP must maintain its original assertion of at-risk windows  
6 at issues cannot be considered necessary, nor guaranteed by  
7 right. Thus, we do not indicate any as a potential,  
8 temporary benefit, to the use of the builder and the  
9 provision of rear yard relief for 100 K Street, Northeast,  
10 would not have adverse effect on the New York Avenue  
11 property.

12           Here the same position is true. The Board, as it  
13 has in past cases, cannot evaluate rear yard relief based on  
14 at-risk windows. At-risk windows are something where 450 K,  
15 while the current owner was not the one that obviously  
16 entered into the covenant, they were aware of the covenant.  
17 It was part of the land record, part of their extensive due  
18 diligence requirements, and so that should not be an issue.

19           We also believe that we have in the record  
20 sufficient information that the use and the impact on privacy  
21 for the hotel use is different, as well as the fact that it  
22 is in compliance with Y302.2, as all the parties were aware  
23 as of the OP report done on March 23rd, 2018, of the ZA's  
24 stated decision on that fact, that because of a hotel use,  
25 those certain special exception conditions were not

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1 specifically impacted in this case, and thus we did satisfy  
2 the special exceptions standard.

3           Based on all of the above, and I think all of the  
4 comprehensive information in the record, we believe that the  
5 case is complete and that we have either mitigated those  
6 factors by loading management plans or by revisions of the  
7 plans as well and that we would ask -- Sorry, last, that the  
8 special exception for the penthouse, we believe that we've  
9 extensively shown that we have satisfied A through F of the  
10 special exception conditions for the penthouse relief, in  
11 regards to the unreasonableness and the undue restriction  
12 because of the narrow property, the narrow aspect of the lot,  
13 as well as the fact that the inability to locate all of our  
14 mechanical uses on the lot without requesting relief and that  
15 the practical difficulty of needing to provide that specific  
16 mechanical equipment in a position that is obviously open to  
17 the air, is what specifically leads to the relief being  
18 requested.

19           And as we had identified in some of our exhibits,  
20 that only two areas, looking in the left-hand document on  
21 Exhibit Page 20, are areas in which they do not comply with  
22 the one-to-one, sorry, there is three, Section A, C and C  
23 below, which do not comply to the one-to-one setback on the  
24 mechanic penthouse relief. And those are specifically  
25 related to the court relief.

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1           In most cases, in most properties, a court would  
2 actually have zero side yard setback. And in other  
3 instances, side yards not on a court would have a one-to-one  
4 half.

5           Here we are above the one-to-one half but it is  
6 the most constrained portion on the narrow site creating the  
7 difficulty. But we do believe that the design is still the  
8 most compliant with the special exception standards and would  
9 not create any adverse impact.

10           And the record is comprehensive, both in regards  
11 to the rear yard and the penthouse with our sun study, which  
12 also shows that this would not create a substantial adverse  
13 impact on any of the neighbors. Based on that we would ask  
14 the record to be closed and the Board to deliberate. Thank  
15 you.

16           VICE CHAIRPERSON HART: Thank you. I think that  
17 we are looking for a few things. And I will, I'll ask my  
18 fellow Board Members.

19           The few things that I think that we still need to  
20 get are just clean drawings that kind of show this is what  
21 you're moving forward with and supplemental OP report.

22           I don't know, do we need something from the ANC,  
23 because I think they have given us sufficient information  
24 about their position. I think Commissioner Brown has  
25 provided sufficient information for me, I just didn't know

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1 if -- Okay. Hearing none I think that's it. I think it's  
2 just those two things that we were looking for, for --

3 MS. LOVICK: Excuse me.

4 VICE CHAIRPERSON HART: Yes.

5 MS. LOVICK: I just want to, since the Applicant  
6 is going to be submitting revised plans just showing the  
7 mechanical, it would potentially be helpful if they did a  
8 revised self-cert removing the penthouse habitable space  
9 relief since they're no longer requesting that relief, just  
10 so it's perfectly clear since there is going to be additional  
11 submissions to the record.

12 VICE CHAIRPERSON HART: Okay. Thank you, Ms.  
13 Lovick.

14 So, I think what I would do is to close the record  
15 with, except for those items. I see heads nodding so I think  
16 that's, we made a decision. All right.

17 And I also think that we can make a, set the  
18 project for a decision on, I think I heard July 18th. Mr.  
19 Moy?

20 MR. MOY: Yes, that would be the earliest date.  
21 Given the circumstances.

22 VICE CHAIRPERSON HART: So, if you could kind of  
23 walk through when we would need to get some of this  
24 information, the documents by.

25 MR. MOY: Working backwards, setting a decision

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1 for July 18th. And let's say, giving the Office of Planning  
2 a week, or do you want two weeks?

3 MR. COCHRAN: I think we could do it in less than  
4 a week.

5 MR. MOY: Okay, perfect. I'll give you a week.  
6 So your due date then would be July 11th. And if the  
7 Applicant can make their filing, I want to get back to the  
8 Opposition Party too, if the Applicant can make their filing  
9 for June the -- can you do it in June? June 27th?

10 MS. MOLDENHAUER: Yes.

11 MR. MOY: All right, June 27th. And would the  
12 Board care for responses from the Opposition Party by, if you  
13 do then I would give them a date of July 11th also?

14 VICE CHAIRPERSON HART: Okay, I think that's fine.

15 MR. MOY: Okay.

16 VICE CHAIRPERSON HART: Wow, okay. I'm just  
17 realizing that we can say this is just about over. So, does  
18 anyone else have any, everyone clear as to the dates when  
19 we're looking for anything? Okay.

20 I want to thank everybody. I know this was kind  
21 of a long hearing but I do appreciate, long hearings, I do  
22 appreciate the time and effort and appreciate you all for  
23 coming out because I think it's, there are a lot of balls in  
24 the air with this one and it is helpful to hear the various  
25 points of view, so I do appreciate all the time and effort

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1 that you all have put into being here.

2           So, with that, I'll say thanks. And I did close  
3 the record, so --

4           MS. MOLDENHAUER: Okay.

5           VICE CHAIRPERSON HART: Except for the items that  
6 we just, I just discussed. And that's it. Thank you very  
7 much. Have a good evening.

8           Mr. Moy, is there any other business before the  
9 Board?

10          MR. MOY: Nothing else for the Staff, sir.

11          VICE CHAIRPERSON HART: All right, we stand  
12 adjourned.

13                   (Whereupon, the above-entitled matter went off the  
14 record at 5:49 p.m.)

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C E R T I F I C A T E

This is to certify that the foregoing transcript

In the matter of: Public Hearing

Before: DC BZA

Date: 06-20-18

Place: Washington, DC

was duly recorded and accurately transcribed under my direction; further, that said transcript is a true and accurate record of the proceedings.



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Court Reporter

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